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NWS EARLE  
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TRANSMITTAL LETTER FOR THE DRAFT COMPLIANCE AGREEMENT NWS EARLE NJ  
9/9/1986  
U S EPA REGION II

FROM: US EPA NY	DATE: 860909	FILE NO: CERT#P 278 975 562
TO: WPNSTA EARLE	FILED IN: 11000	SERIAL NO: 826
VIA:		

RESOURCE CONSERVATION AND RECOVERY ACT NOTICE OF VIOLATION AND COMPLIANCE DEMAND

CODE	INITIALS	DATE		HANDLING DESIRED	REMARKS
		IN	OUT		
01	<i>mt</i>	860912	9/12		
B	<i>R</i>		9/14		
A				←	Test
09		9/15		33	NOTE VARIOUS ACTION! DUE DATE
C7					9/27
20					

CODE	INDICATE HANDLING DESIRED BY NUMBER:
<ul style="list-style-type: none"> <li>A- Commanding Officer</li> <li>B- Executive Officer</li> <li>C-1 DEECO</li> <li>C-2 Chaplain</li> <li>C-3 MCPOC</li> <li>C-4 Public Information Officer</li> <li>C-5 Dentist</li> <li>01 Administration</li> <li>012 Navy Personnel</li> <li>02 Comptroller</li> <li>03 Data Processing</li> <li>04 Safety</li> <li>05 Station Resources and Planning</li> <li>06 Civilian Personnel</li> <li>07 Marine Barracks</li> <li>09 Public Works</li> <li>10 Security</li> <li>11 Supply</li> <li>15 Morale, Welfare and Recreation</li> <li>20 Ordnance</li> <li>30 Calibration Laboratory</li> <li>40 Quality Assurance</li> <li>70 Fleet Support</li> <li>80 Naval Weapons Handling Center</li> <li>82 USS Nitro</li> </ul>	<ul style="list-style-type: none"> <li>22- Take action and report to</li> <li>33- Take Appropriate Action</li> <li>44- Comment and return to</li> <li>55- Prepare Reply for CO's signature</li> <li>66- See CO or _____ on this</li> <li>77- Retain Copy (or no. of copies indicated)</li> <li>88- Retain Enclosures to Basic Correspondence</li> <li>99- Retain correspondence and <u>RETURN ROUTE SLIP</u></li> </ul> <p style="text-align: right; margin-right: 100px;">11000 826</p>

WPNSTAE 2720/4 (REV. 12-77) 3ND-PPSO-4391

**THIS LETTER REQUIRES ACTION BY**

*Jm*

NOTE: Route Slip and correspondence must be returned to Central Files unless otherwise indicated by Route Slip. In all cases ROUTE SLIP MUST BE RETURNED.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

26 FEDERAL PLAZA

NEW YORK, NEW YORK 10278

SEP 09 1986

CERTIFIED MAIL --  
RETURN RECEIPT REQUESTED

Captain E.P. Nicholson  
Commanding Officer  
Naval Weapon Station Earle  
Colts Neck, New Jersey 07722

Re: Resource Conservation and Recovery Act (RCRA)  
Notice of Violation and Compliance Demand  
RCRA Docket No. 86-0104

Dear Captain Nicholson:

This is in response to Captain P.S. Benson's letter dated May 19, 1986 wherein he responded to the violations cited in the above-referenced Notice of Violation and Compliance Demand (NOV/CD). Based upon the May 19th letter and the discussions that took place at the meeting held on May 5, 1986 with representatives of Naval Weapons Station (NWS) Earle, the New Jersey Department of Environmental Protection (NJDEP), and the U.S. Environmental Protection Agency (EPA) Region II, we have prepared the enclosed (draft) Compliance Agreement for your consideration. The Agreement represents a tripartite agreement to be executed by authorized representatives of the Navy, NJDEP, and EPA Region II. Please review this document and provide any comments you may have to this office within ten (10) days of your receipt of this letter. If no comments are received after the 10-day period, we shall take this to mean that you have no comments, and a final agreement will be prepared for your signature.

Be advised that should negotiations be ineffective and a final agreement cannot be reached within 30 days of your receipt of this letter, EPA is authorized to issue a joint administrative order with the NJDEP.

Also be advised that EPA Region II has determined that the Navy's response to the violation cited at 5.bb. of the NOV/CD is unacceptable. The Agency does not agree with the Navy's position that the Explosive Ordnance Disposal (EOD) ranges are exempt from RCRA.

Based upon the "Initial Assessment Study of Naval Weapons Station Earle," dated February 1983 and prepared by the Naval Energy and Environmental Support Activity (NEESA), the primary function of

the EOD activity "is to dispose of nonserviceable naval munitions and chemical explosives (mainly picric acid) from various sources." The Report further states that any rounds of ammunition from the waterfront ordnance operations that are damaged are inspected by EOD and, if required, are routed to the EOD area for disposal. According to this Report, the Waterfront Operations Branch has, on occasion, "received the equivalent of 3-4 carloads of excessive shelf life ammunition requiring disposal."

The "Health/Safety Plan and POAM for Confirmation Study to Determine Existence and Possible Migration of Specific Chemicals In Situ; Naval Weapons Station Earle", (also referred to as the "Confirmation Study"), dated July 1985 and prepared by Roy F. Weston, Inc., describes the NWS Earle EOD activity as the demilitarization of ordnance materials from both on base and off base. The Confirmation Study was prepared for and in consultation with the U.S. Navy Northern Division of Naval Facilities Engineering Command.

Section 6001 of RCRA requires federal facilities, such as NWS Earle, to comply with all federal, state, and local laws pertaining to the management of hazardous waste. According to present EPA policy, RCRA hazardous waste regulations apply from the time and point that the material (e.g., military munitions) become a hazardous waste. (Refer to the enclosed copy of EPA policy letter dated October 3, 1985, from Jack W. McGraw, Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.)

The explosives detonated and burned at the EOD range are solid wastes as defined in 40 C.F.R. §261.2 and are hazardous wastes because they exhibit the characteristic of reactivity as defined in 40 C.F.R. §261.23. Open burning and detonation of these explosives meet the definition of "treatment" given in 40 C.F.R. §260.10 and, therefore, are regulated under 40 C.F.R. Part 265, Subpart P, entitled "Thermal Treatment." (See 40 C.F.R §265.382, entitled "Open burning; waste explosives.")

We recognize that some of these explosives are destroyed as soon as they are generated (for example, at the conclusion of each day's training exercise). In cases like these, some of the requirements of 40 C.F.R. Part 265, Subparts B, C, D, E, and G may not be applicable. However, at the point when there is an intent to dispose of or destroy explosives and they would not be wastes when recycled in lieu of disposal (recycling is not ordinarily considered to be a form of disposal), the explosives become hazardous wastes subject to RCRA regulation and, therefore, the storage and transportation of these waste explosives must be in accordance with the RCRA rules.

According to NEESA, EOD operations have been actively conducted since the early 1970's at NWS Earle, serving the Philadelphia

Naval Base, and coordinating activities for the disposal of various types of explosive items. Notwithstanding this, NWS Earle has failed to submit a Part A application and, consequently does not have interim status for the EOD activities and is not authorized to receive hazardous waste from off base facilities for disposal. According to the terms of the enclosed draft Compliance Agreement, NWS Earle will have 30 days from its receipt of a fully executed Agreement to submit a Part A application and documentation showing compliance with the applicable sections of 40 C.F.R. Part 265, thereby allowing it to continue the open burning/open detonation operations without interim status as long as it maintains compliance with the applicable regulations. Furthermore, if NWS Earle wishes to continue its emergency ordinance disposal service to the community, it may do so provided it complies with the applicable regulations which include, at a minimum, the "general requirements for reactive wastes," 40 C.F.R. §265.17, the requirements for "open burning; waste explosives," 40 C.F.R. §265.382, and the recordkeeping requirements (i.e., manifests, operating record, biennial report), 40 C.F.R. Part 265, Subpart E. In addition to these requirements, the EOD area must comply with all applicable sections of N.J.A.C 7:26-1 et seq. as advised by the NJDEP in its letter dated March 24, 1986. (See enclosed copy.)

Should you have any questions concerning this matter, please contact Kathleen Chojnowski at (212) 264-4877, or Thomas Solecki at (212) 264-6152.

Sincerely yours,

  
Conrad Simon, Director  
Air and Waste Management Division

Enclosure

cc: Lloyd Guerci  
Director of RCRA Enforcement (w/encl.)

John Skoviak, Assistant Chief  
Compliance & Enforcement, NJDEP (w/encl.)

LTC Warren Hull, A-104 (w/encl.)

Lee Harwig, A-104 (w/encl.)

Gerard Burke, Office of Regulatory Services, NJDEP (w/encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

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-----X
In the Matter of      :
                       :
NAVAL WEAPON STATION, EARLE :
COLTS NECK, NEW JERSEY 07722 : COMPLIANCE AGREEMENT
NJ0170022172         :
                       :
Proceeding under Section 3008 : Docket No. II RCRA-86-0104
of the Resource Conservation :
and Recovery Act, 42 U.S.C.  :
§6928.                :
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PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Disposal Act of 1984, 42 U.S.C. §6901 et seq., and Executive Order (E.O.) No. 12088.

Section 3006(b) of RCRA, 42 U.S.C. §6926(b), provides that the Administrator of the U.S. Environmental Protection Agency ("EPA") may, if certain criteria are met, authorize a State to operate a hazardous waste program in lieu of the federal program. The Administrator authorized the State of New Jersey to operate the program in lieu of the federal program on February 21, 1985. Section 3008 of RCRA, 42 U.S.C. §6928, authorizes EPA to enforce the provisions of the authorized State program. E.O. No. 12088, Section 1-3 authorizes EPA to oversee federal compliance with RCRA; in particular, to monitor compliance with applicable pollution control standards by federal facilities and activities.

The Director of the Air and Waste Management Division of the EPA Region II, Complainant in this proceeding, issued a Notice of Violation/Compliance Demand to NAVAL WEAPON STATION, EARLE ("the Respondent") on March 31, 1986. Said document charged Respondent with certain violations of RCRA and the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E et seq., and the regulations promulgated thereunder.

#### FINDING OF FACTS

In order to correct the violations at Respondent's facility and in recognition of the responsibility of the NAVAL WEAPON STATION, EARLE, to implement and assure compliance with applicable pollution control standards, it is agreed as follows:

1. Respondent operates a federal facility, NAVAL WEAPON STATION, EARLE, located at Colts Neck, New Jersey. Pursuant to Section 6001 of RCRA, 42 U.S.C. §6961, Respondent is subject to all Federal, State, interstate and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as "any person" (as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. §6903(15), and in N.J.A.C. 7:26-1.4) is subject to such requirements.

2. By notification dated August 18, 1980, Respondent informed EPA that it conducts activities at the facility involving "hazardous waste," as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and in N.J.A.C. 7:26-1.4. By application

dated November 19, 1980, Respondent requested a permit to conduct its hazardous waste activities.

3. On or about October 8 and 11, 1985, an inspection of the facility was conducted by a duly designated employee of EPA pursuant to Section 3007 of the Act, 42 U.S.C. §6927. Said inspection was conducted for the purpose of determining compliance with RCRA and the New Jersey Hazardous Waste Management Regulations, N.J.A.C. 7:26-1 et seq.

4. N.J.A.C., Title 7, Chapter 26, sets standards for hazardous waste treatment, storage and disposal facilities.

5. During the above-referenced inspection, the following violations of RCRA and the New Jersey Hazardous Waste Management Regulations were identified:

a. Failure to include a waste minimization statement on manifest number NJA0063678 dated September 5, 1985. This statement is required on all manifests as of September 1, 1985 as required by Section 3002(b) of RCRA and 40 C.F.R. §262.20.

b. Failure to properly manage hazardous waste stored in an underground hazardous waste storage tank as required by N.J.A.C. 7:26-9.2(b)3. At the time of the inspection, the underground tank had not undergone integrity testing or monitoring pursuant to N.J.A.C. 7:14A-6.1 et seq.

c. Failure to post proper warning signs at the container storage area located in Building QH8 and any warning signs near containers located at the demil storage area and Building C-15 as required by N.J.A.C. 7:26-9.4(h)3.

d. Failure to test numerous containers of waste which are being stored throughout the facility; some containers are mixed in with reactives and ignitables; in particular, the containers located near the demil storage area, C-15, and and ordnance carpenter shop. In addition, the bilge water was not tested for total petroleum hydrocarbons. Proper waste analysis is required by N.J.A.C. 7:26-9.4(b)1i.

e. Failure to conduct general inspections at the facility for discharge of hazardous waste constituents to the environment or a threat to human health as required by N.J.A.C. 7:26-9.4(f)1.

f. Failure to develop and maintain an adequate written schedule for inspecting equipment and security devices to be utilized for the prevention, detection or response to an environmental or human hazard as required by N.J.A.C. 7:26-9.4(f)3, 4, 5 and 6.

g. Failure to provide adequate hazardous waste training for civilian employees as required by N.J.A.C. 7:26-9.4(g).

h. Failure to maintain the following documents and records at the facility for all individuals involved with hazardous waste: a job title for each position; a written description for each position, including requisite skill, education, or other qualifications and duties of employees assigned to each position; a written description of the type and amount of introductory and continuing training;

and records that document that the training required under Paragraphs 9.4(a)1 - 5 has been given to and completed by facility personnel. All this is required by N.J.A.C. 7:26-9.4(g)6i-iv.

i. Failure to have immediate access to an internal alarm or emergency communication device during the handling of hazardous waste as required by N.J.A.C. 7:26-9.6(d)1.

j. Failure to provide adequate aisle space in the container storage area behind Building C-15 and the demil storage area as required by N.J.A.C. 7:26-9.6(e).

k. Failure to have agreements with other fire departments off-base which might provide support to the primary emergency authority as required by N.J.A.C. 7:26-9.6(f)2.

l. Failure to familiarize the local hospital with the hazardous waste handled at the facility as required by N.J.A.C. 7:26-9.6(f)4.

m. Failure to make arrangements to have the local fire department inspect the facility on a regular basis with at least two (2) inspections annually as required by N.J.A.C. 7:26-9.6(f)5. This requirement may be waived with New Jersey Department of Environmental Protection (NJDEP) approval.

n. Failure to develop a contingency plan which is designed to minimize hazards to human health or the environment from fire or explosion as required by N.J.A.C. 7:26-9.7(a) and (c). The contingency plan only addresses spills.

o. Failure to describe arrangements in the contingency plan agreed to by local police departments, fire departments,

hospitals, and State and local emergency response teams to coordinate emergency services as required by N.J.A.C. 7:26-9.7(e).

p. Failure to include in the contingency plan a list and locations of emergency equipment at the facility as required by N.J.A.C. 7:26-9.7(g).

q. Failure to provide a copy of the contingency plan to local authorities as required by N.J.A.C. 7:26-9.7(i)2.

r. Failure to develop an adequate closure plan as required by N.J.A.C. 7:26-9.8.

s. Failure to store hazardous waste in sturdy, leak-proof containers as required by N.J.A.C. 7:26-9.4(d)1i. In particular, waste was stored in cardboard drums and wooden boxes.

t. Failure to manage containers so that they are kept securely closed except during filling or emptying as required by N.J.A.C. 7:26-9.4(d)4i. A total of 18 drums of hazardous waste were opened and not in use, 3 behind C-15 and 15 in the demil storage area.

u. Failure to segregate containerized hazardous waste in storage behind Building C-15 by waste type and compatibility as required by N.J.A.C. 7:26-9.4(d)(4)iv.

v. Failure to arrange every container behind Building C-15 and in the demil storage area so that its identification label is visible as required by N.J.A.C. 7:26-9.4(d)4v.

w. Failure to inspect, at least daily, areas where

containers are stored, looking for leaks and for deterioration caused by corrosion or other factors as required by N.J.A.C. 7:26-9.4(d)5.

x. Failure to segregate containers of hazardous waste behind Building C-15 that are incompatible with any waste or materials stored nearby by means of a dike, berm, wall or other device as required by N.J.A.C. 7:26-9.4(d)7iii.

y. Failure to post "No Smoking" signs near Building C-15 and the demil storage area as required by N.J.A.C. 7:26-9.4(e)liii.

z. Failure of the owner or operator to carry out immediately the provision of the facility's contingency plan whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment. During the October 8, 1985 inspection, an oil spill was observed near the underground waste oil storage tank. At the completion of the inspection on October 11, the same oil spill was observed. Furthermore, two additional oil spills were observed, one near the two hundred fifty gallon waste oil container near Building C-50 and another near the container storage area behind Building C-15. This is required by N.J.A.C. 7:26-9.7(b).

aa. Exceeding design capacity for container storage. The facility is authorized to store 800 gallons of hazardous waste in containers. At the time of inspection, approximately 3300 gallons of hazardous waste were in container storage. This is prohibited by N.J.A.C. 7:26-12.3(b)3.

bb. Employing processes not specified in the Part A application; particularly open burning (EOD area-T04).

This is prohibited by N.J.A.C. 7:26-12.3(b)2.

6. On May 5, 1986, Respondent met with EPA and NJDEP officials to discuss the findings noted in the Notice of Violation/ Compliance Demand (NOV/CD). At the meeting, Respondent notified EPA and NJDEP of actions completed since the issuance of the NOV/CD to come into compliance with RCRA and N.J.S.A 13:E et seq., and presented proposed corrective actions and a timetable for attaining full compliance. Specifically, Respondent provided the following information concerning required corrective actions:

a. Respondent has ensured that all future manifests will have a waste minimization statement.

b. Respondent has posted "No Smoking - Authorized Personnel" keep out signs at the demil storage area and Building C-15.

c. Respondent will test bilge water for RCRA characteristics, PCBs and total petroleum hydrocarbons. Furthermore, all unknowns will be tested for identification.

d. Respondent has assigned a safety inspector to conduct general inspections of all facilities where a potential risk for a hazardous waste spill exists. Furthermore, an initial inspection has been completed and semi-annual inspections will be conducted in the future.

e. Respondent has rearranged drums insuring adequate aisle space in the container storage areas near Building C-15 and the demil storage area.

f. Respondent has scheduled the fire department for semi-annual inspections of the hazardous waste storage areas.

g. Respondent will provide a copy of the list of hazardous waste handled at the facility to the Paterson Army Hospital.

h. Respondent has completed formal hazardous waste training for civilians involved in handling of hazardous waste on February 4, 1986. Furthermore, training was scheduled for May 29, 1986 and will be conducted semi-annually thereafter.

i. Respondent reported that all activity employees have job titles and written position descriptions. Position descriptions describe the skills, education and other qualifications and duties.

j. Respondent has developed a written inspection schedule for all hazardous waste storage areas. Additionally, equipment and security devices are inspected daily at these areas.

k. Respondent is now providing immediate access to communications during the handling of hazardous waste by using hand held radios.

l. Respondent has cleaned up three spills of waste oil which were located at the demil storage area, behind Building C-15 and C-50 near the hazardous waste storage tank and container, respectively.

m. Respondent is now storing hazardous waste in sturdy, leakproof containers.

n. Respondent has segregated hazardous waste by waste type and compatibility.

o. Respondent has arranged all hazardous waste containers so that their identification labels are visible.

p. Respondent has initiated daily inspections of container storage areas.

CONSENT AGREEMENT

Based upon the foregoing, and the responsibility of Naval Weapon Station, Earle to implement and assure compliance with pollution standards, it is hereby agreed as follows:

1. Immediately upon receipt of the fully executed Agreement, Respondent shall:

a. Use and manage all containers so as to conform with N.J.A.C. 7:26-9.4(d)1, 2, 4, 5 and 7iii.

b. Familiarize the local hospital with the hazardous waste handled at the facility so as to comply with N.J.A.C. 7:26-9.6(f)4.

c. Make arrangements with other fire departments off-base which might provide support to the primary emergency authority so as to comply with N.J.A.C. 7:26-9.6(f)2.

d. Develop a contingency plan adequate to meet the requirements of N.J.A.C. 7:26-9.7(a) and (c).

e. Modify the contingency plan to describe agreements with local police departments, fire departments, hospitals, and state and local emergency response teams so as to comply with N.J.A.C. 7:26-9.7(e).

f. Modify the contingency plan to include a list of emergency equipment and the location throughout the facility of each item on the list so as to comply with N.J.A.C. 7:26-9.7(g).

g. Provide a copy of the contingency plan to local authorities so as to comply with N.J.A.C. 7:26-9.7(i)2.

h. Develop an adequate closure plan to address all RCRA regulated units so as to comply with N.J.A.C. 7:26-9.8.

i. Manage all waste which is in storage for incineration in accordance with the New Jersey Hazardous Waste Regulations, including proper storage, labelling and daily inspections.

j. Submit a revised Part A and Part B application for the EOD area. This area must be managed in accordance with N.J.A.C. 7:26-11.6(e) and other applicable sections of N.J.A.C. 7:26-1 et seq.

k. Hazardous waste shall only be stored for periods exceeding 90 days in the designated hazardous waste storage areas specified on the Part A application. Furthermore, any hazardous waste not stored in these areas will be properly labelled with accumulation dates.

l. Implement closure plan for the 2000 gallon underground hazardous waste storage tank when approved by the NJDEP.

m. Insure that all personnel involved with the handling of hazardous waste have job titles, descriptions related to hazardous waste activities, and the type and amount of hazardous training received.

2. Within 30 days of receipt of this fully executed Agreement, Respondent shall submit:

a. Letters of transmittal of the contingency plans which were sent to the local authorities.

b. The facility's closure plan.

c. A revised Part A or a closure plan for the EOD area.

d. Copies of inspection schedules/checklist for all hazardous waste units.

e. A copy of the roster of personnel who received hazardous waste training in February 1985.

f. A copy of documents which were forwarded to the hospital familiarizing it with the hazardous waste handled at the facility.

g. The facility's contingency plan.

i. A copy of the facility's inspection schedule for areas where the potential for spills or leaks of hazardous materials might occur.

h. An affidavit of compliance with all other violations noted during the October 8 and 11, 1985 RCRA inspections.

3. Respondent shall submit the above required information, notices, and documents to the following addressees:

Mr. Richard M. Walka

Chief, Solid Waste Branch

U.S. Environmental Protection Agency, Region II

26 Federal Plaza, Room 905

New York, New York 10278

Mr. John H. Skoviak  
Assistant Chief  
Compliance and Enforcement  
New Jersey Department of Environmental Protection  
120 Route 156  
Yardville, New Jersey 08620

Mr. Robert Hargrove  
Federal Facilities Coordinator  
U.S. Environmental Protection Agency, Region II  
26 Federal Plaza  
New York, New York 10278

4. In addition to submitting the revised Part A to the EPA, Respondent shall submit the revised Part A and closure plan to:

Mr. Ernie Kulhwein  
Acting Chief, Bureau of Hazardous Waste Engineering  
Division of Waste Management  
New Jersey Department of Environmental Protection  
8 East Hanover Street  
Trenton, New Jersey 08625

5. The Navy's activities under this Compliance Agreement shall be performed within the time limits set forth herein (including approved time schedules) unless performance is delayed by events which constitute a force majeure. For purposes of this Compliance Agreement a force majeure is defined as any event arising

from causes beyond the control of the Navy. In the event of a force majeure, the Navy shall be obligated to perform the affected activities within a time period which shall not exceed the time provided in this Compliance Agreement together with the period of delay attributed to the force majeure, provided, however, that no deadline shall be extended beyond a period of time that is reasonably necessary. The Navy shall notify the NJDEP and EPA in writing as soon as possible following the Navy's awareness that circumstances constituting a force majeure have occurred or are likely to occur. The burden of proving that a force majeure exists shall rest with the Navy.

6. This Compliance Agreement shall be fully enforceable in the New Jersey Superior Court having jurisdiction over the subject matter and the Navy, to the extent provided under §6001 of RCRA, and shall constitute an Administrative Order issued pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

7. Nothing in this Compliance Agreement shall prohibit, prevent or otherwise preclude the NJDEP from taking whatever legal action it deems appropriate to enforce the environmental protection laws of the State of New Jersey in any manner not inconsistent with the terms of this Compliance Agreement, and shall not prohibit, prevent or otherwise preclude the NJDEP from utilizing this Compliance Agreement in any subsequent administrative or judicial proceedings.

8. The EPA and the NJDEP reserve the right to require the Navy to implement additional corrective measures should the EPA or

NJDEP determine that such measures are necessary to protect the public health, safety and welfare or the environment.

9. The Navy agrees to request sufficient funds and/or authorizations from the Congress of the United States necessary to comply with the terms of this Agreement and all applicable pollution control standards. The schedules for implementing corrective measures set forth in this Agreement are fixed except to the extent that the Congress of the United States may fail to approve authorizations and/or budget requests for these activities. Steps to be taken in seeking funding shall be consistent with Sections 1-4 and 1-5 of E.O. No. 12088 as implemented by the Office of Management and Budget Circular A-106, as amended.

10. Failure to comply with the terms of this Compliance Agreement shall trigger the conflict resolution procedures of Section 1-602 of E.O. No. 12088. Under these procedures, EPA Region II will attempt to resolve anticipated or alleged non-compliance with, or other conflict arising pursuant to, this Agreement with the Navy in the first instance. A conflict which is unresolvable will be referred by EPA Region II to the EPA Office of External Affairs (OEA) for resolution of the dispute with your parent agency's Headquarter office. In the event that a resolution is not reached between OEA and the parent agency, the Administrator of EPA will request the Director of the Office of Management and Budget to resolve the conflict pursuant to Sections 1-602 and 1-603 of E.O. 12088, such conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

The Navy hereby consents to and agrees to comply with all the provisions of this Compliance Agreement.

U.S. DEPARTMENT OF THE NAVY

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_

By: \_\_\_\_\_

RONALD T. CORCORY  
Assistant Director  
Hazardous Waste Management and  
Enforcement  
Division of Waste Management

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: \_\_\_\_\_

By: \_\_\_\_\_

CONRAD SIMON  
Director  
Air & Waste Management Division  
U.S. Environmental Protection  
Agency - Region II

APPROVAL

The Regional Administrator of EPA Region II, concurs in the foregoing Compliance Agreement. The Agreement entered into by the parties is hereby approved and issued, effective immediately and in settlement of this proceeding.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Christopher J. Daggett  
Regional Administrator  
EPA - Region II



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 3 1985

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Carl J. Schafer, Jr.  
Director  
Environmental Policy  
Acquisition and Logistics  
Office of the Assistant Secretary of Defense  
Washington, D.C. 20301

Dear Mr. Schafer:

In your letter of July 25, 1985, you requested EPA concurrence on the proposed DoD policy regarding the applicability of the RCRA hazardous waste regulations to the demilitarization of military munitions. These are munitions which have not yet been used and which now may be recycled or disposed. Your request raises two issues: 1.) are such military munitions subject to RCRA prior to demilitarization and 2.) can DoD directives be applied in lieu of RCRA requirements for treatment, storage, and disposal of hazardous waste?

Military Munitions Subject to RCRA

RCRA Section 6001 requires federal facilities to comply with all Federal, State, and local laws pertaining to the management of hazardous waste. RCRA hazardous waste regulations apply from the time and at the point that the material (e.g., military munitions) becomes a hazardous waste. The identification of munitions subject to RCRA must be based on the definition of solid and hazardous waste as presented in 40 CFR Part 261.

Under 40 CFR §261.33, unused commercial chemical products become hazardous wastes only when discarded or intended for discard. Recycling (i.e., use, reuse, or reclamation) is ordinarily not considered to be a form of discard. Similarly, unused munitions ordinarily would not be considered to be wastes unless and until there is an intent to dispose or destroy them, and they would not be wastes when recycled in lieu of disposal. We thus agree that the mere assignment of munitions to the Special Defense Property Disposal Account does not automatically subject munitions to RCRA. It is not until DoD decides to handle the material in a manner which classifies it as a hazardous waste that its storage and transportation must be in accordance with RCRA rules.

You should be aware, however, that burning of these munitions in military deactivation furnaces is considered to be incineration because the main purpose of the activity is waste treatment. Likewise, storage of these wastes prior to incineration would also be considered management of a hazardous waste.

The DoD strategy for identifying those munitions subject to RCRA appears to be in accordance with the RCRA regulations with the exception of the exclusion of hazardous waste storage. Your letter states that military munitions are never waste until demilitarization occurs. We interpret "demilitarization," as used in the DoD policy, to encompass all activities regulated under the RCRA rules except storage. Once there is an intention to dispose or destroy munitions, their storage as well as transportation would be regulated since they are hazardous waste. Therefore, the storage and transportation of military munitions that are hazardous waste are subject to RCRA prior to demilitarization.

#### RCRA Applicability to DoD

Your letter suggests that because DoD directives provide adequate protection of human health and the environment and "conform" to RCRA requirements, that DoD facilities may comply with DoD directives in lieu of RCRA requirements. Our initial review of your directives indicates that in many respects, the DoD directives adequately address the corresponding RCRA requirements. However, we have also identified several deficiencies. For example, RCRA Subpart I §264.175 requires a containment system for container storage, whereas your directives do not. Under RCRA Subpart G §264.113, a closure plan is required for all hazardous waste facilities whether or not the facility plans to close. Your directives inaccurately state that this requirement does not apply.

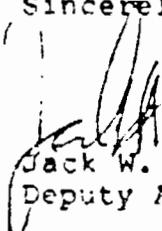
Enclosed is a checklist which identifies all of the RCRA regulations promulgated prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA or the "Amendments"). This checklist is used by the States during the State authorization review process to determine the equivalency of State standards to RCRA requirements. We believe the checklist will be useful to you, as a first step, to identify major omissions in the DoD directives when compared to EPA's "base" (pre-HSWA) program. Unlike State programs, however, the DoD directives must do more than achieve an equivalent level of environmental protection to EPA's program. DoD facilities must meet EPA's standards promulgated under RCRA, and thus the DoD Directives would need to be revised accordingly. We would be glad to help you determine whether specific parts of RCRA apply to DoD (e.g., closure requirements).

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We are currently revising the checklist to reflect the Amendments and we should be able to provide a copy of the draft revised checklist in approximately one month. The Amendments will primarily require additions to the checklist; however, a few of the current provisions of the checklist may also need to be revised slightly. Please contact Chaz Miller (382-2220) of the State Programs Branch, Office of Solid Waste, with regard to the use of the checklist and its revisions.

We are confident that the final DOD directives will facilitate the permitting of DOD facilities and should reduce the need for authorized States to impose requirements other than those prescribed in your current directives.

Sincerely yours,



Jack W. McGraw  
Deputy Assistant Administrator

Enclosure