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NWS EARLE
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LETTER INFORMING NWS EARLE MAY ASSERT BUSINESS CONFIDENTIALITY CLAIM
COVERING ALL OR PART OF REQUESTED INFORMATION NWS EARLE NJ
5/20/1987
U S EPA REGION II



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

MAY 20 1987

Demil

0922
0922/5/28
Please coordinate w/ 20 and prepare response to this letter by 12 June 87.
CO will sign out. I called Lech Terry + he said Joe Dye is his POC. Lech Terry says he can provide info to all questions except part of #5. THX
09

Dene
6/24

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Commander
Lieutenant ~~Colonel~~ Jeff Tubello
Public Works Officer
Earle Naval Weapons Station
Code 09
Colts Neck, New Jersey 07722

Reference No. 114-87-77

Dear Colonel Tubello:

Pursuant to Section 109 of Title I of the Clean Air Act, as amended, 42 U.S.C. §7401 et seq. (the Act), the Administrator of the United States Environmental Protection Agency (EPA) set National Ambient Air Quality Standards (NAAQS) for seven pollutants (sulfur oxides, particulate matter, hydrocarbons, nitrogen oxides, carbon monoxide, photochemical oxidants, and lead) determined to have an adverse effect on the public health and welfare. Pursuant to Section 110 of the Act, state implementation plans (SIPs) were developed by the States containing regulations designed to reduce emissions of the pollutants to the degree necessary to ensure attainment and maintenance of NAAQS. SIPs are submitted to EPA for approval, subject to the conditions of Section 110(a)(2) of the Act, and once approved, the regulations contained therein become federally enforceable.

Section 114 of the Act authorizes the EPA Administrator (or his duly authorized delegate) to require the submittal of certain information by emission sources to enable EPA to determine the compliance status of emissions sources with an applicable SIP, Section 111 of the Act, and the PSD regulations. As the owner and/or operator of the Earle Naval Weapons Station, located in Colts Neck, New Jersey, a source of air pollutant emissions subject to the regulatory requirements of NJAC 7:27-11, you are hereby required pursuant to the authority of Section 114 of the Act and subject to the sanctions set out in Section 113 of the Act (Attachment I), to submit the information called for in Attachment II.

This is to inform you that you may, if you so desire, assert a business confidentiality claim covering all or part of the information being requested. The claim may be asserted by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret", "proprietary" or "company confidential". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business and may be submitted separately to facilitate identification and handling by EPA. If you desire confidential treatment only until a certain date or until the occurrence

of a certain event, the notice should so state. Information covered by such claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in Subpart B, Part 2, Chapter I of Title 40 of the Code of Federal Regulations (40 CFR 2.201 et seq.). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you.

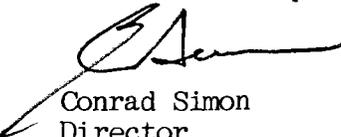
This information must be submitted within twenty (20) days of receipt of this letter to: ^{16 June 87}

Mr. Kenneth Eng, Chief
Air and Environmental Applications Section
Permits Administration Branch
Office of Policy and Management
Region II - Room 432
26 Federal Plaza
New York, New York 10278

Please include the above-cited Reference No. 114-86-77 in your response(s) to this information request. In addition, any change in the information must be reported no later than 5 days after such change occurs. This continuing requirement to provide notification of changes in the information covered by this letter will remain in effect until expressly terminated in writing by this office.

You may address any questions concerning this matter to Mr. Richard Koustas, Environmental Engineer, telephone number (212) 264-6099.

Sincerely yours,


Conrad Simon
Director
Air and Waste Management Division

Attachments

Attachment I

FEDERAL ENFORCEMENT

SEC. 113. (a) (1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b).

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 111(e) (relating to new source performance standards), 112(c) (relating to standards for hazardous emissions), or 119(g) (relating to energy-related authorities), or is in violation of any requirement of section 114 (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b).

(4) An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(5) Whenever, on the basis of information available to him, the Administrator finds that a State is not acting in compliance with any requirement of the regulation referred to in section 129(a)(1) of the Clean Air Act Amendments of 1977 (relating to certain interpretative regulations) or any plan provisions required under section 110(a)(2)(I) and part D, he may issue an order prohibiting the construction or modification of any major stationary source in any area to which such provisions apply or he may bring a civil action under subsection (b)(5).

(b) The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day of violation, or both, whenever such person—

(1) violates or fails or refuses to comply with any order issued under subsection (a); or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administration under subsection (a)(1) that such person is violating such requirement; or

(3) violates section 111(e),^{*} 112(c), section 119(g) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977), subsection (d)(5) (relating to coal conversion), section 320 (relating to cost of certain vapor recovery), section 119 (relating to smelter orders), or any regulation under part B (relating to ozone); or

(4) fails or refuses to comply with any requirement of section 114 or subsection (d) of this section; or

(5) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) has been made.

The Administrator may commence a civil action for recovery of any noncompliance penalty under section 120 or for recovery of any nonpayment penalty for which any person is liable under section 120 or for both. Any action under this subsection may be brought in the district court of the United States for the district in which the violation occurred or in which the defendant resides or has his principal place of business, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty and to collect any noncompliance penalty (and nonpayment penalty) owed under section 120. In determining the amount of any civil penalty to be assessed under this subsection, the court

^{*} The word "section" was apparently omitted following the comma.

shall take into consideration (in addition to other factors) the size of the business, the economic impact of the penalty on the business, and the seriousness of the violation. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought in any case where the court finds that such action was unreasonable.

(c)(1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administration under subsection (a)(1) that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order under section 119 or under subsection (a) or (d) of this section, or

(C) violates section 111(e), section 112(c), or

(D) violates any requirement of section 119(g) (as in effect before the date of the enactment of this Act, subsection (b)(7) or (d)(5) of section 120 (relating to noncompliance penalties), or any requirement of part B (relating to ozone),

shall be punished by a fine of not more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(3) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 302(c), any responsible corporate officer.

(d)(1) A State (or, after thirty days notice to the State, the Administrator) may issue to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order which specifies a date for final compliance with such requirement later than the date for attainment of any national ambient air quality standard specified in such plan if—

(A) such order is issued after notice to the public (and, as appropriate, to the Administrator) containing the content of the proposed order and opportunity for public hearing;

(B) the order contains a schedule and timetable for compliance;

(C) the order requires compliance with applicable interim requirements as provided in paragraph (5) (B) (relating to sources converting to coal), and paragraphs (6) and (7) (relating to all sources receiving such orders) and requires the emission monitoring and reporting by the source authorized to be required under sections 110(a)(2)(F) and 114(a)(1);

(D) the order provides for final compliance with the requirement of the applicable implementation plan as expeditiously as practicable, but (except as provided in paragraph (4) or (5)) in no event later than July 1, 1979, or three years after the date for final compliance with such requirement specified in such plan, whichever is later; and

(E) in the case of a major stationary source, the order notifies the source that, unless exempted under section 120(a)(2)(B) or (C), it will be required to pay a noncompliance penalty effective July 1, 1979, as provided under section 120 or by such later date as is set forth in the order in accordance with section 120(b)(3) or (g), in the event such source fails to achieve final compliance by July 1, 1976.

(2) In the case of any major stationary source, no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this Act. The Administrator shall determine, not later than 90 days after receipt of notice of the issuance of an order under this subsection with respect to any major stationary source, whether or not any State order under this subsection is in accordance with the requirements of this Act. In the case of any source other than a major stationary source, such order issued by the State shall cease to be effective upon a determination by the Administrator that it was not issued in accordance with the requirements of this Act. If the Administrator so objects, he shall simultaneously proceed to issue an enforcement order in accordance with subsection (a) or an order under this subsection. Nothing in this section shall be construed as limiting the authority of a State or political subdivision to adopt and enforce a more stringent emission limitation or more expeditious schedule or timetable for compliance than that contained in an order by the Administrator.

(3) If any source not in compliance with any requirement of an applicable implementation plan gives written notification to the State (or the Administrator) that such source intends to comply by means of replacement of the

facility, a complete change in production process or a termination of operation, the State (or the Administrator) may issue an order under paragraph (1) of this subsection permitting the source to operate until July 1, 1979, without any interim schedule of compliance: *Provided*, That as a condition of the issuance of any such order, the owner or operator of such source shall post a bond or other surety in an amount equal to the cost of actual compliance by such facility and any economic value which may accrue to the owner or operator of such source by reason of the failure to comply. If a source for which the bond or other surety required by this paragraph has been posted fails to replace the facility, change the production process, or terminate the operations as specified in the order by the required date, the owner or operator shall immediately forfeit on the bond or other surety and the State (or the Administrator) shall have no discretion to modify the order under this paragraph or to compromise the bond or other surety.

(4) An order under paragraph (1) of this subsection may be issued to an existing stationary source if—

(A) the source will expeditiously use new means of emission limitation which the Administrator determines is likely to be adequately demonstrated (within the meaning of section 111(a)(1)) upon expiration of the order,

(B) such new means of emission limitation is not likely to be used by such source unless an order is granted under this subsection,

(C) such new means of emission limitation is determined by the Administrator to have a substantial likelihood of—

(i) achieving greater continuous emission reduction than the means of emission limitation which, but for such order, would be required; or

(ii) achieving an equivalent continuous reduction at lower cost in terms of energy, economic, or nonair quality environmental impact; and

(D) compliance by the source with the requirement of the applicable implementation plan would be impracticable prior to, or during, the installation of such new means.

Such an order shall provide for final compliance with the requirement in the applicable implementation plan as expeditiously as practicable, but in no event later than five years after the date on which the source would otherwise be required to be in full compliance with the requirement.

(5) (A) In the case of a major stationary source which is burning petroleum products or natural gas, or both and which—

⁴ For repeal of section 116 and reference to this paragraph, see section 112(b) of Public Law 95-95 in appendix.

(i) is prohibited from doing so under an order pursuant to the provisions of section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such provisions, or

(ii) within one year after enactment of the Clean Air Act Amendments of 1977 gives notice of intent to convert to coal as its primary energy source because of actual or anticipated curtailment of natural gas supplies under any curtailment plan or schedule approved by the Federal Power Commission (or, in the case of intrastate natural gas supplies, approved by the appropriate State regulatory commission),

and which thereby would no longer be in compliance with any requirement under an applicable implementation plan, an order may be issued by the Administrator under paragraph (1) of this subsection for such source which specifies a date for final compliance with such requirement as expeditiously as practicable, but not later than December 31, 1980. The Administrator may issue an additional order under paragraph (1) of this subsection for such source providing an additional period for such source to come into compliance with the requirement in the applicable implementation plan, which shall be as expeditiously as practicable, but in no event later than five years after the date required for compliance under the preceding sentence.

(B) In issuing an order pursuant to subparagraph (A), the Administrator shall prescribe (and may from time to time modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions for each source to which such an order applies. Such limitations, requirements, and measures shall be those which the Administrator determines must be complied with by the source in order to assure (throughout the period before the date for final compliance established in the order) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

(C) The Administrator may, by regulation, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out this paragraph shall provide such systems to users thereof, if he finds, after consultation with the States, that priorities must be imposed in order to assure that such systems are first provided to sources subject to orders under this paragraph in air quality control regions in which national primary ambient air quality standards have not been achieved. No regulation under this subparagraph may impair the obligation of any contract entered into

before the date of enactment of the Clean Air Act Amendments of 1977.

(D) No order issued to a source under this paragraph with respect to an air pollutant shall be effective if the national primary ambient air quality standard with respect to such pollutant is being exceeded at any time in the air quality control region in which such source is located. The preceding sentence shall not apply to a source if, upon submission by any person of evidence satisfactory to the Administrator, the Administrator determines (after notice and public hearing)—

(i) that emissions of such air pollutant from such source will affect only infrequently the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time;

(ii) that emissions of such air pollutant from such source will have only insignificant effect on the air quality concentration of such pollutant in each portion of the region where such standard is being exceeded at any time; and

(iii) with reasonable statistical assurance that emissions of such air pollutant from such source will not cause or contribute to air quality concentrations of such pollutant in excess of the national primary ambient air quality standard for such pollutant.

(6) An order issued to a source under this subsection shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable.

(7) A source to which an order is issued under paragraph (1), (3), (4), or (5) of this subsection shall use the best practicable system or systems of emission reduction (as determined by the Administrator taking into account the requirement with which the source must ultimately comply) for the period during which such order is in effect and shall comply with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include—

(A) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and

(B) a requirement that the source comply with the requirements of the applicable implementation plan during any such period insofar as such source is able to do so (as determined by the Administrator).

(8) Any order under paragraph (1) of this subsection shall be terminated if the Administrator determines on the record, after notice and hearing, that the inability of the source to comply no longer exists. If the owner or operator of the source to which the order is issued demon-

strates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under this subsection.

(9) If the Administrator determines that a source to which an order is issued under this subsection is in violation of any requirement of this subsection, he shall—

(A) enforce such requirement under subsections (a), (b), or (c) of this section,

(B) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

(C) give notice of noncompliance and commence action under section 120, or

(D) take any appropriate combination of such actions.

(10) During the period of the order in effect under this subsection and where the owner or operator is in compliance with the terms of such order, no Federal enforcement action pursuant to this section and no action under section 304 of this Act shall be pursued against such owner or operator based upon noncompliance during the period the order is in effect with the requirement for the source covered by such order.

(11) For the purposes of sections 110, 304, and 307 of this Act, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

(12) Any enforcement order issued under subsection (a) of this section or any consent decree in an enforcement action which is in effect on the day of enactment of the Clean Air Act Amendments of 1977 shall remain in effect to the extent that such order or consent decree is (A) not inconsistent with the requirements of this subsection and section 119 or (B) the administrative orders on consent issued by the Administrator on November 5, 1975 and February 26, 1976 and requiring compliance with sulfur dioxide emission limitations or standards at least as stringent as those promulgated under section 111. Any such enforcement order issued under subsection (a) of this section or consent decree which provides for an extension beyond July 1, 1979, except such administrative orders on consent, is void unless modified under this subsection within one year after the enactment of the Clean Air Act Amendments of 1977 to comply with the requirements of this subsection.

INSPECTIONS, MONITORING, AND ENTRY

SEC. 114. (a) For the purpose (i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard of performance under section 111, or any emission standard under section 112^{*} (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this Act (except a provision of title II with respect to a manufacturer of new motor vehicles or new motor vehicle engines) —

(1) the Administrator may require any person who owns or operates any emission source or who is subject to any requirement of this Act (other than a manufacturer subject to the provisions of section 206(c) or 208) with respect to a provision of title II to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information, as he may reasonably require; and

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises of such person or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment and method required under paragraph (1), and sample any emissions which such person is required to sample under paragraph (1).

(b) (1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section.

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Any records, reports, or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or in-

* A comma was apparently omitted following "section 112."

formation or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

(d) (1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 113(d), before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) with respect to such standard, limitation, or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 110(c).

(2) Nothing in paragraph (1) shall be construed to provide that any failure of the Administrator to comply with the requirements of such paragraph shall be a defense in any enforcement action brought by the Administrator or shall make inadmissible as evidence in any such action any information or material obtained notwithstanding such failure to comply with such requirements.

ATTACHMENT II

All questions refer to the Demilitarization Furnace (Demil) at the Naval Weapons Station, Earle, located in Colts Neck, New Jersey.

1. For the past year, identify each type of ammunition you have burned in the demilitarization furnace. For each type give the full name, any abbreviation or code, the feed rate and retaining time.
2. Which of these identified above do you believe burns the cleanest and why?
3. Which do you believe burns the dirtiest and why?
4. For the past year, provide an operating schedule for the Demil furnace. Include the number of days of operation, the date, the hours for each day, what was demil'd, quantities of each, and the time it took to burn.
5. Provide a copy of the standard operating procedure for the furnace. Include a schematic of the operation and air pollution control equipment; operation parameters such as temperatures, pressures, etc., and if there are any permanent records of these such as a strip chart. Also, provide an explanation of under what condition the air pollution control equipment is bypassed.
6. Provide a schedule of munitions which are planned to be fed into the furnace for the 3 months following receipt of this letter. Include quantities of each.

Please note that the EPA will request that you perform a stack test on all emission points identified in Attachment II and that this information will be used to define representative conditions.