**STATE OF WASHINGTON**

**DEPARTMENT OF ECOLOGY**

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| In the Matter of Remedial Action by:  UNITED STATES DEPARTMENT OF ARMY | AGREED ORDER  No. DE 18125 |

TO: Meseret C. Ghebresllassie

Installation Restoration Program Manager

Department of the Army

Headquarters, Joint Base Lewis-McChord

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# INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and United States Army (Army) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Army to conduct remedial actions at eight Solid Waste Management Units (SWMUs) and 13 Areas of Concern (AOCs) located at the U.S. Army Yakima Training Center. Ecology believes the actions required by this Order are in the public interest.

# JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1). This Order also satisfies the requirements of the Washington State Dangerous Waste Regulations WAC 173-303-646 through -64630.

# PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. The Army agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Army’s responsibility under this Order. 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.

# DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D and WAC 173-340 shall control the meanings of the terms used in this Order.

A. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.

B. 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.

C. Cleanup Action Plan (CAP): 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).

D. Cleanup Standards: Refers to the standards promulgated under RCW 70.105D.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.

E. Corrective Action: Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70.105D and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

F. 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 CAP 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 CAP.

G. 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 70.105D.020(13).

H. 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 70.105D.020(13).

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

J. Dangerous Waste Management Unit (DWMU): 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.

K. Facility: Refers to the former Dangerous Waste Management Units (DWMU) controlled by the Army at the Yakima Training Center; all property contiguous to the DWMU 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 70.105D.020(8).

L. Feasibility Study (FS): Refers to the investigation and evaluation of potential corrective measures performed in accordance with the FS 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 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 70.105D.020(32).

S. Remedial Investigation (RI): Refers toan 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. Site Hazard Assessment: means a remedial action that consists of an investigation performed under WAC 173-340-320, which includes the substantive requirements for a RCRA Facility Screening Process and is equivalent to CERCLA Preliminary Assessment/Site Investigation. CERCLA Preliminary Assessment involves gathering historical and other available information about site conditions to evaluate whether the site poses a threat to human health and the environment and/or whether further investigation is needed. The preliminary assessment also helps identify sites that may need immediate or short-term response actions. The Site Investigation tests air, water, and soil at the site to determine what hazardous substances are present and whether they are being released to the environment and are a threat to human health.

U. 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.

# FINDINGS OF FACT

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by the Army.

* 1. The Army is and has been the owner, and Joint Base Lewis-McChord (formerly Fort Lewis) is and has been the operatorof the Dangerous Waste Management Facility at the Yakima Training Center (YTC) since on or about 1941. YTC is located in Kittitas and Yakima Counties, Washington, straddling the common border between Kittitas and Yakima Counties. The 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 Yakima River. *See* Exhibit A, Figure 1.
  2. YTC 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 Center had expanded to 261,000 acres by 1951. The Center now occupies 327,451 acres. The 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.
  3. Although YTC 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 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 Center including, but not limited to, the use of petroleum-based fuels, solvents, lead-acid batteries, and ordnance, explosives, and other pyrotechnics.
  4. 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.
  5. On November 19, 1980, Fort Lewis submitted to the US Environmental Protection Agency (EPA) Part A of the RCRA permit application.
  6. Pursuant to notification of dangerous waste activity, YTC was issued identification number WA8214053995.
  7. On November 4, 1985, Fort Lewis submitted to Ecology Part B of the RCRA permit application. Fort Lewis identified itself as managing the following dangerous waste units at the Facility: Dangerous Waste Treatment Unit 1: Range 14 Unserviceable Munitions Treatment Unit (UMTU). Fort Lewis’ Part B permit for YTC was never finalized; and a final Part B permit was not issued. Fort Lewis ceased using the dangerous waste management unit in 2000 and officially notified Ecology of Fort Lewis’ intent to close the DWMU on July 14, 2003. The DWMU was clean closed on September 11, 2003, and the facility is no longer operating as a treatment, storage or disposal facility.
  8. In September 1995**,** Science Applications International Corporation (SAIC), on behalf of EPA, issued a final RFA report for the Yakima Training Center. 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 70.105D.020(13), may have occurred or may be occurring.
  9. Pursuant to the RFA Report and other information Ecology has identified the following SWMUs and AOCs at the Yakima Training Center: The RFA Report identified 77 SWMUs and 38 AOCs areas at the Facility where releases of hazardous substances, as defined in RCW 70.105D.020(10), may have occurred or may be occurring (*See* Exhibit B). The SWMUs and 38 AOCs within the Center are described below and are located on the map(s) in Exhibit A, Figures X – XX.
  10. The RFA report concluded that the following 25 SWMUs require no further action:

1. SWMU 2: (Dip Tanks)
2. SWMU 9: Building 810 Baghouse;
3. SWMU 10: Former Building 810 Paint Booth;
4. SWMU 11: Former Building 951 Paint Booth;
5. SWMU 15: Former Army Reserve Stoddard Solvent Wash Tank;
6. SWMU 17: Main Motor Pool Former Waste Battery Acid Container;
7. SWMU 20: Old Mobilization and Training Equipment Site (MATES) Waste Oil Tank;
8. SWMU 21: Old MATES Oil Filter Press;
9. SWMU 23: National Guard Battery Room;
10. SWMU 24: National Guard Underground Oil Tank;
11. SWMU 30: Range Control Battery Room;
12. SWMU 35: Building 319 Underground Storage Tank (UST);
13. SWMU 36: Building 319 UST;
14. SWMU 37: Building 319 UST;
15. SWMU 38: Building 323-1 UST;
16. SWMU 39: Building 323-2 UST;
17. SWMU 40: Building 323-3 UST;
18. SWMU 41: Building 339 UST;
19. SWMU 42: Building 845-2 UST;
20. SWMU 45: Building 845-5 UST;
21. SWMU 46: Building 845 UST;
22. SWMU 47: Building 805/806 UST;
23. SWMU 48: Building 951-4 UST;
24. SWMU 49: Building 970-1 UST; and
25. SWMU 50: Building 970-2 UST.
    1. Based upon recommendations of the RFA Report, multiple environmental investigations and remedial actions were completed within the Facility between 1995 and 2008. Sites with soil or groundwater that contained hazardous substances, as defined in RCW 70.105D.020(10), at concentrations exceeding cleanup levels developed under WAC 173-340, underwent various remedial actions as described in the RCRA Corrective Action Completion Report (Exhibit C), and the Site Closure Report, Centralized Fuel Facility (Exhibit D).
    2. 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.” Based on Ecology’s review of the 2015 Completion Report and supporting appendices that summarize previously conducted evaluations, investigations, and cleanup actions conducted in response to the RFA recommendations, Ecology has concluded that no further remedial action is required at the following SWMUs and AOCs:
26. SWMU 1: Satellite Accumulation/Other Temporary Storage Areas;
27. SWMU 3: 90-Day Accumulation Area;
28. SWMU 4: Former Hazardous Waste Storage Area;
29. SWMU 6: Former Transformer Storage Area;
30. SWMU 7: Former Containers Next to Fence;
31. SWMU 8: Contaminated Soil North of Building 810;
32. SWMU 12: Medical Clinic Silver Recovery Machine;
33. SWMU 13: Dental Clinic X-ray Developing Machine;
34. SWMU 14: Former Dental Clinic X-ray Developing Machine;
35. SWMU 16: Marine Reserve POL Storage Building;
36. SWMU 19: Old MATES Hazardous Waste Storage Area;
37. SWMU 22: Former PCS Stockpile Area;
38. SWMU 25: Old Petroleum, Oil, and Lubricant (POL) Yard;
39. SWMU 26: Ammunition Storage Point;
40. SWMU 28: Former Wire Storage Area;
41. SWMU 29: Current Wire Storage Area;
42. SWMU 31: Multi-Purpose Range Complex (MPRC) Septic/ Drain Field;
43. SWMU 32: MPRC Collection Drum;
44. SWMU 33: MPRC Above Ground Waste Oil Storage Tank;
45. SWMU 34: Waste Oil Tanks;
46. SWMU 52: Soil Stockpile Area;
47. SWMU 53: Transfer Station;
48. SWMU 54: Former Cantonment (Pre-1954) Landfill;
49. SWMU 55: Former Small Landfill Pit located near SWMU 57;
50. SWMU 56: Former Small Landfill Pit located near SWMU 51;
51. SWMU 58: Former Bivouac Landfill Pits;
52. SWMU 60: White Phosphorus Pit;
53. SWMU 61: Range 14 UMTU Area
54. SWMU 62: Main Vehicle Wash Rack;
55. SWMU 63: Main Motor Pool / Building 319 Oil Water Separator (OWS), discharge to sanitary sewer;
56. SWMU 64: Marine Reserve “tank rack” OWS, discharge to drain field;
57. SWMU 65: Army Reserve Shop OWS, discharge to drain field;
58. SWMU 66: Building 845 OWS, discharge to surface drainage;
59. SWMU 67: Building 845 OWS, discharge to sanitary sewer;
60. SWMU 68: Building 301 OWS, discharge to surface drainage;
61. SWMU 69: Building 951 OWS, discharge to sanitary sewer;
62. SWMU 70: Building 323 OWS, discharge to sanitary sewer;
63. SWMU 71: New National Guard Facility OWS, discharge to sanitary sewer;
64. SWMU 72: POL 1 OWS, discharge to surface drainage;
65. SWMU 73: POL 1 OWS, discharge to surface drainage;
66. SWMU 74: Sanitary Sewer System;
67. SWMU 75: Wastewater Treatment Plant;
68. SWMU 76: Yakima Research Station Sewage Lagoons;
69. SWMU 77: Surface Water Drainage System;
70. AOC 1: Former Central Vehicle Wash Rack;
71. AOC 2: Former Main Motor Pool Wash Rack;
72. AOC 3: Former Building 812 Wash Rack;
73. AOC 4: POL Fuel Point;
74. AOC 5: Hazardous Materials Storage Area;
75. AOC 8: Cobra Range AST;
76. AOC 9: Building 223 UST#1;
77. AOC 10: Building 223 UST#2;
78. AOC 11: Building 223 UST#3;
79. AOC 12: Building 223 UST#4;
80. AOC 13: Building 223 UST#5;
81. AOC 21: Building 434 UST;
82. AOC 22: Building 810 UST#1;
83. AOC 23: Building 810 UST#2;
84. AOC 28: Former Building 1470 UST #1;
85. AOC 29: Former Building 1470 UST#2;
86. AOC 30: Former Building 2020 UST #1;
87. AOC 31: Former Building 2020 UST #2;
88. AOC 32: Former Building 2020 UST #3;
89. AOC 33: Building 450 Fuel Bladder Storage Area;
90. AOC 34: Downrange Fuel Bladder Storage Area;
91. AOC 35: Downrange Fuel Bladder Storage Area;
92. AOC 36: Downrange Fuel Bladder Storage Area; and
93. AOC 39: Former Small Arms Range.
    1. Based on Ecology’s review of the Completion Report and supporting appendices that summarize previously conducted evaluations, investigations, and cleanup actions conducted in response to the RFA recommendations, Ecology has concluded that further remedial action is required at the following SWMUs and AOCs:
94. SWMU 5: Former Pesticide Handling Area;
95. SWMU 18: MATES Battery Room;
96. SWMU 27: Former Ammunition Storage Point Burn Pits;
97. SWMU 43: Tracked Vehicle Repair (Old MATES Site);
98. SWMU 44: Tracked Vehicle Repair (Old MATES Site);
99. SWMU 51: 1969-1994 Landfill;
100. SWMU 57: 1954-1968 Landfill/Burn Pits;
101. SWMU 59: Former Fire Training Pit;
102. AOC 7: Building 218 Buried Munitions;
103. AOC 14: Building 310 UST;
104. AOC 15: Building 319 USTs;
105. AOC 16: Building 319 USTs;
106. AOC 17: Building 323 USTs;
107. AOC 18: Building 323 USTs;
108. AOC 19: Building 321 USTs;
109. AOC 20: Building 321 USTs;
110. AOC 24: Building 833 USTs;
111. AOC 25: Building 833 USTs;
112. AOC 26: Building 833 USTs;
113. AOC 27: Building 845-1 UST; and
114. AOC 40: Centralized Fuel Facility.

# ECOLOGY DETERMINATIONS

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

* 1. The Army is a person within the meaning of RCW 70.105D.020(24).
  2. 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 70.105D.020(22), of a “facility” as defined by RCW 70.105D.020(8).
  3. 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.
  4. These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70.105D.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 70.105D.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 70.105D.040 and notified the Army of this determination by letter dated February 28, 2008.

G. Pursuant to RCW 70.105D.030(l) 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 70.105D, or to undertake the interim action itself.

# WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Army take the following remedial action(s) and that this (these) action(s) be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein. The areas within the Site where remedial actions are necessary under RCW 70.105D are described in the Interim Remedial Action Location Diagram (Exhibit X). These remedial actions must be conducted in accordance with WAC 173-340:

* 1. The Army shall submit to Ecology for review and approval, an Annual Report. The Annual Report shall contain a description of the previous year’s work and preliminary plans for the current year. The Army shall submit the Annual Plan by March 31.
  2. The Army shall submit to Ecology for review and approval a Site Specific Work Plan for the SWMU(s) and/or AOC(s) undergoing remediation. Each Site Specific Work Plan shall contain 1) a general description of the proposed remedial action(s), 2) a summary of the cleanup standards for each hazardous substance and for each medium, and 3) a site specific Quality Assurance Project Plan written in accordance with WAC 173-340-820. The Army shall submit Site Specific Work Plans to Ecology for review and approval a minimum of 60 days prior to the commencement of work.
  3. Ecology has concluded that further remedial action is required at the following SWMUs and AOCs:

1. SWMU 5: Former Pesticide Handling Area – Continue with ICs as outlined in the August 2015 Joint Base Lewis-McChord (JBLM) Comprehensive Land Use Control (LUC) Plan;
2. SWMU 18: Old MATES Battery Room – Conduct Site Investigation around the former floor drain discharge outlet to the environment;
3. SWMU 27: Former Ammunition Storage Point Burn Pits – Continue with ICs as outlined in the JBLM Comprehensive LUC Plan;
4. SWMU 43: Tracked Vehicle Repair (Old MATES Site) – Continue with ICs as outlined in the JBLM Comprehensive LUC Plan and Long-Term Groundwater Monitoring until cleanup goals are achieved;
5. SWMU 44: Tracked Vehicle Repair (Old MATES Site) – Continue with ICs as outlined in the JBLM Comprehensive LUC Plan and Long-Term Groundwater Monitoring until cleanup goals are achieved;
6. SWMU 51: 1969-1994 Landfill – Continue with ICs as outlined in the JBLM Comprehensive LUC Plan;
7. SWMU 57: 1954-1968 Landfill/Burn Pits – Continue with ICs as outlined in the JBLM Comprehensive LUC Plan and conduct additional data gap investigation to properly assess human health and ecology risk pathways;
8. SWMU 59: Former Fire Training Pit – Continue with ICs as outlined in the JBLM Comprehensive LUC Plan and Long-Term Groundwater Monitoring until cleanup goals are achieved;
9. AOC 7: Building 218 Buried Munitions – Continue with ICs as outlined in the JBLM Comprehensive LUC Plan;
10. AOC 14: Building 301 UST – Continue with ICs as outlined in the JBLM Comprehensive LUC Plan;
11. AOC 15: Building 319 USTs – Conduct Site Hazard Assessment;
12. AOC 16: Building 319 USTs – Conduct Site Hazard Assessment;
13. AOC 17: Building 323 USTs – Conduct Site Hazard Assessment;
14. AOC 18: Building 323 USTs – Conduct Site Hazard Assessment;
15. AOC 19: Building 321 USTs – Conduct Site Hazard Assessment;
16. AOC 20: Building 321 USTs – Conduct Site Hazard Assessment;
17. AOC 24: Building 833 USTs – Conduct Site Hazard Assessment;
18. AOC 25: Building 833 USTs – Conduct Site Hazard Assessment;
19. AOC 26: Building 833 USTs – Conduct Site Hazard Assessment;
20. AOC 27: Building 845-1 UST – Conduct Site Hazard Assessment; and
21. AOC 40: Centralized Fuel Facility – Continue with ICs as outlined in the JBLM Comprehensive LUC Plan.
22. 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, 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.
23. As detailed in the Land Use Control Plan institutional controls are required at the Facility.
24. 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.
25. 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.
26. 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).
27. Except where necessary to abate an emergency situation or where required by law, the Army shall not perform any remedial actions at the Site 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.

# TERMS AND CONDITIONS

## Payment of Remedial Action Costs

The Army shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Facility under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology’s costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173‑340‑550(2). For all Ecology costs incurred, the Army shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology’s costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

Ecology specifically reserves the right to institute legal or administrative action against the Army to pursue appropriate cost recovery, pursuant to RCW 70.105D.050.

## Designated Project Coordinators

The project coordinator for Ecology is:

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Installation Restoration Program Manager

Department of the Army

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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.

## Performance

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, except as otherwise provided for by RCW 18.43 and 18.220.

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 and 18.220.

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

## Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Facility 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.

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 YTC property within the Site. 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.

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

Access granted under this section, shall be subject to those regulations necessary to protect national security or mission essential activities. The Army reserves the right to terminate and reschedule entry to YTC based upon operational needs. The Army agrees that conformance with security regulations, operational needs, or need for an escort will 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 YTC operational schedules.

The Army will work to schedule access at times that minimize conflict, however, the Army reserves 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.

## 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.

If requested by Ecology, 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 implementation of this Order. The Army shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Facility. Ecology shall, upon request, allow the Army and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology’s sampling. Without limitation on Ecology’s rights under Section VIII.E (Access), Ecology shall notify the Army prior to any sample collection activity unless an emergency prevents such notice.

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.

## Public Participation

Ecology shall maintain the responsibility for public participation at the Facility. However, the Army shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of Annual Reports, Site Specific Work Plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology’s presentations and meetings.

2. Notify Ecology’s project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the Army prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Army that do not receive prior Ecology approval, the Army shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Facility. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

(a)Ecology’s Central Regional Office

1250 West Alder Street

Union Gap, Washington 98903-2803

(b) Yakima Valley Regional Library

102 North 3rd Street

Yakima, Washington 98901

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Facility shall be maintained in the repository at Ecology’s Central Regional Office in Yakima, Washington.

## Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of 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. Upon request of Ecology, the Army shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the Army may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege, the attorney-client privilege, or other federal non-disclosure statutes. 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.

## Resolution of Disputes

1. In the event that the Army elects to invoke dispute resolution, the Army must utilize the procedure set forth below.

a. Upon the triggering event (upon receipt by the JBLM Remedial Project Manager of Ecology’s project coordinator’s written decision or an itemized billing statement), the Army has fourteen (14) calendar days within which to notify Ecology’s project coordinator in writing of its dispute (“Informal Dispute Notice”).

b. The Parties’ project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology’s project coordinator shall issue a written decision (“Informal Dispute Decision”) stating: the nature of the dispute; the Army’s position with regards to the dispute; Ecology’s position with regard to the dispute; and the extent of resolution reached by informal discussion.

c. The Army may then request regional management review of the dispute. This request (“Formal Dispute Notice”) must be submitted in writing to the Central Region Hazardous Waste and Toxics Reduction Section Manager within seven (7) calendar days of receipt of Ecology’s Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party’s position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (“Decision on Dispute”) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology’s final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology’s determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

## Extension of Schedule

1. The Army’s request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least fourteen (14) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

a. The deadline that is sought to be extended;

b. The length of the extension sought;

c. The reason(s) for the extension; and

d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the Army to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

a. Circumstances beyond the reasonable control and despite the due diligence of the Army including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Army;

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VIII.L (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Army.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the Army written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.K (Amendment of Order) when a schedule extension is granted.

4. The Army’s request for an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner;

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.L (Endangerment).

## Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the Army. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the Army shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

## Endangerment

In the event Ecology determines that any activity being performed at the Facility is creating or has the potential to create a danger to human health or the environment on or surrounding the Facility, Ecology may direct the Army to cease such activities for such period of time as it deems necessary to abate the danger. The Army shall immediately comply with such direction.

In the event the Army determines that any activity being performed at the Facility is creating or has the potential to create a danger to human health or the environment, the Army may cease such activities. The Army shall notify Ecology’s project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology’s direction the Army shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Army’s cessation of activities, it may direct the Army to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Army’s obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.J (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

## Reservation of Rights

This Order is not a settlement under RCW 70.105D. Ecology’s signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology’s rights or authority. Ecology will not, however, bring an action against the Army to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Army regarding remedial actions required by this Order, provided the Army complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Facility should it deem such actions necessary to protect human health and 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.

By entering into this Order, the Army does not admit to any liability for the Facility. Although the Army is committing to conducting the work required by this Order under the terms of this Order, the Army expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

## Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility shall be consummated by the Army without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the Army’s transfer of any interest in all or any portion of the Facility, and during the effective period of this Order, the Army shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Army shall notify Ecology of said transfer. Upon transfer of any interest, the Army shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

## Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by the Army pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The Army has a continuing obligation to identify applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Army, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the Army must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the Army pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If relevant and appropriate requirements are identified by Ecology or the Army, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the Army must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the Army may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the Army shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The Army has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Army determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Army shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Army shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Army and on how the Army must meet those requirements. Ecology shall inform the Army in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Army shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the Army shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

## O. Periodic Review

So long as remedial action continues at the Site, the Parties agree to review the progress of remedial action at the Facility, and to review the data accumulated as a result of monitoring the Facility as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Facility, the Parties shall meet to discuss the status of the Facility and the need, if any, for further remedial action at the Facility. At least ninety (90) days prior to each periodic review, the Army shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Facility under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

## P. Indemnification

The Army agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property to the extent arising from or on account of acts or omissions of the Army, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Army shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

# 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 corrective actions required by this Order, as amended by any modifications, and that the Army has complied with all other provisions of this Order.

# ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. 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.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

2. Civil penalties of up to twenty-five thousand dollars ($25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order:

**UNITED STATES DEPARTMENT STATE OF WASHINGTON**

**OF THE ARMY DEPARTMENT OF ECOLOGY**

Skye D. Duncan Greg Caron, Manager

Colonel, United States Army Section Manager

Joint Base Lewis-McCord Hazardous Waste and Toxics Reduction

Mail Stop 69 Program

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