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**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	
)	Docket No. RCRA 10-2014-0114
)	
United States Army,)	
Respondent.)	
)	CONSENT AGREEMENT
Fort Wainwright Garrison,)	AND FINAL ORDER
Facility.)	
)	
_____)	

I. AUTHORITY

1.1 This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 6001, 9006, and 9007 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6961, 6991e, and 6991f. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has re-delegated this authority to the Regional Judicial Officer.

1.2 Respondent is the United States Army.

1.3 Pursuant to Section 6001(b)(1) of RCRA, 42 U.S.C. § 6961(b)(1), the Administrator is authorized to initiate an administrative enforcement action against a federal facility in the same manner and under the same circumstances as an action would be initiated against another person, and any settlement of such action must be set forth in a consent order.

1.4 Pursuant to Section 9007(a) of RCRA, 42 U.S.C. § 6991f(a), a federal facility having jurisdiction over any underground storage tank (“UST”) or engaged in any activity involving the installation, operation, management, or closure of an UST including any release response activities related thereto, or the delivery, acceptance, or deposit of any regulated substance into an UST, is subject to, and must comply with, all federal, state, interstate, and local UST requirements in the same manner and to the same extent as any person is subject to such requirements, including complying with administrative orders and paying administrative penalties.

1.5 Pursuant to Section 9006(d) of RCRA and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Respondent hereby consents to the issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2 The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority to sign consent agreements between EPA and the party against whom an administrative penalty is proposed to be assessed pursuant to Section 9006 of RCRA, for violations of Subtitle I of RCRA, and the corresponding federal regulations.

2.3 A concise statement of the factual basis for alleging violations of RCRA, together with specific references to the federal UST regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 The United States Army is a department, agency and/or instrumentality of the United States and is a “person” as defined by 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12 and the “owner” of underground storage tanks located on Fort Wainwright Garrison.

3.2 USTs that contain regulated substances were in operation at 13 separate locations at Fort Wainwright at the time of inspection. Since the time of the inspection, Respondent has taken out of service and/or removed the following tanks: Tanks 16 at Building 1171; Tank 228 at Building 3011; Tank 208 at Building 3480; Tank 243 at Building 3490; Tanks 177, 179, and 180 at Building 3562; and Tanks 202 and 203 at Building 3730. Respondent plans to take out of service and/or remove Tank 17 at Building 1171 during the summer of 2014.

3.3 On June 5, 2013, EPA Region 10 conducted inspections of the USTs at Fort Wainwright.

3.4 The EPA inspections included a review of the records maintained at Fort Wainwright for each UST system for the previous year and an inspection of the UST systems at each of the 13 locations.

3.5 The USTs at the facilities within Fort Wainwright are used to store petroleum and antifreeze, each of which is a “regulated substance,” as defined in Section 9001(7), 42 U.S.C. § 6991(7), and 40 C.F.R. § 280.12.

3.6 Respondent is the “owner” and/or “operator” of “underground storage tank(s)” as these terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

3.7 As owner and/or operator of petroleum and antifreeze USTs in the state of Alaska, Respondent is subject to federal UST requirements.

3.8 As a result of the June 2013 inspections and follow-up discussions and information exchange with Respondent, EPA alleges the violations described in paragraphs 3.9 to 3.28 below.

Building 1171, Ski Hill

3.9 **Count 1:** Respondent failed to monitor tanks at least every 30 days as required by 40 C.F.R. § 280.41(a) for two UST systems from June 1, 2012 through October 31, 2012 and December 1, 2012 through May 31, 2013.

Building 1537, Bureau of Land Management

3.10 **Count 2:** Respondent failed to monitor one tank at least every 30 days as required by 40 C.F.R. § 280.41(a) for one UST system from June 1, 2012 through April 30, 2013.

Building 2080, Fire Pumps Hangar 7/8

3.11 **Count 3:** Respondent failed to monitor one tank at least every 30 days as required by 40 C.F.R. § 280.41(a) for one UST system from June 1, 2012 through May 31, 2013.

Building 2096, Golf Course

3.12 **Count 4:** Respondent failed to monitor tanks at least every 30 days as required by 40 C.F.R. § 280.41(a) for two UST systems from June 1, 2012 through April 30, 2013.

Building 3011, Fire Pumps Hangar 2/3

3.13 **Count 5:** Respondent failed to monitor one tank at least every 30 days as required by 40 C.F.R. § 280.41(a) for one UST system from June 1, 2012 through May 21, 2013.

Building 3015, Department of Public Works

3.14 **Count 6:** Respondent failed to monitor tanks at least every 30 days as required by 40 C.F.R. § 280.41(a) for two UST systems from June 1, 2012 through November 30, 2012 and January 1, 2013 through May 31, 2013.

Building 3480, Installation Maintenance Facility

3.15 **Count 7:** Respondent failed to monitor one tank at least every 30 days as required by 40 C.F.R. § 280.41(a) for one UST system from June 1, 2012 through April 30, 2013.

Building 3484, Directorate of Logistics

3.16 **Count 8:** Respondent failed to monitor tanks at least every 30 days as required by 40 C.F.R. § 280.41(a) for two UST systems from June 1, 2012 through April 30, 2013.

3.17 **Count 9**: Respondent failed to conduct piping release detection as required by 40 C.F.R. § 280.41(b)(1)(ii) for two piping systems from June 1, 2012 through April 30, 2013.

3.18 **Count 10**: Respondent failed to report a suspected release within 24 hours to the implementing agency as required by 40 C.F.R. § 280.50(c) from at least April 24, 2013 through June 5, 2013.

3.19 **Count 11**: Respondent failed to immediately investigate and confirm all suspected releases of regulated substances requiring reporting under § 280.50 within seven days, as required by 40 C.F.R. § 280.52, from at least April 29, 2013 through June 5, 2013.

Building 3490, Installation Maintenance Facility

3.20 **Count 12**: Respondent failed to monitor one tank at least every 30 days as required by 40 C.F.R. § 280.41(a) for one UST system from June 1, 2012 through April 30, 2013.

Building 3562, AAFES Shoppette

3.21 **Count 13**: Respondent failed to monitor tanks at least every 30 days as required by 40 C.F.R. § 280.41(a) for three UST systems from June 1, 2012 through May 31, 2013.

3.22 **Count 14**: Respondent failed to conduct piping release detection as required by 40 C.F.R. § 280.41(b)(1)(ii) for three piping systems from June 1, 2012 through May 31, 2013.

Building 3730, Auto Hobby Shop

3.23 **Count 15**: Respondent failed to monitor one tank at least every 30 days as required by 40 C.F.R. § 280.41(a) for one UST system from June 1, 2012 through February 4, 2013 (Tank #917/202 waste oil).

3.24 **Count 16**: Respondent failed to monitor an existing hazardous substance tank at least every 30 days as required by 40 C.F.R. § 280.42(a) for one UST system from June 1, 2012 through May 31, 2013 (Tank #918/203 antifreeze).

3.25 **Count 17**: Respondent failed to operate and maintain a cathodic protection system continuously as required by 40 C.F.R. § 280.31(a) from August 23, 2012 through February 4, 2013 (Tank #917/202 waste oil).

3.26 **Count 18**: Respondent failed to operate and maintain a cathodic protection system continuously as required by 40 C.F.R. § 280.31(a) from August 13, 2011 through September 14, 2013 (Tank #918/203 antifreeze).

3.27 **Count 19**: Respondent failed to comply with temporary closure requirements for a tank system for three or more months as required by 40 C.F.R. § 280.70(b) from February 5, 2013 through September 14, 2013.

Building 5009, Defense Reutilization Marketing Office

3.28 **Count 20**: Respondent failed to monitor one tank at least every 30 days as required by 40 C.F.R. § 280.41(a) for one UST system from June 1, 2012 through April 30, 2013.

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

4.1 Respondent admits the jurisdictional allegations contained in Part I, above, and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this CAFO.

4.2 Respondent neither admits nor denies the specific factual allegations in Part III, above.

4.3 Respondent waives its right to request an adjudicatory hearing on any issue addressed in this CAFO. In addition, Respondent waives its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).

4.4 Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.5 Pursuant to Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), EPA and Respondent agree that an appropriate penalty to settle this action is \$158,679.

4.6 Respondent consents to the issuance of the Final Order in Part V below and to payment of the civil penalty cited in the foregoing paragraph within 60 days of the effective date of the Final Order. The aforesaid settlement amount was based upon Complainant's consideration of the statutory assessment factors, including the seriousness of the violation and any good faith efforts to comply with applicable requirements, in accordance with the U.S.

Penalty Guidance for Violations of UST Regulations, dated November 14, 1990, as revised on April 6, 2010.

4.7 Payments under this CAFO shall be made by U.S. Government Treasury check, certified check or bank check payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case. Respondent also may make the penalty payment by wire transfer or electronic payment in accordance with instructions which will be provided by EPA upon request.

4.8 Respondent shall serve a photocopy of the check or documentation of the wire transfer or electronic payment described above to the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101-3140

Anne Christopher
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop OCE-082
Seattle, Washington 98101-3140

4.9 Each party shall bear its own costs, fees, and disbursements in this action.

4.10 Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein and, without admitting or denying the factual allegations contained in the Final Order, consents to the terms of this CAFO.

4.11 This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

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

STIPULATED AND AGREED:


RESPONDENT



S. C. Zemp
Colonel, U.S. Army
Commanding Officer
Fort Wainwright Garrison

Dated: 12 June 2014

U.S. ENVIRONMENTAL PROTECTION AGENCY



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

Dated: June 23, 2014

V. FINAL ORDER

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

5.2. Based on the findings contained in the Consent Agreement, Respondent is also ordered to comply with the following requirement pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a):

(a) Within 30 days of any tank closure/removal activities, Respondent shall provide copies of all documentation of tanks taken out of service and/ or removed associated with the UST systems listed in paragraph 3.2.

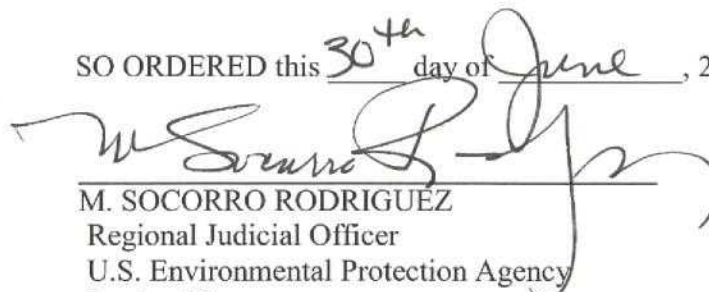
(b) Compliance documentation shall be provided to the following address:

Anne Christopher
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop OCE-082
Seattle, Washington 98101-3140

5.3. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the violations and facts alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations and permits issued thereunder.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 30th day of June, 2014


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
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, Fort Wainwright Garrison; Docket No.: RCRA-10-2014-0114**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

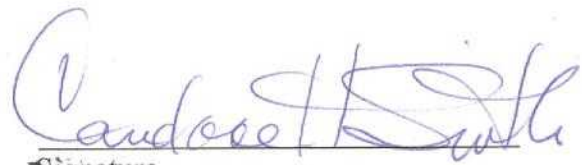
The undersigned certifies that a true and correct copy of the document was delivered to:

Anne Christopher
U.S. Environmental Protection Agency
1200 Sixth Avenue, OCE-082
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:

Tracey Carter
Environmental Law Attorney
Fort Wainwright Law Center
1060 Gaffney Road, # 1562
Fort Wainwright, Alaska 99703

DATED this 30th day of June, 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10