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State of New Mexico
ENVIRONMENT DEPARTMENT
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502
(505) 827-2850

*Claudia
my pending file
Bert*

ENTERED
J. M. ESPINOSA
SECRETARY

BRUCE KING
GOVERNOR

RON CURRY
DEPUTY SECRETARY

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

August 23, 1993

Brigadier General John J. Little
Base Commander
U.S. Army Air Defense Artillery Center and Ft. Bliss
Ft. Bliss, Texas

Dear General Little:

The Hazardous and Radioactive Materials Bureau of the New Mexico Environment Department ("NMED") issues the enclosed Compliance Order to the U.S. Army Air Defense Artillery Center and Ft. Bliss (Ft. Bliss), pursuant to the New Mexico Hazardous Waste Act, §74-4-10 NMSA 1978. The Compliance Order states that Ft. Bliss has failed to comply with the New Mexico Hazardous Waste Management Regulations (HWMR-6). The violations are specifically set out in this Compliance Order.

The Compliance Order sets forth a schedule of compliance required of Ft. Bliss and an assessment of penalties. Ft. Bliss may be subject to additional civil penalties of up to \$25,000.00 for each day of noncompliance with the Compliance Order, as set forth in §74-4-10 NMSA 1978.

Any inquiries concerning this Compliance Order should be directed to Mr. Edward Horst, RCRA Program Manager, Hazardous and Radioactive Materials Bureau, at (505) 827-4308.

Sincerely,

Kathleen M. Sisneros, Director
Water and Waste Management Division

KMS:JMT:jt

- cc: Lynn Prince, U.S. EPA Region VI (6H-HS)
- Benito Garcia, Chief, Hazardous & Radioactive Materials Bureau
- Edward Horst, RCRA Program Manager, HRMB
- Ana Marie Ortiz, Office of General Counsel, NMED
- Ken Smith, NMED District III Office
- Gunther Diehl, NMED Alamogordo Field Office

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

IN THE MATTER OF
U.S. ARMY AIR DEFENSE ARTILLERY
AND FT. BLISS,

COMPLIANCE ORDER
NMHWA 93-14

RESPONDENT.

**ADMINISTRATIVE ORDER REQUIRING COMPLIANCE
AND PROPOSING TO ASSESS A CIVIL PENALTY**

This Administrative Order ("Order") is issued to the U.S. Army Air Defense Artillery Center and Ft. Bliss ("Respondent") pursuant to the New Mexico Hazardous Waste Act ("HWA"), §74-4-10 NMSA 1978. The authority to issue this Order has been delegated by the Secretary of the New Mexico Environment Department ("NMED") to the Director of the Water and Waste Management Division ("Complainant").

FINDINGS

1. Complainant is the agency within the executive branch of the New Mexico state government charged with administration and enforcement of the New Mexico Hazardous Waste Act §§74-4-1 et seq. NMSA 1978.

2. Respondent is the U.S. Army Air Defense Artillery Center and Ft. Bliss, a federal military installation located in New Mexico, who notified the U.S. Environmental Protection Agency in November of 1988 that it generates, transports, and treats/stores hazardous waste.

3. Respondent generates solid and hazardous waste from the operations and maintenance of military parts and components at Respondent's facility.

4. On May 5, 1993, NMED employee John Tymkowych conducted a hazardous waste inspection at Respondent's facility.

5. At the time of the May 5, 1993 inspection, a 55 gallon container, which was approximately one-third full, was found in the waste storage area of Bldg. T-8108. Respondent did not know what was being stored in the container.

CONCLUSIONS

1. Respondent is a "person" as defined at §74-4-3.K. of HWA, and §101 of Hazardous Waste Management Regulations (HWMR-7), which incorporates federal regulation 40 CFR §260.10.

2. Respondent is a "generator" as defined at §74-4-3.F. of HWA, and §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

3. Respondent generates "hazardous waste" at its facility as that term is defined at §74-4-3.I. of HWA, and §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

4. Respondent generates "solid waste" at its facility as that term is defined at §74-4-3.M of HWA, and §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

5. Respondent operates a "facility" as defined at §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

6. Respondent engages in the "storage" of hazardous waste as defined at §74-4-4.3.N. of HWA, and §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

7. Respondent stores hazardous waste in "containers" as defined at §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

8. §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.10(a), makes the regulations in 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste) applicable to Respondent, and Respondent has violated the regulations in Part 262 as specified below.

9. A person who generates a solid waste must determine if that waste is a hazardous waste.

10. Respondent has failed to perform a hazardous waste determination on the contents of a 55 gallon container as noted in Finding #5, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11.

CIVIL PENALTY

Section 74-4-10 of HWA authorizes the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day for each violation of HWA and the regulations promulgated thereunder. Complainant hereby proposes to assess a civil penalty of One Thousand Two Hundred Sixty Dollars (\$1,260.00) against Respondent. The penalty is based on the seriousness of the violations and any good faith efforts on the part of the Respondent to comply with the applicable requirements, and any economic benefit accruing to the Respondent, as well as such other matters as justice may require, and is calculated pursuant to the NMED's Civil Penalty Policy. The individual penalty for each violation is:

<u>VIOLATION</u>	<u>AMOUNT</u>
Conclusion 10: Failure to perform a hazardous waste determination.	\$1,260

If you wish to contest the imposition of the penalty, see the following section entitled "Notice of Opportunity to Request a Hearing."

COMPLIANCE ORDER

Based on the foregoing Findings and Conclusions, Respondent is hereby ordered to comply with the following schedule of compliance:

Within five (5) working days from the receipt of this Order, institute measures to ensure that a hazardous waste determination for the contents of the container noted in Finding #5 has been initiated, and within forty-five (45) calendar days from the receipt of this Order submit to Complainant the results of this determination.

NOTICE

If you fail to take the corrective actions within the time specified in the Order, the Secretary may assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the Order, pursuant to §74-4-10.C. of HWA.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

Where Respondent (a) contests any material fact or legal matter upon which the Order is based; (b) contends the amount of the penalty proposed is inappropriate; (c) contends that Respondent is entitled to prevail as a matter of law; or (d) otherwise contests the appropriateness of the order, Respondent shall file a written request for Hearing together with an answer to the Order with the Hearing Clerk within thirty (30) calendar days after service of the Order. The answer must clearly and directly identify what, specifically, Respondent is appealing.

The answer shall clearly and directly admit or deny with explanation, each of the factual allegations contained in the Order with regard to which Respondent has any knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure of Respondent to specifically deny any material factual allegation contained in the Order constitutes an admission of the allegation.

The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) any affirmative defenses upon which Respondent intends to rely; (3) the facts which Respondent intends to place at issue; and (4) whether a hearing is requested.

A hearing upon the issues raised by the Order and answer shall be held upon the request of the Respondent. The Respondent shall attach to the answer a copy of the Compliance Order to which the request for hearing pertains.

The Hearing Clerk's address is:

Barbara Rivera, Acting Hearing Clerk
P.O. Box 26110
1190 St. Francis Drive
Harold Runnels Building, S-4100
Santa Fe, New Mexico, 87502
(505) 827-2850

FINALITY OF ORDER

The Order shall become final unless Respondent files a written request for hearing with an answer within thirty (30) calendar days of the service of this Order. For purposes of this action, failure by the Respondent to file an answer constitutes as admission of all facts alleged in the Order and a waiver of Respondent's right to request a hearing under §74-4-10 of HWA concerning the factual allegations.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer with Complainant concerning settlement. NMED encourages settlement consistent with the provisions and objectives of HWA and applicable regulations. A request for a settlement conference does not extend the thirty (30) day period during which the written answer and a Request for Hearing must be submitted. The settlement conference may be pursued as an alternative to and simultaneously with the hearing proceedings. Respondent may appear at the settlement conference itself and/or be represented by counsel.

Any settlement reached by the parties shall be finalized by written Order by the Secretary of NMED. The issuance of such an Order shall constitute a waiver of Respondents right to request a hearing on any such matter stipulated therein.

To explore the possibility of settlement in this matter, Contact Mr. Edward L. Horst, of the Environment Department, P.O. Box 26110, 525 Camino de Los Marquez, Suite 4, Santa Fe, New Mexico, 87502, telephone number 827-4308.

Compliance with the requirements of the Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations.

The Order shall terminate when Respondent certifies that all requirements of the Order have been completed, and NMED has approved such certification.

DATE

8/19/93

JUDITH M. ESPINOSA, SECRETARY

By:

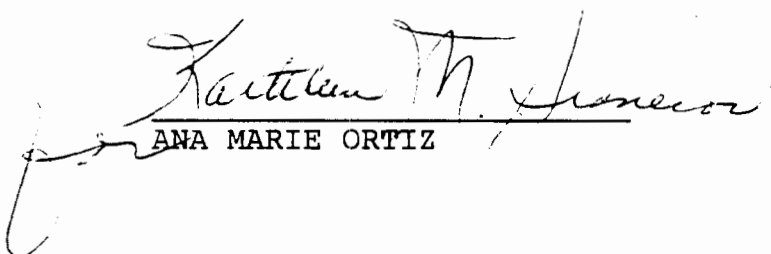
Kathleen M. Sisneros
KATHLEEN SISNEROS, Director
Water and Waste Management
Division

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Order Requiring Compliance was mailed postage prepaid as follows on this 23rd day of August, 1993 to the following:

Via Certified Mail, Return Receipt Requested:

Brigadier General John J. Little
Base Commander
U.S. Army Air Defense Artillery
Center and Ft. Bliss
Ft. Bliss, Texas 79916-0058


ANA MARIE ORTIZ