

**FEDERAL FACILITY COMPLIANCE AGREEMENT
BETWEEN UNITED STATES DEPARTMENT OF THE ARMY
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

SECTION I. SCOPE AND PURPOSE

1. The express purpose of the undersigned Parties in entering into this Federal Facility Compliance Agreement (“FFCA” or “Agreement”) is to address National Pollutant Discharge Elimination System (“NPDES”) effluent limit exceedances of permitted limits and to further the goals of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1251-1387. It is the objective of all provisions and obligations of this FFCA to cause the Permittee, U.S. Department of the Army (“Army”), to come into and remain in full compliance with all applicable Federal, state, and local laws and regulations governing the discharge of pollutants into waters of the United States, at its Iowa Army Ammunition Plant (“Facility”) as required by Section 301(a) of the Act, 33 U.S.C. § 1311(a).

SECTION II. JURISDICTION

2. The United States Environmental Protection Agency, Region 7, (“EPA”) and the Army enter into this FFCA pursuant to the Act, 33 U.S.C. §§ 1251-1387, and Executive Order No. 12088, to achieve and maintain compliance with the CWA.

SECTION III. PARTIES

3. The Parties to this FFCA are the EPA and the Army.
4. The Army officers, agents, contractors, employees, successors, assigns, and all persons, departments, agencies, firms, and corporations in active concert or participation with them will take all necessary steps to ensure compliance with the provisions of this FFCA.

The Army shall give written notice of this FFCA to any prospective successor in interest.

At least ninety (90) calendar days prior to transfer of ownership or operation of Facility, the Army shall give written notice of such transfer or change in ownership or operation to the EPA Project Manager identified in paragraph 58 of this FFCA.

5. The undersigned representative of each Party to this FFCA certifies that they are fully authorized by the Party whom they represent to enter into the terms and conditions of the FFCA and to execute and legally bind that Party to it.

SECTION IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. For the purposes of this FFCA, the following constitutes a summary of the findings upon which this FFCA is based. The facts related herein shall not be considered admissions by any Party. This section contains findings of fact determined solely by the Parties and shall not be used by any person related or unrelated to this FFCA for purposes other than determining the basis of this FFCA.
7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into the waters of the United States by any person except in accordance with other specified sections of the Act, including Section 402, 33 U.S.C. § 1342.
8. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in the state of Iowa. Each violation of an NPDES permit, and each discharge of pollutant that is not authorized by an NPDES permit, constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
9. IDNR issued NPDES Permit No. IA0022144 (“Permit”) to the Facility. The effective dates of the Permit are February 1, 2020, through January 31, 2025.

10. The Facility's NPDES permit authorizes the Army to discharge pollutants to waters of the United States in accordance with limitations and conditions set forth in the permit. The facility has 11 permitted outfalls and 1 calculated outfall. Permitted outfalls 004, 009, 013, and 014 discharge to Long Creek, Brush Creek, Skunk Creek, and their tributaries. On January 1, 2023, the Permit was amended to exclude Outfall 004, which has been closed.
11. At all times relevant to this action, the Army owned the Facility, located at 17571 DMC Highway 79, Middletown, Iowa 52638. Operations are contracted out to American Ordnance, LLC. As the facility operator, AO loads, assembles, and packs medium and large caliber ammunition items and operates under the SIC code 3483, Ammunition except for Small Arms.
12. The Effluent Limitations and Monitoring and Reporting Requirements sections of the Facility's NPDES permit prohibit discharges except in compliance with effluent limitations and establish monitoring requirements and effluent limitations for Outfalls 004, 009, 013, and 014, as set forth below:

Outfall 004, Effective 2/1/2020 to 1/31/2025			
Parameter	Sample Frequency	Limit Type	Limits
Oil and Grease			
	1 Every Month	30 Day Average	10 mg/L
	1 Every Month	Daily Maximum	15 mg/L

Outfall 009, Effective 2/1/2020 to 1/31/2025			
Parameter	Sample Frequency	Limit Type	Limits
Chloride	1 Every Month	30 Day Average	389 mg/L 50.6 lbs/day

	1 Every Month	Daily Maximum	629 mg/L 81.1 lbs/day
Nickel, total	1 Time Per Week	30 Day Average	0.094 mg/L 0.012 lbs/day
	1 Time Per Week	Daily Maximum	0.843 mg/L 0.110 lbs/day
Total Suspended Solids	1 Every 3 Months	Daily Maximum	50 mg/L
Sulfate, total	1 Every Month	30 Day Average	1514 mg/L 197 lbs/day
		Daily Maximum	1514 mg/L 197 lbs/day

Outfall 013, Effective 2/1/2020 to 1/31/2025			
Parameter	Sample Frequency	Limit Type	Limits
Nitrogen, ammonia	May, 1 Time Per Week	30 Day Average	1.7 mg/L 15.7 lbs/day
	May, 1 Time Per Week	Daily Maximum	5.0 mg/L 44.0 lbs/day

Outfall 014, Effective 2/1/2020 to 1/31/2025			
Parameter	Sample Frequency	Limit Type	Limits
Aluminum, total	1 Time Per Week	30 Day Average	0.087 mg/L 0.051 lbs/day
	1 Time Per Week	Daily Maximum	0.750 mg/L 0.438 lbs/day

13. In December 2020, effluent from Outfall 004 exceeded the permitted limit for daily maximum and monthly average for oil and grease.

14. Between June 2019 and June 2022, effluent from Outfall 009 exceeded the following permitted limits:

- a. Chloride: daily maximum on 10 occasions and monthly average on 10 occasions;

- b. Nickel: daily maximum on three occasions and monthly average on 10 occasions;
 - c. Total Suspended Solids: daily maximum on one occasion;
 - d. Sulfate: daily maximum on 11 occasions and monthly average on nine occasions.
15. In May 2022, effluent from Outfall 013 exceeded the permitted limit for daily maximum and monthly average for nitrogen.
16. Between March 2021 and June 2022, effluent from Outfall 014 exceeded the permitted limit for monthly average on three occasions for aluminum.

SECTION V. COMPLIANCE PROGRAM

17. The Army agrees to take any and all necessary steps to comply fully with the Permit as soon as practicable. Such steps will include, but not be limited to, the activities outlined in this section. To the extent the Army is able to achieve compliance more expeditiously than the timeframes set forth in this FFCA, the Army shall do so.
18. Within thirty (30) days of receipt of this FFCA, the Army shall develop and submit for EPA review, a written response describing all actions taken and a Compliance Plan that includes all measures necessary to eliminate effluent limit exceedances.
- a. The Compliance Plan shall include, but not be limited to, detailed implementation schedules with a final completion date and any relevant engineering, upgrades, or changes to Facility operation and maintenance.
 - b. The Compliance Plan shall be submitted according to requirements set forth in Paragraphs 24 through 27 below.
19. The Army shall begin implementation of its Compliance Plan immediately upon EPA's approval of the Plan. EPA shall review and approve or provide comments on the Plan within fourteen (14) days of submittal.

20. The Compliance Plan shall be deemed an enforceable part of this FFCA effective on the date of EPA's approval of the Plan.

SECTION VI. REPORTING

21. The Army shall submit a written status report to EPA no later than thirty (30) calendar days after the end of each fiscal year quarter as long as this FFCA is in effect. The status report shall be submitted in addition to any other reporting or certification required under this FFCA or pursuant to law, regulation, or the Permit. The status report shall state and describe the cause of any failure to comply with this FFCA and at a minimum shall include: (1) the deadlines and other milestones which the Army was required to meet during the reporting period; (2) the progress it made toward meeting them; (3) the reasons for any noncompliance with this FFCA; and (4) a description of any matters relevant to the status of its compliance with this FFCA.

22. Within thirty (30) days of Compliance Plan completion, the Army must submit a Statement of Return to Compliance, along with supporting documentation that adequately demonstrates a return to compliance and steps taken to correct any underlying problems that may cause another violation.

23. Notification to EPA of any noncompliance with any provision of this FFCA or anticipated delay in performing any obligation under this FFCA shall not excuse the Army's noncompliance or anticipated delay.

24. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Agreement must be submitted to EPA electronically to the extent possible. All electronic submissions must be sent to the EPA Project Manager identified in paragraph 58. The subject line of all email correspondence must include the following:

“IAAAP FFCA” and the subject or title of the deliverable. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (“PDF”) with Optical Character Recognition (“OCR”) applied.

25. If electronic submittal is not possible, the materials must be submitted by certified mail, return receipt requested. All certified mail submissions must be sent to the EPA Project Manager. Each notification or communication to EPA sent by certified mail shall be deemed submitted on the date it is postmarked.
26. The Army shall maintain records of each notification or communication, regardless of whether sent electronically or by mail, together with proof of mailing by certified mail, if applicable, for the duration of this FFCA.
27. All submissions provided pursuant to this Agreement shall be signed by a duly authorized representative of the Army who has personal knowledge of the submission’s contents. Each submission shall be admissible as evidence in any proceeding to enforce this FFCA. Each submission shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

SECTION VII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

28. Compliance with the terms of this FFCA in no way affects or relieves the Army of its obligation to comply with all applicable requirements of the Act and regulations promulgated thereunder, or other applicable requirements of Federal, state, or local law.

SECTION VIII. PERMIT OBLIGATIONS

29. This FFCA does not constitute a permit and does not relieve the Army of any obligation to apply for or obtain new NPDES permits or comply with its existing NPDES Permit.

SECTION IX. RIGHT OF ENTRY

30. EPA, its contractors, and other authorized representatives shall have the right to enter the Facility to conduct any inspection, including but not limited to records inspection, sample testing, or monitoring they believe is necessary to determine the Army's compliance with this FFCA.

SECTION X. DISPUTE RESOLUTION

31. In the event of any conflict involving violations of this FFCA, EPA and the Army shall meet promptly and work in good faith in an effort to reach a mutually agreeable resolution of the dispute.
32. Except as specifically set forth elsewhere in this FFCA, if a dispute arises under this FFCA, the procedures of this Section shall apply. In addition, during the pendency of any dispute, the Army agrees that it shall continue to implement those portions of this FFCA which are not in dispute.

33. The pendency of any dispute under this Section shall not affect the Army's responsibility to perform the work required by this FFCA in a timely manner, except that the time period for completion of work affected by such dispute may, at EPA's sole discretion, be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this FFCA which are not affected by the dispute shall continue and be completed in accordance with applicable schedule.
34. The Parties to this FFCA shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. With respect to EPA, "Project Manager" means the person identified in paragraph 58 or any duly identified successor. With respect to the Army, "Project Manager" means the person identified in paragraph 58 or any duly identified successor.
35. Within twenty-one (21) days after any action which leads to or generates a dispute, the Army shall submit to EPA a written statement of dispute setting forth the nature of the dispute, the Army's position with respect to the dispute, and the information the Army is relying upon to support its position. If the Army does not provide such written statement to EPA within this twenty-one (21) day period, the Army shall be deemed to have agreed with EPA's position with respect to the dispute.
36. Upon EPA's receipt of the written statement of dispute from the Army, the Parties shall engage in dispute resolution among the Project Managers and/or their immediate supervisors. The Parties shall have twenty-one (21) days from the receipt by EPA of the written statement of dispute to resolve the dispute. During this period, the Project Managers shall meet or confer as many times as necessary to discuss and attempt

resolution of the dispute. If agreement cannot be reached on any issue within this twenty-one (21) day period, the Army may, within ten (10) days after the conclusion of the twenty-one (21) days dispute resolution period, submit a written notice to EPA elevating the dispute to the Dispute Resolution Committee (“DRC”) for resolution. If the Army does not elevate the dispute to the DRC within this ten (10) day period, the Army shall be deemed to have agreed with EPA’s position with respect to the dispute.

37. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached pursuant to the foregoing paragraphs in this Section. Following elevation of a dispute to the DRC, the DRC shall have thirty (30) days to unanimously resolve the dispute. EPA’s designated representative on the DRC is the Region 7 Water Branch Chief in the Enforcement and Compliance Assurance Division. The Army’s designated representative on the DRC is the Iowa Army Ammunition Plant Commander. Delegation of the authority from a Party’s representative on the DRC to an alternate shall be provided to the other Party within seven (7) days of delegation.

38. If unanimous resolution by the DRC is not achieved within this thirty (30) day period, a member of the DRC may, within twenty-one (21) days after the conclusion of the thirty (30) day dispute resolution period, submit a written Notice of Dispute to the Regional Administrator of EPA Region 7 for final resolution of the dispute. In the event that the dispute is not elevated to the Regional Administrator of EPA Region 7 within the designated twenty-one (21) day period, the Army shall be deemed to have agreed with the EPA DRC representative’s position with respect to the dispute.

39. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Army shall incorporate the resolution and final

determination into the appropriate statement of work, plan, schedule, or procedures and proceed to implement this FFCA according to the amended statement of work, plan, schedule, or procedures.

40. Resolution of a dispute pursuant to this Section of the FFCA constitutes a final resolution of any dispute arising under this FFCA. The Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of the FFCA.

SECTION XI. FORCE MAJEURE

41. The Army's obligations under the Compliance Program Section of this FFCA shall be performed as set forth in this FFCA unless performance is prevented or delayed by a force majeure event. For purposes of this FFCA, "force majeure" is defined as any event arising from causes beyond the control of the Army or of entities controlled by the Army, including but not limited to contractors and subcontractors, which could not be overcome by the due diligence of the Army or the entities controlled by the Army, which delays or prevents the performance of any obligation under this FFCA, including acts of God or war, labor unrest, and any judicial orders which prevent compliance with the provisions of this FFCA. Force majeure shall not include increased costs of performance of any activity required by this FFCA or the failure to apply for any required permits or approvals or to provide all information required in a timely manner, nor shall it include the failure of contractors or employees to perform or the avoidable malfunction of equipment.

42. If the Army is having difficulty meeting its obligations as set forth in this FFCA due to a force majeure event, it shall notify EPA promptly by telephone or electronic mail of any

change in circumstances giving rise to the suspension of performance or the nonperformance of any obligation under this FFCA. In addition, within fourteen (14) calendar days of the occurrence of circumstances causing such difficulty, it shall provide a written statement to EPA of the reason(s), the anticipated duration of the event and delay, the measures taken and to be taken to prevent or minimize the time and effects of failing to perform or delaying any obligation, and the timetable for the implementation of such measures. Failure to comply with the notice provisions shall constitute a waiver of any claims of force majeure. The Army shall take all reasonable measures to avoid and/or minimize any such delay.

43. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Army shall rest with the Army.

SECTION XII. MODIFICATIONS

44. The requirements, timetable, and deadlines under this FFCA may be modified upon receipt of a timely request for modification and when good cause exists for the requested modification. Any request for modification by the Army shall be submitted in writing and shall specify: the requirement, timetable, or deadline for which a modification is sought; the length of the extension sought; the good cause for the extension; and any related requirement, timetable, deadline, or schedule that would be affected if the extension were granted.
45. Good cause exists for a modification when sought in regard to: a force majeure; a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; a delay caused by failure of a regulatory Agency to perform its duties in a timely manner where regulatory action is necessary to proceed

with construction and where the Army has made a timely and complete request for action from the regulatory Agency; and any other event or series of events that the Parties mutually agree constitutes good cause.

46. EPA shall make best efforts to reply to any written request for a modification within twenty-one (21) calendar days of receipt of a request for a modification, and, as part of such reply, EPA shall advise the Army of its position on the request. If EPA does not concur on the extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

SECTION XIII. FUNDING

47. It is the expectation of the Parties to this FFCA that all obligations of the Army arising under this FFCA, including any environmentally beneficial projects required, will be fully funded. The Army agrees to use every legally available mechanism to seek sufficient funding through the Army budgetary process to fulfill its obligations under the FFCA.
48. Provision herein shall not be interpreted to require obligations or payment of funds in violations 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 within the terms delineated in this FFCA.
49. If funds are not available to fulfill the Army's obligations under this FFCA, EPA reserves the right to initiate an action against any other person or to take any action which would be appropriate absent this agreement.

SECTION XIV. GENERAL PROVISIONS

50. This FFCA was negotiated and executed by the Parties in good faith to ensure compliance with the law. No part of this FFCA constitutes or should be interpreted or construed as an admission of fact or of liability under Federal, state or local laws, regulations, ordinances, or common law or as an admission of any violations of any laws, regulations, ordinances, or common law. By entering into this FFCA, the Army does not waive, other than as to the enforcement of this FFCA pursuant to the terms contained herein, any claim, right, or defense that it might raise in any other proceeding or action. Further, nothing contained in this FFCA shall be considered a declaration, expressly or implied, by the Parties regarding the extent of the waiver of Federal sovereign immunity under the Clean Water Act.
51. Terms and conditions of this Agreement changed by an agreed upon modification shall be enforceable as changed.
52. The Parties agree that the terms and conditions of this Agreement are enforceable as appropriate by any person pursuant to Section 505 of the Act, 33 USC §1365.
53. If any provision of this FFCA or the applications of this FFCA to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the FFCA shall remain in force and shall not be affected thereby.
54. The effective date of this FFCA shall be the date on which it is signed by the last signatory.
55. The FFCA shall be effective if signed in counterparts.

56. In computing any period of time described as “days” herein, all references to “days” refer to “calendar days, unless stated otherwise.” The last day of a time period shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.
57. This FFCA shall terminate once the Army has met all of its obligations herein, as determined by the mutual consent of the Parties and evidenced in writing.

SECTION XIV. DESIGNATED PROJECT MANAGERS

58. The contact information for the Project Manager for EPA is:

Erin Kleffner, or successor
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
kleffner.erin@epa.gov
913-551-7921

59. The contact information for the Project Manager for Army is:

Randy Doyle, or successor
Iowa Army Ammunition Plant
17571 Highway 79 Middletown,
Iowa 52638
randy.a.doyle.civ@army.mil
319-753-7103

DAVID COZAD

Director, Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 7

DATE

DUNLAPP.JOHN. Digitally signed by
DOUGLAS.10804 DUNLAPP.JOHN.DOUGLAS.1
67326 080467326
Date: 2023.09.14 08:14:14
-05'00'

JOHN DUNLAPP

LTC, LG
Commander, IAAAP
U.S. Department of the Army

DATE