



BRUCE KING
GOVERNOR

KAFB 93

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

*Clarissa
my packing fell
Burt*

ENTERED
JUDITH M. ESPINOSA
SECRETARY

RON CURRY
DEPUTY SECRETARY

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

October 28, 1993

Brigadier General James L. Higham
Base Commander
Kirtland Air Force Base
542D CTW/CC
Albuquerque, New Mexico, 87117-5000

U.S Department of the Army
Medical Research and Development
Blast Overpressure Facility
P.O. Box 5532
Kirtland Air Force Base
Albuquerque, NM 87117
ATTN: Captain Johnson

CT Corporation Systems
217 West Manhattan Ave.
Santa Fe, New Mexico 87501

**RE: Compliance Order
NM9570024423**

To whom it may concern:

The Hazardous and Radioactive Materials Bureau of the New Mexico Environment Department ("NMED") issues the enclosed Compliance Order to Kirtland Air Force Base ("KAFB"), U.S. Department of the Army ("DOA"), and EG&G Special Projects ("EG&G"), (collectively "Respondents") pursuant to the New Mexico Hazardous Waste Act, §74-4-10 NMSA 1978. The Compliance Order is issued because the Respondents have jointly and severally failed to comply with the New Mexico Hazardous Waste Management Regulations (HWMR-7). The violations are specifically set out in the Compliance Order.

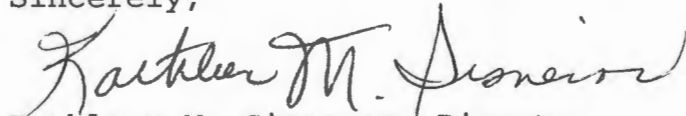
The Compliance Order sets forth a schedule of compliance required of KAFB, DOA and EG&G as well as an assessment of penalties. Respondents may be subject to additional civil penalties of up to \$25,000 for each day of noncompliance with the Compliance Order, as set forth in §74-4-10 NMSA 1978. Failure to comply with the Order could result in the suspension of KAFB's permit to store hazardous waste.

KAFB1340

To whom it may concern
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October 28, 1993

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

Sincerely,



Kathleen M. Sisneros, Director
Water and Waste Management Division

KMS:JES:js

cc: Kathryn M. Griffith, U.S. EPA Region VI (6H-HS)
Benito Garcia, Bureau Chief, H&RMB
Edward Horst, RCRA Program Manager, H&RMB
Rip 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 93-19

U.S Department of the Army
KAFB, NM

EG&G Special Projects, Inc.
2450 Alamo Ave.S.E.
Albuquerque, NM,

RESPONDENTS.

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

This Administrative Order ("Order) is issued to Kirtland Air Force Base, U.S. Department of the Army and Edgerton, Germeshausen and Greer (EG&G) Systems ("Respondents") pursuant to the New Mexico Hazardous Waste Act ("HWA"), §74-4-10 NMSA 1978. 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. NMSA 1978.

2. Respondents are Kirtland Air Force Base (KAFB), a military facility owned and operated by the U.S. Department of Defense and located in Albuquerque, New Mexico, U.S. Department of the Army (DOA), who operates the Blast Overpressure Facility located on KAFB, Albuquerque, NM and Edgerton, Germeshausen and Greer (EG&G) who is contractor for the DOA at the Blast Overpressure Facility on Kirtland Air Force Base, Albuquerque, NM.

3. On July 13 - 16, 1993, NMED employees James Seubert and John Tymkowych conducted a hazardous waste inspection ("inspection") at Respondent's facility.

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

5. Upon information and belief, at Bldg. 9051, Blast Overpressure Facility, spent photo fixer has been disposed of through the septic system prior to a hazardous waste determination of the photo fixer.

6. At the time of the inspection, at Bldg. 336, Propulsion Shop, an unlabeled, 55-gallon container was found in the satellite accumulation point (SAP).

7. Upon information obtained during the time of the inspection, at Bldg. 1024, DRMO, the emergency phone was inoperable from June 11, 1992 through July 16, 1992.

8. Upon information obtained during the time of the inspection, a weekly inspection was not performed at Bldg. 28009 for the week of July 5, 1993.

9. Upon information obtained during the time of the inspection, at Bldg. 1024, DRMO, the Land Disposal Restriction Notice did not contain the manifest document number of the related manifest.

10. At the time of the inspection, at Bldg. 1024, DRMO, two (2) containers were found to be labeled with incorrect hazardous waste codes.

11. Upon information and belief, manifest document number EXP0045 was not dated as to when the hazardous waste was received at the Explosives Ordnance Disposal facility.

CONCLUSIONS

1. Respondents are 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. Respondents are 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. Respondents generate "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. Respondents operate a "facility" as defined at §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

5. Respondents engage 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. Respondents store 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 Respondents, and Respondents have violated regulations in Part 262 as specified below. §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.1, makes the regulations in Part 268 (Land Disposal Restrictions) applicable to Respondents, and Respondents have violated regulations in Part 268 as specified below. §74-4-4.2 of HWA authorizes Respondent's hazardous waste permit, and Respondent (KAFB) has violated provisions of it permit as specified below.

8. Respondents have failed to perform a hazardous waste determination on spent photo fixer being disposed of through the septic system of Bldg. 9051, Blast Overpressure Facility, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11. *how many days?*

9. Respondents have failed to label a 55 gallon container found in the satellite accumulation point at Bldg. 336, Propulsion Shop. This a violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(ii). *why not? \$500?*

10. Respondents have failed to repair the emergency phone for the period of June 11, 1992 through July 16, 1992 at Bldg. 1024, DRMO. This is a violation of the Hazardous Waste Permit, Module II.E.

11. Respondents have failed to perform a weekly inspection at Building 28009. This is a violation of the Hazardous Waste Permit, Module II.E.

12. Respondents have failed to assign the manifest document number to the Land Disposal Restriction Notice related to manifest document #26728. This is a violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.7(a)(1)(iii).

13. Respondents have failed to label 2 containers at Bldg. 1024 with the correct hazardous waste code. This is a violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.50(a)(2)(i).

14. Respondents have failed to complete manifest document number EXP0045 as to the date the shipment of hazardous waste was received at the Explosives Ordnance Disposal facility. This is a violation of §601 of HWMR-7, which incorporates federal regulation 40 CFR §265.71(a) (1).

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 one hundred three thousand nine hundred sixty dollars (\$103,960) against Respondents. The penalty is based on the seriousness of the violations and any good faith efforts on the part of the Respondents to comply with the applicable requirements, and any economic benefit accruing to the Respondents, 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. 8 Failure to perform a hazardous waste determination.	\$103,410
Para. 9 Failure to label a hazardous waste container.	\$550

COMPLIANCE ORDER

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

1. Within thirty (30) working days from the receipt of this Order, sample the contents of the septic system at Bldg. 9051. Samples will have hazardous waste determinations performed on them and within five (5) working days from the receipt of the test results, submit the results to the Complainant.

2. Within one (1) working day after receipt of this Order, properly label the 55 gallon container found in the satellite accumulation point outside Bldg. 336, Propulsion Shop.

3. Within five (5) working days after receipt of this Order, take proper measures to insure that problems noted in facility inspection logs are promptly addressed.

4. Within five (5) working days after receipt of this Order, take proper measures to insure that inspections are completed.

5. Within five (5) working days after receipt of this Order, take proper measures to verify that manifest numbers are assigned to all LDR notices.

6. Within one (1) working day after receipt of this Order, properly label the 2 containers in Bldg. 1024, DRMO.

7. Within five (5) working days after receipt of this Order, take proper measures to insure that all manifests are dated.

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 respondents (a) contest any material fact or legal matter upon which the Order is based; or (b) contend that Respondents are entitled to prevail as a matter of law, Respondents 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, Respondents are appealing.

The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Order with regard to which Respondents have any knowledge. Where the Respondents have no knowledge of a particular factual allegation and so state, the allegation is deemed denied.

Failure of Respondents 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 Respondents intend 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 Respondents. The Respondents shall attach to the answer a copy of the Compliance Order to which the Request for Hearing pertains.

The Hearing Clerk's address is:

Barbara Rivera, Acting 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 Respondents file 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 Respondents 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 Respondents request a hearing, Respondents 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. Respondents 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 Mr. Edward L. Horst, 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 Respondents of their obligation to comply with all applicable laws and regulations.

The Order shall terminate when Respondents certify that all requirements of this Order have been completed, and NMED has approved such certification.

10/28/93
DATE

JUDITH M. ESPINOSA, SECRETARY

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 1st day of November, 1993 to the following:

Via Certified Mail, Return Receipt Requested:

Brigadier General James L. Higham
Base Commander
Kirtland Air Force Base
542D CTW/CC
Albuquerque, New Mexico, 87117-5000

U. S. Department of the Army
Medical Research and Development
Blast Overpressure Facility
P.O. Box 5532
Kirtland Air Force Base
Albuquerque, NM 87117
ATTN: Captain Johnson

EG&G
2450 Alamo Ave. S.E.
Albuquerque, NM
ATTN: Dr. Johnson


LEGAL COUNSEL