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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK  
EPA -- REGION 10

In the Matter of: )

DOCKET NO. SDWA 10-2013-0046

U.S. Air Force 611<sup>th</sup> Air Support Group )

CONSENT AGREEMENT &  
FINAL ORDER

Respondent, )

Sparrevohn, Tatalina, and Indian  
Mountain Long Range Radar Sites,  
Alaska )

The United States Environmental Protection Agency ("EPA") issues the following Consent Agreement & Final Order to resolve alleged violations of the Safe Drinking Water Act with the U.S. Air Force 611<sup>th</sup> Air Support Group ("Respondent").

**I. AUTHORITIES**

1.1. This Consent Agreement & Final Order ("CAFO") is issued under the authority vested in the Administrator of the EPA under Section 1447(b) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. § 300j-6(b).

1.2. The EPA Administrator has delegated the authority to negotiate consent orders memorializing settlements of claims under Section 1447(b) of the SDWA to the Regional Administrator for EPA, Region 10, who in turn has delegated the authority to the Director of the Office of Compliance and Enforcement, Region 10.

1.3. Pursuant to Section 1447(b) of the SDWA, 42 U.S.C. § 300j-6(b), 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 the Respondent hereby agrees to issuance of, the Final Order contained in Part V of this CAFO. Respondent

waives its right to confer with the Administrator and its right to a hearing on the issuance of this order under Section 1447(b)(3) of the SDWA, 42 U.S.C. § 300j-6(b)(3).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.43, issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Part III of this CAFO contains a statement of the legal and factual allegations against the Respondent.

2.3. This Order shall become effective in accordance with Paragraph 5.4.

## **III. ALLEGATIONS**

3.1. Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), authorizes EPA to administer the Underground Injection Control ("UIC") program in states which do not have approved state programs. The State of Alaska has not acquired primacy of the Class V UIC program. Therefore, EPA Region 10 directly implements the Class V UIC program in the State of Alaska.

3.2. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), grants EPA enforcement authority whenever the Administrator finds that any person subject to any requirement of any applicable UIC program is violating that requirement. EPA's enforcement authority includes commencing a civil action under Section 300h-2(b) of the SDWA, 42 U.S.C. § 1423(b), or issuing an administrative order to require compliance with UIC regulations, to assess penalties, or both under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

3.3. 40 C.F.R. § 144.3 defines “person” as an “individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.”

3.4. Section 1447(b) of the Act, 42 U.S.C. § 300j-6(b), authorizes EPA to issue a penalty order assessing a penalty whenever the Administrator finds that a Federal agency subject to any requirement of any applicable UIC program is violating that requirement.

3.5. Section 1447(a) of the Act, 42 U.S.C. § 300j-6(a), expressly waives any sovereign immunity otherwise applicable to the United States with respect to any substantive or procedural requirement, including any injunctive relief, administrative order, or civil or administrative penalty.

3.6. Section 1445 of the Act, 42 U.S.C. § 300j-4, authorizes EPA to conduct inspections and to request information to determine whether the owner or operator of an injection well has acted or is acting in compliance with the UIC program.

3.7. 40 C.F.R. § 144.17 authorizes EPA to require an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations.

3.8. 40 C.F.R. § 144.3 defines “owner or operator” as “the owner or operator of any ‘facility or activity’ subject to regulation under the UIC program.”

3.9. 40 C.F.R. § 144.11 prohibits any underground injection, except as authorized by rule or permit under the UIC program.

3.10. 40 C.F.R. § 144.12 prohibits any injection activity that allows the movement of fluids containing any contaminant into an Underground Source of Drinking Water (“USDW”)



if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons.

3.11. 40 C.F.R. § 144.3 defines “USDW” as an aquifer or its portion, which supplies any public water system; or which contains a sufficient quantity of ground water to supply a public water system; and currently supplies drinking water for human consumption or contains fewer than 10,000 mg/l total dissolved solids; and which is not an exempted aquifer.

3.12. 40 C.F.R. § 144.3 defines “injection well” as a “well” into which “fluids” are being placed.

3.13. 40 C.F.R. § 144.3 defines “well” as a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.

3.14. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or moves whether in semisolid, liquid, sludge, gas, or any other form or state.

3.15. 40 C.F.R. § 144.3 defines “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.

3.16. 40 C.F.R. § 144.6 defines the types of wells regulated under the UIC program. 40 C.F.R. Part 144, Subpart G defines the requirements for Class V wells. A motor vehicle waste disposal well is a Class V well.

3.17. 40 C.F.R. § 144.81(16) defines a “motor vehicle waste disposal well” (“MVWDW”) as a well that receives or has received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility

that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (“MCLs”) established by federally mandated primary drinking water regulations. These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

3.18. 40 C.F.R. § 144.87 mandates that all motor vehicle waste disposal wells in Alaska must be closed, in accordance with 40 C.F.R. § 144.89, by January 1, 2005.

3.19. Respondent is part of the Department of the Air Force, a Federal agency, and therefore meets the definition of a “person” under 40 C.F.R. § 144.3.

3.20. **Sparrevohn Long Range Radar Site:** The injection well at the vehicle maintenance shop at the Sparrevohn Long Range Radar Site consisted of floor drains that were piped to an oil/water separator that discharged to an adjacent septic leach field. The system was an injection well that received motor vehicle waste fluids. This injection well was a Class V MVWDW.

3.21. **Tatalina Long Range Radar Site:** The injection well at the vehicle maintenance shop at the Tatalina Long Range Radar Site consisted of floor drains that were piped to an oil/water separator that discharged to an adjacent septic leach field. The system was an injection well that received motor vehicle waste fluids. This injection well was a Class V MVWDW.

3.22. **Indian Mountain Long Range Radar Site:** There were two injection wells at this site that required closure: the original well and the 2007 replacement well. The injection well at the vehicle maintenance shop at the Indian Mountain Long Range Radar Site consisted

of floor drains that were piped to an oil/water separator that first discharged to the original adjacent septic leach field from the 1980s to 2007. The original septic leach field was replaced in 2007 and the floor drains and oil/water separator discharged to the new septic leach field from 2007 to 2012. Both systems were injection wells that received motor vehicle waste fluids. Both injection wells were Class V MVWDWs.

3.23. Respondent is the owner and operator of the MVWDWs at the Sparrevohn, Tatalina, and Indian Mountain Long Range Radar Sites.

3.24. Respondent failed to close the subject wells in accordance with 40 C.F.R. § 144.87 by January 1, 2005.

3.25. On June 27, 2012, EPA sent Respondent a Conditional Approval of Respondent's Closure Plans for the subject wells.

3.26. Respondent completed the physical closure of the floor drains in July 2012 and sent photo documentation to EPA on August 6, 2012, and conducted sampling of the leach fields from October 2-4, 2012.

3.27. In accordance with Section 1447(b) of the Act, 42 U.S.C. § 300j-6(b), and 40 C.F.R. Part 19, Respondent is liable for administrative penalties of up to \$32,500 per day of violation.

#### **IV. CONSENT AGREEMENT**

4.1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.



4.3. Pursuant to Section 1447(b) of the Act, 42 U.S.C. § 300j-6(b), EPA determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of FORTY-FIVE THOUSAND DOLLARS (\$45,000).

4.4. Respondent consents to issuance of the Final Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in Paragraph 4.3, above, within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check 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  
PO Box 979077  
St. Louis, MO 63197-9000

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

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5, above, on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, MS ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Anne Christopher  
U.S. Environmental Protection Agency  
Ground Water Unit  
1200 Sixth Avenue, Suite 900, OCE-082  
Seattle, WA 98101

4.7. 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 the SDWA, the applicable regulations thereunder, or 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.

4.8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.9. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V, below.

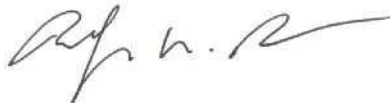
4.10. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.11. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant EPA Region 10.

DATED:

DEC 14 2012

FOR RESPONDENT:



Print Name: Robyn M. Burks  
Title: Commander, 611th Air Support Group

DATED:

2/6/2013

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement



V. FINAL ORDER

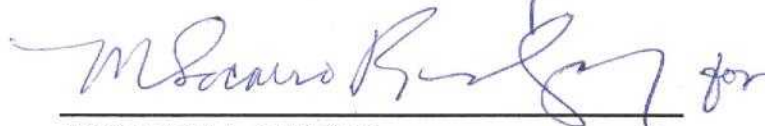
5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all claims for administrative penalties pursuant to the SDWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA 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 obligations to comply with all applicable provisions of the SDWA and regulations or permits promulgated thereunder.

5.3. Pursuant to Section 1447(b)(4) of the Act, 42 U.S.C. § 300j-6(b)(4), and 40 C.F.R. § 22.43(c), EPA provided public notice of Consent Agreement and Final Order served on the parties, and provided public notice that any interested person may, within thirty (30) days of the effective date of the final Order, obtain judicial review of the penalty order pursuant to Section 1447(b)(4) of the Act, 42 U.S.C. § 300j-6(b)(4).

5.4. In accordance with 40 C.F.R. § 22.43(b), this Final Order shall become effective thirty (30) days after it is served on the parties.

SO ORDERED this <sup>28<sup>th</sup></sup> day of March, 2013.



THOMAS M. JAHNKE  
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 **In the Matter of: U.S. Air Force 611<sup>th</sup> Air Support Group, DOCKET NO.: CWA-10-2013-0046**, was filed, and served as follows, on the signature date below.

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


Endre M. Szalay  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, WA 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:

Colonel Robyn M. Burk, USAF  
Commander, 611<sup>th</sup> Air Support Group  
611 ASG/CC  
9480 Pease Avenue, Suite 123  
Joint Base Elmendorf-Richardson, Alaska 99506-2101

Lt. Colonel Justin H. Trumbo, USAF  
Regional Counsel, U.S. Air Force Western Region  
AFLOA/JACE-WR  
50 Fremont Street, Suite 2450  
San Francisco, CA 94105

29<sup>th</sup> March 2013  
Dated

  
Candace Smith  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10