



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

Bustara
file KAFB
1-494

MAY 31 1994

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Thomas A. Norris, Colonel, USAF
Director
Environmental Management Division
377 ABW/EM
Kirtland Air Force Base, New Mexico 87117-5659

Re: **WARNING LETTER**
Kirtland Air Force Base
EPA I.D. NO NM9570024423

Dear Colonel Norris:

On the basis of information available to me, I am notifying you by means of this ~~WARNING LETTER~~, that Kirtland Air Force Base, located in Albuquerque, New Mexico, may be in violation of legal requirements of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Sections 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Public Law No. 98-616., 98 Stat. 3221, and as further amended by the Federal Facility Compliance Act of 1992, Pub. Law No. 102-386.

The State of New Mexico is authorized by the Environmental Protection Agency (EPA) to conduct a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. Section 6926. However, the authorized State program does not include the provisions of HSWA, and regulations promulgated thereunder. Therefore, EPA implements and enforces those regulations which are promulgated pursuant to HSWA, including the HSWA portion of your Permit (Module IV).

EPA believes that you have violated the requirements of 40 CFR Part 270.30(a); failure to comply with all of the conditions of a permit. 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.

Section I of Module IV, titled "RCRA Facility Investigation (RFI) 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.

On June 8, 1993, the Region approved your RFI Workplan for Appendix II Units and ordered you to immediately initiate the implementation of the approved RFI Workplan according to the project schedule contained in that Workplan.

According to the schedule in your Workplan, field work should have begun within 30 days of approval of the Workplan - July 8, 1993. You did not begin field work until September 8, 1993. Therefore, you were 61 days late in implementing field work as ordered by the Administrative Authority, and as required by the HSWA Permit Module IV, Section I. This is a violation of 40 CFR Part 270.30(a) for failure to comply with all of the conditions of a permit.

Any noncompliance with schedules is deemed noncompliance with the Permit. Extensions of due dates for submittals and changes to schedules may be granted only by approval of the Administrative Authority in accordance with the Permit modification process under 40 CFR Parts 270.41 or 270.42 as outlined in Section D (Standard Conditions) of your permit.

Funding problems do not justify permit noncompliance. If funding is claimed as a reason for delays in submittal of deliverables or for failure to adhere to schedules, Kirtland is requested to submit proof that funds were requested in time to meet the deadlines imposed by the Permit, but that funds were denied. "Proof" consists of A106 documentation and letters signed by high-ranking Department of Defense officials, such as a Deputy Secretary, or those persons responsible for denying the funding requests.

Kirtland Air Force Base is requested to take the following actions:

1. Begin an investigation of your standard operating procedures which will result in: (a) an understanding of how delays in (i) submission of requests for funding or (ii) approval of funding for and (iii) commencement of work required pursuant to your permit and late submission of information or reports required thereby have occurred in the past; and (b) a determination of what changes need to be instituted in order to prevent future occurrences thereof to ensure full compliance with all terms and conditions of your permit.

2. Submit to us a report outlining the results of the investigation undertaken above and the steps you have taken to insure that (i) requests for funding of work required by your permit will be timely submitted, (ii) funding of work required by your permit will be timely approved, (iii) work required by your permit will be commenced on a timely basis.

We request that you submit, within forty-five (45) days of receipt of this letter, all information and documentation requested in this WARNING LETTER. In all instances in which this letter requires written submissions to EPA, 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" of a federal agency means a person in charge of a principal business, agency, or departmental function, is a commissioned officer with responsibilities in this area, or any other person who performs similar decision-making functions for the federal agency or department, or other person to whom authority is delegated to perform similar decision-making functions.

Notwithstanding any other provision of this WARNING LETTER, an enforcement action may be brought against Kirtland pursuant to Sections 3008 (42 U.S.C. Section 6928), and 7003 (42 U.S.C. Section 6973) of RCRA, or such other statutory authority as is appropriate.

Under the law, failure to comply with the requirements of a permit is subject to the imposition of penalties of up to TWENTY FIVE THOUSAND dollars (\$25,000) for each day of continued noncompliance, and 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. Section 6928(c).

All information required by this WARNING LETTER should be submitted to:

Mark W. Potts, Chief
ALONM Section (6H-CS)
RCRA Enforcement Branch
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

If you have any questions regarding this WARNING LETTER, you should contact Joel Dougherty of my enforcement staff at the above EPA address, or telephone (214) 655-2281.

Sincerely yours,

Jack Divita

for Allyn M. Davis, Director
Hazardous Waste Management Division

Enclosure

cc: ✓ Benito Garcia, Chief
Hazardous and Radioactive Waste Bureau
New Mexico Environment Department

Colonel Peter Walsh
HQ/USAFCE
1260 AF Pentagon
Washington, D.C. 20330-1260

