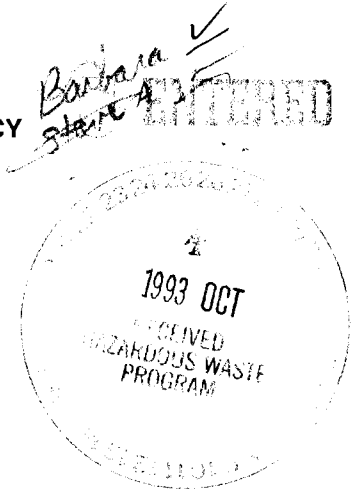




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733



OCT 22 1993

Mr. Edward Horst, RCRA Program Manager
Hazardous and Radioactive Materials Bureau
New Mexico Environment Department
Harold Runnels Building, 1190 S. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502

RE: RCRA 3008a ORDER - Kirtland Air Force Base

Dear Mr. Horst:

EPA is hereby providing advance notification of our intention to take direct enforcement action against Kirtland Air Force Base, Albuquerque, New Mexico. This notification is based upon the Memorandum of Understanding between the New Mexico Environment Department and the EPA provisions in Appendix B (1).

Enclosed for your review and comment is a RCRA §3008 Complaint, Compliance Order and Notice of Opportunity for Hearing regarding Kirtland Air Force Base. Please review the draft and provide any comments within ten (10) working days of your receipt.

The alleged violations are for failure to comply with all of the conditions of a permit. The violations were discovered during an EPA review of permit deliverables and correspondence. Issuance of the final complaint will be upon receipt of any comments received and final EPA review.

If you have any comments or questions which you would like to discuss, feel free to contact me, or have your staff contact Joel Dougherty of my staff at 214-655-2281.

Thank you for your assistance and cooperation.

Sincerely yours,

Randall E. Brown
Chief
RCRA Enforcement Branch

Enclosure



Administrator has information that any person has violated or is violating any requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939b. The requirements of Subtitle C include the requirements of the authorized program in a State which has been authorized to carry out a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926. On January 25, 1985, EPA granted New Mexico the authority to administer a hazardous waste management program (55 Fed. Reg. 1515). The New Mexico Environment Department ("NMED") is the State agency designated to carry out this program. The State of New Mexico has not been authorized to enforce the provisions of HSWA. Therefore, EPA will enforce the relevant provisions of the hazardous waste program and HSWA for the violations contained in this complaint. The violations in this Complaint were identified by the EPA, and the EPA is assuming full enforcement authority for this Complaint.

The authority to issue complaints has been delegated to the Regional Administrator, EPA Region 6, and has been further delegated to the Hazardous Waste Management Division Director, EPA Region 6. Complainant in this action is the Director, Hazardous Waste Management Division, EPA Region 6, who is the person to whom authority has been delegated to issue complaints in the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

II

NOTICE TO THE STATE

Notice of this action was given to the State of New Mexico prior to the issuance of this Complaint, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III

PRELIMINARY STATEMENT

1. Respondent, Kirtland Air Force Base, is a Department of Defense installation located southeast and adjacent to the City of Albuquerque, Bernalillo County, New Mexico: 35° 02' 23" latitude and 106° 35' 34" longitude.

2. Respondent is a "Federal agency", as defined in Section 1004(4) of RCRA, 42 U.S.C. § 6903(4), and 40 CFR § 260.10.

3. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), as amended by the Federal Facility Compliance Act of 1992, Pub. Law No. 102 - 386, and as defined in (HWMR 6), Part I, 101, and 40 CFR § 260.10 and § 270.2.

4. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent notified NMED and the EPA of hazardous waste activity at its facility on August 18, 1980. In its RCRA Section 3010 notification (Notification), Respondent identified itself as a generator of hazardous waste and as a hazardous waste treatment, storage, and disposal facility.

5. Respondent manages hazardous wastes generated from laboratory experimentation, training and testing activities, support activities, aircraft maintenance and refurbishment, and from base housing.

6. Respondent has "hazardous waste" at its facility as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 CFR § 260.10, and HWMR-6 § 102.

7. Respondent engages in the "treatment", "storage", or "disposal" of hazardous waste as those terms are defined under Sections 1004(34), 1004(33), and 1004(3) of RCRA, 42 U.S.C. §§ 6903(34), 6903(33), 6903(3), 40 CFR § 260.10, and HWMR-6 § 102.

8. Respondent is a "generator" of hazardous waste as defined in 40 CFR § 260.10 and HWMR-6 § 102.

9. Respondent is an "owner" of an "existing hazardous waste management facility" as those words are defined in 40 CFR § 260.10 and HWMR-6 § 102.

10. Pursuant to Sections 6001 and 6004 of RCRA, 42 U.S.C. §§ 6961 and 6964, each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of "solid waste" or "hazardous waste", as defined at 40 CFR §260.10, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements.

11. The Respondent filed a Part A RCRA permit application on November 19, 1980.

12. Pursuant to Section 3005(e)(1) of RCRA, 42 U.S.C. § 6925(e)(1), Respondent qualified for interim status in that it was in existence on November 19, 1980, and it timely filed its notification and its Part A RCRA permit application.

13. The Respondent filed a Part B RCRA permit application on November 8, 1988.

14. On or about October 10, 1990, NMED and EPA issued to the

Respondent, a Joint Hazardous Waste Management Permit to operate a hazardous waste facility. The HSWA portion of the permit comprising Module IV was issued by EPA, who is the Administrative Authority for this portion of the permit.

15. The HSWA portion of the permit was effective as of November 14, 1990 and will remain effective until November 14, 2000, unless revoked, reissued, or terminated in accordance with § 3005 of RCRA, 42 U.S.C. § 6925, and 40 CFR §§ 270.41, 270.43, or 270.51; or until the State of New Mexico hazardous waste program receives authorization under RCRA to administer HSWA. At that time NMED will receive authorization to act in lieu of EPA for the HSWA portion of this permit.

16. Section D of Module IV, titled "Standard Conditions", contains Subsection 3 which states that all plans and schedules required by the conditions of the Permit Module IV, are incorporated in the Schedule of Compliance by reference and become an enforceable part of the Permit. Any noncompliance with such approved plans and schedules shall be termed noncompliance with the Permit.

17. Section H of Module IV, titled "RCRA Facility Investigation (RFI) Workplan", contains schedules for submission of RFI Workplans and Reports to the Administrative Authority (EPA).

18. Subsection H.1 requires submission of a Preliminary Report describing the current conditions at the facility as outlined in the RFI scope of work, Task I within 180 days of the effective date of the Permit, or May 14, 1991.

19. Subsection H.2 requires submission of a RFI Workplan for all units listed in Appendix I of Module IV within 180 days of the effective date of the Permit, or May 14, 1991.

20. Subsection H.2 requires submission of a second RFI Workplan for all units listed in Appendix II of Module IV within 18 months of the effective date of the Permit, or May 14, 1992.

21. Subsection H.2 requires submission of a third RFI Workplan for all units listed in Appendix III of Module IV within 30 months of the effective date of the Permit, or May 14, 1993.

22. Subsection H.3 states that the Administrative Authority will either approve or disapprove the Workplans in writing. If the Administrative Authority disapproves a Workplan, the Administrative Authority will notify the Respondent in writing, of the Workplan's deficiencies and specify a due date for submittal of a revised plan. In addition, the Administrative Authority may revise the Workplan. The Revised Workplan becomes the Approved RFI Workplan and all Approved Workplans become a part of the permit.

23. Section I of Module IV, titled "RCRA Facility Investigation Workplan Implementation", states that, upon receipt of written approval from the Administrative Authority for the RFI Workplan, the Permittee shall begin implementation of the RCRA Facility Investigation according to the Schedules specified in the RFI Workplan.

IV

VIOLATIONS

COUNT I - Failure to Meet Permit Condition H.3

Failure to Submit a Complete RFI Report for Appendix I Units

24. Paragraphs 1 to 23 are hereby incorporated by reference.

25. Respondent submitted to EPA, the RFI Workplan for Appendix I units, on April 11, 1991.

26. On August 9, 1991, EPA issued to Respondent a Notice of Deficiency

for the RFI Workplan submitted for Appendix I units, as specified in Subsection H.3.

27. Respondent submitted to EPA, a response to the Notice of Deficiency on September 13, 1991.

28. On September 26, 1991, EPA issued to Respondent approval of a modified RFI Workplan for Appendix I units.

29. The September 26, 1991 approval of the modified RFI Workplan for Appendix I units included a Modification as specified in Subsection H.3 which required Respondent to submit an RFI Report for the Appendix I units to EPA one year from the date of approval, or September 26, 1992.

30. On September 4, 1992, Respondent requested from EPA, an extension to the submittal date for the RFI Report for Appendix I units, until February 28, 1993.

31. On September 24, 1992, EPA granted Respondent 30 days to submit a sampling schedule in response to the Respondent's request for an extension to the submittal date for the RFI Report for Appendix I units, or October 24, 1992.

32. On October 28, 1992, Respondent submitted to EPA, a proposed sampling schedule for the RFI Report for Appendix I units, and proposed a submittal date for the RFI Report of March 12, 1993.

33. On December 3, 1992, EPA granted Respondent an extension to the submittal of the RFI Report for Appendix I units, until March 12, 1993.

34. Respondent submitted to EPA, 80% of the necessary data for the RFI Report for Appendix I units, on March 16, 1993.

35. EPA commented on Respondent's submittal on May 4, 1993.

36. Respondent has not replied to EPA's comments or submitted the remainder of the data necessary to complete the RFI Report for Appendix I

units.

37. Respondent has failed to submit a complete RFI Report for Appendix I units as required by the HSWA Permit Module IV, Section H, Subsection 3, and EPA's September 26, 1991 approval of the modified RFI Workplan for Appendix I units. Therefore, Respondent is in violation of 40 CFR § 270.30(a) for failure to comply with all of the conditions of a permit.

Count II -Failure to Meet Permit Condition I

Failure to Implement the RFI Workplan for Appendix II Units

38. Paragraphs 1 through 23 are hereby incorporated by reference.

39. Respondent submitted to EPA, the RFI Workplan for Appendix II units, on April 22, 1992.

40. On August 7, 1992, EPA issued to Respondent a Notice of Deficiency for the RFI Workplan submitted for Appendix II units, as specified in Subsection H.3.

41. Respondent submitted to EPA, a response to the Notice of Deficiency on September 4, 1992, and requested a re-submittal date for the RFI Workplan submitted for Appendix II units, of February 28, 1993.

42. On September 24, 1992, EPA issued to Respondent approval to re-submit on December 15, 1992 the RFI Workplan for Appendix II units.

43. On November 25, 1992, Respondent submitted to EPA, a request to extend the deadline for submission of the RFI Workplan for Appendix II units, until January 29, 1993.

44. On December 14, 1992, the EPA granted Respondent's request for an extension to the submission of the RFI Workplan for Appendix II units, until January 29, 1993.

45. Respondent submitted to EPA, the RFI Workplan for Appendix II units, on January 21, 1993.

46. On April 16, 1993, EPA issued to Respondent a Notice of Deficiency for the RFI Workplan submitted for Appendix II units, as specified in Subsection H.3.

47. Respondent submitted to EPA, a response to the Notice of Deficiency on May 13, 1993.

48. On June 8, 1993, EPA approved Respondent's May 13, 1993 submittal and ordered Respondent to immediately initiate the implementation of the approved RFI Workplan for Appendix II units according to the project schedule contained in that Workplan.

49. Respondent has not begun work on the approved RFI Workplan for Appendix II units as ordered by the Administrative Authority, and as required by the HSWA Permit Module IV, Section I. Therefore, Respondent is in violation of 40 CFR § 270.30(a) for failure to comply with all of the conditions of a permit.

COUNT III - Failure to Meet Permit Condition H.2

Failure to Submit the RFI Workplan for Appendix III Units

50. Paragraphs 1 through 23 are hereby incorporated by reference.

51. On April 6, 1993, Respondent requested an extension to the deadline for submission of the RFI Workplan for Appendix III units, until (at least) January 11, 1994.

52. EPA did not approve the Respondent's request for an extension to the submission of the RFI Workplan for Appendix III units. Therefore, Respondent has failed to meet the requirement for submittal of the RFI Workplan for Appendix III units as required by the HSWA Permit Module IV, Section H, Subsection 2, and is in violation of 40 CFR § 270.30(a) for failure to comply with all of the conditions of a permit.

COMPLIANCE ORDER

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions:

1. Within 30 days, Respondent shall submit to EPA, a complete RFI Report for Appendix I units, as required by the HSWA Permit Module IV, Section H, Subsection 3, and EPA's September 26, 1991 approval of the modified RFI Workplan for Appendix I units.

2. Respondent shall immediately initiate the implementation of the approved RFI Workplan for Appendix II Units according to the project schedule contained in that Workplan, as required by EPA's letter of June 8, 1993, and the HSWA Permit Module IV, Section I.

3. Within 30 days, Respondent shall submit to EPA, a complete RFI Workplan for Appendix III units as required by the HSWA Permit Module IV, Section H, Subsection 2.

4. In all instances in which this Order requires written submissions to EPA or NMED, each submission must be accompanied by the following certification signed by a "responsible official":

"I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete."

For the purpose of this certification, a "responsible official" means a person in charge of the principal functions of the facility, or any other person who is delegated to perform similar decision-making functions for the facility.

NOTICE: If you fail to take the required action(s) within the time specified in the Order, you may be liable for an additional penalty of up to TWENTY-FIVE THOUSAND (\$25,000) DOLLARS for each day of continued noncompliance, and may be subject to further enforcement action, including injunction from any further generation, transportation, treatment, storage or disposal of hazardous waste and such other and further relief as may be necessary to achieve compliance with Subtitle C of RCRA, all pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c).

Notwithstanding any other provision of this Complaint, an action may be brought against the Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority if EPA finds that the handling, storage, treatment, transportation or disposal of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment.

VI

PROPOSED CIVIL PENALTY

Section 3008 of RCRA authorizes a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) per day for each violation of RCRA and the regulations promulgated thereunder. Complainant proposes to assess a civil penalty of NINETY-TWO THOUSAND THREE HUNDRED DOLLARS (\$92,300) against Respondent. The computation of this amount is based upon the seriousness of the violations, the threat of harm to public health or the environment, the Respondent's good faith efforts to comply with the applicable regulations, and the October 1990 RCRA Civil Penalty Policy. The individual penalties for the violations are:

<u>COUNT</u>	<u>VIOLATION</u>	<u>PENALTY</u>
I	Failure to Submit a Complete RFI Report for Appendix I Units	18,300
II	Failure to Implement the RFI Workplan for Appendix II Units	37,000
III	Failure to Submit the RFI Workplan for Appendix III Units	37,000
TOTAL PROPOSED PENALTY		\$92,300

If you wish to contest any material fact contained in the Complaint, or the appropriateness of this penalty, see the following Section entitled "Notice of Opportunity to Request a Hearing".

VII

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Where Respondent (1) contests any material fact upon which the Complaint is based, (2) contends that the amount of the penalty proposed in the Complaint is inappropriate, or (3) contends that it is entitled to judgment as a matter of law, Respondent shall file a written Answer to the Complaint with the Regional Hearing Clerk, Region 6, within thirty (30) days after the service of the Complaint.

The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint 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 Complaint 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 Complaint and Answer shall be held upon request of the Respondent in the Answer.

The hearing, if requested, will be conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. § 552 et seq.), and the Consolidated Rules of Practice, codified at 40 CFR Part 22. A copy of these Rules is enclosed. Respondent may retain counsel to represent it at the hearing.

The Regional Hearing Clerk's address is:

Regional Hearing Clerk
U.S. Environmental Protection Agency
First Interstate Bank Tower
1445 Ross Avenue
Dallas, Texas 75202-2733

VIII

DEFAULT ORDER

If Respondent fails to file an Answer within thirty (30) days of the filing date of this Complaint, it may be found to be in default pursuant to 40 CFR § 22.17. For purposes of this action, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 3008 of RCRA, 42 U.S.C. § 6928, concerning such factual allegations. The proposed penalty shall become due and payable by Respondent without further proceedings sixty (60) days after issuance of a Final Order upon Default. Upon issuance of the Final Order upon Default, Respondent must immediately comply with the Order provisions in the Complaint.

IX

SETTLEMENT CONFERENCE

Whether or not the Respondent requests a hearing, it may confer with Complainant concerning settlement. EPA encourages settlement consistent with the provisions and objectives of RCRA 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 procedure may be pursued as an alternative to and simultaneous with the formal hearing procedures. Respondent may appear at the settlement conference and/or be represented by counsel.

Any settlement reached by the parties shall be finalized upon the issuance of a written Consent Order by the Regional Administrator, EPA Region 6, in accordance with 40 CFR § 22.18. The issuance of a Consent Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

To explore the possibility of settlement in this matter, contact the attorney assigned to this case, Michael Barra, who can be reached at (214) 655-2143, or Mark Potts, Chief, ALONM Section, RCRA Enforcement Branch, U.S. EPA, Region 6, First Interstate Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202-2733, or telephone (214) 655-2192.

Allyn M. Davis
Director
Hazardous Waste Management Division
(6H)
U.S. EPA, Region 6

Dated this _____ day of _____ 1993, at Dallas, Texas.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing concerning Kirtland Air Force Base, RCRA Docket No. VI-401-H, was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and that a true and correct copy of such Complaint, together with a copy of the Consolidated Rules of Practice (40 CFR Part 22) was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this ___ day of _____ 1993, addressed as follows:

Brig. General James L. Higham
377th Air Base Wing
2000 Wyoming Blvd., S.E.
Kirtland Air Force Base
New Mexico 87117-5606

Lauretta Scott