



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Hazardous & Radioactive Materials Bureau
2044 Galisteo
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MARK E. WEIDLER
SECRETARY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

EDGAR T. THORNTON, III
DEPUTY SECRETARY

February 28, 1997

Colonel Gary D. Dills
Base Commander
Kirtland Airforce Base
1606 ABW/CC
Albuquerque, New Mexico 87117-5000

Dear Colonel Dills:

RE: Compliance Order
NM9570024423

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 violation is specifically set out in the Compliance Order and the Compliance Order sets out 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.

The Hazardous and Radioactive Materials Bureau (HRMB) of the New Mexico Environment Department (NMED) wishes to commend KAFB for self-reporting the disposal of lead contaminated soils without a permit and in an improper manner. These actions illustrate KAFB's willingness to meet regulatory requirements and good citizenship. This has been taken into account in developing this Compliance Order

KAFB1835



February 28, 1997

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Any inquiries concerning this Compliance Order should be directed to Mr. Benito Garcia, Bureau Chief, Hazardous and Radioactive Materials Bureau, New Mexico Environment Department, at (505) 827-1557.

Sincerely,



Ed Kelley, Ph.D., Director
Water and Waste Management Division

cc: Benito Garcia, Bureau Chief, HRMB
John Tymkowych, RCRA Program Manager, HRMB
Richard Mertz, Office of General Counsel
Thomas Manning, U.S. Air Force Regional Compliance Officer
Dan Vigil, 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
HRM-97-01 (CO)

RESPONDENT.

ADMINISTRATIVE COMPLIANCE ORDER AND CIVIL PENALTY

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. (Repl. Pamp. 1993), and the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1).

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. KAFB notified the U.S. Environmental Protection Agency of its hazardous waste generation activities on November 23, 1988.

3. KAFB occupies approximately 85 square miles skirting the south easternmost edge of Albuquerque. Within KAFB proper is housed Sandia National Laboratory (SNL) along with several other agencies. The Sandia Skeet Range, a DOD entity operated by the Morale, Welfare and Recreation (MWR) Section at KAFB, lies due west of the southern boundary of SNL TA-4 complex.

4. On May 15, 1996, the Environmental Compliance Branch (ECB) of KAFB was notified that the Sandia Skeet Range was being cleaned/graded of lead shot, clay pigeons, and dirt by the base Civil Engineering group (CE), who then transported and used the lead contaminated soil as road bedding along approximately 2.5 miles of road between the entrance of the Sandia Skeet Range and the base C & D landfill. This road runs through the Tijeras Arroyo, the prominent watershed at KAFB. It was determined by the ECB that the proper permits for the soil removal were not obtained by CE and that proper notification was not given by CE.

5. On October 28, 1993, NMED issued a Compliance Order to KAFB based upon results of an inspection conducted July 13-16, 1993. The violations noted in this compliance order were: failure to perform a hazardous waste determination on spent photo fixer, failure to label a container at a satellite accumulation point, failure to repair an emergency phone, failure to perform a weekly inspection at the DRMO, failure to assign a proper manifest number to a Land Disposal Restriction (LDR) notice, failure to label two containers with proper hazardous waste codes, and failure to properly complete a hazardous waste manifest.

6. On February 14, 1995, NMED issued a Compliance Order to KAFB based upon results of an inspection conducted on November 21, and November 30 - December 2, 1994. The violation noted in this compliance order was: KAFB exceeded the 55-gallon storage limit at a satellite accumulation point.

7. On March 14, 1996, a Letter of Violation (LOV) was issued to KAFB based upon results of an inspection conducted on February 26-29, 1996. The violations noted in this LOV were: failure to place an accumulation start date on a container, failure to close a container, failure to mark containers with the words "hazardous waste".

8. On May 20, 1996, ECB received analyses on samples taken on the skeet range which revealed lead concentrations up to 59,600 mg/kg. Samples taken on the road where contaminated soils were spread for road bedding revealed lead concentrations of up to 375 mg/kg. Waste that is tested via the Toxicity Characteristic Leaching Procedure (TCLP) and is found to contain lead at levels greater than 5.0 mg/kg is a hazardous waste.

9. On May 21, 1996, verbal notice of this incident was given by the Environmental Compliance Branch to NMED employee and program manager Mr. Coby Muckelroy.

10. On May 30, 1996, NMED received a letter from Mr. Walter Darr, Chief of the Environmental Compliance Branch at KAFB, dated May 28, 1996 self-reporting the incident.

11. On June 3, 1996, NMED employees Jim Seubert and Frank Sanchez conducted a site inspection of the Sandia Skeet Range and the road on which material from the skeet range had been placed.

12. During the June 3, 1996 site inspection, the inspectors observed that lead shot had been washed in a southerly direction down the spillway for the north/south running arroyo. This flows to the lower arroyo which eventually washes into the Tijeras Arroyo.

CONCLUSIONS

13. 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 November 1, 1995, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

14. Respondent is a "generator" as defined at §74-4-3.F. of HWA, and 20 NMAC 4.1.100, which incorporates with a few exceptions, federal regulation 40 CFR §260.10.

15. Respondent generates "hazardous waste" as defined at §74-4-3.I. of HWA, and 20 NMAC 4.1.100, which incorporates, with few exceptions, federal regulation 40 CFR §260.10.

16. Respondent "disposes" of hazardous waste as defined at §74-4-3.C. of HWA, and 20 NMAC 4.1.100, which incorporates, with few exceptions, federal regulation 40 CFR §260.10.

17. 20 NMAC 4.1.900, which incorporates, federal regulation 40 CFR §270.1(a), makes the regulations in Part 270 (EPA Administered Permit Programs: The Hazardous Waste Permit Program), applicable to Respondent, and Respondent has violated regulations in Part 270 as specified below.

18. Respondent has disposed of hazardous waste on the road leading from the Sandia Skeet Range to the KAFB C&D landfill without having obtained a hazardous waste disposal permit. This is a violation of 20 NMAC 4.1.900, which incorporates federal regulation 40 CFR Part 270, Subpart B.

19. Paragraph #18 entails a violation which has caused the substantial likelihood of exposure of hazardous waste and which demonstrates a substantial deviation from the hazardous waste regulations. Therefore, Respondent is a High Priority Violator (HPV).

CIVIL PENALTY

20. 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 or the regulations promulgated thereunder. Complainant hereby assesses a civil penalty of Thirty Six Thousand Four Hundred Dollars (\$36,400) 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 resulting from noncompliance accruing to Respondent, as well as such other matters as justice may require, and is calculated pursuant to the NMED's Civil Penalty Policy. The penalty for the violation is:

<u>VIOLATION</u>	<u>AMOUNT</u>
¶18 Disposal of hazardous waste on the road leading from the Sandia Skeet Range to the C&D landfill	\$36,400

Payment shall be made to the State of New Mexico Hazardous Waste Emergency Fund by certified check, bank draft, or other guaranteed negotiable instrument, and mailed to or hand delivered to Linda Romero, Office of General Counsel, New Mexico Environment Department, P.O. Box 26110, Santa Fe, New Mexico 87502.

SCHEDULE OF COMPLIANCE

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

1. Within forty five (45) days after receipt of this Order, establish a barrier or screening apparatus designed to prevent lead shot from migrating down the spillway located on the southern edge of the range (See highlighted area on Attachment 2).
2. Within sixty (60) days after the receipt of this Order, determine the vertical and horizontal extent of contamination on all roadways where debris from the skeet range has been placed as road bedding, and in the arroyo underneath the spillway located at the southern edge of the skeet range. (See highlighted areas on Attachments 1 and 2, which delineate the areas that require initial investigation). These are the areas that, at a minimum, must be investigated to determine the extent of contamination. Further investigation may be required depending on the results of the initial investigation.

3. Within ninety (90) days after receipt of this Order, submit a remediation plan for Complainant's approval that provides for the removal of soils containing ≥ 100 mg./kg. total lead from the areas identified in paragraph #2 above.
4. Within one hundred eighty (180) days after receipt of this Order, provide Complainant with a final report demonstrating that the site has been remediated as required by the Order.

NOTICE

22. If Respondent fails to timely comply with the Schedule of Compliance or if Respondent elects not to comply with the schedule of Compliance and to challenge it as set forth below, the Secretary may assess additional civil penalties of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance pursuant to §74-4-10.C. of HWA.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

23. Respondent has a right to answer this Order and request a hearing pursuant to §74-4-10.H. of the HWA and 20 NMAC 1.5.200 of NMED's Adjudicatory Procedures. Respondent shall file a written Request for Hearing, Answer and a copy of the Order with the Hearing Clerk within thirty (30) calendar days after receipt of the Order.

The Request for Hearing and Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge believed to be true and correct. The answer shall clearly and directly admit or deny 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 any affirmative defenses upon which Respondent intends to rely.

A hearing upon the issues raised by the Order and answer shall be held upon the request of the Respondent. NMED's Adjudicatory Procedures shall govern all hearing and pre-hearing procedures. Respondent may contact the Hearing Clerk for a copy of these regulations.

The Hearing Clerk's address is:

Gloria Miller, Hearing Clerk
P.O. Box 26110
1190 St. Francis Drive
Harold Runnels Building, N4084
Santa Fe, New Mexico 87502
(505) 827-2842

FINALITY OF ORDER

24. This Order shall become final unless Respondent files a written Request for Hearing and Answer within thirty (30) calendar days of receipt of the Order. 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 the HWA. Unless Respondent requests a hearing, the penalty proposed in this Order shall become due and payable without further proceedings within sixty (60) days after receipt of this Order.

SETTLEMENT CONFERENCE

25. Whether or not Respondent files an Answer and Request for Hearing, Respondent may confer with Complainant concerning settlement. A request for a settlement conference does not extend the thirty (30) day period during which the Answer and Request for Hearing must be submitted. The settlement conference may be pursued as an alternative to, or simultaneously with, the hearing proceedings. Respondent may appear at the settlement conference by itself or by represented by counsel.

26. Any settlement reached by the parties shall be approved by a stipulated final Order of the Secretary of NMED pursuant to the conditions set forth in 20 NMAC 1.5.601. The issuance of such an Order shall serve to resolve all issues raised in the Order, shall be final and binding on all parties to the Order, and shall not be appealable.

27. To explore the possibility of settlement in this matter, contact Mr. Benito Garcia of the Environment Department, P.O. Box 26110, 2044 Galisteo, Santa Fe, NM 87501, telephone number (505) 827-1558.

TERMINATION

28. Compliance with the requirements of this Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations. This Order shall terminate when Respondent certifies that all requirements of the Order have been completed, and NMED has approved such certification, or when the Secretary approves a settlement agreement.

MARK E. WEIDLER, SECRETARY

DATE

By:



ED KELLEY, Director

Water and Waste Management Division

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid as follows on this 28th day of February, 1997 to the following:

Via Certified Mail, Return Receipt Requested:

Colonel Gary D. Dills
Base Commander
Kirtland Air Force Base
1606 ABW/CC
Albuquerque, New Mexico 87117-5000


Susan McMichael