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EPA--REGION 10

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 6TH Avenue
Seattle, Washington 98101**

IN THE MATTER OF:

**United States Department
of the Army**

**Fort Lewis
Fort Lewis, Washington**

Respondent

Docket No.

RCRA-10-2000-0216

CONSENT

AGREEMENT AND FINAL ORDER

I. AUTHORITY

1.1 This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under 42 U.S.C. § 6961(b)(1) by Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10.

1.2 Pursuant to Section 9006 of RCRA and in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, EPA hereby issues, and U.S. Army Ft. Lewis ("Respondent") hereby agrees to the issuance of, the Final Order contained in Part IV of this CAFO.

II. PRELIMINARY STATEMENT

2.1. On September 18, 2000, EPA initiated this proceeding against Respondent pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, by issuing an Administrative Complaint and Compliance Order ("Complaint") against Respondent for assessment of an administrative penalty and issuance of a final compliance order attached hereto as Exhibit A and incorporated herein by reference.

2.2. On October 19, 2000, Respondent filed an Answer pursuant to 42 U.S.C. § 6991e(b) which is attached hereto as Exhibit B and incorporated herein by reference.

2.3. By signing this CAFO, Respondent certifies that it has complied with the terms of the compliance order, and provisions of RCRA, contained in the Complaint.

2.4. The complete factual and jurisdictional basis for the assessment of a civil penalty is set forth in the Complaint which is attached hereto as Exhibit A and incorporated herein by reference.

2.5. This CAFO shall apply and be binding upon Respondent, and its officers, directors, employees, successors, and assigns, including but not limited to, subsequent purchasers.

2.6. Respondent hereby waives its right to a judicial or administrative hearing or appeal and its opportunity to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of law or fact set forth in the Complaint or in this CAFO.

Respondent also waives any right it may have pursuant to Executive Order 12146 to refer any dispute regarding this CAFO to the United States Department of Justice for resolution.

2.7. Respondent and Complainant each agree to bear its own costs and attorney fees relating to this case.

III. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

3.1. Respondent admits the jurisdictional allegations contained in the Complaint.

3.2. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.

3.3. Pursuant to Section 9006(c), 42 U.S.C. § 6991e(c), taking into account the seriousness of the alleged violations, Respondent's good faith efforts to comply with the applicable requirements and Respondent's agreement to perform a supplemental environmental project ("SEP"), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is SIXTY THOUSAND DOLLARS (\$60,000).

3.4. Respondent consents to the issuance of the Final Order recited herein, to payment of the civil penalty cited in the foregoing paragraph within one hundred and twenty days (120) days of the effective date of the Final Order, and to performance of the SEP described herein.

3.5. Payment under this CAFO shall be made by U.S. Government Treasury check payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

Mellon Bank
EPA Region 10
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

Respondent shall note on the check the title and docket number of this case.

3.6. Respondent shall serve photocopies of the check described above on the Regional Hearing Clerk and Complainant at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Claire Hong
U.S. Environmental Protection Agency
1200 Sixth Avenue, Mail Stop OW-137
Seattle, Washington 98101

3.7. Respondent shall complete a SEP, which the parties agree is intended to secure significant environmental protection, as follows. By April 13, 2002, Respondent shall complete a SEP that will cost approximately \$200,000. This project consists of permanently removing, without replacement, underground, single-walled heating oil storage tanks. Respondent will permanently remove the following tanks according to Washington State regulations (WAC Chapter 173-360, Underground Storage Tank Regulations), in no particular order, until reaching the \$200,000 amount: tanks 11166, 11138, 11248, 11228, 2003, 2004, 2014, 2015-1, 2015-2, 2068, 2493-1, 9620, 9576-1 and 9576-2. Any releases from these tanks will be addressed according to Washington State regulations for clean-up (WAC Chapter 173-340, Model Toxics Control Act - Clean Up). The \$200,000 SEP will include any associated clean-up costs that may arise from any releases from these tanks. All clean-ups from any releases from these tanks will be

completed in accordance with WAC Chapter 173-340, Model Toxics Control Act - Clean Up, despite the \$200,000 threshold. If the cost of this SEP falls below \$200,000, Respondent commits to removing additional tanks until reaching the \$200,000 amount. The SEP is more specifically described in the Fort Lewis Supplemental Environmental Project Management Plan, attached hereto as Exhibit C and incorporated herein by reference.

3.8. The total cost of completion of the SEP shall be not less than TWO HUNDRED THOUSAND DOLLARS (\$200,000). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report detailed below.

3.9. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required by any federal, state, or local law or regulation to perform or develop the activities required by this SEP. Respondent further certifies that it is not required by any other agreement or grant, or as injunctive relief in this or any other case, to perform or develop these activities and that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for these activities.

3.10. Respondent shall submit a SEP Completion Report to EPA within 30 days of completing the activities described in Paragraph 3.7. Failure by Respondent to timely submit a complete and accurate SEP Completion Report shall be deemed a violation of this CAFO and shall subject Respondent to stipulated penalties pursuant to Paragraph 3.14 of this CAFO. The SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented;

- b. a description of any problems encountered in implementing the SEP and the solutions thereto;
- c. an itemization of costs incurred by Respondent in implementing the SEP (documented by purchase orders, receipts, canceled checks, etc.);
- d. certification that the SEP has been fully implemented pursuant to this CAFO; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP.

3.11. Following receipt of the SEP Completion Report described in the preceding paragraph, EPA will do one of the following:

- a. approve the SEP Completion Report;
- b. reject the SEP Completion Report, notify Respondent, in writing, of deficiencies in the Report, and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or
- b. disapprove the SEP Completion Report and seek stipulated penalties in accordance with Paragraph 3.14 of this CAFO.

If EPA elects to exercise option (b) or (c) above, EPA shall allow Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent. Respondent agrees to comply with any

requirements imposed by EPA as a result of any deficiency. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 3.14 of this CAFO.

3.12. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, military interdepartmental purchase requests, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

3.13. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CAFO and shall provide the documentation of any such underlying research and data to EPA not more than seven (7) days after a request for such information. In all documents or reports, including, without limitation, any SEP reports submitted to EPA pursuant to this CAFO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there

are significant penalties for submitting false information, including the possibility of fines and imprisonment.

3.14. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the following provisions:

- a. For a SEP that has not been satisfactorily completed pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000).
- b. If the SEP is satisfactorily completed, but Respondent spent less than \$200,000, but more than ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between the amount of money EPA approves spent on the SEP and TWO HUNDRED THOUSAND DOLLARS (\$200,000 - amount EPA approves spent on SEP).
- c. For failure to timely submit the SEP Completion Report required by Paragraph 3.12 of this CAFO, Respondent shall pay a stipulated penalty in the amount of THREE HUNDRED DOLLARS (\$300) for each day after the report is due until it is submitted. Such stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue until the report is submitted. This stipulated penalty is capped at TWO HUNDRED THOUSAND DOLLARS (\$200,000).

- d. The determination of whether the SEP and the SEP Completion Report, have been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- e. Respondent shall pay stipulated penalties within thirty (30) days of receipt of a written demand by EPA for payment of such penalties. Stipulated penalties shall be paid in accordance with the provisions of Paragraphs 3.5 and 3.6 of this CAFO. Respondent agrees that it will provide access for EPA to inspect the site at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
- f. All reports and submissions required by this CAFO shall be made to:

Claire Hong
U.S. Environmental Protection Agency
1200 Sixth Avenue, Mail Stop OW-137
Seattle, Washington 98101

3.15. Respondent shall perform the requirements of the SEP within the time limits approved or established in this CAFO, unless the performance is prevented or delayed solely by events which constitute a *force majeure*. A *force majeure* is defined as an event arising from causes which are not foreseeable, which are totally beyond the control of Respondent, including its consultants and contractors, which could not be overcome by the exercise of due diligence, and which delay or prevent the performance of an element of the SEP by the date required by this CAFO. Such events do not include unanticipated or increased costs of performance, changes in economic circumstances of Respondent, or normal precipitation events. A *force majeure* shall

include insufficient availability of funds only if the Department of Defense shall have made timely requests for such funds as part of the budgetary process.

If any event, including a *force majeure* event, occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify EPA in writing within 10 days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CAFO based on such incident.

- a. If the parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, which could not be overcome by the exercise of due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time and a modification of the time periods allowed for performance of the applicable element(s) of the SEP required under this CAFO. This extension of time and modification of time periods shall be accomplished through written notification by EPA to Respondent.

- b. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent, which could not be overcome by the exercise of due diligence, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the Dispute Resolution provisions in Paragraph 3.16 of the CAFO. EPA will notify Respondent in writing of its decision. Any delays in the completion of the SEP shall not be excused, unless according to the Dispute Resolution provisions in Paragraph 3.16 of the CAFO.
- c. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent, which could not be overcome by the exercise of due diligence, shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

3.16. If Respondent objects to any decision or directive of EPA regarding the SEP to be performed under this CAFO, Respondent shall notify the Director of the Office of Water ("Office Director"), Region 10, in writing of its objections and the basis for those objections within fifteen (15) calendar days of receipt of EPA's decision or directive. The Office Director and the Respondent shall then have an additional thirty (30) calendar days from EPA's receipt of

Respondent's written objections to attempt to resolve the dispute. If agreement is reached between the Office Director and Respondent, the agreement shall be reduced to writing and signed by both parties. This agreement will become an enforceable part of this CAFO.

- a. If no agreement is reached between the Office Director and Respondent within the time period specified above, the dispute shall be submitted to the EPA Regional Administrator, Region 10 ("Regional Administrator"). The Regional Administrator and Installation Commander of Fort Lewis ("Installation Commander") shall then have an additional thirty (30) day period to resolve the dispute. If agreement is reached between the Regional Administrator and Installation Commander, the agreement shall be reduced to writing and signed by the Regional Administrator and Installation Commander. This agreement will become an enforceable part of this CAFO. If the Regional Administrator and Installation Commander are unable to reach agreement within this additional time period, the Regional Administrator shall provide a written statement of EPA's decision to Respondent, which shall be final and binding upon the parties.
- b. During the pendency of the dispute resolution process, unless there has been a written modification by EPA of a compliance date, or excusable delay as defined in Section 3.15 of this CAFO, the existence of a dispute as defined in this Section and EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this CAFO which is not directly in dispute.

However, payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CAFO until the date of final resolution of the dispute, unless Respondent prevails on the disputed issue. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided herein.

3.17. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the underground storage tank requirements in the Resource Conservation and Recovery Act."

3.18. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology used by Respondent in connection with the SEP undertaken pursuant to this CAFO.

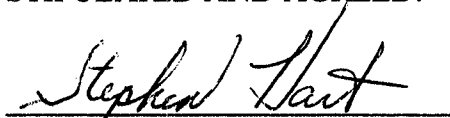
3.19. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to 42 U.S.C. § 6991e for the violations alleged in the Complaint. Nothing in this CAFO shall be construed to limit the authority of EPA to undertake action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and

substantial endangerment to public health, welfare, or the environment, nor shall anything in the CAFO be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

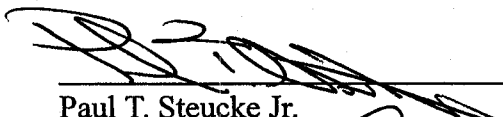
3.20. Nothing in this CAFO shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

3.21. The undersigned representative of the Army certifies that he is fully authorized by the Army to enter into the terms and conditions of this CAFO and to execute and legally bind the Army to it.

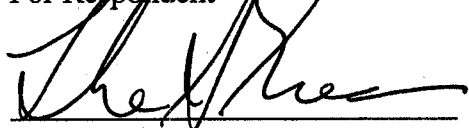
STIPULATED AND AGREED:


STEPHEN HART
Attorney
For Respondent

Dated: 16 MAY 2001


Paul T. Steucke Jr.
Chief, Environmental and Natural Resources Division, PW
For Respondent

Dated: 16 MAY 2001


Luke S. Green
Colonel, U.S. Army
Garrison Commander

Dated: 16 MAY 2001

U.S. ENVIRONMENTAL PROTECTION AGENCY

Joan W. Olmstead

JOAN W. OLMSTEAD

Attorney

For Complainant

Dated: 5/4/01

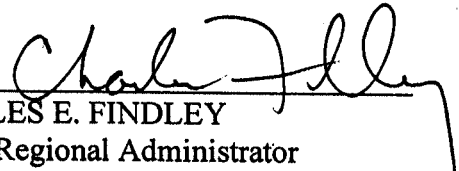
IV. CONSENT ORDER

4.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Resource Conservation and Recovery Act for the particular violations alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and the regulations issued thereunder.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this 17th day of May, 2001.



CHARLES E. FINDLEY
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 10

Attachment C

Fort Lewis Supplemental Environmental Project Management Plan

Project Name: Fort Lewis Public Works (PW) Supplemental Environmental Project
Project Goal: Remove heating oil underground storage tanks (UST's).
Completion: April 2002
Cost: \$200,000
Project Officer: James Lee
Engineer POC: Seattle District Corps of Engineers, Dave Roden & Beth Coffee

General Description:

This project consists of tank work activities at three general locations on Fort Lewis Washington. A portion of the work (4 tanks) is located on North Fort Lewis. The balance of the work is located on main post near the historic district (7 tanks) and in the logistics center (3 tanks). See Table 1. The intent of the project is to spend the entire \$200,000 on heating oil tank removals. Additional heating oil tank work on Fort Lewis is readily available should it become necessary to add work in order to spend the \$200,000. The USTs will be removed in accordance with Washington Administrative Code (WAC) Chapter 173-360, Underground Storage Tank Regulations, and the sites remedied in accordance with WAC Chapter 173-340, Model Toxics Control Act - Clean Up.

North Fort

At four facilities on North Fort Lewis are four each 8,000 gallon underground heating oil tanks that are presently temporarily closed. The building numbers for the four locations are 11166, 11138, 11248 and 12228. The plan is to permanently close and remove all four UST's. The possible exception to this situation is if the removal of the UST would cause damage or undermine an existing structure. In that event, the tanks would be permanently closed in place in lieu of removal.

Main Post

At six locations on main post are seven underground heating oil tanks. The building numbers of the six sites are 2003, 2004, 2014, 2015 (2 tanks), 2068 and 2493. The various tank sizes are summarized in table 1 below. The plan is to permanently close and remove all seven UST's. The possible exception to this situation is if the removal of the UST would cause damage or undermine an existing structure. In that event, the tanks would be permanently closed in place in lieu of removal.

Logistics Center

At two locations there are three old UST's. The building numbers of the two sites are 9576 and 9620. The plan is to permanently close and remove the the tank at 9620 and the two tanks at 9576. The possible exception to this situation is if the removal of the UST would cause damage or undermine an existing structure. In that event the tanks would be permanently closed in place in lieu of removal.

Timeline

The contract design and scope efforts are already underway. The contract will be ready to solicit as soon as the funds are available in September or October of 2001. \$200,000 worth of contract will be awarded by December 2001 with notice to proceed in January 2002. The tank removals on North Fort and main post should occur concurrently to reduce mobilization costs.

Team

The project funds would be moved directly to the Seattle District Corps of Engineers. The Seattle District personnel would administer and execute the contract action. Fort Lewis Public Works (PW)

Environmental and Natural Resources Division (ENRD) personnel would continue to be involved to review deliverables and inspect the work.

Table 1 - Tanks Proposed for Removal

Bldg.	Existing UST/AST	Existing Capacity
11166	UST	8,000
11138	UST	8,000
11248	UST	8,000
11228	UST	8,000
2003	UST	2,000
2004	UST	1,000
2014	UST	1,000
2015-1	UST	1,000
2015-2	UST	8,000
2068	UST	5,000
2493-1	UST	8,000
9620	UST	2,000
9576-1	UST	48,000
9576-2	UST	48,000