

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION VIII

IN THE MATTER OF:)

ROCKY FLATS)
ENVIRONMENTAL)
TECHNOLOGY SITE)
Golden, Colorado)

U.S. DEPARTMENT OF ENERGY)
EG&G ROCKY FLATS, INC.)

Respondents.)

COMPLIANCE ORDER ON
CONSENT

DOCKET NO. TSCA October 18, 1994

I. PARTIES

1. The parties to this Compliance Order on Consent ("Order") are the United States Environmental Protection Agency Region VIII ("EPA"); the United States Department of Energy, including the United States Department of Energy at the Rocky Flats Office ("DOE"); and EG&G Rocky Flats, Inc. ("EG&G").

II. JURISDICTION

2. This Order is issued pursuant to the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.* ("TSCA"), and Executive Order 12088 as applicable to DOE and Federal regulations promulgated pursuant to TSCA.

3. For purposes of entry and enforcement of this Order, DOE and EG&G waive any objection to the jurisdiction of EPA.

4. By entering into this Order, DOE does not waive any claim of sovereign immunity it may have under Federal law that is not expressly waived by statute; nor does it waive any immunity from payment of fines or penalties or any claim of jurisdiction over matters reserved to it under the Atomic Energy Act, 42 U.S.C. § 2011, *et seq.* ("AEA").

III. INTRODUCTION

5. The regulations at 40 C.F.R. § 761.65 (a), require polychlorinated biphenyl ("PCB") containers stored for disposal to be removed from storage and disposed within one year of being placed into storage.

6. The regulations at 40 C.F.R. § 761.65 (b)(1)(ii), require the floors of facilities used for storage of PCB containers designated for disposal to have a continuous six inch curb.

7. This Order is entered into by the Parties because DOE and EG&G have determined that:

- (a) radioactive wastes generated at the Rocky Flats Environmental Technology Site ("RFETS") which also contain PCB wastes cannot be removed from storage and disposed within one year of being placed into storage due to the lack of disposal capacity for such wastes; and,

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- (b) certain radioactive PCB waste storage facilities at RFETS use secondary containment in lieu of the required six inch curb because nuclear criticality safety requirements prohibit the use of such curbs for storage areas for these wastes.

8. As set forth in this Order, DOE and EG&G shall provide an annual inventory of PCB containers in storage for disposal, provide an annual report regarding the status of treatment and disposal technologies which may be applicable to PCB's in containers in storage for disposal, and provide secondary containment for certain PCB containers without required six inch curbs and keep records of their inspection.

IV. COVERED MATTERS

9. Except as specifically set forth elsewhere in this Order, this Order shall apply only to the TSCA one year storage for disposal and six inch curb requirements as set forth in paragraphs 5 and 6 herein pertaining to past, on-going and future accumulation and storage at RFETS of the PCB waste component of:

(a) containers *and articles* of radioactive wastes managed as radioactive wastes by DOE under the Atomic Energy Act which also contain PCB wastes subject to TSCA;

(b) containers *and articles* of radioactive wastes managed as radioactive wastes by DOE under the Atomic Energy Act which also contain PCB wastes subject to TSCA and hazardous wastes subject to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and the Federal Facility Compliance Act of 1992, ("FFC Act") 42 U.S.C. § 6901 *et seq.* (hereinafter referred to as "RCRA"), and/or the Colorado Hazardous Waste Act, CRS Sections 25-15-101 *et seq.*, as amended ("CHWA"), and federal and state regulations promulgated pursuant thereto; and,

~~(c) containers of PCB wastes subject to TSCA which, because of their point of generation at RFP within Radioactive Materials Management Areas ("RMMA's") cannot be disposed using available capacity unless and until these wastes are verified to be free of radioactive contamination.~~

These wastes are referred to herein as "covered PCB wastes."

10. The parties acknowledge that this Order does not address waste generation, accumulation, storage or disposal, or corrective or remedial action for any component of covered PCB wastes subject to RCRA, CHWA or the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), or any Compliance Order or Agreement pursuant thereto, nor does this Order address TSCA compliance issues other than those compliance issues specifically addressed herein.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. The following constitute the Findings of Fact and Conclusions of Law that EPA considers the basis for this Order. By entering into this Order, DOE and EG&G do not admit, accept or concede the determinations, allegations, findings of fact, and conclusions of law set forth in this Order, and each specifically reserves the right to contest any such determinations, allegations, findings of fact, and conclusions of law in any proceeding, other than in actions brought to enforce this Order.

(a). The RFETS, *which was formerly known as the Rocky Flats Plant*, is located in northern Jefferson County, Colorado, approximately 16 miles northwest of Denver.

(b). The *RFP Rocky Flats Plant* was established by the United States Atomic Energy Commission in 1951 and began operations in 1952. The *RFP Rocky Flats Plant* ~~was has been used for the production of components for nuclear weapons in accordance with DOE's authority and responsibility under the Atomic Energy Act , 42 U.S.C. § 2011 et seq., The RFP's present mission is to perform transition activities to ensure that facilities are in a safe and stable shutdown condition pending decontamination and decommissioning and/or economic development. In 1994 the site's mission changed from the production of nuclear weapons components to waste management, site cleanup and conversion to beneficial uses.~~

(c). The RFETS is a government owned and operated, contractor co-operated facility.

(d). The RFETS is owned by the United States and is part of the DOE nuclear weapons complex.

(e). DOE is an agency of the Federal government and is subject to regulation of PCB's pursuant to TSCA, 15 U.S.C. § 2619 (a)(1).

(f). EG&G Rocky Flats, Inc., a Colorado corporation, is a management and operating contractor for DOE and has been the contractor for RFETS since January 1, 1990, under Contract DE-AC04-90DP62349 and as such has certain responsibilities for PCB waste management activities at RFETS.

(g). Pursuant to 40 C.F.R. § 761.65 (a), PCB containers stored for disposal must be removed from storage and disposed within one year of being placed in storage.

(h). By letter from M.S. Karol to R. Duprey (93-DOE-01542), dated March 9, 1993, and by letter from R. M. Nelson to J. McGraw (93-DOE-02237), dated March 12, 1993, DOE brought to EPA's attention that covered PCB wastes at RFETS are being stored beyond one year of being placed in storage for disposal in non-compliance with 40 C.F.R. § 761.65 (a). DOE also brought to EPA's attention that additional covered PCB wastes are likely to be generated at RFETS which will remain in storage beyond one year of being placed in storage for disposal.

(i). Pursuant to 40 C.F.R. § 761.65 (b)(1)(ii), PCB containers stored for disposal must be stored in a facility having a floor which has a continuous curbing with a minimum six inch high curb.

(j). By letter from R. M. Nelson to J. J. Scherer (90-DOE-6309), dated May 24, 1990, DOE brought to EPA's attention that covered PCB wastes which also meet the definition of fissile nuclear material in the RFETS "Nuclear Material Safety Manual", Document NS-100 ("NS-100") are prohibited from being surrounded by a six inch curb based upon nuclear criticality safety requirements. EPA was informed in this letter that RFETS is using secondary storage containers ("overpacks") to store containers of covered PCB wastes which are prohibited from being surrounded by a six inch curb. EPA, by letter from I. L. Dickstein to R.M. Nelson (8AT-TS), dated August 15, 1990, allowed the use of overpacks for these covered PCB wastes, subject to specific requirements for

inspection, replacement of any observed leaking storage containers and clean-up of spills, if any, from such leaks, and written records.

VI. ORDER

12. DOE and EG&G shall comply with the following requirements.

(a). *Sixty days after the effective date of this Order, and each September 1 thereafter* Every ~~insert date~~ after the effective date of this Order, DOE and EG&G shall submit an Annual Report to EPA for review and comment. The Annual Report shall contain the following parts.

(1). INVENTORY REPORT. The Inventory Report shall contain the PCB Annual Document Log prepared pursuant to 40 C.F.R. § 761.180 and shall also contain the following information:

- (i). an identification and description of covered *PCB* wastes, including process information used for waste identification, when the waste was placed in storage, radioactivity type (*i.e.*, ~~generated in RMMA but potentially non-radioactive requiring verification as non-radioactive~~, low level waste, or transuranic waste) and physical form (e.g., solid, liquid, sludge);
- (ii). the quantity of waste identified and described;
- (iii). the physical storage location at RFETS and size and type of storage container;
- (iv). an assessment of the compliance status of the storage methods under applicable regulations;
- (v). identification of covered waste future generation rates, an estimate of the storage capacity, and when storage capacity will be reached, including an identification of the bases and assumptions used in making such estimates; and
- ~~(vi). the projected schedule and status of verification activities related to covered wastes generated in RMMA's but potentially non-radioactive requiring verification as non-radioactive.~~
UNRESOLVED ISSUE — SCHEDULE FOR SHIPPING SUCH WASTES FOR DISPOSAL.

(2). COMPREHENSIVE TREATMENT REPORT. This part shall provide the following information with respect to covered PCB wastes:

- (i) treatment and disposal alternatives authorized and/or required by the then current applicable regulations and treatment capacity needed to remove for disposal the existing stored and anticipated future generated covered *PCB* wastes;
- (ii) an analysis regarding whether and when any current or known projected commercial or DOE capacity is or will be available to remove covered PCB wastes for disposal ;

(iii) a description of alternate technologies that are in development to allow removal of covered PCB wastes for disposal, and an estimate of when such technologies may be available.

(b). Covered PCB wastes which are subject to the six inch curb prohibition pursuant to the requirements of NS-100 shall be stored in overpacks pursuant to the conditions of the aforementioned August 15, 1990 EPA letter, as follows:

- (1). covered PCB wastes in 55 gallon capacity U.S. Department of Transportation ("DOT") specification 17C drums shall be stored in 83 gallon capacity, DOT specification 17C overpack drums;
- (2). overpack drums shall be opened and inspected quarterly;
- (3). written inspection records shall be maintained, giving the date of the inspection, the name of the inspector and whether or not any leaks are observed;
- (4). if leaks are observed, the leaking drum must be replaced within 48 hours and the leaked PCB's must be cleaned up and stored for disposal in overpacks; and,
- (5). a description of the cleanup and storage for disposal must also be part of the written record.

VII. PROJECT MANAGERS

13. Within ten (10) days of the effective date of this Order, EPA, DOE and EG&G shall each designate a Project Manager. The Parties shall each notify the other Parties in writing of the Project Manager they have selected. Each Project Manager shall be responsible for overseeing the implementation of this Order. Any Party may change its designated Project Manager by notifying the other Parties, in writing, ten (10) days before the change, to the extent possible. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Order shall be directed through the Project Managers. Each Project Manager shall be responsible for assuring that all communication from the other Parties and Project Managers is appropriately disseminated to that responsible Project Manager's organization.

14. The Project Managers shall meet upon a schedule mutually agreeable to the Project Managers, but not less frequently than annually to discuss progress and problems relating to the compliance requirements under the Order. As a requirement of the agenda for each meeting, EPA shall notify DOE and EG&G of all potential problems or issues they have identified regarding compliance with this Order; DOE and EG&G shall notify EPA of all potential issues or problems regarding compliance with this Order. Additionally, the status of the resolution of any previously identified problems or issues of compliance shall be provided and discussed.

15. Draft meeting minutes shall be prepared by EG&G and provided to the other Parties within fourteen (14) days of the meeting.

VIII. NOTIFICATION

16. Unless otherwise specified, one copy of the Annual Report required by this Order, or any notice or notification required to be made or given by any Party under this Order shall be sent to the Project Managers at the addresses stated below by certified mail or hand delivery, with written acknowledgment of receipt.

PCB COORDINATOR
TOXIC SUBSTANCES CONTROL BRANCH
US EPA REGION VIII
999 18TH STREET, SUITE 500
DENVER, COLORADO 80202-2405

PCB PROJECT MANAGER, WASTE PROGRAMS DIVISION
US DOE ROCKY FLATS ENVIRONMENTAL TECHNOLOGY CENTER
BOX 928
GOLDEN, COLORADO 80402-0928

PCB PROJECT MANAGER, E&WM
EG&G ROCKY FLATS, INC.
BOX 464
GOLDEN, COLORADO 80402-0464

IX. SUBMITTAL AND REVIEW OF ANNUAL REPORT

17. The Annual Report shall be submitted by DOE to EPA so that EPA receives it not later than the date established pursuant to this Order.

18. EPA will review the Annual Report and will consult with DOE and EG&G as necessary. Oral comments made during these discussions shall not require a written response by the Parties.

X. ENFORCEABILITY

19. DOE and EG&G recognize their obligation to comply with TSCA as established by 15 U.S.C. § 2601, *et seq.*, Executive Order 12088 as applicable to DOE and Federal regulations promulgated pursuant to TSCA. EPA shall have the right to take enforcement action against DOE or EG&G to enforce the requirements in Section VI (Order). Except as set forth in this order, DOE and EG&G reserve the right to raise any defenses each may have, whether procedural or substantive, in law or in equity to such enforcement action.

XI. EXTENSIONS

20. Extensions of time to perform activities and to achieve schedules required by this Order shall be granted, for good cause which includes force majeure, upon a timely submission of a request by DOE and EG&G. A "force majeure" is defined as any event or circumstance arising from causes beyond the reasonable control of a Party which cannot be overcome by due diligence and that causes a delay in or prevents the performance of any obligation under this Order. In the event of a force majeure that, in DOE's and EG&G's opinion, necessitates revision of the requirements of this Order, DOE and EG&G shall bear the burden of proof that the event is or was a force majeure.

XII. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

21. EPA recognizes that DOE and EG&G are currently storing and will continue to generate and store the covered PCB wastes which are described in Section IV (Covered Matters) in excess of the one year limitation and for certain of the covered PCB wastes in storage areas not in compliance with the curb requirements of the PCB regulations and that DOE and EG&G have agreed to address the continued storage of covered PCB wastes as set forth in this Order. Based upon the aforementioned facts and circumstances and upon other facts and circumstances known to EPA and set forth in this Order, as of the effective date of this Order and during its term, the Parties agree that so long as DOE and EG&G are in full compliance with the provisions herein EPA shall not refer the subject matters covered by the Order to the Department of Justice and this Order shall operate in lieu of any administrative or civil action by EPA against DOE or its officers or employees, or against EG&G Rocky Flats, Inc., its parent corporation, EG&G Inc., and their respective corporate officers, directors and employees, for storage for disposal of covered PCB wastes in excess of the one year limitation and for storage of certain of the covered PCB wastes in storage areas not in compliance with the curb requirements of the PCB regulations.

22. Except as otherwise set forth in this Order, each party expressly reserves all other rights and defenses each may have, whether procedural or substantive, in law or in equity, with respect to any other party to this Order and with respect to any person not a party to this Order.

23. In the event that EG&G is unable to comply with a requirement of this Order due to a lack of timely or adequate funding under its contract with DOE, it is agreed that EG&G shall not be required to provide funding itself, or obtain funding from other sources in order to complete performance. DOE and EG&G shall bear the burden of proving that the lack of funding is due to factors beyond the control of EG&G.

XIII. COMPLIANCE WITH APPLICABLE LAWS

24. All actions required to be taken pursuant to this Order shall be taken in accordance with the requirements of all applicable Federal and State laws and regulations. All parties acknowledge that such compliance may affect schedules to be performed under this Order. Extensions of schedules, when necessary, shall be provided in accordance with Section XIII (Extensions).

XIV. AMENDMENT AND TERMINATION

25. This Order shall terminate three years from the effective date of this Order. *Upon the effective date of any agreement or order entered into by DOE Headquarters and EPA Headquarters (hereinafter referred to as a "national covered PCB waste agreement") which addresses the storage of covered PCB wastes, or* Upon the effective date of any amendment to TSCA, or upon the publication in the Federal Register of a *change to* any of its implementing regulations, which allow covered PCB wastes to be stored for a period longer than the remaining term of this Order, the parties agree to meet and negotiate in good faith the amendment of any provision of this Order or to terminate this Order, as appropriate, based upon the substantive provisions of the *national covered PCB waste agreement*, amended law or implementing regulation.

26. This Order may be amended, including extending or shortening its term, at any time prior to its termination. The Parties agree, subject to relevant considerations, including the facts, circumstances, and status of DOE's and EG&G's compliance with this

analysis and handling, monitoring, record keeping and reporting, and related covered waste management activities other than those described above as within DOE's sole responsibility and as governed by the decisions made by DOE.

33. In addition to the procedures set forth in Section VII (Project Managers), if any situations arise which appear likely to result in a Notice of Noncompliance ("NON"), Compliance Order, or an assessment of penalties related to compliance by DOE and EG&G with the terms of this Order, the Parties shall, as soon as practicable, use their best efforts to provide written notice of the circumstances of the controversy by the Parties to each of their upper line management. The DOE and EG&G Project Managers shall be notified by EPA in accordance with Section VIII (Notification) regarding any proposed NON or Compliance Order. This notification shall effect an "early warning system" and shall set out the facts and circumstances which are the basis for the proposed NON or Compliance Order. Thereafter, the pertinent upper management for the Parties shall use their best efforts to assist in resolution of the situation.

XVIII. EFFECTIVE DATE

34. This Order shall become effective upon execution by authorized representatives of EPA, EG&G and DOE. In the event that authorized representatives of EPA, EG&G and DOE do not execute the Order on the same day, the Order shall become effective upon the date when the last party affixes its signature to the Order.

THE PARTIES SO AGREE:

U.S. Environmental Protection Agency
Region VIII

Date

Mark N. Silverman
Manager
U.S. Department of Energy
Rocky Flats Office

Date

Anson Burlingame
President
EG&G Rocky Flats, Inc.

Date

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