

New Mexico Health and Environment Department

GARREY CARRUTHERS
Governor

DENNIS BOYD
Secretary

MICHAEL J. BURKHART
Deputy Secretary

RICHARD MITZELFELT
Director



CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 25, 1990

XI

Colonel David E. Benson
Commander
27th Combat Support Group
Cannon Air Force Base
Cannon Air Force Base, New Mexico 88103

Dear Colonel Benson:

As the New Mexico Environmental Improvement Division's (EID's) February 28, 1990 letter to Cannon Air Force Base (Cannon) indicated, Cannon must install an adequate groundwater monitoring system. The draft compliance agreement dated April 9, 1990 included those items that EID believes will ensure that Cannon has an adequate groundwater monitoring system. The New Mexico Environmental Improvement Division (EID) has received your revised compliance agreement and recommended changes (dated April 25, 1990). The deletion of item 2 of the Resolution of Alleged Violations is unacceptable.

EID has prepared a revised compliance agreement taking into consideration Cannon's comments. Adjustments to the schedule have been made so that the drilling of the second well (item 2) is delayed until after the dry borehole monitor well has been drilled. Some timing changes recommended by Cannon have been included. All changes made have been bolded.

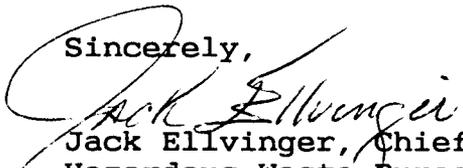
The enclosed revised compliance agreement includes all actions that EID believes are necessary for Cannon to resolve the alleged violations. Please sign the enclosed compliance agreement (dated May 25, 1990) and return it within fifteen days of receipt.

Colonel David E. Benson
May 25, 1990
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If Cannon does not sign and return the agreement within 15 days of receipt, EID will proceed with an enforcement action against Cannon.

If you need additional information or have any questions, please contact me at (505) 827-2210 or Suzanne Moore-Mayne at (505) 827-0170.

Sincerely,


Jack Ellvinger, Chief
Hazardous Waste Bureau

JE/SMM/smm

cc: Lynn Prince, U.S. EPA, Region 6
Felicia Orth, Office of General Counsel, EID
Ronald W. Jahns, U.S. Air Force, Dallas

ENVIRONMENTAL IMPROVEMENT DIVISION

IN THE MATTER OF:
CANNON AIR FORCE BASE
NEW MEXICO

COMPLIANCE AGREEMENT

The Director of the Environmental Improvement Division of the Health and Environment Department ("EID") on behalf of the State of New Mexico issued on 11 August 1989, a Notice of Violation to Cannon Air Force Base, Department of the Air Force, in which EID alleges violations of the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-12, NMSA 1978 and the regulations promulgated thereunder. The Notice of Violation of 11 August 1989 is appended to and made part of this agreement (Appendix A). EID and Cannon hereby consent to entry of this Compliance Agreement without trial or hearing in settlement of all issues raised by the Notice of Violation, except the administrative penalty. For the purposes of Section 74-4-10 NMSA 1978 of the New Mexico Hazardous Waste Act, this Agreement shall have the force of law of a Compliance Order. All provisions, conditions, and terms of the corrective measures to be taken, the schedule for achieving compliance and the requirements for reporting are integrated in this Agreement and its attachments, and documented herein. Any parole agreements not incorporated are null and void. EID and Cannon agree to place the current pursuit of the administrative penalty on hold pending final disposition of Mitzelfelt vs. Department of the Air Force, Civil Action 88-1535M including all appeals.

NOW, THEREFORE, it is AGREED as follows:

I. ENFORCEABILITY

For purposes of this Agreement, Cannon neither admits nor denies the jurisdictional allegations or the specific factual allegations contained in the Notice of Violation.

Cannon recognizes its obligation to comply with the Resource Conservation and Recovery Act of 1976 (RCRA) as set forth in Section 6001 of RCRA, the Clean Water Act of 1977 (CWA), the New Mexico Hazardous Waste Act and the New Mexico Hazardous Waste Management Regulations.

II. COMPUTATION OF TIME

In computing any period of time prescribed or allowed by this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed 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 which is not a Saturday, a Sunday or a legal holiday.

III. BINDING EFFECT

This Agreement shall apply to and be binding upon the EID, the United States Department of the Air Force, and all officers, directors, agents, trustees, servants, employees, successors or assigns of the named parties as well as upon all persons, firms and

other legally cognizable entities in active concert or participation with the named parties.

IV. DEFINITIONS

As used in this Agreement:

"Binding" means to be legally enforceable upon. Those entities bound by this Agreement are constrained and compelled to act in accordance with the terms contained herein.

"Reviewers" means the following person or their designees:

1) For EID: Director of New Mexico Environmental Improvement Division, Health and Environment Department, and Counsel.

2) For Cannon: Commander, 27th Combat Support Group, Cannon Air Force Base, New Mexico, and Counsel.

3) "Submit" means to mail, certified, return-receipt requested, the specified number of copies of the applicable documentation to the following individuals or their successors in interest:

Mr. Richard Mitzelfelt, Director
Environmental Improvement Division
New Mexico Health and Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87503
(one [1] copy)

Colonel David E. Benson
Commander
27th Combat Support Group
Cannon Air Force Base, NM 88103
(one [1] copy)

V. CORRECTIVE MEASURES
RESOLUTION OF ALLEGED VIOLATIONS

A. Identification of Alleged Violations

The Notice of Violation of 11 August 1989 (Appendix A) alleges that Cannon has violated the New Mexico hazardous Waste Regulations (HWMR-5) and the New Mexico Hazardous Waste Act NMSA 1978, Section 74-4-1 through 74-4-12. The Notice of Violation cites five separate violations, which are as follows:

1. Cannon has not installed an upgradient well(s) screened at depths to yield groundwater samples representatives of the uppermost aquifer near the facility and has not installed downgradient wells that are screened at depths to ensure that they will immediately detect contamination migrating from the Landfill 5 Cell 3 RCRA unit as required by Pt. VI, sec. 265.91(a)(1),(2). Specifically, the screen in the upgradient well does not intersect the water table, therefore, groundwater samples collected from that well are not representative of the groundwater near the facility. The screens in the downgradient monitor wells do not intersect the water table, therefore, the wells cannot immediately detect non-aqueous light phase layers that potentially could be present at the water table interface. Under unconfined water table conditions, the screens should intersect the water table thereby ensuring

the detection of potential light phase immiscible constituent layers. Constituents received in Landfill 5 Cell 3 include light non-aqueous phase liquids.

2. Cannon has not developed an adequate groundwater sampling and analysis plan as required by Pt. VI, sec. 265.92(a). The sampling and analysis plan is inadequate in detail and should be expanded. The following specific inadequacies need to be addressed: 1) samples for organic analyses were collected in polypropylene containers instead of fluorocarbon resin or glass containers; 2) Total Organic Carbon (TOC) analyses were not preserved with acid; 3) sample labels and chain-of-custody seals were not prepared at the time of sample collection and affixed to the containers to assure identification and proper chain-of-custody; 4) the chain-of-custody record was not prepared and inserted with the sample containers; 5) there is no procedure to contain and dispose of purged groundwater from the wells if the purge water is analytically determined to contain hazardous constituents; 6) the procedure to calculate five well volumes as outlined in the Sampling and Analysis Plan was not followed (purge water was allowed to flow on to the ground); the size of containers and type of container lids were not

- specified; and 7) the order of sample collection was not specified.
3. Cannon's groundwater sampling equipment is inadequate to obtain a sample representative of the groundwater in the uppermost aquifer as required by Pt. VI, sec. 265.90(a). Sampling equipment is inadequate for collection of representative samples for pH, volatiles, semi-volatiles, metals, TOX and other labile constituents. Specifically, a groundwater sample from the monitor wells would not be representative because of the agitation and aeration caused by the usage of the submersible pump to collect the samples.
 4. Cannon's field log did not record details of the care and maintenance of sampling equipment as required by Pt. VI, sec. 265.15 (d). Field notes were not maintained on the maintenance of the water depth probe, its malfunctions and the resolution of those problems.
 5. Monitor well J's construction is inadequate to maintain the integrity of the monitoring well bore hole as required by Pt. VI, sec. 265.91 (c) or Monitor Well J was developed inadequately to obtain a sample representative of the groundwater in the uppermost aquifer as required by Pt. VI, sec. 265.90(a). Water samples collected from Monitor well J contained sand indicating that the well was

not properly completed or developed.

B. Resolution for Alleged Violations.

Refer to Appendix D for due dates of each action. All dates are calculated from the date of the signing of the agreement.

1. Monitor wells B, C and D shall be used only as RCRA water level wells. The water elevations shall be measured at these wells each time the RCRA groundwater monitor wells are sampled.

Monitor well A shall remain the upgradient, RCRA groundwater monitoring well.

Monitor well I shall remain a downgradient, RCRA groundwater monitoring well.

Within 60 days from the signing of this Agreement, Cannon shall provide in writing to EID turbidity test results from Monitor Well J. If Monitor well J is redeveloped to have reproducible turbidity of less than 5 NTUs, then Monitor well J may be used as an additional RCRA downgradient monitor well.

2. Within 60 days of the signing of this Agreement, Cannon shall submit a drilling and installation plan to drill dry one borehole immediately downgradient of Landfill 5, Cell 3 and complete as a groundwater monitor well. The plan shall include the location of the proposed well and

all pertinent information as outlined in Appendix B, RCRA Groundwater Monitoring System Design, Construction, and Certification Requirements (Appendix B).

The borehole shall be drilled dry to determine if any perched water zones are present, the accurate depth to groundwater, and the stratigraphy of the unsaturated zone. The borehole shall be completed as a monitor well in accordance with Appendix B. Samples shall be described at five foot intervals. Any unusual odors or discolorations of the soil shall be noted and described.

Within 90 days, EID shall review the plan and provide written comments to Cannon.

Within 111 days, Cannon shall incorporate EID's comments into the plan and submit the revised plan to EID.

Within 126 days, EID shall review the revised plan to determine if comments were incorporated adequately and provide a written response to Cannon. The revised plan must be acceptable to EID.

Cannon shall follow the revised plan; if any changes from the plan are necessary, Cannon shall contact EID for verbal and written concurrence prior to initiating the changes. If EID does not concur, Cannon shall not deviate from the plan.

Within 216 days, Cannon shall complete the installation and development of the well.

Within 246 days, Cannon shall certify to EID in writing that the well was drilled in accordance with the approved plan.

3. Within 231 days after the signing of this Agreement, Cannon shall submit a drilling and installation plan for an additional monitor well immediately downgradient of Cell 3. The plan shall include the location of the proposed well and all pertinent information as outlined in Appendix B.

Within 261 days, EID shall review the plan and provide written comments to Cannon.

Within 282 days, Cannon shall incorporate EID's comments into the plan and submit the revised plan to EID.

Within 297 days, EID shall review the revised plan to determine if EID's comments were incorporated adequately and provide a written response to Cannon. The revised plan must be acceptable to EID.

Cannon shall follow the revised plan; if any changes from the plan are necessary, Cannon shall contact EID for verbal and written concurrence prior to initiating the changes. If EID does not concur, Cannon shall not deviate from the plan.

Within 327 days, Cannon shall complete the installation and development of the well.

Within 357 days, Cannon shall certify to EID in writing that the well was drilled in accordance with the approved plan.

4. Within 372 days after the signing of this Agreement, Cannon shall submit a report including the as-built details of the new downgradient wells. This includes a map with surveyed locations of all monitor wells at the landfill, and the surveyed boundaries of the landfill and landfill cells. This map must include a north arrow and a scale. In addition, the report shall be as specified in Appendix B, Section C and Appendix C, Monitoring Well Identification Report and must be acceptable to EID.

5. Within 348 days after the signing of this Agreement, using the new pumps Cannon shall analyze groundwater samples from all the RCRA wells that are part of the adequate groundwater monitoring system, for the HWMR-5, as amended, 40 CFR, Section 264, Appendix IX constituents.

After installation of an adequate groundwater monitoring system, Cannon shall begin determination of RCRA background groundwater quality pursuant to HWMR-5, as amended, 40 CFR, Section 265, Subpart F.

6. After signing the Agreement, written, progress reports shall be submitted by the fifth day of each month describing activities relating to the above compliance items. Cannon must briefly give the status of each of the items under V.B. of this Agreement; a one page report is acceptable.

7. Within 30 days of the signing of this Agreement, Cannon shall incorporate the EID Sampling and Analysis Plan and submit the plan to EID for review and comment. Cannon shall include a proposal for the sampling pump specifications in an appendix to the Sampling and Analysis Plan. In addition, if a different pump is to be used to purge the wells prior to sampling, then the specifications for that pump shall be submitted at this time.

All monitor wells, except Monitor well A, shall be sampled with a sampling pump constructed of inert materials, unless the pump in Monitor well A is suspected of causing contamination. The sampling pump must be capable of low flow rates (100 ml/min or less) and must be acceptable to EID.

Within 60 days, EID shall provide written comments to Cannon on the Sampling and Analysis Plan.

Within 90 days, Cannon shall incorporate EID's comments in the Sampling and Analysis Plan and submit the revised Sampling and Analysis Plan to

EID.

Within 120 days, EID shall review the revised Sampling and Analysis Plan to determine if EID's comments were incorporated adequately and shall provide a written response to Cannon. The Sampling and Analysis Plan must be acceptable to EID and the pumps used by Cannon to purge and sample the monitor wells must be acceptable to EID. The approved Sampling and Analysis Plan shall be used by Cannon for all future RCRA sampling events.

8. Within 90 days, Cannon shall develop and submit a field logbook format which includes provisions for recording details of the activities concerning the groundwater monitor well system.

Within 120 days, EID shall review the logbook format and provide written comments to Cannon.

Within 150 days, Cannon shall incorporate EID's comments and submit a revised logbook format to EID for review.

Within 180 days, EID shall review the revised logbook format and provide a written response to Cannon. The revised logbook format must be acceptable to EID. This format will be used and completed for each subsequent sampling event at Cannon.

VI. FUNDING

Cannon shall request, through the Department of the Air Force and the Department of Defense, all funds and/or authorizations necessary to meet the conditions of this Agreement. With regard to funding, the timetables, schedules and courses of action reached in implementation of this Agreement are fixed and definite except to the extent that the Congress of the United States may fail to approve authorization and/or appropriations necessary to execute them. Although failure to obtain approval of adequate authorization and/or appropriations may allow the Air Force to alter the established timetables and schedules in accordance with Section VIII, Force Majeure, it does not release Cannon from its obligations of compliance with this Compliance Agreement and with RCRA, as amended. If sufficient funds are not appropriated by the Congress as requested and existing funds are not available to achieve compliance with the schedules in this Agreement, Cannon shall report the lack of funds in accordance with Section VIII, Reporting Requirements and Extensions.

VII. NOTICE

Whenever under the terms of this Agreement, notice or information is required to be forwarded by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing to the other parties of another individual designated to receive such communications. Notice or the supplying of

information required under this Agreement shall be perfected upon the mailing of such documentation or notice.

Mr. Richard Mitzelfelt, Director
Environmental Improvement Division
New Mexico Health and Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87503
(one [1] copy)

Colonel David E. Benson
Commander
27th Combat Support Group
Cannon Air Force Base, NM 88103
(one [1] copy)

VIII. EXCHANGE OF INFORMATION

Routine communications may be exchanged between the parties and their consultants to facilitate the orderly conduct of work contemplated by this Agreement, but no such communication shall alter or waive any rights and/or obligations of the parties under this Agreement. The parties agree to routinely exchange technical data developed pursuant to this Agreement, or which is in possession of the parties upon execution of this Agreement, upon request by one party to the other, unless such data is privileged from disclosure. Cannon may confer with EID at any time prior to the submittal of any proposals, reports or other documents required by this Agreement.

IX. FORCE MAJEURE

A Force Majeure shall mean any event arising from reasonable causes beyond the control of Cannon which causes a delay in or prevents the performance of any obligation under this Agreement.

Failure to obtain approval of adequate authorizations and/or appropriations from Congress, if Cannon shall have made a timely request for such funds as part of the budgetary process as set forth in Part VI (Funding) of this Agreement shall be handled under Section IX, Reporting Requirements and Extensions. Force Majeure shall not include increased costs of activities covered by this Agreement, whether or not anticipated at the time such activities were initiated.

Within seven (7) workdays from the time Cannon obtains information indicating Force Majeure event or delay has been or will be encountered, Cannon will supply a written notice as set forth in Section VIII of this Agreement which includes a detailed explanation of the reason(s) for and anticipated duration of any such delay; the measures taken and to be taken by Cannon to prevent or minimize the delay; and the timetable for implementation of such measures.

X. REPORTING AND EXTENSIONS

Commencing at the end of the first full quarter after EID signs this Agreement, Cannon shall submit a quarterly progress report by the fifth (5th) working day of each fourth (4th) month. Progress reports shall summarize the efforts undertaken pursuant to this Agreement during the previous quarter.

In addition to regularly scheduled progress reports, Cannon shall immediately submit notification to EID whenever any delay is anticipated in meeting any scheduled compliance date (e.g., an

event of Force Majeure). The notification shall describe in detail the anticipated length of delay, the precise cause or causes of the delay, when and how Cannon became aware of the causes of the delay, the measures taken and to be taken to prevent or minimize the delay (or similar, future delays) and the alternative timetable by which the measures shall be implemented. Within thirty (30) days of receiving such notification, EID shall make a determination whether the compliance schedule shall be revised. If Cannon disagrees with EID's determination, Dispute Resolution procedures described herein (Section XII of this Agreement) shall control. EID shall have the option to extend deadlines as outlined for Cannon above.

XI. EMPOWERMENT TO AMEND

In the event that there is an amendment of RCRA or The New Mexico Hazardous Waste Act, or the regulations promulgated under these statutes, or in the event that amendments to this Agreement are appropriate due to Dispute Resolution pursuant to Section XII of this Agreement, or otherwise, this Agreement shall be renegotiated as necessary. Disagreements in renegotiation shall be resolved pursuant to the Dispute Resolution provision of this Agreement. During the pendency of any request for renegotiation, this Compliance Agreement, to the extent it is not specifically stayed by EID, shall remain in effect. Modifications to this Agreement shall be in writing and signed by both parties.

XII. DISPUTE RESOLUTION

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply. In addition, during the pendency of any dispute, Cannon agrees that it shall continue to implement those portions of this Agreement which are not in dispute and which EID determines can be reasonably implemented pending final resolution of the issue(s) in dispute. The time period for completion of work affected by a dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any dispute in accordance with this Part. Work not affected by the dispute shall be completed in accordance with the applicable schedule. If EID determines that all or portions of work affected by the dispute should stop during the pendency of the dispute, Cannon shall discontinue the affected work.

a. Cannon shall provide EID with a written notice of dispute within fifteen (15) days of any action by EID which it disputes. Within thirty (30) days of any action by EID which Cannon is disputing, it shall provide EID with a written statement of the dispute setting forth the nature of the dispute, Cannon's position with respect to the dispute and the information Cannon is relying upon to support its position. If Cannon does not provide written notice within fifteen (15) days, or after such notice fails to provide a written statement to EID within thirty (30) days, Cannon shall be deemed to have agreed to the position taken by EID.

b. Upon request of the written statement of dispute, Cannon and EID shall engage in dispute resolution between the Director of the Environmental Management Division at Cannon or his designated representative, and the EID Hazardous Waste Program Manager or his/her designated representative. The parties shall have fifteen (15) days from the receipt by EID of the written statement of dispute to resolve the dispute. During this period the parties shall meet or confer by telephone as many times as necessary to discuss and attempt resolution of the dispute. If a resolution cannot be reached on any issue within this fifteen (15) day period, either Cannon or EID may, by written notice, elevate the dispute to the Dispute Resolution Committee (DRC) for resolution.

c. The DRC shall consist of the Deputy Director of the Waste Management Branch at EID, and the Commander of Cannon. The DRC shall serve as an independent forum for resolution of disputes which the informal process has not resolved. The DRC is free to choose either party's position or to select any other position to resolve a dispute referred to the DRC.

d. If the designated members of the DRC do not agree on a resolution of the dispute within thirty (30) days, the Director of EID will issue a final decision including a statement of the reasons for approval or disapproval. This final decision is considered "final action" for the purposes of this Agreement.

e. Final action by the Director of EID shall be binding upon the parties unless Cannon files an action for modification or setting aside of the final action of EID in District Court within thirty (30) days of the EID final action.

f. Within twenty-one (21) days of resolution of a dispute pursuant to this Part, the parties shall incorporate the resolution into the appropriate plan, schedule, or procedure and comply with this Agreement as amended by the dispute resolution process.

XIII. TERMINATION

Cannon's obligations under this Compliance Agreement shall terminate upon EID's certification to Cannon in writing that all conditions of this Agreement have been completed by Cannon. Such notification shall not be unreasonably withheld.

XIV. MERGER

This Settlement Agreement contains all the terms of the settlement agreement between the parties, there being no oral agreements not contained herein.

XV. EFFECTIVE DATE

This Agreement is effective when signed by all parties to this Agreement.

Dated this _____ day of _____, 1989 at Santa Fe, New Mexico.

AGREED: _____

Dated: _____
Richard Mitzelfelt, Director
Environmental Improvement
Division, New Mexico Health and
Environment Department

Dated: _____
Colonel David E. Benson
Commander
27th Combat Support Group
Cannon Air Force Base

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT DIVISION
HEALTH AND ENVIRONMENT DEPARTMENT
SANTA FE, NEW MEXICO

IN THE MATTER OF:
CANNON AIR FORCE BASE
CANNON AIR FORCE BASE, NEW MEXICO

ORDER

THIS MATTER HAVING COME before the Director by agreement of the parties to approve the Compliance Agreement and the Director being fully apprised with premises therein:

IT IS THEREFORE ORDERED that the Compliance Agreement be, and hereby is, approved and made a final order of the Director, pursuant to Section 74-4-10 NMSA 1978.

RICHARD MITZELFELT, DIRECTOR
Environmental Improvement Division
Health and Environment Department
State of New Mexico

Date: _____