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LETTER TRANSMITTING DRAFT CONSENT ORDER HW-524-96 ABL ROCKET CENTER WV
11/1/1996
WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION



DIVISION OF ENVIRONMENTAL PROTECTION
1356 Hansford Street
Charleston, WV 25301-1401

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI McCOY, Ph.D.
DIRECTOR

November 1, 1996

Mr. David Shepherd,
Asst. Counsel
Naval Facilities Engineering CMD
Atlantic Division
1510 Gilbert Street
Norfolk, VA 23511

Certified Mail
Return Receipt Requested

Dear Mr. Shepherd:

Enclosed is Draft Consent Order HW-524-96 proposed by the Chief of the Office of Waste Management as a settlement for violations of the West Virginia Hazardous Waste Management Regulations and the West Virginia Code.

If you need assistance or have questions concerning the terms of Consent Order HW-524-96, please contact me at (304) 558-2505.

Sincerely,

A handwritten signature in black ink that reads "Mark E. Kees".

Mark E. Kees
Environmental Resource
Specialist III

MEK/raf

Enclosed Order

cc: H. Michael Dorsey, CME Asst. Chief
Stan Moskal, Inspector Supervisor
Joyce Moore, Inspector
Tom Bass, SIR Section
EPA Region III

Office of Waste Management, Compliance Monitoring and Enforcement
Telephone: (304) 558-2505 Fax: (304) 558-0256 TDD: 1-800-422-5700



DIVISION OF ENVIRONMENTAL PROTECTION

1356 Hansford Street
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ORDER

ISSUED UNDER THE

HAZARDOUS WASTE MANAGEMENT ACT

WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18

ORDER NUMBER HW-524-96

TO: Mr. David Shepherd,
Assistant Counsel
Naval Facilities Engineering CMD
Atlantic Division
1510 Gilbert Street
Norfolk, VA 23511

WVD0170023691

ATTENTION: MR. DAVID SHEPHERD:

This Order is issued by the Director of the West Virginia Division of Environmental Protection through his authorized representative, the Chief of the Office of Waste Management (hereinafter, "Chief"), under the authority of the West Virginia Code, as amended (hereinafter, the "Code"), Chapter 22, Article 18, Sections 8 and 15 to the Department of the Navy (hereinafter, "Navy"). The Director has adopted and incorporated by reference the applicable Sections of 40 CFR, Parts 260 through 279 into the West Virginia Hazardous Waste Management Regulations (hereinafter, the "Regulations").

BASIS FOR ORDER

Allegheny Ballistics Laboratory (hereinafter, "ABL"), is a government-owned, contractor-operated facility and a permitted Treatment, Storage and Disposal facility, United States Environmental Protection Agency identification number WV0170023691. The facility is located on State Route 956, Rocket Center, West Virginia. ABL is owned by the Department of the Navy (hereinafter, the "Navy") and is currently operated by Alliant Techsystems, Inc. ABL was formerly operated by Hercules Aerospace Corporation (hereinafter, "Hercules") prior to a merger and subsequent name change in 1995. Navy is a "Person" by definition, in accordance with 40 CFR 260.10 and Chapter 22, Article 12, Section 3 of the Code.

During the time period 1964-1975, Hercules generated and disposed of wastes in a landfill approved for Beryllium disposal only. The landfill is owned by the Navy and was operated by Hercules. The WVDNR ordered Hercules to excavate and remove the contents of the landfill in June 1980. In a letter dated December 1, 1980, Hercules requested an extension to comply with the directed removal. The letter also discussed the possibility of Navy involvement under the Installation Restoration Program, then referred to as the Navy Assessment and Control of Installation Pollutants Program. An assessment study conducted by the Navy in 1982 identified the Beryllium landfill as Site 7. The contents were eventually excavated and containerized in roll-offs in July 1994 by OHM Remediation Services Corporation (OHM) under the direction of the Navy. The activity produced a unique combination of D003 propellant/explosive waste, vials of P015 Beryllium powder, and U151 Mercury. When disposal of the RCRA hazardous waste was attempted, it was discovered that the waste could not be treated without segregation. The containerized material remained at Site 7 until January 1995. However, the roll-offs of hazardous waste were not segregated for disposal, and remained stored on site. The Navy, as directed by the State, then moved the roll-offs to more secure temporary storage site within a monitored area of the facility. The Navy submitted the Final Work Plan/Soil Segregation and Analysis Plan (hereinafter, the "Plan") to the Office of Waste Management on July 18, 1995. The Plan was prepared for the Navy by OHM.

On July 9, 1996 a joint inspection was conducted at Alliant by representatives of the Office of Air Quality and of the Office of Waste Management. As a result of that inspection and in support of this Order, the Chief hereby finds the following:

1. Navy stored hazardous waste (roll-off containers holding soils/debris containing D003 propellant and/or explosives, vials of P015 Beryllium powder, and vials of U151 Mercury) on-site for greater than 90 days, in violation 40 CFR 262.34(a), as referenced by Section 5.1 of the Regulations and 22-18-8 of the Code.
2. Navy failed to clearly label or mark each container (roll-off) of hazardous waste with the words "Hazardous Waste," in violation of 40 CFR 262.34(a)(3) as referenced by Section 5.1 of the Regulations.
3. Navy failed to clearly mark each container holding hazardous waste with the date upon which each period of accumulation begins, in violation of 40 CFR 262.34(a)(2), as referenced by Section 5.1 of the Regulations.

REQUIREMENTS OF ORDER

Now, therefore, in accordance with Chapter 22, Article 18, Sections 8 and 15 of the Code, it is hereby agreed between the parties and **ORDERED** by the Chief as follows:

1. Navy shall immediately **Cease and Desist** the on-site storage of hazardous waste in excess of ninety days , and come into full compliance with 40 CFR 264.1 and Section 8 of the Code.
2. Immediately upon receipt of the analytical test results of the Plan described in the Basis for Order involving the segregated material and prior to disposal, Navy shall submit copies of those results to **OWM/SIR** for review and comment.
3. Within 45 day of receipt of the analytical results described above, Navy shall lawfully dispose of or ship off-site all and any containerized wastes associated with the disposal activities described in Section 6.0 ("Disposal") of the Plan. Navy shall furnish **OWM/SIR** with a summary of all remedial activities, to include legible copies of all hazardous waste manifests and other pertinent shipping papers associated with the remedial activities.

Sites 1, 7, 10 and 11 described in item numbers 4 thru 7 have been designated for CERCLA response and shall be implemented under the provisions, rules and regulations pursuant to that Act.

4. The Navy shall implement the approved Remedial Action pursuant to the Record of Decision (hereinafter, the "ROD") for the Site 1 groundwater treatment no later than July 1, 1997.
5. The Navy shall submit a plan (hereinafter, "Work Plan") to **OWM/SIR** for review and approval to a) confirm the effectiveness of the excavation activity conducted at Site 7 and b) install groundwater monitoring wells in the vicinity of Site 7 (one upgradient and two downgradient wells). Navy shall implement the approved Work Plan no later than July 1, 1997.
6. The Navy shall implement the approved Remedial Action pursuant to the ROD for the Site 10 groundwater treatment no later than December 31, 1997.
7. The Navy shall complete a remedial investigation (RI) at Site 11, F well, no later than December 31, 1997.
8. The terms/requirements and project milestones described herein shall be incorporated into the final Site Management Plan of the Federal Facilities Agreement as *enforceable deadlines*.
9. For the violations cited in the Basis for Order, Navy owes a total administrative settlement of \$217,600.00 (two hundred, seventeen thousand and six hundred dollars). This settlement amount was calculated by the use of daily penalties incurred by Navy for the time period July 19, 1995 thru July 9, 1996 (356 days).
10. The Chief agrees to hold the total amount of the administrative settlement in abeyance for a period of one year from the effective date of this Order.

11. Navy shall forfeit the amount of \$217,600.00 (two hundred, seventeen thousand and six hundred dollars) held in abeyance during that one year period upon written notification from a representative of the Chief that Navy has experienced a recurrence of any of the violations cited in the Basis for Order, or violated any term or condition of this Order as described in these Requirements. At the termination of that one year period, Navy may retain the amount of \$217,600.00 (two hundred, seventeen thousand and six hundred dollars) held in abeyance if Navy has not allowed a recurrence of any of the violations cited herein or has not violated any term or condition set forth in this Order.
12. If any event occurs which causes delay in the achievement of the requirements of this Order, Navy shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence. Within two working days after Navy becomes aware of such a delay, it shall notify the Chief orally and shall, within seven working days of oral notification to the Chief, notify same in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which Navy intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Navy, the time established for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

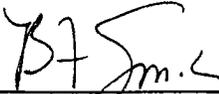
GENERAL PROVISIONS

1. The Chief reserves all rights and defenses which he may have pursuant to any legal authority as well as a right to raise, as a basis for supporting such legal authority or defenses, facts other than those enumerated in the Basis for Order.
2. Navy hereby waives its rights to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 of the Code. Under this Order, Navy agrees to undertake all actions required by the terms and conditions of this Order and consents to and will not contest the Chief's jurisdiction regarding this Order. However, Navy does not admit to any factual and legal determination made by the Chief in this Order and reserves all rights and defenses available regarding liability and responsibility in any proceedings regarding the facility, other than proceedings, either administrative or civil, to enforce this Order.
3. This Order becomes effective on the date indicated and shall terminate upon notification from the Chief that Navy has fulfilled the requirements as set forth in the Requirements of Order.

11 | 12 | 96

Effective Date

Department of the Navy



B. F. Smith, P.E.
Chief
Office of Waste Management

ADMINISTRATIVE SETTLEMENT CALCULATION MATRIX

Each of the factors, Potential for Harm and Extent of Deviation from the requirement, forms one of the axes of the administrative settlement calculation matrix. The matrix has nine cells, each cell contains an administrative settlement range. The specific cell is chosen after determining which category (major, moderate, or minor) is appropriate for the Potential for Harm factor, and which category is appropriate for the Extent of Deviation factor.

The lowest cell (minor Potential for Harm, minor Extent of Deviation) contains a maximum administrative settlement of \$499. The highest cell (major Potential for Harm, major Extent of Deviation) is limited by the maximum statutory administrative settlement allowance of \$25,000 per day for each violation. The complete matrix is illustrated below. The administrative settlement amounts are based on EPA Guidelines.

		EXTENT OF DEVIATION		
		MAJOR	MODERATE	MINOR
POTENTIAL FOR HARM	MAJOR	\$25,000 TO \$20,000	\$19,999 TO \$15,000	\$14,999 TO \$11,000
	MODERATE	\$10,999 TO \$8,000	\$7,999 TO \$5,000	\$4,999 TO \$3,000
	MINOR	\$2,999 TO \$1,5000	\$1,499 TO \$500	\$499 TO \$100

**VIOLATIONS SUMMARY
FOR
ALLIANT TECHSYSTEMS, INC.**

Violation	Potential	Deviation	Amount
1. Storage > 90 Days Without a Permit, 40 CFR 264.1, Section 8 Code	Minor/ <i>Daily</i>	Major/ <i>Daily</i>	<i>\$600.00/Day</i>
2. Containers Not Labeled, 40 CFR 262.34(a)(3), Section 5.1 Regulations	Minor	Major	\$2,000.00
3. No Accumulation Date, 40 CFR 262.34(a)(2) Section 5.1 Regulations	Minor	Major	\$2,000.00
Total Amount Due:			\$217,600.00
Total Amount Held in Abeyance:			\$217,600.00
Total Amount Due to the West Virginia Hazardous Waste Management Fund:			\$-0-