



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

1250 West Alder Street • Union Gap, Washington 98903-0009 • (509) 575-2490

December 8, 2020

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

Subject: U.S. Army's September 1, 2020, Letter re: Yakima Training Center Agreed Order for RCRA Corrective Action

Dear Colonel Masson:

This letter is in response to your September 1, 2020, letter concerning the Agreed Order for the US Army Yakima Training Center Site (Site). In your letter, you requested that the State of Washington Department of Ecology (Ecology) retract its notice and public comment of the Ecology draft Agreed Order for that Site. Given the late stage of the public review and comment process for the draft Order, Ecology will not be retracting or striking it. The public review period for the Agreed Order and its exhibits is scheduled to end on September 16, 2020.

It appears that part of the basis for your request to retract the public notice of the Order is an alleged failure of Ecology to follow regulations and procedures for orders issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305. However, Ecology followed MTCA, the Dangerous Waste regulation (WAC 173-303), and its policy in responding to a request from the Department of Army (Army) and its initiation and negotiation of an agreed order with the Army for the Site.

In September 2015, Ecology received a RCRA Corrective Action Completion Report for the Site from the Army. That September 2015 Completion Report's "Conclusions" section stated:

In summary, maintenance of implemented [Land Use Controls (LUCs)] is required at all nine locations listed above within the LUC boundaries shown on the attached plate entitled "Final Remedies at [Yakima Training Center] RCRA Corrective Action Sites." In addition, ongoing [groundwater monitoring (GWM)] is required at TVR/Old MATES and Former Fire Training Pit (SWMU 59). **As a result, JBLM is requesting Ecology issue a Dangerous Waste Management Permit for Corrective Action for the ongoing long-term management requirements (i.e., LUC maintenance and GWM) at these nine locations.**

Att. A at 22 (emphasis added). In response to the Army's request, Ecology provided an Army representative at Joint Base Lewis-McChord a letter inviting the Army to begin negotiations for an agreed order for a RCRA corrective action at the Site. *See* Att. B. Ecology followed this up

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with another invitation to the Army in January 2019 to negotiate an agreed order for the Site. *See* Atts. C and D. In 2019, an Army representative responded to Ecology's invitation and set up a meeting with Ecology to discuss the draft Order. *See* Atts. B and E. Ecology's actions inviting the Army to negotiate an Agreed Order in response to the Army's September 2015 Completion Report comport with the requirements from WAC 173-340-530 and Ecology's policy for MTCA agreed orders. Ecology and the Army then negotiated the draft Agreed Order for the Site that went out for public comment.

In your September 1 letter, you raise an issue with language from Ecology's webpage for the public comment of the Order, which 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." The end of the public comment period does not automatically confer "final" status to the Agreed Order and its accompanying permit. Ecology acknowledges that the draft Order cannot become final until Ecology and the Army consent to and sign the Order.

In your September 1 letter, you also state that by continuing with the public comment process for the Order that "the Army may be required to comment on and object to the process and the substance of the draft Agreed Order and Permit." Ecology has no objection to the Army providing comments on the Order. In a September 10, 2020 email to Lieutenant Colonel Scott D. Walters, Ecology granted your September 9, 2020 request, on behalf of the Army, for a 30-day extension to the public notice period. The Army has until October 16 to provide its comments to Ecology.

If you have any questions regarding this letter, feel free to contact me at 509-454-7893 or at grca461@ecy.wa.gov. Thank you for your cooperation.

Sincerely,

Greg Caron

Greg Caron
Section Manager
Hazardous Waste and Toxics Reduction Program
Central Regional Office
Washington State Department of Ecology

Attachments A - E

cc: Thomas Mackie, Hazardous Waste and Toxics Reduction Program Site Manager
John Level, Attorney General's Office
Meseret C. Ghebreslassie, Joint Base Lewis-McChord