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In the Matter of:	:	<b>STIPULATION AND CONSENT</b>
	:	<b>ORDER</b>
Utah Test and Training Range	:	<b>No. 2006051</b>
Notice of Violation	:	
No. 2003038	:	
UT0570090001	:	

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This **STIPULATION AND CONSENT ORDER** (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 §19-6-101, *et seq.* The Director has authority to issue such ORDERS in accordance with Utah Code § 19-6-112.

### JURISDICTION

1. The Director has jurisdiction over the subject matter of this CONSENT ORDER pursuant to Utah Code §§ 19-6-107 and 19-6-112 and jurisdiction over the Utah Test and Training Range (UTTR) owned by the United States Department of the Air Force (U.S. Air Force) and operated by Hill Air Force Base. Hill Air Force Base, UTTR, and the Director are the parties to this agreement.
2. The Board has authority to review this CONSENT ORDER pursuant to Utah Code §19-6-104(1)(f), and jurisdiction over the Utah Test and Training Range.

### FINDINGS

3. Hill Air Force Base is a United States Department of the Air Force entity located in Utah. Hill Air Force Base is the operator of UTTR.
4. UTTR is a remote military reservation with operations and facilities that store and treat hazardous waste. These operations include a closed hazardous waste landfill (Landfill 5) that has been remediated under corrective action requirements. Hill Air Force Base and UTTR operate the hazardous waste storage and treatment unit and conduct corrective action remediation and post closure care of Landfill 5 under the provisions of the State-issued Hazardous Waste Part B Permit initially issued to UTTR on February 13, 2003, as modified (the UTTR Permit). The Director renewed and reissued the UTTR Permit, effective September 27, 2013, as modified February 4, 2020.
5. UTTR is a “person” as defined in Utah Code § 19-1-103(4) and is subject to all applicable provisions of the Utah Administrative Code (the Rules), the Act, and the UTTR Permit.

6. On May 3, 2019, Clean Harbors Grassy Mountain, LLC (CHGM), a commercial waste treatment, storage and disposal facility, self-reported that it “accepted and disposed of hazardous waste that failed to meet the land disposal restrictions” from UTTR. *See* Letter from Shane B. Whitney to Ty Howard (hereinafter referenced as “CHGM Notification”) (DSHW-2019-004806) (May 3, 2019). CHGM identified six waste profiles from UTTR that failed to meet the land disposal restriction concentration limits when disposed – profiles CH1718328, CH1750747, CH1752015, CH1764521, CH1764523, CH1782136. *Id.*
7. Based on a Geotechnical and Health Risk Assessment conducted on behalf of CHGM, the Director accepted the risk assessment conclusion that leaving the UTTR waste disposed at the CHGM facility in the disposal cell was the best management practice notwithstanding that the waste failed to meet the alternative land disposal restriction standards. *See* Letter from Shane B. Whitney to Ty Howard (hereinafter referenced as “CHGM Risk Assessment”) (DSHW-2019-005981) (June 11, 2019)
8. On July 9 and 10, 2019, authorized representatives of the Director conducted a hazardous waste inspection at UTTR.
9. On April 9, 2020, the Director issued NOV No. 2003038 to UTTR which alleged violations for failure to comply with applicable land disposal restrictions for contaminated soil and for failure to properly label containers of hazardous waste.
10. Pursuant to Utah Code § 63G-4-201(3) and Utah Administrative Code R305-7-303, on May 19, 2020, Hill Air Force Base filed a request for agency action to administratively contest NOV No. 2003038.
11. On June 30, 2020, the Director provided an informal response to the request for agency action acknowledging that the disposed waste related to profile CH1718328 did not exceed the alternative land disposal treatment standards. *See* Letter from Ty L. Howard to Michelle L. Cottle (June 30, 2020) (DSHW-2020-009442). The Director confirmed that CHGM disposed of 6,938 tons of UTTR hazardous waste that failed to meet alternative land disposal restriction treatment standards, related to waste profiles CH1750747, CH1752015, CH1764521, CH1764523, CH1782136. *Id.*
12. On August 21, 2020, the Director proposed to Hill Air Force Base a draft stipulation and consent order to settle NOV No. 2003038.
13. On September 24, 2020, Hill Air Force Base submitted a response to the Director’s proposed draft stipulation and consent order stating that Hill Air Force Base has “direct oversight authority through both informal and formal means . . . over contracts relating to the management of hazardous waste, in compliance with [the Act, the Rules, and the UTTR Permit].” *See* Letter from Michelle L. Cottle to Ty L. Howard (DSHW-2020-013881) (September 24, 2020). To illustrate its authority over contractors, Hill Air Force Base stated, “only a Government representative assigned to the facility where work is being performed may sign hazardous waste manifests.” *Id.*
14. In accordance with the Civil Penalty Policy, Utah Admin. Code R315-102, which considers such factors as the gravity of the violation, the extent of deviation from the rules, the potential for harm to human health and the environment, economic benefit due to noncompliance, and other factors, the Director calculated a penalty based on the violations alleged in NOV No. 2003038.

## STIPULATION AND CONSENT ORDER

15. This CONSENT ORDER has been negotiated in good faith and the parties now wish to fully resolve Notice of Violation No. 2003038 and the subsequent request for agency action, filed by Hill Air Force Base on May 19, 2020, without further administrative or judicial proceedings.
16. The Director vacated the \$44,000 (forty-four thousand dollars) economic benefit penalty enhancement because he found no economic benefit incentive for noncompliance as (1) the U.S. Air Force, Hill Air Force Base, or UTTR receive no direct economic benefit for the non-compliance related to Notice of Violation No. 2003038; (2) since the issuance of the Notice of Violation, Hill Air Force Base conducted an evaluation and confirmed that it has informal and formal oversight authority for all UTTR hazardous waste management contracts to ensure compliance with the Act, the Rules and the UTTR Permit; and (3) the U.S. Air Force will require the UTTR third party contractor pay the penalty specified in ¶ 17 which is expected to eliminate any incentive for future noncompliance by a contractor.
17. Therefore, in full settlement of the violations alleged in NOV No. 2003038, Hill Air Force Base shall pay a penalty of \$21,485.00 (twenty one thousand, four hundred eighty-five dollars). Payment shall be made within 120 days of the effective date of this CONSENT ORDER.
  - a. Payment made by a third party, UTTR contractor, shall be credited against the obligation of Hill Air Force Base to pay the penalty assessed in this paragraph. Payment by a UTTR contractor shall be made within 30 days of the effective date of this CONSENT ORDER.
18. Payment of the penalty specified in ¶ 17 shall be made to the State of Utah, Department of Environmental Quality, c/o Ty L. Howard, Director, Division of Waste Management and Radiation Control, P.O. Box 144880, Salt Lake City, Utah 84114-4880. Payment shall reference Stipulation and Consent Agreement No. 2006051.
19. As this CONSENT ORDER resolves Notice of Violation No. 2003038, the May 19, 2020, Hill Air Force Base request for agency action is now moot.

## EFFECT OF CONSENT ORDER

20. For the purpose of this CONSENT ORDER, the parties agree and stipulate to the above stated facts. The obligations in this CONSENT ORDER apply and are binding upon the Division of Waste Management and Radiation Control and upon the U.S. Air Force, Hill Air Force Base, and UTTR.
21. The stipulations contained herein are for the purposes of settlement and shall not be considered admissions by any party, or the UTTR contractor referenced in ¶ 17.a, 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 Utah of its right to initiate enforcement action, including civil penalties, against Hill Air Force Base or UTTR in the event of future non-compliance with this CONSENT ORDER, with the Act, with the Rules, or with the UTTR Permit; nor shall the State of Utah be precluded in any way from taking appropriate action should such a situation arise again at the UTTR facility. However, entry into this CONSENT ORDER shall relieve Hill Air Force Base,

UTTR, the U.S. Air Force, and the UTTR contractor referenced in ¶ 17.a of all liability for violations which did arise or could have arisen with respect to the allegations contained in NOV No. 2003038.

**EFFECTIVE DATE**

22. This CONSENT ORDER shall become effective upon the date of execution by the Director.

**PUBLIC PARTICPATION**

23. This CONSENT ORDER shall be subject to public notice and comment for a period of at least 30 days (“Comment Period”) in accordance with Utah Admin. Code R315-124-34. The Director reserves the right to withdraw or withhold its consent if any comment received during the Comment Period disclose facts or consideration indicating the CONSENT ORDER is inappropriate, improper, or inadequate.

**SIGNATORY**

24. The undersigned representative of the U.S. Air Force, Hill Air Force Base, and the Utah Test and Training Range certifies the individual is authorized to enter into this CONSENT ORDER and to execute and legally bind the U.S. Air Force, Hill Air Force Base, and the Utah Test and Training Range.

Pursuant to the Utah Solid and Hazardous Waste Act, Utah Code § 19-6-101, *et seq.*, in the *Matter of Utah Test and Training Range, UT057009001, Notice of Violation No. 2003038*, the parties hereto mutually agree and consent to this STIPULATION AND CONSENT ORDER, No .2006051 as evidenced below:

UNITED STATES DEPARTEMENT OF  
AIR FORCE  
HILL AIR FORCE BASE

STATE OF UTAH  
DIVISION OF WASTE MANAGEMENT  
AND RADIATION CONTROL

\_\_\_\_\_  
Colonel Jenise M. Carroll,  
75<sup>th</sup> Air Base Wing Commander

\_\_\_\_\_  
Ty L. Howard, Director

Date:

Date:

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

NOV # 2003038

violation number 1

Violation Description **Waste Treatment Determination**

1. Gravity Based Penalty: \$ 9,100
  - (a) Potential for Harm - **MAJOR**.

Failure to determine whether (i) the waste from Landfill 5 met the alternative land disposal restriction (LDR) standards for contaminated soils or (ii) required treatment before land disposal. The failure led to improper disposal, which could lead to impacts to human health and the environment. UTTR's noncompliance with this regulation has a **MAJOR** impact on the regulatory purposes for implementing the hazardous waste program as proper characterization of waste is a foundation of the hazardous waste program.
  - (b) Extent of Deviation - **MODERATE**.

Five waste profiles did not meet the alternative LDR treatment standards and UTTR improperly disposed of the waste in unapproved landfills at CHGM.
  - (c) Multiple - \$1,235 for each violation
    - (i) Number of Violations: There were six items cited in the NOV. UTTR disputed finding 8(a) regarding waste profile Ch1718328. The Division dropped Ch1718328 as a violation and from the penalty calculations.
2. Adjustment Factors – not applicable
  - (a) Good faith - N/A
  - (b) Willfulness/Negligence - N/A
  - (c) History of Compliance or Noncompliance - N/A
  - (d) Ability to pay - N/A
  - (e) Other Unique Factors - N/A
3. Economic Benefit - There appears to be no economic benefit due to the failure to determine whether the waste met the alternative LDR standards. UTTR did expend resources to conduct the laboratory analysis on the waste that indicated alternative LDR standards were exceeded.
4. Recalculation of Penalty based on New Information - N/A

**TOTAL: \$14,040**

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

NOV # 2003038

violation number 2

Violation Description **Non-Treated Waste Disposed in Landfill**

1. Gravity Based Penalty: \$4,715
  - (a) Potential for Harm - **MODERATE**. Failure to treat the waste to meet LDR or alternative LDR standards from Landfill 5 prior to placement in a landfill led to improper disposal, which in turn could lead to impacts to human health and the environment. Concentrations of three of the constituents of concern exceeded the alternative LDR standard (or Universal Treatment Standards (UTS)) by factors ranging from 1.1 to 2.7. UTTR's noncompliance with this regulation has a **MODERATE** impact on the regulatory purposes for implementing the hazardous waste program as proper disposal of waste is a core principle in the management of hazardous waste.
  - (b) Extent of Deviation - **MAJOR**. The errors noted affected five waste profiles which did not meet the treatment standards that were placed in landfills at CHGM. The volume of waste from the five waste profiles was calculated to be 6,938 tons.
  - (c) Multiple - \$631 for each violation
  - (i) Number of Violations: There were six items cited in the NOV. UTTR disputed finding 8(a) regarding waste profile Ch1718328. The Division dropped Ch1718328 as a violation and from penalty calculations.
2. Adjustment Factors – not applicable
  - (a) Good faith- N/A
  - (b) Willfulness/Negligence- N/A
  - (c) History of Compliance or Noncompliance- N/A
  - (d) Ability to pay- N/A
  - (e) Other Unique Factors- N/A
3. Economic Benefit - \$44,000.00. The Director vacated the economic benefit enhancement because he found there is no economic benefit incentive for noncompliance as (1) the U.S. Air Force did not receive a direct benefit, (2) the U.S. Air Force reviewed its contracting Memorandum of Agreement and the UTTR hazardous waste contracts to determine it has both formal and informal contract oversight, and (3) the UTTR contractor has agreed to pay the penalty which will eliminate an incentive for any future noncompliance by a contractor.

As a matter of record, the vacated economic benefit enhancement was calculated as described below. Based on the five sample profiles identified in the NOV, 6,938 tons of contaminated soil from Landfill 5 failed to meet alternative LDR standards for contaminated soil. The cost to thermally treat 6,938 tons of hazardous waste to meet the alternative LDR standard followed by proper land disposal is estimated at \$3,295,550. UTTR expended \$462,047.50 to dispose of the

Landfill 5 waste that failed to meet alternative LDR standards. The difference in the cost to treat the waste to meet the alternative LDR standards is estimated at \$2,833,502.50. Nevertheless, in estimating a reasonable economic benefit realized from UTTR's noncompliance, the Director considered the following factors:

- (a) As owner and operator of the facility and permittee of the UTTR permit, the U.S. Air Force, UTTR, and Hill Air Force Base are the parties responsible for conducting corrective action at its Landfill 5. Nevertheless, the contract is a "fixed price, performance based" contract to perform corrective action, including disposal of Landfill 5 waste. It is presumed that the contract requires disposal of any wastes removed from Landfill 5 to be performed in compliance with applicable provisions of the Utah Solid and Hazardous Waste Act, Utah hazardous waste rules, and the UTTR hazardous waste Part B permit.
- (b) As a fixed price, performance-based contract and the estimated additional \$2.8 million cost of thermal treatment, it is improbable that the contractor would have chosen to treat the entire 6,938 tons of waste. It is assumed that the contractor would attempt to fully characterize and profile the waste to reduce the volume that failed to meet alternative LDR standards. American West Analytical Laboratory estimates the cost of analysis for methanol - TCLP, phenol, and trichlorophenoxyacetic acid (2,4,5-T) for 75 samples is \$39,270.
- (c) Additionally, based on a Geotechnical and Health Risk Assessment conducted by Clean Harbors to evaluate the potential impacts from disposal of waste that exceeded the alternative LDR standards, the Director accepted the conclusion that removing the waste would pose a greater risk to the stability of the landfill, the liner and human health. The contractor nor Hill Air Force Base contributed to the cost of the risk assessment. Clean Harbor's stated its cost to conduct the risk assessment was \$9,497.
- (d) As a fixed price, performance-based contract, the contractor may have indeed realized an economic benefit associated with i) the costs for additional sampling estimated at \$39,270, ii) an unknown amount for thermal treatment up to approximately \$2.83 million and iii) potentially a portion of the risk assessment costs up to \$9,497.
- (e) Because the contract is a fixed price, performance-based contract, it is presumed no economic benefit for noncompliance was directly realized by the U.S. Air Force.

However, not enhancing a penalty for the economic benefit of noncompliance because of a fixed price, performance-based contract could be an incentive for future noncompliance if a contract is under bid below the actual cost to complete the project. Therefore, although, Hill AFB or UTTR may not have directly received an economic benefit for noncompliance related to the cost of additional sampling or thermal treatment, an economic benefit was indeed realized. The economic benefit enhancement is estimated at \$44,000 which includes the cost of additional sampling and half of the cost of the risk assessment.

4. Recalculation of Penalty based on New Information- N/A

**TOTAL: \$51,239.00**

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

NOV # 2003038

violation number 3

Violation Description **Improperly Labeled Waste Containers**

1. Gravity Based Penalty: \$155
  - (a) Potential for Harm - **MINOR**. Not labeling the hazardous waste containers with the indication of the hazard could lead to mismanagement/improper storage of the waste. The labels contained waste code and waste description information and the potential harm would be minimal. UTTR's noncompliance with this regulation has a **MINOR** impact on the regulatory purposes for implementing the hazardous waste program as accurate documentation is necessary for evaluating the Permittee's regulatory compliance.
  - (b) Extent of Deviation - **MINOR**. The errors noted involved two 55-gallon containers of drill cuttings from the installation of soil vapor extraction wells. Except for the hazard indication, labels on both containers exhibited the remainder of the requisite information.
  - (c) Multiple - \$51 for each violation
    - (i) Number of Violations: Two instances were cited in the NOV.
2. Adjustment Factors – not applicable
  - (a) Good faith- N/A
  - (b) Willfulness/Negligence- N/A
  - (c) History of Compliance or Noncompliance- N/A
  - (d) Ability to pay- N/A
  - (e) Other Unique Factors- N/A
3. Economic Benefit- There appears to be no economic benefit of this error. The hazard labels had already been purchased and were available for use but were not affixed to the containers as required.
4. Recalculation of Penalty based on New Information- N/A

**TOTAL: \$206**