



BRUCE KING
GOVERNOR

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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

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ENTERED
JAN 11 1995
SECRETARY

RON CURRY
DEPUTY SECRETARY

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

December 23, 1994

Major General James Cravens, Jr.
Commander
U.S. Army Air Defense Artillery Center and Fort Bliss
Fort Bliss, TX. 79916-0058

Dear Major General Cravens:

RE: Compliance Order
NMD147273528

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 Fort Bliss (Ft. Bliss) pursuant to the New Mexico Hazardous Waste Act, NMSA 1978, §74-4-10 (Repl. Pamp. 1993). The Compliance Order states that Ft. Bliss has failed to comply with the New Mexico Hazardous Waste Management Regulations (HWMR-7). The violations are specifically set out in the Compliance Order.

The Compliance Order sets forth a schedule of compliance required of Ft. Bliss as well as an assessment of penalties. Ft. Bliss may be subject to additional civil penalties of up to \$25,000 for each day of noncompliance with the Compliance Order, as set forth in §74-4-10.

Any inquiries concerning the Compliance Order should be directed to Mr. Coby Muckelroy, RCRA Inspection/Enforcement Program Manager, Hazardous and Radioactive Materials Bureau, at (505) 827-4308.

Sincerely,

Kathleen M. Sisneros
Director
Water and Waste Management Division

cc: Kathryn Griffith, U.S. EPA Region VI (6H-HS)
Benito Garcia, Chief, H&RMB
Coby Muckelroy, RCRA Program Manager, H&RMB
Susan McMichael, Office of General Counsel
Ken Smith, NMED District III Office

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

IN THE MATTER OF
U.S. Army Air Defense Artillery
and Fort Bliss,

COMPLIANCE ORDER
NMHWA 94-13

RESPONDENT.

**ADMINISTRATIVE COMPLIANCE ORDER
AND CIVIL PENALTY**

This Administrative Order ("Order") is issued to the U.S. Army Air Defense Artillery Center and Fort Bliss ("Respondent") pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §74-4-10 (Repl. Pamp. 1993). 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.

2. Respondent is the U.S. Army Air Defense Artillery Center and Fort Bliss, a federal military installation owned and operated by the United States Department of Defense and located primarily in the extreme southeast corner of Dona Ana County and southwest Otero County, New Mexico. Respondent notified the U.S. Environmental Protection Agency in November of 1988 that it generates, transports, treats and stores hazardous waste.

3. Respondent generates solid and hazardous waste from the operations and maintenance of military parts and components and from the use of ordinance and projectiles at Respondents facility.

4. On August 3-4, 1994, NMED employees Frank Sanchez and John Tymkowych conducted a hazardous waste inspection at Respondent's facility.

5. At the time of the August 3-4, 1994 inspection, a spent Safety-Kleen parts cleaning container containing spent solvent, which is a hazardous waste, was not labeled with the words "Hazardous Waste" or words identifying the contents at the satellite accumulation point in the motor pool of the 7th Ranger Battalion Unit, Bldg. 9470, at the McGregor Base Camp. Respondent stated that Safety-Kleen failed to pick up the container during prior servicing.

6. At the time of the August 3-4, 1994 inspection, two 5 gallon "Jeri" cans, which were approximately one-half to three-quarters full with unknown contents, were found in the less than 90 day accumulation area in the northeast corner of the motor pool yard at the 7th Ranger Battalion Unit - Bldg. 9470 at the McGregor Base Camp. Respondent had not performed a hazardous waste determination as to the contents of those containers, nor had any effort been made to close the containers, label them or contact the environmental personnel.

7. At the time of the August 3-4, 1994 inspection, a general waste analysis for the Open Burn/Open Detonation pit located at the McGregor Base Camp was unavailable for inspection.

8. At the time of the August 3-4, 1994 inspection, a means of preventing the unknowing entry, and minimizing the possibility of an unauthorized entry, of persons onto the active portion of the Open Burn/Open Detonation pit located at the McGregor Base Camp was not provided.

9. At the time of the August 3-4, 1994 inspection, an artificial or natural barrier (e.g. a fence in good repair), which completely surrounds the active portion of the Open Burn/Open Detonation pit located at the McGregor Base Camp was not found.

10. At the time of the August 3-4, 1994 inspection, a sign with the legend "Danger-Unauthorized personnel Keep Out", written in both English and Spanish, posted at the entrance of the active portion of the Open Burn/Open Detonation pit located at the McGregor Base Camp, was not found.

11. At the time of the August 3-4, 1994 inspection, an inspection log or summary of recorded inspections for the Open Burn/ Open Detonation pit located at the McGregor Base Camp was unavailable for inspection.

12. At the time of the August 3-4, 1994 inspection, two 55 gallon containers, which were approximately one-third and three-quarters full with unknown contents, were found at the satellite accumulation point in the New Mexico Air National Guard at the Dona Ana Base Camp. Respondent had not performed a hazardous waste determination, nor made any effort to label containers or contact facility environmental personnel.

13. At the time of the August 3-4, 1994 inspection, the appropriate EPA waste code was missing from the Land Disposal Restriction (LDR) notice for State Manifest Document Number 781145.

14. On May 5, 1993, May 19-20, 1992, and September 5-6, 1991, Complainant conducted hazardous waste inspections of Respondents facility. Enforcement actions taken by Complainant as the result of these inspections were, an Administrative Order of Compliance with penalties resulting from the May 5, 1993 inspection, and Letters of Violation resulting from the May 19-20, 1992 and September 5-6, 1991 inspections. During these inspections, violations concerning hazardous waste determinations, container labeling, open containers, and exceeding storage time pursuant to the HWA and the implementing regulations, were noted.

CONCLUSIONS

15. Respondent is a "person" as defined at §74-4-3.K. of HWA, and §101 of Hazardous Waste Management Regulations "HWMR-7", effective November 20, 1992, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

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

17. 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, with a few exceptions, federal regulation 40 CFR §260,10.

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

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

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

21. §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.

22. Respondent has failed to perform a hazardous waste determination on the contents of two 5 gallon "Jeri Cans" as noted in Paragraph #6, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11.

23. Respondent has failed to perform a hazardous waste determination on the contents of two 55 gallon drums as noted in Paragraph #12, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11.

24. Respondent has failed to label a container with the words "Hazardous Waste" or other words that identify the contents, as noted in Paragraph #5, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(ii).

25. §501 of HWMR-7, which incorporates federal regulation 40 CFR §264.10(a) makes the regulations in Part 264 (General Facility Standards) applicable to Respondent, and Respondent has violated regulations in Part 264 as specified below. §601 of HWMR-7, which incorporates federal regulations 40 CFR §265.10 makes the regulations in 40 CFR Part 265 (Interim Status Standards For Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities) applicable to Respondent, and Respondent has violated the regulations in Part 265 as specified below.

26. Respondent has failed to provide a general waste analysis for the Open Burn/ Open Detonation pit as noted in Paragraph #7, in violation of §601 of HWMR-7, which incorporates federal regulation 40 CFR §265.13(a)(1) or §501 of HWMR-7 which incorporates federal regulation 40 CFR §264.13(a)(1).

27. Respondent has failed to prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons onto the active portion of the facility as noted in Paragraph #8, in violation of §601 of HWMR-7, which incorporates federal regulation 40 CFR §265.14(a) or §501 of HWMR-7, which incorporates federal regulation 40 CFR §264.14(a).

28. Respondent has failed to provide an artificial or natural barrier (e.g. a fence in good repair), which completely surrounds the active portion of the facility as noted in Paragraph #9, in violation of §601 of HWMR-7, which incorporates federal regulation 40 CFR §265.14(b)(2)(i) or §501 of HWMR-7, which incorporates federal regulation 40 CFR §264.14(b)(2)(i).

29. Respondent has failed to provide a sign with the legend "Danger-Unauthorized Personnel Keep Out", written in both English and Spanish, posted at the entrance of the active portion of the facility as noted in Paragraph #10, in violation of §601 of HWMR-7, which incorporates federal regulation 40 CFR §265.14(c) or §501 of HWMR-7, which incorporates federal regulation 40 CFR §264.14(c).

30. Respondent has failed to provide recorded inspections in an inspection log or summary for the treatment facility as noted in Paragraph #11, in violation of §601 of HWMR-7, which incorporates federal regulation 40 CFR §265.15(d) or §501 of HWMR-7, which incorporates federal regulation 40 CFR §264.15(d).

31. §801 of HWMR-7, which incorporates federal regulations 40 CFR §268.1(a), makes the regulations in 40 CFR Part 268 (Land Disposal Restrictions) applicable to Respondent, and Respondent has violated the regulations in Part 268 as specified below.

32. Respondent has failed to provide the appropriate EPA waste code(s) on the Land Disposal Restriction (LDR) notice with accompanying the manifest noted in Paragraph #13, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.7(a)(1)(ii).

33. Paragraphs 22 through 24, and 26-29 entail violations that were cited as a result of the inspections and/or included in enforcement actions referred to in Paragraph 14 and/or pose a substantial likelihood of exposure to hazardous waste. Therefore, Respondent has demonstrated that it is a high priority violator of HWMR-7. Paragraphs 30 and 32 were not cited in previous inspections and do not pose a substantial likelihood of exposure to hazardous wastes.

CIVIL PENALTY

34. Section 74-4-10 of the 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 Eleven Thousand Six Hundred Thirty Dollars (\$11,630) 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 NMED's Civil Penalty Policy. The individual penalty for each violation is:

<u>VIOLATION</u>	<u>AMOUNT</u>
Paragraph 22: Failure to perform hazardous waste Determination.	\$5,600
Paragraph 23: Failure to perform hazardous waste determination.	\$1,470
Paragraph 24: Failure to label spent solvent with the words "Hazardous Waste".	\$780
Paragraph 26: Failure to perform waste analysis at OB/OD Pit.	\$1,260
Paragraphs : Failure to prevent unknowing entry 27 and 28 and to have an artificial or natural barrier.	\$1,260
Paragraph 29: Failure to provide a written warning sign.	\$1,260

COMPLIANCE ORDER

35. 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 general waste analysis, noted in Paragraph #26, for residue in the OB/OD Pit be implemented, and within forty-five (45) calendar days from the receipt of this Order submit to Complainant this general waste analysis for review.

Within five (5) working days from the receipt of this Order, institute measures to ensure that an artificial barrier (e.g. fence), noted in Paragraph #28, be constructed around the active portion of the OB/OD Pit, and within sixty days (60) from the receipt of this Order complete the construction of this artificial barrier to the satisfaction of the Complainant.

Within five (5) working days from the receipt of this Order, institute measures to ensure that an inspection log or summary sheet format and recorded inspections, as noted in Paragraph #30 be initiated for the OB/OD Pit, and within forty-five (45) days from the receipt of this Order be a standard operating procedure for any activities conducted at the OB/OD Pit and a copy of this inspection log furnished to the Complainant for review.

Paragraph #22 has been adequately addressed in response faxed to Complainant 9/22/94.

Paragraph #23 has been adequately addressed in response faxed to Complainant 9/22/94.

Paragraph #24 has been adequately addressed in response faxed to Complainant 9/22/94.

Paragraph #29 has been adequately addressed in response faxed to Complainant 9/22/94.

Paragraph #32 has been adequately addressed in response faxed to Complainant 9/22/94.

NOTICE

36. If you fail to take the corrective action within the times 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

37. Where Respondent (a) contests any material fact or legal matter upon which the Order is based; or (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.

38. The answer shall clearly and directly admit, deny, or explain 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 admit, deny, or explain 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 Order to which the request for hearing pertains.

The Hearing Clerk's address is:

Roberta Lopez, Hearing Clerk
P.O. Box 26110
1190 St Francis Drive
Harold Runnels Building, S-4100
Santa Fe, New Mexico, 87502
(505)827-2834

FINALITY OF ORDER

39. 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 the Order. For purposes of this action, failure by the Respondent to file an answer constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a hearing under §74-4-10 of HWA concerning the factual allegations.

SETTLEMENT CONFERENCE

40. Whether or not Respondent requests a hearing, Respondent may confer with Complainant concerning settlement. NMED encourages settlement consistent with the provisions and the 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 Respondent's right to request a hearing on any such matter stipulated therein.

41. To explore the possibility of settlement in this matter, contact Coby Muckelroy of the Hazardous and Radioactive Materials Bureau, Environment Department, P.O. Box 26110, 525 Camino De Los Marquez, Suite 4, Santa Fe, NM 87501, telephone number (505)827-4308.

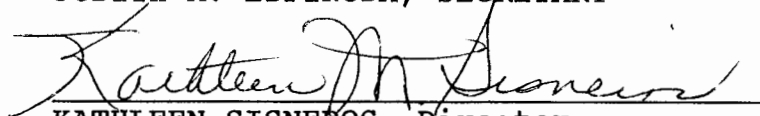
42. Compliance with the requirements of the Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations. The Order shall terminate when Respondent certifies that all requirements of the Order have been completed, and NMED has approved such certification.

JUDITH M. ESPINOSA, SECRETARY

12/22/94

DATE

By:



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 December, 1994 to the following:

Via Certified Mail, Return Receipt Requested:

Major General James Cravens Jr.
Commander
U.S. Army Defense Artillery Center
and Fort Bliss
Fort Bliss, TX. 79916-0058



SUSAN MCMICHAEL