

KAFB 95

Benito's file



State of New Mexico  
ENVIRONMENT DEPARTMENT

Hazardous & Radioactive Materials Bureau  
525 Camino De Los Marquez  
P.O. Box 26110  
Santa Fe, New Mexico 87502  
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Mark E. Weidler  
Secretary

Edgar T. Thornton, III  
Deputy Secretary

Gary E. Johnson  
Governor

CERTIFIED MAIL - - RETURN RECEIPT REQUESTED

February 14, 1995

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

Dear General Perez:

RE: Compliance Order  
NM9570024423

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, NMSA 1978 §74-4-10 (Repl. Pamp. 1993). The Compliance Order is issued because KAFB has failed to comply with the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1). 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.

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,

Ed Kelley, Director  
Water and Waste Management Division

- xc: Benito Garcia, Bureau Chief, HRMB
- Coby Muckelroy, RCRA Program Manager, HRMB
- Susan McMichael, Office of General Counsel
- Thomas Manning, U.S Air Force Regional Compliance Officer
- Garth Graves, NMED District I Office



KAFB1575

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT

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

COMPLIANCE ORDER  
95-01

RESPONDENT.

**ADMINISTRATIVE ORDER REQUIRING COMPLIANCE**

This Administrative Order ("Order") is issued to Kirtland Air Force Base, ("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 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 November 21 & 30 - December 2, 1994, NMED employees Michael Le Scouarnec and Frank Sanchez conducted a compliance evaluation inspection ("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. 1051, approximately 75 gallons of hazardous waste in the form of spent contaminated JP-8 fuel, which is ignitable, was being stored in two 55 gallon drums. One of the drums was full and the second drum held approximately 20 gallons.

6. On August 6 - 9, 1991 and July 13 - 17, 1992, NMED inspectors performed compliance evaluation inspections at Respondent's facility. During these inspections, storage of hazardous waste in excess of 55 gallons at satellite accumulation points was noted. These violations were set forth in a Letter of Violation issued on September 3, 1991 and a Compliance Order issued on December 11, 1992.

### CONCLUSIONS

7. Respondent is a "person" as defined at §74-4-3.K. of HWA, and §101 of the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1), effective September 23, 1994, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

8. Respondent is a "generator" as defined at §74-4-3.F. of HWA, and 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

9. Respondent generates "hazardous waste" at its facility as that term is defined at §74-4-3.I. of HWA, and 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

10. Respondent operates a "facility" as defined at 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

11. Respondent engages in the "storage" of hazardous waste as defined at §74-4-4.3.N. of HWA, and 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

12. Respondent stores hazardous waste in "containers" as defined at 20 NMAC 4.1.101, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

13. §301 of 20 NMAC 4.1 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.

14. Respondent exceeded the 55 gallon hazardous waste storage limit at the satellite accumulation point noted in Paragraph #5, in violation of 20 NMAC 4.1.301, which incorporates federal regulation 40 CFR 262.34(c).



**NOTICE**

18. 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**

19. 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, a copy of the Order, and 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.

20. The answer shall clearly and directly admit or deny, with explanation, each factual allegation contained in the Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation may be denied on that basis. Any allegation, finding, or conclusion not specifically denied shall be deemed admitted. 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 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

21. 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 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**

22. 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.

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

24. 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.

MARK E. WEIDLER, SECRETARY

14 Feb 1995  
DATE

By: Ed Kelley  
ED KELLEY, Director  
Water & Waste Management  
Division

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Order Requiring Compliance was mailed postage prepaid as follows on this 14<sup>th</sup> day of February, 1995 to the following:

Via Certified Mail, Return Receipt Requested:

Brigadier General Charles H. Perez  
Commander  
Kirtland Air Force Base  
1606 ABW/CC  
Albuquerque, NM 87117

  
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SUSAN M. MCMICHAEL