

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

ENFORCEMENT ORDER

UNITED STATES DEPARTMENT  
OF ARMY

No. DE 21499

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## **I. INTRODUCTION**

The objective of the State of Washington, Department of Ecology (Ecology) under this Enforcement Order (Order) is to require remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires United States Department of Army (Army) to: (1) conduct a Remedial Investigation and Feasibility Study per WAC 173-340-350 and to develop a preliminary draft Cleanup Action Plan per WAC 173-340-350 through 173-340-380 addressing contamination at and originating from the U.S. Yakima Training Center (Training Center); and (2) implement institutional controls and conduct groundwater monitoring at seven Solid Waste Management Units (SWMUs) and three Areas of Concern (AOCs) located at the Training Center. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Enforcement Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1). This Order also satisfies the corrective action requirements of Washington's Dangerous Waste Regulations, WAC 173-303-646 through -64630. Under the Dangerous Waste Regulations, Ecology can require the owner/operator of a facility to fulfill corrective action responsibilities using an enforceable action issued pursuant to MTCA. WAC 173-303-64630(1).

## **III. POTENTIALLY LIABLE PARTY BOUND**

This Order shall apply to and be binding upon the Army. The Army shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## **IV. DEFINITIONS**

Unless otherwise specified herein, the definitions set forth in RCW 70A.305 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Area of Concern (AOC): Refers to any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

B. Cleanup Action Plan: Refers to the document issued by Ecology under WAC 173-340-380 that selects Facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures).

C. Cleanup Standards: Refers to the standards promulgated under RCW 70A.305.030(2)(e) and include (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the Facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the Facility.

D. Corrective Action: Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70A.305 and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

E. Corrective Measure: Refers to any measure or action to control, prevent, or mitigate release(s) and/or potential release(s) of dangerous constituents (including dangerous waste and hazardous substances) reviewed and approved by Ecology for the Facility and set forth in a Facility-specific Cleanup Action Plan prepared in compliance with the requirements of WAC 173-340, including WAC 173-340-360. Corrective measures may include interim actions as defined by WAC 173-340. Interim actions will not necessarily be set forth in a Facility-specific Cleanup Action Plan.

F. Dangerous Constituent or Dangerous Waste Constituent: Refers to any constituent identified in WAC 173-303-9905 or 40 C.F.R. part 264, appendix IX; any constituent that caused a waste to be listed or designated as dangerous under the provisions of WAC 173-303; and any constituent defined as a hazardous substance under RCW 70A.305.020(13).

G. Dangerous Waste: Refers to any solid waste designated in WAC 173-303-070 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70A.305.020(13).

H. Dangerous Waste Management Facility: Used interchangeably in this document with the term “Facility.”

I. Dangerous Waste Management Unit: Refers to a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-303-040.

J. Enforcement Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are an integral and enforceable part of this Order

K. Facility: Refers to the former Dangerous Waste Management Units controlled by the Army at the Yakima Training Center; all property contiguous to the Dangerous Waste Management Units also controlled by the Army; and all property, regardless of control, affected by release(s) or threatened release(s) of hazardous substances, including dangerous wastes and dangerous constituents, at and from these areas. “Facility” also includes the definition found in RCW 70A.305.020(8).

L. Feasibility Study: Refers to the investigation and evaluation of potential corrective measures performed in accordance with the Feasibility Study requirements of WAC 173-340-350 which includes the substantive requirements for a Resource Conservation and Recovery Act Corrective Measures Study, and which is undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

M. Parties: Refers to the State of Washington, Department of Ecology (Ecology) and the United States Department of Army (Army).

N. Potentially Liable Person (PLP): Refers to the Army.

O. Permit or Permitting Requirement: Unless otherwise specified, refers to the requirements of WAC 173-303 for applying for, obtaining, maintaining, modifying, and terminating Dangerous Waste Management Facility permits.

P. RCRA: Refers to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

Q. RCRA Facility Assessment (RFA): Refers to the EPA conducted investigation of release(s) and potential release(s) at the Dangerous Waste Management Facility and the information contained in the report entitled Final RCRA Facility Assessment Report U.S. Army Yakima Training Center, September 1995 (RFA Report). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

R. Release: Refers to any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents, and includes the definition of “release” in RCW 70A.305.020(32).

S. Remedial Investigation: Refers to an investigation and characterization performed in accordance with the requirements of WAC 173-340-350, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

T. Solid Waste Management Unit (SWMU): Refers to any discernible location at the Dangerous Waste Management Facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the Dangerous Waste Management Facility at which solid wastes, including spills, have been routinely and systematically released, and include regulated units as defined by WAC 173-303.

## V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Army:

A. The Army is and has been the owner, and Joint Base Lewis-McChord (formerly Fort Lewis) is and has been the operator of the Dangerous Waste Management Facility at the Training Center since on or about 1941. The Training Center is located in Kittitas and Yakima Counties, Washington, straddling the common border between Kittitas and Yakima Counties. The Training Center is approximately five (5) miles north of the City of Yakima and is bordered on the east side by the Columbia River and on the west side by the Interstate 82. *See Exhibit A, Figure 1.*

B. The Training Center has been in use for military training since 1941. Prior to 1941, the land was used for ranching and mining operations. Beginning with 160,000 acres in 1941, the Training Center had expanded to 261,000 acres by 1951. The Center now occupies 327,451 acres. The Training Center houses several military or federal government tenants, including the State of Washington Army National Guard Materials and Training Equipment Site, the Marine and Army Reserve Centers, and the Yakima Research Station.

C. Although the Training Center has been in nearly continuous use since the early 1940s, there are few records of waste management practices prior to 1984. Available data indicate that potentially hazardous wastes had been generated at the Training Center in the past. The environmental problems to be addressed include various releases of hazardous substances from all historical military and maintenance operations at the Training Center including, but not limited to, the use of petroleum-based fuels, solvents, lead-acid batteries, and ordnance, explosives, and other pyrotechnics.

D. The Army owned and operated the Training Center as a Dangerous Waste Management Facility on or after November 19, 1980, the date which subjects facilities to RCRA permitting requirements, including interim status requirements pursuant to RCRA, 42 U.S.C. §

6925, and implementing regulations thereunder, and including authorized state regulations promulgated in WAC 173-303.

E. On November 19, 1980, Fort Lewis submitted to the U.S. Environmental Protection Agency (EPA) Part A of the RCRA permit application.

F. Pursuant to notification of dangerous waste activity, the Training Center was issued identification number WA8214053995.

G. On November 4, 1985, the Army submitted a RCRA Part A application to EPA for a RCRA permit to dispose of hazardous wastes at the Yakima Training Center. On November 4, 1985, the Army submitted a RCRA Part B application to EPA for thermal treatment by open burning and open detonation of ordnance at the Yakima Training Center.

H. In September 1995, Science Applications International Corporation, on behalf of EPA, issued a final RFA report for the Yakima Training Center. The purposes of this RFA was to: (1) identify and gather information on releases at RCRA regulated facilities; (2) evaluate solid waste management units areas (SWMUs) and other areas of concern (AOCs) for releases to all media and regulated units for releases to media other than groundwater; (3) make preliminary determinations regarding releases of concern and the need for further actions and interim measures at the facility; and (4) screen from further investigation those SWMUs which do not pose a threat to human health or the environment. The purpose of an RFA is to identify those areas at the Dangerous Waste Management Facility where release(s) of hazardous substances, as defined in RCW 70A.305.020(13), may have occurred or may be occurring.

I. The RFA Report identified 77 SWMUs and 38 AOCs areas at the Facility where releases of hazardous substances occurred or may have occurred (*see* Exhibit B). The SWMUs and AOCs within the Training Center are described below and are located on the figures in Exhibit B at 3, 5–8.

J. Based upon recommendations of the RFA Report, multiple environmental investigations and remedial actions were completed within the Facility between 1995 and 2008.



Some of the SWMUs and AOCs at the Yakima Training Facility with soil or groundwater that contained hazardous substances at concentrations exceeding cleanup levels developed under WAC 173-340, underwent various remedial actions as described in the RCRA Corrective Action Completion Report and the Site Closure Report, Centralized Fuel Facility.

K. In September 2015, the Installation Restoration Program, Directorate of Public Works for Joint Base Lewis-McChord, submitted a “Final RCRA Corrective Action Completion Report Yakima Training Center, Yakima, Washington.

L. Based on Ecology’s review of the Completion Report and supporting appendices and cleanup actions conducted in response to the RFA recommendations, Ecology has concluded that institutional controls must be undertaken and groundwater monitoring performed at the following SWMUs and AOCs:

1. SWMU 5: Former Pesticide Handling Area;
2. SWMU 27: Former Ammunition Storage Point Burn Pits;
3. SWMU 43: Tracked Vehicle Repair (Old MATES Site);
4. SWMU 44: Tracked Vehicle Repair (Old MATES Site);
5. SWMU 51: 1969-1994 Landfill;
6. SWMU 57: 1954-1968 Landfill/Burn Pits;
7. SWMU 59: Former Fire Training Pit;
8. AOC 7: Building 218 Buried Munitions;
9. AOC 14: Building 310 UST; and
10. AOC 40: Centralized Fuel Facility.

M. On July 5, 2022, Ecology provided the Army with a letter in which Ecology asked the Army to reconsider its refusal to consent to enter into an agreed order with Ecology and work cooperatively with the State of Washington to address contamination associated with the Yakima Training Center. In addition to the letter, Ecology also provided the Army with a draft Agreed Order (2022 Agreed Order) for the Yakima Training Center and the exhibits to that Order.

N. On July 22, 2022, Ecology received an email from the Army that stated: “Ecology letter to Garrison Commanders - Agreed Order U.S. Army Yakima Training Center - was elevated

to HQDA and a response will be forthcoming.” On August 16, 2022, Ecology received a letter from the Army that stated that Ecology’s 2022 Agreed Order was under Army Headquarters’ advisement.

O. On November 28, 2022, Ecology sent the Army a letter that asked the Army inform Ecology within 14 days whether the Army will sign that 2022 Agreed Order for the Yakima Training Center. The November 28 letter also stated that if the Army did not agree to sign the Agreed Order, Ecology would issue an enforcement order to the Army. On December 12, 2022, Ecology received the Army’s response that the Army’s position is that it would not consent to entering into an Agreed Order with Ecology.

## **VI. ECOLOGY DETERMINATIONS**

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the Army.

A. The Army is a person within the meaning of RCW 70A.305.020(24).

B. The Army is the owner and operator of a Dangerous Waste Management Facility that has operated, is operating, or should have been operating under interim status or a final facility permit, subject to RCRA, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in WAC 173-303. The Army is also an “owner or operator,” as defined by RCW 70A.305.020(22), of a “facility” as defined by RCW 70A.305.020(8).

C. Certain waste and constituents found at the Facility are dangerous wastes and/or dangerous constituents as defined by WAC 173-303 and in Section IV (Definitions) of this Order.

D. These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70A.305.020(13).

E. Based on the Findings of Fact and the administrative record, Ecology has determined that release(s) and potential release(s) of hazardous substances at and/or from the Facility present a threat to human health and the environment.

F. Based on credible evidence, Ecology issued a PLP status letter to the Army dated November 26, 2001, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Army is a PLP under RCW 70A.305.040 and notified the Army of this determination by letter dated February 28, 2008.

G. Pursuant to RCW 70A.305.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

H. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself.

## **VII. WORK TO BE PERFORMED**

Based upon the above Findings of Fact and Ecology Determinations, Ecology hereby orders the Army to comply with all provisions of this Order and any modifications to this Order, including all exhibits to this Order and all documents incorporated by reference into this Order.

Ecology hereby orders that the Army take the following remedial actions at the Facility. The Army must conduct these remedial actions in accordance with WAC 173-340:

**A. Scope of Work/Work Plan**

The Army shall develop a Remedial Investigation and Feasibility Study Work Plan that includes a scope of work to delineate and quantify (i.e., identify the levels of contamination) the contaminants of potential concern in all media (e.g., soil, groundwater). The Army will implement the Remedial Investigation and Feasibility Study Work Plan, and achieve milestones and produce documents in accordance with the Schedule and Reporting requirements. All work shall be completed utilizing professionals qualified to perform the tasks required. Note, all draft final documents for Ecology review may be submitted in redline strikeout or track changes format to facilitate the review. The Remedial Investigation and Feasibility Study Work Plan will include the elements listed below.

1. A Facility Health and Safety Plan and a Sampling and Analysis Plan, which includes quality assurance/quality control requirements. These plans shall conform to the requirements specified in WAC 173-340-810 and 173-340-820, respectively.
2. The requirements of WAC 173-340-350, including but not limited to the sections listed below.
  - a. **Preliminary Identification of Cleanup Levels** – Identify appropriate preliminary cleanup levels (e.g., levels established under MTCA (*see* WAC 173-340-700 through 173-340-760)). Note that the preliminary cleanup levels must consider all applicable pathways including direct contact, media transfer pathways (e.g., leaching to groundwater, groundwater migration to surface water, etc.), and exposure to terrestrial and/or aquatic ecological receptors.
  - b. **Evaluation of Existing Data** – Existing analytical data will be plotted (as accurately as possible) on both historical and current aerial photographs using geo-referencing techniques. Review the sample locations with respect to

identified sources and areas where suspected releases (e.g., discharges, spills, dumping, leaks, etc.) have occurred. All of the existing analytical data collected at the Facility should be evaluated in terms of data usability (analytical methods used to evaluate the effectiveness of a cleanup action shall comply with the requirements in WAC 173-340-830) and screened against the most protective preliminary cleanup levels identified under an unrestricted land use scenario. Both non-detect and detected data should be included in the screening. Identify sample points containing exceedances on a map and also discuss the adequateness of the reporting limits in terms of achieving the preliminary cleanup levels. Chemicals exceeding the preliminary cleanup levels should be identified as contaminants of potential concern.

- c. **Remedial Investigation Approach** – Based on the background information gathered, and the evaluation of existing data, discuss by media (e.g., soil, sediment, surface water, etc.) the data required to complete a Remedial Investigation for the Facility. The Remedial Investigation approach should be consistent with WAC 173-340-350 and include any data needed to help identify habitat restoration opportunities. Identify data gaps and the overall approach for conducting the Remedial Investigation. The Sampling and Analysis Plan will provide the details on numbers and locations of samples for each media and the analytical requirements.
- d. **Feasibility Study Approach** – This section should provide an overview of the methods that the Army will use in conducting the Feasibility Study for the Facility. The Feasibility Study approach will be consistent with WAC 173-340-350 and include, but not limited to, the sections listed below:
  - (1) Establishment of Cleanup Levels

- (2) Delineation of Media Requiring Remedial Action that protect human health and the environment.
- (3) Cleanup Alternatives including at least one permanent cleanup action alternative.
- (4) Evaluation of Cleanup Alternatives.

e. **Schedule and Reporting** – This section will contain the schedule and reporting requirements for the Remedial Investigation and Feasibility Study implementation.

B. **Remedial Investigation Report and Feasibility Study Report** – The Army shall prepare a draft Remedial Investigation Report and Feasibility Study Report in accordance with the Scope of Work (Exhibit C), which meet the requirements of WAC 173-340-350. The Remedial Investigation Report shall present the results of a remedial investigation regarding the full nature and extent of soil, groundwater, sediment, and/or surface water contamination. The Feasibility Study Report shall provide potential cleanup action alternatives and a preferred alternative for the cleanup of the contamination present at the Facility. Also, the alternatives evaluation and the preferred cleanup alternative must meet the requirements of WAC 173-340-360.

C. **Preliminary Cleanup Action Plan** – Upon the approval of the draft final Remedial Investigation and Feasibility Study report, the Army shall prepare a draft preliminary Cleanup Action Plan in accordance with WAC 173-340-380 that provides a proposed cleanup action to address the contamination present on the Site. The preliminary Cleanup Action Plan shall include a general description of the proposed cleanup action, results of any remedial technology pilot studies, cleanup standards from the Remedial Investigation and Feasibility Study report and rationale regarding their selection, a schedule for implementation, descriptions of any institutional controls proposed, and a summary of applicable, local, state and federal laws pertinent to the proposed cleanup action.

D. **Schedule** – The Army shall perform the actions required by this Order according to the schedule found in Exhibit C and any schedule approved by Ecology in a deliverable document.

E. **Work to be Performed at Certain Facility SWMUs and AOCs**

In addition to the corrective action requirements described in paragraphs A-D of this section, the Army shall continue to undertake the institutional control measures outlined in the August 2015 Joint Base Lewis-McChord Comprehensive Land Use Control Plan (Exhibit D) and conduct monitoring as set forth in the Groundwater Monitoring Plan for the Fire Training Pit and Tracked Vehicle Repair/Old Mobilization and Training Equipment Site (Exhibit E) at the following SWMUs and AOCs at the Facility:

1. SWMU 5, Former Pesticide Handling Area – institutional control requirements.
2. SWMU 27, Former Ammunition Storage Point Burn Pits – institutional control requirements.
3. SWMU 43, Tracked Vehicle Repair (Old MATES Site) – institutional control and groundwater monitoring requirements.
4. SWMU 44, Tracked Vehicle Repair (Old MATES Site) – institutional control and groundwater monitoring requirements.
5. SWMU 51, 1969-1994 Landfill – institutional control requirements.
6. SWMU 57, 1954-1968 Landfill/Burn Pits – institutional control requirements.
7. SWMU 59, Former Fire Training Pit – institutional control and groundwater monitoring requirements.
8. AOC 7, Building 218 Buried Munitions – institutional control requirements.
9. AOC 14, Building 301 UST – institutional control requirements.
10. AOC 40, Centralized Fuel Facility – institutional control requirements.

F. If the Army learns of a significant change in conditions at the Facility, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations

in soil, groundwater, sediment or air, the Army, within 30 days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

E. The Army shall submit to Ecology written Quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted according to the Schedule (Exhibit C) after the effective date of this Order. Unless otherwise specified or requested by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent electronically to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the quarter.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Scope of Work and Schedule (Exhibit C) during the current quarter, and any planned deviations in the upcoming quarter.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
6. A list of deliverables for the upcoming quarter if different from the schedule.

F. All plans or other deliverables submitted by the Army for Ecology's review and approval shall, upon Ecology's approval, become integral and enforceable parts of this Order.

G. The Army shall notify Ecology's project coordinator in writing of any newly-identified SWMU(s), newly-discovered release(s) from known SWMU(s), and newly-discovered AOCs at the Facility no later than 30 days after discovery, and shall investigate and report on these areas as directed by Ecology's project coordinator.



H. If Ecology determines that the Army has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after written notice to the Army, perform any or all portions of the remedial action or at Ecology's discretion allow the Army opportunity to correct. In an emergency, Ecology is not required to provide notice to the Army, or an opportunity for dispute resolution. The Army shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

I. Except where necessary to abate an emergency situation or where required by law, the Army shall not perform any remedial actions at the Facility outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the Army must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

## VIII. TERMS AND CONDITIONS

### A. **Reservation of Rights for Remedial Investigation, Feasibility Study, and Draft Cleanup Action Plan Costs**

Ecology specifically reserves the right to require payment of all past and future remedial action costs incurred by Ecology for the Facility and/or to institute legal or administrative action against the Army to pursue appropriate cost recovery, pursuant to RCW 70A.305.050, WAC 173-340-550(2), and/or 42 U.S.C. § 9607.

### B. **Designated Project Coordinators**

The project coordinator for Ecology is:

Kurt Walker  
Ecology Central Region  
1250 West Alder Street  
Union Gap, WA 98903-2803  
509-934-0386  
[kurt.walker@ecy.wa.gov](mailto:kurt.walker@ecy.wa.gov)

The project coordinator for the Army is:

Mark Mettler  
Installation Restoration Program Manager  
Department of the Army  
Headquarters, Joint Base Lewis-McChord  
1010 Liggett Avenue – Box 339500, Mail Stop 14A  
Joint Base Lewis-McChord, WA 98433-9500  
253-966-8004  
[mark.a.mettler2.civ@mail.mil](mailto:mark.a.mettler2.civ@mail.mil)

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Facility. To the maximum extent possible, communications between Ecology and the Army, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

### **C. Performance**

Except as provided in RCW 18.220.190(2), RCW 18.43.130(6), or any other applicable exemption, all geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a

professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43.070 and RCW 18.220.090.

The Army shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), subcontractor(s), and other key personnel to be used in carrying out the terms of this Order, in advance of their involvement at the Facility.

**D. Access**

Ecology and/or its authorized representatives shall provide notice to the Army at least seven (7) days prior to the date of requested access to the Training Center property within the Facility. The Army Project Coordinator or their designee shall coordinate any request for access under this Agreed Order; provide an escort; and coordinate any other access requests.

MTCA authorizes Ecology or any Ecology authorized representative to enter any property where there has been a release or threatened release of hazardous substances to conduct investigations or remedial actions after giving reasonable notice unless an emergency prevents such notice. RCW 70A.305.030(1)(a)(b). In addition, Washington's Hazardous Waste Management Act grants Ecology with the authority to enter, at reasonable times, facilities regulated under that Act for the purposes of inspection, monitoring, and sampling. RCW 70A.300.220(2)(d).

Ecology or any Ecology authorized representative shall have access to enter property at the Facility where there has been a release or threatened release of hazardous substances that the Army either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Army's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a

camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Army.

The Army shall honor all reasonable requests for access, subject to presentation of appropriate identification and conformance with security requirements. The Army may reserve the right to require an escort for Ecology and/or its representatives when visiting the Training Center. Ecology and/or its authorized representatives shall not use any camera, sound recording or other recording device at the Training Center within the Facility without obtaining the appropriate permission. The Army shall not unreasonably withhold such permission.

Access under this section shall be subject to those regulations necessary to protect national security or mission essential activities. The Army may reserve the right to terminate and reschedule entry to the Training Center based upon operational needs, provided that conformance with security regulations, operational needs, or need for an escort should not unduly delay access. Such regulation shall not be applied so as to unreasonably hinder Ecology and/or its authorized representatives, from carrying out their authorities and/or responsibilities, pursuant to this Agreed Order. In the event that a request for access under this section is denied by the Army, the Army shall provide an explanation within forty-eight (48) hours of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. Also in the event that a request for access under this section is denied by the Army, the Army shall work with Ecology to provide appropriate alternatives. All parties provided access and conducting work shall be required to conform to the Training Center operational schedules.

The Army may reserve the right to withdraw access if security or operational needs require. In the event the Army withdraws access, it shall work with Ecology to reschedule the requested access.

**E. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the Army shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to

Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

Upon Ecology's request, the Army shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Army pursuant to the implementation of this Order. The Army shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Facility.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

**F. Access to Information**

The Army shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within the Army's possession or control or that of their contractors or agents relating to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. The Army shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work required by this Order.

Nothing in this Order is intended to waive any right the Army may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If the Army withholds any requested Records based on an assertion of privilege, the Army shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Facility-related data collected pursuant to this Order shall be

considered privileged, including: (1) any data regarding the storage of dangerous waste at the Facility or releases or threatened releases of hazardous substances at or from the Facility, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Facility; or (2) the portion of any Record that Army are required to create or generate pursuant to this Order.

Notwithstanding any provision of this Order, Ecology retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any other applicable statutes or regulations.

#### **G. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, the Army shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors.

#### **H. Delay in Performance**

1. The Army shall notify Ecology of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the Ecology Project Coordinator within forty-eight (48) hours after the Army first knew or should have known that a delay might occur. The Army shall adopt all reasonable measures to avoid or minimize any such delay. Within seven (7) days after notifying Ecology by telephone and email, the Army shall provide to Ecology written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why the Army should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or

expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

2. Ecology shall consider any delay in performance of this Order that, in Ecology's judgment, is not properly justified by the Army a violation of this Order. Any delay in performance of this Order shall not affect the Army's obligations to fully perform all obligations under the terms and conditions of this Order.

#### **I. Amendment of Order**

The Ecology Project Coordinator may make minor changes to any plan or schedule or the work to be performed under this Order without formally amending this Order. The Ecology Project Coordinator may direct such changes in writing or verbally. Ecology will memorialize any verbal change in writing, but the effective date of the change is the date Ecology's Project Coordinator verbally directed the change.

To make substantial changes to any plan or schedule or the work to be performed, Ecology will formally amend this Order. Such amendments will be in writing and signed by the Program Manager of Ecology's Hazardous Waste and Toxics Reduction Program. Such amendments are subject to public notice and comment.

No informal advice, guidance, suggestion, or comment by Ecology's Project Coordinator or other Ecology representatives regarding any deliverables submitted by the Army shall relieve the Army of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

#### **J. Reservation of Rights**

Ecology reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Facility should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also

reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Facility.

Nothing in this Order shall limit the power and authority of Ecology to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Facility. Further, nothing in this Order shall prevent Ecology from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Army in the future to perform additional activities pursuant to MTCA, RCRA, or any other applicable law.

**K. Other Claims**

By issuance of this Order, Ecology assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of the Army. Ecology shall not be deemed a party to any contract entered into by the Army or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Army or any person not a party to this Order, for any liability such person may have under MTCA, CERCLA, other statutes, or common law.

No action or decision by Ecology pursuant to this Order shall give rise to any right to judicial review, except as set forth in RCW 70A.305A.070.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon the Army's receipt of written notification from Ecology that the Army has completed the remedial activity required by this Order, and that the Army has complied with all other provisions of this Enforcement Order.

**X. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that the Army have sufficient cause not to comply with one or more provisions of this Order, the Army shall



remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

#### **XI. ENFORCEMENT**

Pursuant to RCW 70A.305.050 and WAC 173-303-960, the Attorney General may bring an action to enforce this Order.

The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Facility under RCW 70A.305.050, WAC 173-340-550(2), and/or 42 U.S.C. § 9607.

Effective date of this Order: February 1, 2023

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

A handwritten signature in black ink, appearing to read 'L. Watson', is written over a horizontal line.

Laura Watson, Director  
360-407-6000