



State of Utah

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Governor

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Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Ty L. Howard
Director

April 24, 2020

Tooele Army Depot
Nick Montgomery
JMTE-BON, Bldg. 501
1 Tooele Army Depot
Tooele, UT 84074-5003

RE: Proposed Revised Stipulation and Consent Order No. 2001003 for Resolution of
Notice of Violation No. 1911117
UT5210090002

Dear Mr. Montgomery:

Enclosed please find a revised draft STIPULATION AND CONSENT ORDER (SCO) and propose penalty explanation narrative to resolve Notice of Violation (NOV) No. 1911117 issued to the Tooele Army Depot South Area (TEAD-S) on November 18, 2019. The proposed penalty has been revised based on new information submitted by TEAD-S in a letter dated March 30, 2020 (DSHW-2020-005548) as part of the comment period on the proposed SCO. The draft SCO includes a penalty of \$7,753.00.

Please contact this office by May 25, 2020, to let us know if the terms are acceptable or to schedule a meeting to discuss the SCO.

Sincerely,

Ty L. Howard, Director
Division of Waste Management and Radiation Control

TLH/RAP/ar

Enclosures: Proposed Revised Stipulation and Consent Order No. 2001003
Narrative Explanation to Support Penalty Amount for Proposed Revised Stipulation and
Consent Order (DSHW-2020-006386)

DSHW-2020-006382

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In the Matter of:

	:	Proposed Revised STIPULATION AND
	:	CONSENT ORDER
Tooele Army Depot South Area (TEAD-S)	:	
Notice of Violation No. 1911117	:	No. 2001003
UT5210090002	:	

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This draft **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, *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 §19-6-112 and jurisdiction over the Tooele Army Depot South Area (TEAD-S). TEAD-S and the Director are the parties to this agreement.

FINDINGS

2. TEAD-S, formerly the Deseret Chemical Depot (DCD), is a US Army facility located in Rush Valley, Tooele County, Utah.
3. TEAD-S includes operations and facilities for the storage and treatment of hazardous waste. These include igloos for the storage of hazardous waste munitions, and the treatment of military munitions by open detonation. TEAD-S operates these units under the provisions of the State-issued Hazardous Waste Part B Permit (the Permit) most recently reissued to TEAD-S on August 18, 2015, as modified, on file with the Utah Department of Environmental Quality, Division of Waste Management and Radiation Control (the Division). TEAD-S received authorization to begin open detonation operations again on October 9, 2018. They had discontinued open detonation operations for several years while they were destroying the chemical agent stockpile.
4. TEAD-S is a "person" as defined in Utah Code §19-1-103(4) and is subject to all applicable provisions of the Act, the Utah Administrative Code (Rules) and the Permit issued to TEAD-S as owner and operator of the TEAD-S facility.
5. Authorized representatives of the Director (inspectors) conducted a hazardous waste inspection at TEAD-S on August 6-7, 2019 (the FY2019 inspection). In addition, the facility self-reported non-compliance issues at the facility.
6. The Director issued NOTICE OF VIOLATION No. 1911117 (the NOV) on November 18, 2019, alleging violations by TEAD-S of the Permit.

7. TEAD-S filed a response to the NOV on November 26, 2019.
8. TEAD-S submitted additional information relating to the violations in the NOV on March 30, 2020

STIPULATION AND CONSENT ORDER

9. The parties now wish to fully resolve the NOV without further administrative or judicial proceedings.
10. In full settlement of the violations alleged in the NOV, TEAD-S shall pay a penalty of \$7,753.00 (seven thousand seven 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 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

11. TEAD-S 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-S 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, lightening, riot, sabotage, or war. TEAD-S shall 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-S.
12. TEAD-S 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.
13. Failure to obtain adequate funds or appropriation from Congress does not, in any way, release TEAD-S 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

14. 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-S 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-S facility. However, entry into this **CONSENT ORDER** shall relieve TEAD-S of all liability for violations which did arise or could have arisen with respect to the allegations contained in the NOV.

EFFECTIVE DATE

15. This **CONSENT ORDER** shall become effective upon execution by TEAD-S and the Director.

Dated this _____ day of _____, 2020

Tooele Army Depot South Area

Division of Waste Management and Radiation Control

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

Ty L. Howard, Director

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

NOV # 1911117

violation number 1

violation description **MME spreadsheet**

1. Gravity Based Penalty: \$3,380
 - (a) Potential for Harm -- **MODERATE**. Without completing the Munitions Mix Evaluator spreadsheets, the emissions from the detonations could possibly pose an unacceptable risk. However, no limits were actually exceeded.
 - (b) Extent of Deviation - **MODERATE**. The Munitions Mix Evaluator spreadsheets were being done, but were missed for a significant number of days.
2. Multiple/Multi-day: \$481
 - (a) Number of Violations or Days of Violation: Seventeen.
3. Adjustment for Good Faith: -30% – TEAD-S notified the Division of the violations.
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: \$0 – The time required to fill out the spreadsheets would be insignificant.
16. Adjustment for Ability to Pay: N/A

Total: **\$7,753.00**