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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2016-0027
United States Army,)	
Respondent)	CONSENT AGREEMENT
Fort Wainwright Garrison Facility)	
OB/OD River Site CC-FTWW-068)	
Fort Wainwright, Alaska)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency by Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928.

1.2. Pursuant to Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), EPA may take enforcement action against departments, agencies, and instrumentalities of the Federal government in the same manner and under the same circumstances as against any other person.

1.3. At this time, the State of Alaska does not have an authorized RCRA program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926; therefore, EPA may directly enforce the federal hazardous waste program.

1.4. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the United States Army (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement (Final Order).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant) has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Respondent is a department, agency, and/or other instrumentality of the United States.

3.2 Respondent is a “person” as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

3.3 At all times relevant to the allegations set forth herein, Respondent is and has been the “owner” and “operator” of the U.S. Army Fort Wainwright Garrison Facility, located in the State of Alaska at Fairbanks North Star Borough, at latitude 64 degrees 48 minutes 47 seconds North and

longitude 147 degrees 34 minutes 38 seconds West (Fort Wainwright or Facility) as those terms are defined in 40 C.F.R. § 260.10.

3.4 Fort Wainwright constitutes approximately nine hundred and eleven thousand acres in the Fairbanks North Star Borough. Included in this is a range complex, maneuver areas, missile sites, and a cantonment area located on the eastern border of the city of Fairbanks.

3.5 Fort Wainwright was listed on the National Priorities List in August 1990 and the Army entered into a Federal Facilities Agreement with EPA and the Alaska Department of Environmental Conservation in March 1992.

3.6 Among other things, the stated purpose of the FFA was to implement the selected interim and final remedial actions at the Facility in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act and applicable state law and to assure compliance with RCRA and other federal and state hazardous waste laws and regulations for matters covered within the FFA.

3.7 The FFA at Section 11.3 requires the Army to immediately notify EPA and ADEC Project Managers if preliminary analysis indicates a potential imminent and substantial endangerment to the public health.

3.8 The FFA at Section 24.3 requires the Army to notify EPA and ADEC within thirty days of identifying a new potential source area.

3.9 On September 23, 2013, EPA issued a RCRA Hazardous Waste Facility Permit (Permit) to U.S. Army Fort Wainwright (Permittee) for closure of an open burning/open detonation unit and for corrective action at all solid waste management units at the Facility. The Permit became effective on November 15, 2013.

3.10 The Permit defined a SWMU as “. . . any discernable unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at the Facility at which hazardous wastes and/or constituents have been routinely and systematically released.”

3.11 The Permit incorporated the FFA by reference and included the FFA as an attachment to the Permit.

3.12 The Permit recognized (in Part III) that RCRA corrective action for the Facility would be satisfied by performance of actions pursuant to the FFA, except for those SWMUs specified in the Permit as not covered by the FFA, to which the corrective action provisions of the Permit applied. Those SWMUs, as specified in the Permit at Part III, paragraphs 1 and 2, are: SWMUs transferred from the FFA to the Permit; newly discovered SWMUs formally identified as outside the scope of the FFA; newly discovered SWMUs not expressly included in writing as within the scope of the FFA; and SWMUs that are discovered, or have not completed corrective action, after the termination of the FFA.

3.13 Permit Condition III.C.1 requires the Permittee to notify the EPA Administrator in writing of any newly identified, newly-discovered, or newly-created SWMU(s) within fifteen days after discovery.

3.14 Permit Condition III.C.2 requires the Permittee to prepare a SWMU Assessment Report within ninety days of the initial notification.

3.15 According to Permit Condition III.C.3., the SWMU Assessment Report serves the purpose of providing the EPA Administrator with information to determine the need for further investigations at the units covered in the Report.

3.16 On or about October 14, 2014, the Army's contractor, Jacobs Engineering, sent an email to EPA and ADEC, attaching a May 12, 2014 Technical Memorandum (Jacobs Memo) documenting the

Army's June 2013 investigation of trespass and illegal activity at the Facility within the Fort Wainwright Small Arms Range, commonly referred to as the Tanana River Military Munitions Site, and since designated by the Army as the OB/OD River Site CC-FTWW-068.

3.17 The Jacobs Memo identified a high probability of encountering munitions and explosives at the Tanana River Military Munitions Site due to the amount of uncharacterized munitions-related debris and expressed concern that the nature of these materials eroding into the Tanana River presented an imminent threat to the environment.

3.18 On or about December 18, 2014, EPA sent a letter informing Respondent that it had violated terms of both the FFA and the RCRA Permit when the Army delayed notifying EPA of the Tanana River Military Munitions Site (hereinafter referred to as the OB/OD River Site) as a new source area and a new SWMU. Additionally, EPA requested, among other things, that the Army provide specific information on the nature and extent of the contamination as well as information on the Army's actions to address the potential for the imminent threat presented by the OB/OD River Site.

3.19 On or about February 20, 2015, Respondent sent a letter in response to EPA's December 2014 letter, notifying EPA of the actions the Army had taken to control access to the OB/OD River Site and the additional actions the Army planned to take under a CERCLA time critical removal action to immediately address the erosion issues at the OB/OD River Site. In the letter, Respondent proposed that the FFA project managers meet in accordance with the FFA if questions or concerns arise with the progress of work at the site.

3.20 On or about March 31, 2015, EPA sent a letter to Respondent reiterating EPA's position that the Army was out of compliance with the terms of the FFA and of the RCRA Permit by its failure to notify EPA within the required timeframes, of the new potential source area and/or the new SWMU.

3.21 On or about May 21, 2015, Respondent responded to EPA's March 2015 letter. Respondent provided information about actions taken and work associated with the Army's proposed time critical removal action and requested a meeting with EPA to discuss the OB/OD River Site.

3.22 Under the terms of the Permit, the OB/OD River Site is a discernable unit at the Facility at which solid wastes have been placed.

3.23 Under the terms of the Permit, the OB/OD River Site falls within the definition of a SWMU.

3.24 Respondent had knowledge of the OB/OD River Site SWMU from at least June 2013 when Respondent's contractor conducted an investigation to document conditions at the Site.

COUNT I

3.25 EPA first received information from Respondent, the Permittee, regarding the OB/OD River Site SWMU on October 14, 2014, about 11 months after the effective date of the Permit and about 16 months after Respondent had knowledge of the OB/OD River Site SWMU.

3.26 Permit Condition III.C.1 requires the Permittee to notify the EPA Administrator in writing of any newly-identified, newly-discovered, or newly-created SWMU(s) within fifteen calendar days after discovery.

3.27 Permit Condition I.U. specifies how notifications, reports, or other submissions to the Administrator must be provided.

3.28 Respondent violated the terms of Permit Condition III.C.1. by failing to notify the Administrator in writing of the OB/OD River Site within the required timeframe.

3.29 Under Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per day per violation, issue an order requiring compliance, or both.

COUNT II

3.30 Permit Condition III.C.2 requires the Permittee to prepare a SWMU Assessment Report within ninety days of the initial notification. Permit Conditions III.C.2.a. through III.C.2.f. identify the information that must be provided in the SWMU Assessment Report.

3.31 EPA did not receive a SWMU Assessment Report, or the results of such Report, from Respondent for the OB/OD River Site SWMU.

3.32 Respondent violated the terms of Permit Condition III.C.2. by not providing a SWMU Assessment Report, or results of such Report, to EPA, within the required timeframe.

3.33 Under Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per day per violation, issue an order requiring compliance, or both.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is \$59,220 (the Assessed Penalty).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order and to undertake the actions specified in this Consent Agreement.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency
Office of Enforcement and Compliance
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Luna.Teresa@epa.gov

Cheryl Williams, RCRA Compliance
Office of Compliance and Enforcement
EPA Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Williams.Cheryl@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty shall become immediately due and owing.

4.8. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take actions within the times specified in this Consent Agreement may subject Respondent to additional civil penalties for each day of continued noncompliance.

4.9. Based on the findings contained in this Consent Agreement, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is also ordered to verify compliance with Permit Condition III.C.2 by providing:

- i. a SWMU Assessment Report for OB/OD River Site CC-FTWW-0068 no later than December 10, 2015;
- ii. written notification of any other SWMUs subject to Part III of the Permit (or notification that Respondent is not aware of other SWMUs) within fifteen calendar days of the effective date of this order;
- iii. a SWMU Assessment Report for any SWMUs identified in 4.9.ii within one hundred and five calendar days of the effective date of this order;

4.10. Further, Respondent understands that to be consistent with Permit Section III.A.3 it must obtain EPA approval prior to implementation of activities subject to the Permit.

4.11. All documentation required by this order shall be submitted to the Administrator, as required by Permit Condition I.U., within 30 days of the effective date of this order. Concurrently, a duplicate copy, which may be electronic, shall be submitted to:

Sandra Halstead, CERCLA Remedial Project Manager
U. S. Environmental Protection Agency Region 10
222 West 7th Avenue, #19
Anchorage AK 99513
Halstead.Sandra@epamail.epa.gov

Concurrently, a copy of the transmittal letter, or transmittal email, shall also be submitted to:

Cheryl Williams, RCRA Compliance Officer
Office of Compliance and Enforcement
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Williams.Cheryl@epa.gov

4.12. The Assessed Penalty, including any additional penalty incurred under Paragraph 4.8 represents an administrative civil penalty assessed by EPA.

4.13. Respondent shall seek all existing funds to meet the requirements of this CAFO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to comply with RCRA, the applicable regulations thereunder, the Permit, or this CAFO. Nothing in this CAFO shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

4.14. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.15. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.16. Each party shall bear its own costs and attorney's fees in bringing or defending this action.

4.17. Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order and/or to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2) on any issue of law of fact set forth in this Consent Agreement and the Final Order.

4.18. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.19. Respondent consents to the issuance of any specified compliance or corrective action order, and to any stated permit action.

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO: RCRA-10-2016-0027
United States Army,)	
RESPONDENT)	FINAL ORDER
Fort Wainwright Garrison Facility)	
OB/OD River Site CC-FTWW-068)	
Fort Wainwright, Alaska)	
)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re-delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ORDERED to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's

4.20. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA

Region 10.

DATED:

2 Nov 2015

FOR RESPONDENT:


SEAN C. WILLIAMS, Colonel U.S. Army
Commanding Fort Wainwright

Wesley D. Potter
Deputy to the Garrison Commander
USAG Fort Wainwright
907-353-7660

DATED:

November 2, 2015

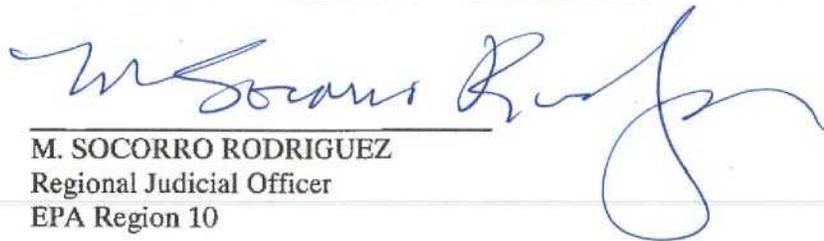
FOR COMPLAINANT:


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 12th day of November, 2015.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: United States Army, Respondent, Fort Wainwright Garrison Facility, OB/OD River Site CC-FTWW-068, Fort Wainwright, Alaska, Docket No. RCRA-10-2016-0027**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

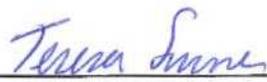
The undersigned certifies that a true and correct copy of the document was delivered to:

Joan C. Shirley, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Tracy Carter, Esquire
Environmental Law Attorney
Fort Wainwright Law Center
1060 Gaffney Road, #1562
Fort Wainwright, AK 99703

DATED this 12 day of November 2015.



TERESA LUNA
Regional Hearing Clerk
EPA Region 10