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In the Matter of:	:	STIPULATION AND CONSENT ORDER
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Tooele Army Depot North Area (TEAD-N)	:	No. 1911119
Notice of Violation No. 1908083	:	
UT3213820894	:	

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This **STIPULATION AND CONSENT ORDER** is issued by the DIRECTOR OF THE UTAH DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code Ann. §19-6-101. 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 Area (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 originally issued to TEAD-N on March 22, 1993, as modified (the Permit), on file with the Division of Waste Management and Radiation Control (the 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 (the Rules), the Act, and the Permit.
5. Authorized representatives of the Director conducted a hazardous waste inspection at TEAD-N on April 29 through May 2, 2019.

6. The Director issued NOTICE OF VIOLATION No. 1908083 (the NOV) on September 12, 2019, alleging violations by TEAD-N of the Permit.
7. TEAD-N filed a response to the NOV on September 26, 2019.

STIPULATION AND CONSENT ORDER

8. The parties now wish to fully resolve Notice of Violation (NOV) No. 1908083 without further administrative or judicial proceedings.
9. In full settlement of the violations alleged in NOV No. 1908083, TEAD-N shall pay a penalty of \$20,153.00 (twenty thousand one hundred fifty three dollars). 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 Ty L. Howard, Director, Utah 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 Division's Civil Penalty Policy (R315-102 of the Rules), 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 Rules, 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 _____, 2020

Tooele Army Depot North Area

Division of Waste Management and Radiation Control

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

Ty L. Howard, Director