



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 377TH AIR BASE WING (AFMC)

U.S. AIR FORCE



10 APR 1997

MEMORANDUM FOR MR. BENITO GARCIA  
HAZARDOUS AND RADIOACTIVE MATERIALS BUREAU  
NEW MEXICO ENVIRONMENT DEPARTMENT  
P.O. BOX 26110  
SANTA FE, NM 87502

FROM: 377 ABW/CC  
2000 Wyoming Blvd SE  
Kirtland AFB NM 87117-5606

SUBJECT: Amended Response to Compliance Order HRM-97-01 (CO)

1. As requested, my staff has revised the answer to Compliance Order HRM-97-01 to reflect our interest of engaging in an informal settlement conference with the goal of amenable settling this matter. As stated in our response, we disagree with the findings of the Compliance Order and believe there has been no violation of State Statute or the Code of Federal Regulation. I believe an open dialogue between our staffs will bring about a speedy resolution.

2. If you or your staff have any questions or concerns, please contact Lt Col James R. Fraser, Director, Environmental Division, (505) 846-2751.

*Gary D. Dills*  
GARY D. DILLS, Colonel, USAF  
Commander

Attachment:  
Answer to Administrative Compliance Order

cc: Governor's office  
file: Blue, KAFB, 1997

KAFB1849



FRASER, JAMES R.

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT

IN THE MATTER OF  
KIRTLAND AIR FORCE BASE  
KAFB NM  
ID NO. NM9570024423

COMPLIANCE ORDER  
HRM-97-01 (CO)

RESPONDENT.

ANSWER TO ADMINISTRATIVE COMPLIANCE ORDER AND  
REQUEST FOR ADMINISTRATIVE HEARING

Comes now the Respondent in answer to the Compliance Order issued by the State of New Mexico Environment Department on 28 February 1997, pursuant to Section 74-4-10H of the New Mexico Hazardous Waste Act, and the 2 April 1997 letter issued by the Hazardous and Radioactive Materials Bureau which extended the deadline for the answer to the Compliance Order to 14 April 1997, and requests an Administrative Hearing a on the matters raised by said Compliance Order.

With regard to the specific findings and paragraphs contained in the Environment Department's Compliance Order, the Respondent answers as follows:

1. Respondent admits to the findings of Paragraphs 1 through 3, Paragraphs 9 through 11, and Paragraphs 13 through 16 of the Compliance Order;
2. Paragraph 4 of the Compliance Order is an incorrect statement of the facts. The Kirtland AFB did not determine that some form of permit was required before clay material could be removed from the skeet range and used as road bedding, but rather decided to cease the practice until determining whether some form of permit was required to accomplish this task;

3. Respondent admits to receiving past Notices of Violation and Compliance Orders issued by the N.M. Environment Department on 28 Oct 93, 14 Feb 95 and 14 Mar 96, as stated in Paragraphs 5 through 7 of this Compliance Order;

4. Respondent denies the assertions of Paragraph 8. The material removed from the skeet range and used for road bedding is not solid waste as defined by State Statutes 74-4-3M or 74-9-3N;

5. Respondent has no direct knowledge of the assertions made in Paragraph 12 of the Compliance Order;

6. Respondent agrees in part to the assertions of Paragraph 17 of the Compliance Order, denying that Respondent has violated Section 40 of the Code of Federal Regulation Part 270, and specifically 40 CFR Sect. 270.1(a) which has been incorporated by 20 NMAC 4.1.900;

7. Respondent denies the assertions of Paragraph 18 of the Compliance Order. Respondent has not disposed of solid waste on the road leading from the Sandia Skeet Range to the KAFB C&D landfill. Spent lead shot and clay targets are not solid waste as defined by the Resource Conservation and Recovery Act nor the New Mexico Solid Waste Act nor the New Mexico Hazardous Waste Regulations;

8. Respondent denies the assertions of Paragraph 19 of the Compliance Order. Respondent has not engaged in an activity that would constitute a substantial deviation from New Mexico hazardous waste regulations;

9. Respondent denies the validity of the civil fine of \$36,400 as asserted in Paragraph 20 of the Compliance Order. Respondent has not violated State hazardous waste regulations as alleged, and therefore the Environment Department has no legal authority by which to assess a civil penalty. Without admitting to the validity of the facts and conclusion upon which the State bases its authority to impose the civil fine, the Respondent also contends that the amount of

penalties demanded are inappropriate, based upon the nature of the alleged violation and the circumstances upon which the State discovered the facts of this alleged violation.

10. In response to the State's Schedule of Compliance set forth in Paragraph 21 of this Compliance Order, the Respondent denies that it has violated State solid waste disposal regulations and therefore the State Environment Department is without legal authority to direct a course of corrective action with set deadlines for completion. Without admitting to the validity of the facts and conclusion upon which the State bases its authority to direct corrective action, the Respondent also contends that the deadlines set by the Environment Department for the insisted course of remediation are unreasonable and arbitrary;

The Respondent, Kirtland Air Force Base, New Mexico, hereby requests an Administrative Hearing regarding this Order of Compliance. In addition, the Respondent requests an opportunity to engage in an informal settlement conference with Complainant to discuss a possible alternative resolution of this matter which would be amenable to the Parties.

Respondent affirms that the above-stated information is, to the best of his knowledge, true and accurate. Respondent reserves the right to present additional facts, circumstances or arguments which constitute the grounds for defense of the assertions made in the State's Compliance Order as such facts, circumstances or arguments become known to the Respondent through discovery or other means.

Respectfully submitted this 10<sup>th</sup> day of April 1997.



Gary D. Dills, Colonel, USAF  
Installation Commander  
Kirtland AFB, New Mexico