



**BRUCE KING**  
GOVERNOR

*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



**JUDITH M. ESPINOSA**  
SECRETARY

**RON CURRY**  
DEPUTY SECRETARY

**CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

May 13, 1994

Brigadier General Charles H. Perez  
Base Commander  
Kirtland Air Force Base  
377 ABW/CC  
Albuquerque, New Mexico 87117-5000

**RE: Compliance Order**  
**NM9570024423**

Dear General Perez:

The Hazardous and Radioactive Materials Bureau of the New Mexico Environment Department ("NMED") issues the enclosed Compliance Order to Kirtland Air Force Base ("KAFB") pursuant to the New Mexico Hazardous Waste Act, §74-4-10 (Replacement Pamphlet 1993). The Compliance Order is issued because KAFB 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 KAFB as well as an assessment of penalties. KAFB 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 (Replacement Pamphlet, 1993). Failure to comply with the Order could result in the suspension of KAFB's permit to store hazardous waste.

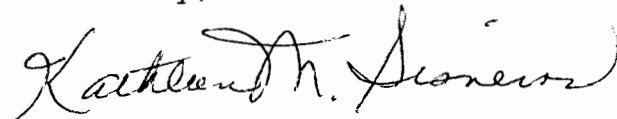
KAFB1419



General Perez  
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May 13, 1994

Any inquiries concerning this Compliance Order should be directed to Coby Muckelroy, Program Manager, RCRA Enforcement, Hazardous and Radioactive Materials Bureau, New Mexico Environment Department, at (505) 827-4308.

Sincerely,

A handwritten signature in cursive script, reading "Kathleen M. Sisneros".

Kathleen M. Sisneros, Director  
Water and Waste Management Division

cc: Kathryn M. Griffith, U.S. EPA Region VI (6H-HS)  
Benito Garcia, Bureau Chief, HRMB  
Coby Muckelroy, RCRA Program Manager, HRMB  
Ripley Harwood, Office of General Counsel, NMED  
Thomas Manning, Regional Compliance Officer  
Garth Graves, District I, NMED

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT

IN THE MATTER OF  
KIRTLAND AIR FORCE BASE  
KAFB, N.M.  
ID NO. NM9570024423,

COMPLIANCE ORDER  
NMHWA 94-07

RESPONDENT.

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

This Administrative Order ("Order") is issued to Kirtland Air Force Base, ("Respondent") pursuant to the New Mexico Hazardous Waste Act ("HWA"), §74-4-10 (Replacement Pamphlet 1993). The authority to issue this Order has been delegated by the Secretary of the New Mexico Environment ("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. (Replacement Pamphlet 1993).

2. Respondent is Kirtland Air Force Base (KAFB), a military facility owned and operated by the U.S. Department of Defense and located in Albuquerque, New Mexico.

3. On March 14 - 17, 1994, NMED employees James Seubert and Janet Garcia conducted a hazardous waste inspection at Respondent's facility.

4. At the time of the inspection, Respondent was operating under a Hazardous Waste Facility Permit issued by the NMED on July 24, 1990.

5. At the time of the inspection, at Bldg. 20602, Field Command Defense Nuclear Agency, two unlabeled, 5-gallon containers were found in the satellite accumulation point (SAP) in the printing press area.

6. At the time of inspection, at Bldg. 416, Phillips Lab, two unlabeled, 10 gallon containers were found in the satellite accumulation point (SAP) outside of Room 117.

7. On July 13-17, 1992 and on July 13-16, 1993, NMED inspectors performed compliance evaluation inspections of Respondents facility. During these inspections failure to label hazardous waste containers at satellite accumulation points were noted. These violations were set forth in Compliance Orders and Respondent stated in settlement meetings with Complainant that Respondent had corrected the violations cited in the Compliance Orders.

### 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 regulations 40 CFR §260.10.

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

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

5. 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.

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

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

8. Respondent has failed to label 2 five gallon containers found in the satellite accumulation point at Bldg. 20602, FCDNA printing press area. This a violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(ii).

9. Respondent has failed to label 2 ten gallon containers found in the satellite accumulation point at Bldg. 416, Phillips Lab. This is a violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(ii).

10. Conclusions 8 and 9 entail violations which were cited as a result of the July 13-17, 1992 and July 13-16, 1993 inspections referred to in finding #7. Therefore, Respondent has demonstrated that it is a chronic and recalcitrant violator of HWMR-7.

**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 Three Thousand and Forty Six dollars (\$3,046) 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:

<b><u>VIOLATION</u></b>	<b><u>AMOUNT</u></b>
Para. 8, 9      Failure to label hazardous waste containers at satellite accumulation points.	\$3,046

**COMPLIANCE ORDER**

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

1. Within one (1) working day after receipt of this Order, properly label the 2 five gallon containers found in the satellite accumulation point in the print press area of Bldg. 20602, FCDNA.

2. Within one (1) working day after receipt of this Order, properly label the 2 ten gallon containers found in the satellite accumulation point outside Room 117 of Bldg. 416, Phillips Lab.

## NOTICE

If you fail to take the corrective action 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 is inappropriate; (c) contends that the 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, 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) the facts which Respondent intends to place at issue; and (3) 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:

Kim Martinez, 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 a hearing under §74-4-10 of HWA concerning such 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 the 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.

To explore the possibility of settlement in this matter, contact Coby Muckelroy, Program Manager, RCRA Enforcement, Hazardous & Radioactive Materials Bureau, New Mexico 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 this 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 this Order have been completed, and NMED has approved such certification.

JUDITH M. ESPINOSA, SECRETARY

5/13/94  
DATE

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 17<sup>th</sup> day of May, 1994 to the following:

Via Certified Mail, Return Receipt Requested:

Brigadier General Charles H. Perez  
Base Commander  
Kirtland Air Force Base  
377 ABW/CC  
Albuquerque, New Mexico, 87117-5000

Ripley Harwood  
Ripley Harwood by 