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In the Matter of: : **PROPOSED STIPULATION AND**
: **CONSENT ORDER**

Tooele Army Depot North Area (TEAD-N) : **No. 1712027**
UT3213820894 :

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This proposed **STIPULATION AND CONSENT ORDER** is issued by the Director of the Division of Waste Management and Radiation Control (Director) pursuant to the Solid and Hazardous Waste Act (the Act), Utah Code Ann. §19-6-101, *et seq.* The Director has authority to issue such ORDERS in accordance with Utah Code Ann. §19-6-112.

JURISDICTION

1. The Director has jurisdiction over the subject matter of this CONSENT ORDER pursuant to Utah Code Ann. §19-6-112 and jurisdiction over the Tooele Army Depot North (TEAD-N). TEAD-N and the Director are the parties to this agreement.

FINDINGS

2. TEAD-N is owned and operated by the U.S. Army and is located in Tooele County, Utah, approximately two miles south of the city of Tooele. The mission of TEAD-N is conventional ammunition storage, maintenance and demilitarization.
3. TEAD-N operates various facilities for the storage and treatment of hazardous waste. These include the Hazardous Waste Storage Units, the Open Burn/Open Detonation (OB/OD) Munitions Treatment Unit, the Deactivation Furnace, the Hydrolysis System and the Pull-Apart Operations. TEAD-N operates these units under the provisions of the State-issued Hazardous Waste Part B Permit issued to TEAD-N on March 22, 1993, as modified (the Permit) on file with the Division of Waste Management and Radiation Control (Division). The Permit was renewed and reissued effective February 2, 2017.
4. TEAD-N is a “person” as defined in Utah Code Ann. § 19-1-103(4) and is subject to all applicable provisions of the Utah Administrative Code (UAC), the Act and the Permit.
5. Authorized representatives of the Director conducted a hazardous waste inspection at TEAD-N on May 22-25, 2017.
6. The Director issued NOTICE OF VIOLATION No. 1708015 (the NOV) on October 11, 2017, alleging violations by TEAD-N of the Permit.
7. TEAD-N filed a response to the NOV on November 7, 2017.

STIPULATION AND CONSENT ORDER

8. The parties now wish to fully resolve the NOV without further administrative or judicial proceedings.
9. In full settlement of the violations alleged in the NOV, TEAD-N shall pay a penalty of \$12,348.00. Payment shall be made within thirty days of entry into this CONSENT ORDER. Payment shall be made to the State of Utah, Department of Environmental Quality, c/o Scott T. Anderson, Director, Division of Waste Management and Radiation Control, P.O. Box 144880, Salt Lake City, Utah 84114-4880. This amount has been determined in accordance with the Waste Management and Radiation Control Board's Civil Penalty Policy (UAC R315-102), which considers such factors as the gravity of the violations, the extent of deviation from the rules, the potential for harm to human health and the environment, good faith efforts to comply and other factors.

FORCE MAJEURE

10. TEAD-N shall perform the requirements of this CONSENT ORDER within the time frames set forth herein unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of TEAD-N which cannot be overcome by due diligence. A force majeure shall mean any event arising from causes beyond the control of a party that causes a delay in, or prevents the performance of, any obligation under this CONSENT ORDER, including but not limited to, acts of God, public enemy, unforeseen strikes or work stoppages, fire, explosion, flood, tornado, earthquake, lightning, riot, sabotage, or war. TEAD-N will notify the Director when it learns that performance will be prevented or delayed, setting forth the cause of the delay and its anticipated duration. The burden of showing that a force majeure event has prevented or delayed performance of this CONSENT ORDER lies upon TEAD-N.
11. TEAD-N shall seek all funds necessary for the payment of civil penalties under this CONSENT ORDER by the most expeditious means possible and, if necessary, shall seek new authorization from Congress to achieve the most expeditious schedule of such compliance. However, nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. Any requirement for payment or obligation of funds by a particular date established by the terms of this agreement shall be subject to the availability of funds.
12. Failure to obtain adequate funds or appropriation from Congress does not, in any way, release TEAD-N from its obligations to comply with the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et seq.*, or the Solid and Hazardous Waste Act, Section 19-6-101 *et seq.*, as amended, including the payment of fines or penalties or performance of supplemental environmental projects.

EFFECT OF CONSENT ORDER

13. For the purpose of this CONSENT ORDER, the parties agree and stipulate to the above stated facts. The stipulations contained herein are for the purposes of settlement and shall not be considered admissions by any party and shall not be used by any person related or unrelated to this CONSENT ORDER for purposes other than determining the basis of this CONSENT ORDER. Nothing contained herein shall be deemed to constitute a waiver by the State of its right to initiate enforcement action, including civil penalties, against TEAD-N in the event of future non-compliance with this CONSENT ORDER, with the Act, with the UAC or with the Permit; nor shall the State be precluded in any way from taking appropriate action should such a situation arise again at the TEAD-N facility. However, entry into this CONSENT ORDER shall relieve TEAD-N of all liability for violations which did arise or could have arisen with respect to the allegations contained in the NOV.

EFFECTIVE DATE

14. This CONSENT ORDER shall become effective upon execution by TEAD-N and the Director.

Dated this _____ day of _____, 2018

Tooele Army Depot North

Division of Waste Management and Radiation Control

Todd W. Burnley, Colonel
U.S. Army Commanding

Scott T. Anderson, Director

SETTLEMENT PENALTY AMOUNT

Company Name: Tooele Army Depot North
ID#: UT3213820894

NOV #: 1708015

Prepared By: DWMRC
Date Prepared: November 22, 2017

Violation number (from NOV)	1	2	3	4
Finding Description	SPAM inspections	personnel training	manifest	operating record
1. Gravity based penalty from the matrix	\$155.00	\$520.00	\$2,080.00	\$155.00
(a) Potential for Harm	MINOR	MINOR	MODERATE	MINOR
(b) Extent of Deviation	MINOR	MODERATE	MINOR	MINOR
2. Select an amount from the appropriate multiday matrix cell	\$0.00	\$520.00	\$2,080.00	\$155.00
(a) Number of violations or days of violation	1	2	4	10
3. Multiply Item 2 by the number of days of violation minus 1 (or other number, as appropriate)	\$0.00	\$520.00	\$6,240.00	\$1,395.00
4. Add items 1 and 3	\$155.00	\$1,040.00	\$8,320.00	\$1,550.00
5. Good Faith				
(a) Percent increase	0%	0%	0%	0%
(b) Percent decrease	0%	0%	30%	0%
6. Willfulness/negligence				
(a) Percent increase	0%	0%	0%	0%
(b) Percent decrease	0%	0%	0%	0%
7. History of compliance/noncompliance				
(a) Percent increase	0%	0%	0%	0%
(b) Percent decrease	0%	0%	0%	0%
8. Other unique factors				
(a) Percent increase	0%	0%	0%	0%
(b) Percent decrease	0%	0%	0%	0%
9. Total items 5 through 8	0%	0%	-30%	0%
10. Multiply item 4 by item 9	\$0.00	\$0.00	-\$2,496.00	\$0.00
11. Add items 4 and 10	\$155.00	\$1,040.00	\$5,824.00	\$1,550.00
12. Adjustment for environmental project	\$0.00	\$0.00	\$0.00	\$0.00
13. Subtract item 12 from item 11	\$155.00	\$1,040.00	\$5,824.00	\$1,550.00
14. Calculate economic benefit	\$0.00	\$0.00	\$0.00	\$0.00
15. Add items 13 and 14	\$155.00	\$1,040.00	\$5,824.00	\$1,550.00
16. Adjustment amount for ability to pay	\$0.00	\$0.00	\$0.00	\$0.00
17. Adjustment amount for litigation risk	\$0.00	\$0.00	\$0.00	\$0.00
18. Add items 16 and 17	\$0.00	\$0.00	\$0.00	\$0.00
19. Subtract item 18 from item 15 for final settlement total	\$155.00	\$1,040.00	\$5,824.00	\$1,550.00

TOTAL THIS PAGE = \$8,569

SETTLEMENT PENALTY AMOUNT

Company Name: Tooele Army Depot North
ID#: UT3213820894

NOV #: 1708015

Prepared By: DWMRC
Date Prepared: November 22, 2017

Violation number (from NOV)	5	6		
Finding Description	CEMS drift checks	OB without permit		
1. Gravity based penalty from the matrix	\$155.00	\$155.00		
(a) Potential for Harm	MINOR	MINOR		
(b) Extent of Deviation	MINOR	MINOR		
2. Select an amount from the appropriate multiday matrix cell	\$155.00	\$0.00		
(a) Number of violations or days of violation	14	1		
3. Multiply Item 2 by the number of days of violation minus 1 (or other number, as appropriate)	\$2,015.00	\$0.00		
4. Add items 1 and 3	\$2,170.00	\$155.00		
5. Good Faith				
(a) Percent increase	0%	0%		
(b) Percent decrease	0%	30%		
6. Willfulness/negligence				
(a) Percent increase	0%	0%		
(b) Percent decrease	0%	0%		
7. History of compliance/noncompliance				
(a) Percent increase	0%	0%		
(b) Percent decrease	0%	0%		
8. Other unique factors				
(a) Percent increase	0%	0%		
(b) Percent decrease	0%	0%		
9. Total items 5 through 8	0%	-30%		
10. Multiply item 4 by item 9	\$0.00	-\$46.50		
11. Add items 4 and 10	\$2,170.00	\$108.50		
12. Adjustment for environmental project	\$0.00	\$0.00		
13. Subtract item 12 from item 11	\$2,170.00	\$108.50		
14. Calculate economic benefit	\$0.00	\$1,500.00		
15. Add items 13 and 14	\$2,170.00	\$1,608.50		
16. Adjustment amount for ability to pay	\$0.00	\$0.00		
17. Adjustment amount for litigation risk	\$0.00	\$0.00		
18. Add items 16 and 17	\$0.00	\$0.00		
19. Subtract item 18 from item 15 for final settlement total	\$2,170.00	\$1,608.50		

TOTAL THIS PAGE =	\$3,779
GRAND TOTAL =	\$12,348

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1708015

Violation Number from NOV 1

Violation Description: **SPAM inspections**

1. Gravity Based Penalty:
 - (a) Potential for Harm: **MINOR**. Inspections were done in the subsequent and prior weeks and no problems were found.
 - (b) Extent of Deviation: **MINOR**. The inspections are done most of the time; only one was missed.
2. Multiple/Multi-day:
 - (a) Number of Violations: **One**.
5. Adjustment for Good Faith: N/A
6. Adjustment for Willfulness/Negligence: N/A
7. Adjustment for History of Compliance or Noncompliance: N/A
8. Adjustment for Other Unique Factors: N/A
14. Adjustment for Economic Benefit: Considered but not applied; benefit negligible.
16. Adjustment for Ability to Pay: N/A

Total: **\$155.00**

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1708015

Violation Number from NOV 2

Violation Description: **personnel training**

1. Gravity Based Penalty:
 - (a) Potential for Harm: **MINOR**. The required training was eventually completed.
 - (b) Extent of Deviation: **MODERATE**. Most of the training is conducted within six months. However, in these cases, it was significantly longer than six months.
 2. Multiple/Multi-day:
 - (a) Number of Violations: **Two**. Two employees were found to be deficient in the training requirements.
 5. Adjustment for Good Faith: N/A
 6. Adjustment for Willfulness/Negligence: N/A
 7. Adjustment for History of Compliance or Noncompliance: **N/A**
 8. Adjustment for Other Unique Factors: N/A
 14. Adjustment for Economic Benefit: Considered but not applied; benefit negligible.
 16. Adjustment for Ability to Pay: N/A
- Total: **\$1,040.00**

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1708015

Violation Number from NOV 3

Violation Description: **manifest**

1. Gravity Based Penalty:
 - (a) Potential for Harm: **MODERATE**. The manifest is the key to ensuring that hazardous wastes are tracked properly and arrive at their intended destinations. However, these wastes were shipped to a proper TSD which rejected them and they were returned to TEAD-N until the proper manifests were prepared.
 - (b) Extent of Deviation: **MINOR**. Most of the shipments are accompanied by a hazardous waste manifest.
2. Multiple/Multi-day:
 - (a) Number of Violations: **Four**. There were four trucks of hazardous waste without manifests in the shipment.
5. Adjustment for Good Faith: **-30%**. The violation was reported by TEAD-N.
6. Adjustment for Willfulness/Negligence: N/A
7. Adjustment for History of Compliance or Noncompliance: N/A
8. Adjustment for Other Unique Factors: N/A
14. Adjustment for Economic Benefit: Considered but not applied; benefit negligible.
16. Adjustment for Ability to Pay: N/A

Total: **\$5,824.00**

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1708015

Violation Number from NOV 4

Violation Description: **operating record**

1. Gravity Based Penalty:
 - (a) Potential for Harm: **MINOR**. The discrepancies in the weights would have been reconciled when they were sent for processing.
 - (b) Extent of Deviation: **MINOR**. Although there were many discrepancies, each one was fairly minor, and the number of discrepancies is accounted for below.
 2. Multiple/Multi-day:
 - (a) Number of Violations: **Ten**. Although there were likely more discrepancies, ten were cited in the NOV.
 5. Adjustment for Good Faith: N/A
 6. Adjustment for Willfulness/Negligence: N/A
 7. Adjustment for History of Compliance or Noncompliance: N/A
 8. Adjustment for Other Unique Factors: N/A
 14. Adjustment for Economic Benefit: Considered but not applied; benefit negligible.
 16. Adjustment for Ability to Pay: N/A
- Total: **\$1,550.00**

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1708015

Violation Number from NOV 5

Violation Description: **CEMS drift checks**

1. Gravity Based Penalty:
 - (a) Potential for Harm: **MINOR**. Most of the failures were fairly minor. The system also adjusts the output to account for deviations in the calibrations.
 - (b) Extent of Deviation: **MINOR**. Although there were many discrepancies, each one was fairly minor, and the number of discrepancies is accounted for below.
 2. Multiple/Multi-day:
 - (a) Number of Violations: **Fourteen**. The NOV cited fourteen separate and distinct violations.
 5. Adjustment for Good Faith: N/A
 6. Adjustment for Willfulness/Negligence: N/A
 7. Adjustment for History of Compliance or Noncompliance: N/A
 8. Adjustment for Other Unique Factors: N/A
 14. Adjustment for Economic Benefit: Considered but not applied; benefit negligible.
 16. Adjustment for Ability to Pay: N/A
- Total: **\$2,170.00**

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1708015

Violation Number from NOV 6

Violation Description: **OB without permit**

1. Gravity Based Penalty:

- (a) Potential for Harm: **MINOR**. The treatment was conducted on-_base, in an area far from populations, by people who are knowledgeable. They would have completed the operation the same way if they had obtained an emergency permit.
- (b) Extent of Deviation: **MINOR**. TEAD-N usually obtains an emergency permit for these types of treatment operations

2. Multiple/Multi-day:

(a) Number of Violations: **One**.

5. Adjustment for Good Faith: **-30%**. The violation was reported by TEAD-N.

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: **\$1500**. TEAD-N avoided the cost of the emergency permit. A typical cost would be around \$1500 (filing fee, public notices, and review time).

16. Adjustment for Ability to Pay: N/A

Total: **\$1608.50**