



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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December 17, 2020

Colonel Alicia M. Masson  
U.S. Army Installation Management Command  
U.S. Army Environmental Command  
2455 Reynolds Road  
Joint Base San Antonio Fort Sam Houston  
San Antonio, TX 78234-7588

Reference: Draft Agreed Order No. DE 18125

Subject: **Response to Public Comments**

Dear Colonel Masson:

The United States Army's refusal to sign Agreed Order No. DE 18125 comes as a complete surprise to the Washington State Department of Ecology (Ecology). It was the United States Army (Army) that requested the Agreed Order, planned and arranged for negotiations, and indicated the draft was ready for public comment. It is greatly disappointing so much effort and goodwill were expended over the past two years of this process.

The Army provided its October 16, 2020, comments in a semi-narrative form. In Ecology's response to those comments, Ecology has captured the key comments from that narrative. Below, *in italics*, are Ecology's responses to the comments.

**Army comments on YTC order**

1. “[I]n 2003, the Army obtained agreement from Ecology that the hazardous waste management unit included in the Army’s Resource Conservation and Recovery Act (RCRA) permit applications was clean closed, requiring no additional actions or controls. This closure ended facility’s interim status under RCRA.”

*The 2003 correspondence that Ecology provided to the Fort Lewis’ Environmental and Natural Resources Division was not an agreement that the Army had clean closed all of the units at YTC. Rather, Ecology’s correspondence addressed its acceptance of only the Army’s August 2003 “Closure Certification Report for the Unserviceable Munitions Treatment Unit [UMTU].” The closure of the UMTU did not end the YTC Facility’s interim status under RCRA. The Facility still had 8 regulated units and 13 areas of concern (AOCs) that are subject to ongoing State Dangerous Waste corrective action requirements. A corrective action facility under the State’s Dangerous Waste*

*regulations includes all contiguous property under the control of the property owner, 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. See WAC 173-303-040.*

2. “[T]he Army had been conducting cleanup on other areas of YTC under its cleanup authority in compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which incorporates applicable or relevant and appropriate requirements (ARARs), including state RCRA regulations. Therefore, there is no legal necessity or requirement for the Agreed Order.”

*The Army’s position that it has been conducting cleanup of the regulated units at YTC under CERCLA does not eliminate the legal necessity or requirement for RCRA corrective action under the Ecology Agreed Order.*

*The 8 regulated units and 13 AOCs at the YTC Facility found in the draft Agreed Order still require corrective action under WAC 173-303-64620. Since the YTC Facility never received a final facility permit, Ecology is issuing the draft Dangerous Waste Management Permit for Corrective Action, a.k.a. “permit lite,” which went out for public comment with the draft Agreed Order.*

*The United States Environmental Protection Agency (EPA) approved of such permits in 49 Fed. Reg. 55322 (1994) (Washington: Final Authorization of State Hazardous Waste Management Program Revisions). That Federal Register provides:*

*Washington’s corrective action program would allow corrective action to be specified through the terms of a State-issued order which is incorporated by reference into operating or postclosure permits issued to facilities. The State could . . . simultaneously issue the order and the permit with the order incorporated into the permit. Under the Washington program, a State order would be considered to be part of the authorized RCRA program only when the order is incorporated into an existing RCRA permit, or when the order is issued simultaneously with and incorporated by reference into a new RCRA permit.*

*49 Fed. Reg. 55322. Through an Ecology permit lite, EPA acquires some authority over the corrective action because Ecology issues a permit lite as part of the State’s authorized RCRA program and as part of an agreement between EPA and Ecology, which provides for EPA review of Ecology-issued facility permits.*

*The YTC Facility permit lite provides this jurisdictional connection to the corrective action for EPA. The permit lite incorporates the draft Agreed Order by reference. The Agreed Order contains the provisions that govern the required remedial corrective actions for the YTC Facility.*

*The corrective action obligations extend to whole of the YTC Facility, not just the UMTU. Because cleanup is not complete at other regulated units and AOCs in the Facility, a permit lite and Order is necessary.*

3. “[U]nder its EPA delegation, Washington’s authority to issue RCRA corrective action orders – agreed or otherwise – is only in conjunction with a permit. *See* 59 FR 55323. As there is no basis for a permit, there is no basis for a corrective action order.”

*A permit is required for the YTC Facility. The YTC Facility is subject to the permit requirements under the State’s Dangerous Waste regulations (WAC 173-303) based on the following:*

- *The Army owned and operated YTC 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.*
- *On November 19, 1980, Fort Lewis submitted to the EPA Part A of the RCRA permit application.*
- *In November 1988, Engineering, Design, and Geosciences Group, Inc., submitted on the behalf of the Army a RCRA Part B Application for Open Detonation at Yakima Firing Center, Yakima, Washington. In 1996 an updated Part B application was received. On September 20, 1999, Ecology received Notice of Intent to submit an application for expansion of the OB/OD Unit.*

*Thus, there is a basis for a permit issued by Ecology and a corresponding order requiring corrective action at the YTC Facility.*

4. The Army, in coordination with Ecology, has conducted cleanup at YTC under the Army’s lead agency authority, under CERCLA, which incorporates MTCA as an ARAR.

*Ecology appreciates that the Army has taken steps to cleanup the YTC Facility. However, as noted above, the cleanup/corrective action at the Facility must be done under an Ecology permit and order.*

5. “Pursuant to DoD requirements of the Defense Environmental Restoration Program (DERP), the Army conducts all cleanup consistent with CERCLA, which incorporates all ARAR requirements of the federal RCRA and state cleanup laws (including MTCA).”

*See Ecology response to number 4. In addition, to be in compliance with RCRA, the Army must be in possession of a permit for RCRA Corrective Action or the State equivalent, a Washington State Dangerous Waste Permit for Corrective Action.*

6. “Ecology’s public comment website specifically states: ‘When the public comment period ends, we will consider all public comments and may change the documents based on them. After considering all public comments, the documents will become final.’ . . . However, based on communications with Ecology, the proposed draft Agreed Order and Permit will not become final if Army cannot agree to enter into the Agreed Order. Since consent of both parties is

required prior to the finalization of the Agreed Order, and the Army has indicated that it cannot consent to the Agreed Order, it is the Army's understanding that Ecology will not issue a final Agreed Order and Permit as indicated in its public notice."

*The draft Agreed Order and accompanying permit for the YTC Facility will become final only after Ecology and the Army consent to and sign the Order.*

7. "The Agreed Order is not necessary, because the 8 sites identified as SWMUs and 13 sites identified as AOCs that require additional investigation or cleanup are not regulated units or active hazardous waste management units (treatment, storage, or disposal), and therefore, do not require a RCRA permit."

*As noted in previous responses, an Ecology corrective action agreed order and permit are necessary for corrective actions that are required at the aforementioned units and AOCs.*

8. "[T]he Army does not agree that it is the operator of a Dangerous Waste Management Facility at YTC, which is Ecology's basis for subjecting the Army to regulation under the state's Dangerous Waste Regulations and MTCA. YTC is thus a cleanup-only facility. Under WAC 173-303-64610(3), YTC is not subject to the State's authorized RCRA corrective action provisions."

*The YTC Facility is where dangerous waste treatment, storage, or disposal operations took place, and thus constitutes a facility under the State's Dangerous Waste regulations and not a cleanup-only facility. As such a facility, the Army must institute Dangerous Waste corrective actions to protect human health and the environment for all releases of dangerous wastes and dangerous constituents, including releases from all solid waste management units at the facility.*

9. "The Agreed Order is unnecessary because the Army is committed to taking necessary cleanup actions to address historic Army releases of hazardous substances . . ."

*Although the Army may be committed to taking actions to address the releases of hazardous substances at the YTC Facility, it does not negate the requirement that such actions be done under an Ecology order and permit.*

10. "The remedy for a majority of these SWMUs requires LUCs [land use controls], which have already been implemented through recordation in JBLM's comprehensive BMP. If these sites, where the LUC remedy has already been implemented, were removed from the list, there is only one site left to address that needs additional action – SWMU 18. The Army does not agree that it is necessary to address the remaining investigation for SWMU 18 through the Agreed Order process . . ."

*The list of SWMUs and AOCs listed in the draft agreed order were negotiated and agreed to by the Army and Ecology. These SWMUs and AOCs were also recommended for further action by the Army in their "Final RCRA Corrective Action Completion Report Yakima Training Center, Yakima, Washington" dated September 21, 2015, and in Army correspondence. Please note that*

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*just because a LUC remedy has been implemented, it does not mean that cleanup objectives have been reached. Three of the SWMUs subject to the LUC are also subject to long-term groundwater monitoring and one is currently undergoing a remedial investigation to determine the nature and extent of soil and groundwater contamination, which is currently unknown.*

Please feel free to contact me at (509) 454-7893 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Caron".

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