



Gary E. Johnson
Governor

State of New Mexico
ENVIRONMENT DEPARTMENT

Hazardous & Radioactive Materials Bureau
525 Camino De Los Marquez
P.O. Box 26110
Santa Fe, New Mexico 87502
(505) 827-4358
Fax (505) 827-4361

Mark E. Weidler
Secretary

Edgar T. Thornton, III
Deputy Secretary

ENTERED

March 2, 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 95-01

On February 27, 1995, Hazardous and Radioactive Materials Bureau (HRMB) staff and Kirtland Air Force Base (KAFB) environmental office staff met concerning settlement of the above referenced compliance order. At this meeting, Mr. Walter Darr and Ms. Marsha Carra presented documentation which appears to support KAFB's contention that the alleged hazardous waste in excess of 55 gallons at the Bldg. 1051 satellite accumulation point referred to in ¶5 of the compliance order was actually diesel fuel instead of JP-8 jet fuel. Therefore, based on this new information, HRMB has decided to rescind the above referenced compliance order.

HRMB would like to emphasize that, at the time of the inspection, no representative of KAFB disputed the HRMB inspector's finding that an apparent violation of 20 NMAC 4.1 had occurred. Further, although this finding was delineated in the outbrief conference upon completion of the inspection on December 2, 1994, HRMB was not informed of the new information until the above referenced meeting was held on February 27, 1995.

Finally, please be reminded that failure to provide accurate information to an HRMB inspector concerning the contents of containers at a satellite accumulation point could be construed as failure by the operator of the process generating the waste to maintain control of his waste, which is a violation of 20 NMAC 4.1.301, which incorporates federal regulation 40 CFR §262.34(c).

KAFB1582



Brigadier General Charles H. Perez
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March 2, 1995

If you have any questions concerning this matter, please contact Mr. Coby Muckelroy, RCRA Inspection/Enforcement Program Manager, at (505) 827-4308.

Sincerely,



Ed Kelley, Director
Water and Waste Management Division

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



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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,

A handwritten signature in cursive script, appearing to read "Ed Kelley".

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

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).

15. Paragraph #14 entails a violation which was also cited as a result of the August 6 - 9, 1991 and July 13 - 17, 1992 inspections referred to in Paragraph #6. Therefore, Respondent has demonstrated that it is a chronic and recalcitrant violator of 20 NMAC 4.1.

CIVIL PENALTY

16. 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 Five Hundred Seventy Five dollars (\$1,575) 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>
Para. 14 Storage of greater than 55 gallons at satellite accumulation point	\$1,575

COMPLIANCE ORDER

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

Within one (1) working day from the receipt of this Order, remove hazardous waste in excess of 55 gallons from the satellite accumulation point noted in Paragraph #5.

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 14th 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


SUSAN M. MCMICHAEL