

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**U.S. ARMY PINE BLUFF ARSENAL  
U.S. ARMY CHEMICAL MATERIALS AGENCY  
WASHINGTON DEMILITARIZATION COMPANY  
10020 KABRICH CIRCLE  
PINE BLUFF, AR 71602-9500  
PERMIT 29H  
EPA ID No. AR0213820707  
AFIN 35-00116**

LIS 07- 056

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (hereinafter referred to as "Order") is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act (Act 406 of 1979, as amended; A.C.A. § 8-7-201 et seq.), and the Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") Regulation No. 23, APC&EC Regulation No. 8, and APC&EC Regulation No. 7. The issues herein, as they pertain to the U.S. Army Pine Bluff Arsenal, the U.S. Army Chemical Materials Agency, and the Washington Demilitarization Company (hereinafter referred to as "Respondents"), Jefferson County, Arkansas, having been settled by the agreement of Respondents and the Arkansas Department of Environmental Quality (hereinafter referred to as "ADEQ"), it is hereby agreed and stipulated by all parties that the Findings of Fact and Order and Agreement be entered herein.

**FINDINGS OF FACT**

1. The Pine Bluff Chemical Agent Disposal Facility (hereinafter referred to as "PBCDF") is a RCRA permitted storage and treatment facility located at the Pine Bluff Arsenal. The PBCDF is operated by the Respondents under Permit 29H.
2. On July 5, 2005, PBCDF notified ADEQ that it had discovered certain differential pressure monitors on the Pollution Abatement System (hereinafter "PAS") Filter System (hereinafter

“PFS”) installed incorrectly. Air emissions from the PBCDF furnaces are routed through the PAS, a series of air pollution control devices ultimately emitting through the Common Stack. The last control in the series is the PFS, banks of filters designed to remove trace agent and other pollutants from the exhaust gases. Each furnace system has its own dedicated PFS consisting of a Pre-Filter Bank, designed to filter out larger particles from the exhaust gas stream, a HEPA-Filter Bank, which captures finer particulate, and the final Carbon Filters for absorbing any trace chemical agent compounds. The Pre-Filters and HEPA filters are monitored by differential pressure transducers tied to Automatic Waste Feed Cut Offs (hereinafter “AWFCOs”). These monitors were installed by the original equipment manufacturers. During a change out of the PFS filters on July 5, 2005, technicians discovered that sensing lines to the Pre-Filter monitors were reversed. This resulted in an electronic reading of zero pressure on a monitor set to trigger upon a high pressure reading. PBCDF notified ADEQ of this discovery on July 5, 2005, and corrected the monitor configuration by July 6, 2005. In follow-up reports concerning this incident, PBCDF demonstrated that PFS Filters had operated below the permitted AWFCO levels since agent operations began.

3. On July 28, 2005, the PBCDF notified ADEQ that three (3) Enhanced Onsite Containers (hereinafter “EONCs”) were being stored in the Container Handling Building (hereinafter “CHB”). An EONC is a double-walled, cylindrical steel container specially designed for transporting chemical munitions from storage igloos to the CHB. EONCs also have a double O-ring seal on the door to assure that agent will be contained if a munition develops a leak. Once delivered to the CHB, EONCs are offloaded onto trays for placement on the CHB roller conveyors. In July 2005, the PBCDF had thirty-two (32) EONCs, but only twenty-seven (27) trays. On July 8, 2005, the PBCDF received three (3) EONCs containing M-55 rockets armed with nerve agent GB for which there were no trays available to offload onto the conveyor.

These EONCs were staged in the North CHB unloading area awaiting available trays. On this date, munition processing ceased for an extended period. The three (3) EONCs remained in the North CHB unloading area until M-55 rockets processing freed up trays on July 26<sup>th</sup> and 29<sup>th</sup>, 2005. During this time period, Permit 29H, Module III(C)(3) prohibited storage of EONCs within the unloading areas, the conveyor corridor, or the lift areas of the CHB. PBCDF maintains that storing the EONCs within the CHB during the extended cessation of operations provided more protection to affected employees, the public health, and the environment than available alternatives.

4. In response to the events described in Findings of Fact two (2) and three (3), ADEQ conducted Compliance Investigations at the Respondent's Pine Bluff, Arkansas, facility in June and July of 2005. A Compliance Investigation Report was mailed to the Respondents on August 22, 2005, alleging the following violations of APC&EC Regulation No. 23 and Permit 29H:
  - a. PBCDF Permit 29H, Module VI (A)(1)(d) – Failure to install and test all process monitoring and control instrumentation specified in Tables VII-10, VII-12, VII-14, and VII-16 of this Permit for incinerators in accordance with the design plans in Volume II, Section D-4 through D-7 and Volume VII, Attachment D-3, Sections D-5b through D-8b of the application prior to treating surrogate or any chemical agent hazardous waste in any incinerator.
  - b. PBCDF Permit 29H, Module III (C) (3) – The Permit prohibits storage of EONCs (C3-052) within the unloading areas, the conveyor corridor, or the lift areas of the CHB as designated on page III-6 of this Permit Volume II, pg. D-1-9, Figure D-1-1 of the part B application.

5. On November 12, 2005, ADEQ was notified by Respondents that the PBCDF Operations Crew "B" received a fire alarm from the Explosion Containment Room (hereinafter "ECR") "B." According to the control room operator, the fire appeared to have started under the Rocket Shear Machine (hereinafter "RSM") 102 hopper and in the drip pan on the south side of the RSM. The control room operator immediately initiated the chute sprays. Smoke filled the ECR and the fire dampers automatically functioned to close and isolate the ECR. Immediate notifications were made to the Emergency Operations Center, the Government Shift Representative, the PBA Fire Department, and the Washington Demilitarization Company (hereinafter "WDC") management in accordance with (IAW) PB-OP-002 Event Notification Procedure. The ECR ventilation path was restored to normal to clear the smoke from the room. A Level "A" entry was made to inspect the room for damage. In the hopper, damage was noted on the conduit surrounding the fire detector. However, when the fire alarm was tested, it was found to be working properly. The automation system does not allow the slide gate and the tipping gate to be open at the same time during hazardous waste operations. The tipping gate was opened manually for maintenance purposes. Dried out residue on an idle rocket line was also addressed as a possible cause of the fire. This residue should have been removed during an explosive clean-up of the ECR.
6. On December 15, 2005, while reviewing the Operations Waste Management weekly inspection records of December 11 – December 17, 2005, ADEQ noticed that on December 11, the Toxic Maintenance Area (hereinafter "TMA") inspection was done remotely by use of closed circuit television. The TMA is a 90-day secondary waste storage area. Remote inspections are only allowed if no toxic area entries are made during the inspection week. ADEQ found that there were five (5) toxic entries into the TMA area during the inspection week. Upon further review of the inspection and entry records, it was apparent that WDC had

adopted the practice of using the remote cameras for inspection of the TMA as the primary means of completing the task.

7. ADEQ's on-site inspector reviewed Respondents TMA 90-day weekly container inspection log record for the month of August, 2006, and found no deficiencies.
8. In response to the events described in Findings of Fact five (5) and six (6), ADEQ conducted Compliance Investigations at the Respondent's Pine Bluff, Arkansas facility on November 12 and December 17, 2005. A Compliance Investigation Report was mailed to the Respondents on April 6, 2006, alleging the following violations of APC&EC Regulation No. 23 and Permit 29H:
  - a. APC&EC Regulation No. 23, Section 264.17(a) – Failure to take precautions to prevent accidental ignition or reaction of ignitable or reactive waste.
  - b. APC&EC Regulation No. 23, Section 264.174 – Failure to inspect, at least weekly, areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.
9. On November 17, 2005, ADEQ received a corrective action response to the Incident Report, dated November 12, 2005, detailing corrective actions to prevent a recurrence and a revised ECR Housekeeping/Explosive Clean Up and Decontamination Procedure (SOP PB-0000-M-112). In addition, Respondents submitted a copy of the "Live Time Training for "B" and "D" Crew Incident and Procedure Changes", a copy of the list of crew personnel that were trained, and a review of feed chute temperature control requirements and set points.
10. On May 17, 2006, ADEQ received a Class 2 Permit Modification requesting the storage of EONCs in designated areas in the Container Handling Building (CHB). This Class 2 Permit Modification was approved on July 18, 2006. The Permit Modification allows Respondents to store up to eight (8) loaded EONCs in the CHB unloading areas without increasing the

maximum allowable permitted storage capacity within the CHB set at thirty-two (32) loaded EONCs.

11. Without admitting or denying the alleged violations cited in the Compliance Investigation Reports, Respondents agree to the following Order and Agreement in full settlement and compromise of the alleged violations of APC&EC Regulation No. 23 and Permit 29H as stated herein.

#### **ORDER AND AGREEMENT**

1. Henceforth, Respondents shall properly store EONCs in the CHB according to Permit 29H, Module III(C)(3), as modified.
2. Henceforth, Respondents shall continue to take precautions to prevent accidental ignition or reaction of ignitable or reactive waste in accordance with APC&EC Regulation No. 23, Section 264.17(a). Respondents shall continue to follow and update as necessary the Revised ECR Housekeeping/Explosive Clean Up and Decontamination Procedure (SOP PB-0000-M-112).
3. Upon the effective date of this Order, Respondents shall physically inspect the TMA 90-day secondary waste storage area during the first entry of each week. However, if there are no toxic entries during the week due to documented operational restrictions, Respondents may use remote closed circuit television to conduct their weekly inspection on the last day of the week. If Respondents use the remote closed circuit television to conduct the weekly inspection, Respondents shall document the change in the weekly inspection log book.

4. In compromise and full settlement of the violations specified in the Findings of Fact, the Respondents agree to pay a civil penalty of ELEVEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$ 11,250.00). Payment is due within thirty (30) calendar days of the effective date of this Order. Payment of the civil penalty shall be made by Respondent Washington Demilitarization Company. Such payment shall be made payable to the ADEQ, Attention: Fiscal Division, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219-8913. In the event that Respondents fail to pay the civil penalty within the prescribed time, the ADEQ shall be entitled to attorneys' fees and costs of collection.
5. Respondents hereby designate a Project Manager who shall be responsible for overseeing the implementation of activities subject to the requirements of this Order. The Project Manager shall communicate with ADEQ on all technical issues which arise under this Order and shall be empowered to agree on minor modifications in the implementation of any of the requirements of this Order when such modifications are deemed by ADEQ to further the purpose of this Order. Respondents may change their Project Manager by providing written notice of such change to ADEQ. The initial Project Manager shall be:

Mark Lumpkin, Director  
Risk Management & Regulatory Affairs  
U.S. Army Pine Bluff Arsenal  
10020 Kabrich Circle  
Pine Bluff, AR 71602-9500
6. If Respondents fail to submit to ADEQ any reports or plans, or meet any other requirement of this Order within the applicable deadline established in the Order, ADEQ may assess stipulated penalties for delay in the following amounts:
  - a. First day through the tenth day: \$500/day or less
  - b. Eleventh day through the twentieth day: \$750/day or less
  - c. Twenty-first day through the thirtieth day: \$1,000/day or less

d. Each day beyond the thirtieth day: \$2,500/day or less

These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of Respondents' failure to comply with the requirements of this Order.

7. If any event occurs, including but not limited to Natural Disasters, which causes or may cause delay in the achievement of compliance by Respondents with the requirements of this Order, Respondents shall notify ADEQ, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the deadline has passed. The written notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken and to be taken to minimize the delay, and the timetable by which those measures are implemented.
8. ADEQ may grant a written extension of any provision of this Order, provided that Respondents request such an extension in writing and provided that the delay or anticipated delay has been caused by circumstances beyond the control of and without the fault of Respondents. The time for performance may be extended for a reasonable period but, in no event longer than the period of delay resulting from such circumstances. The burden of proving that any delay is caused by circumstances beyond the control of and without fault of Respondents and the length of delay attributable to such circumstances shall rest with Respondents.
9. Respondents shall perform the requirements of this CAO within the time frames set forth herein unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondents which cannot be overcome by due

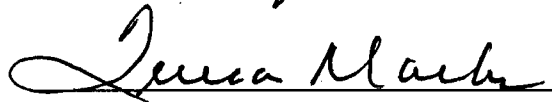
diligence. A force majeure shall mean any event arising from causes beyond the control of a party that causes a delay in or prevents the performance of any obligation under this CAO, including but not limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to actions or inactions of any governmental agency or authority other than Respondents; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if Respondents shall have made timely request for such funds as part of the budgetary process. A force majeure shall also include any strike or other labor dispute, whether or not within the control of a party affected thereby. Force majeure shall not include increased costs or expenses of an action, whether or not anticipated at the time of the action was initiated.

10. It is the anticipation of the Parties to this CAO that all obligations of Respondents arising under this CAO will be fully funded. Respondents agree to seek sufficient funding to fulfill its obligations under this CAO. However, any requirement for the payment or obligation of funds by Respondents established by the terms of this CAO shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases where payment or

obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

11. Nothing contained in this Order shall be construed as a waiver of ADEQ's enforcement authority over alleged violations not specifically addressed herein; nor does this Order exonerate past, present, or future conduct which is not expressly addressed herein. Nothing contained herein shall relieve Respondents of any other obligations imposed by any local, state, or federal laws, nor shall this Order be deemed in any way to relieve Respondents of their responsibilities for obtaining or complying with any necessary permits or licenses.
12. This Order is subject to public review and comment in accordance with A.C.A. Section 8-4-103 (d) and is therefore not final until thirty (30) calendar days after public notice of the Order is given. ADEQ retains the right and discretion to rescind this Order based on comments received within the thirty-day public comment period or based on any other considerations which may subsequently come to light. Additionally, this Order is subject to being reopened upon Arkansas Pollution Control & Ecology Commission initiative or in the event a petition to set aside this Order is granted by the Commission.

SO ORDERED THIS 6<sup>th</sup> DAY OF June, 2007.



**TERESA MARKS  
DIRECTOR**

**APPROVED AS TO FORM AND CONTENT:**

U.S. Army Pine Bluff Arsenal

BY: Signature B. Libanod  
Print or Type Name B. Libanod  
Title Commander  
Date 4 June 2007

U.S. Army Chemical Materials Agency

BY: Signature Clara A. Moraga  
Print or Type Name Clara A. Moraga  
Title Acting Site Project Manager  
Date 1 June 2007

Washington Demilitarization Company

BY: Signature David P. Reber  
Print or Type Name David P. REBER  
Title Project General Manager  
Date 5/31/07