

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

US Army Corps of Engineers,
Chemistry and Material Quality Assurance
Laboratory
420 South 18th Street
Omaha, Nebraska

EPA ID No. NE7210890029

ANSWER TO THE COMPLAINT

Docket No. RCRA-07-2006-0233

Respondent

Proceeding under Section
3008(a) and (g) of the Resource
Conservation and Recovery Act,
As amended 42 U.S.C. §6928(a) and (g).

I. PRELIMINARY STATEMENT

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928 (a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), Title 40 Code of Federal Regulations (C.F.R.) Part 22.

2. The Complainant is the Chief of the RCRA Enforcement & State Programs Branch of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency (EPA), Region 7, who has been duly delegated the authority to bring this action. The Respondent is the United States Army Corp of Engineers, Chemistry and Materials Quality Assurance Laboratory, a federal facility, owned and operated by the United States Army Corp of Engineers as a quality assurance laboratory in the State of Nebraska.

3. The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated May 11, 1994. This authority has been delegated to the Director of the Air, RCRA, and Toxics Division of EPA, Region 7, by EPA Delegation No. R7-8-9-A, dated January 1, 1995, and further delegated to the Chief of the RCRA Enforcement and State Programs Branch, by EPA Delegation No. R7-DIV-B-9-A, dated June 15, 2005.

4. Section 3008 (g) of RCRA, 42 U.S.C. § 6928 (g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are authorized for violations of Subchapter HI of RCRA that occur after January 30, 1997 and before March 15, 2004. In addition, penalties of up to \$ 32,500 per day are now authorized for violations occurring after March 15, 2004. Based upon the facts alleged in this Complaint and upon those factors which Complainant must consider pursuant to Section 3008 (a) (3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, and attached hereto, including the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with applicable requirements, as well as other matters as justice may require, the Complainant proposes that Respondent be assessed a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. §6928(g), for the violations of RCRA alleged in the Complaint. The proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

5. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at the pertinent parts of Title 128, Nebraska Hazardous Waste Regulations. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period. When the violation occurs in a state which is authorized to carry out its own hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing the order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

ANSWER

The Respondent, the United States Army Corps of Engineers Engineering Research and Development Center (ERDC), who files this answer to the complaint in Section II. of the complaint in the above titled matter:

ALLEGATIONS COMMON TO ALL COUNTS

6. The Respondent, the United States Army Corp of Engineers Chemistry and Materials Quality Assurance Laboratory in Omaha (COE), Nebraska, is owned and operated by the United States Army

Corp of Engineers. The COE is a "person" as defined in Section 1004 (15) of RCRA, 42 U.S.C. § 6903(15).

The Respondent states that the United States owns the real property where the CMQAL is located and admits the remaining allegations contained in paragraph 6 of the complaint.

7. The Respondent's facility is operated as a quality assurance laboratory which conducts analytical testing on water and soil samples which are generated from projects in the Omaha and Kansas City Regional areas.

The Respondent admits the allegation contained in paragraph 7 of the complaint, and the facility in question tests samples for any USACE District project, as requested by the District.

8. Respondent has been in operation at its current location since 1948 and currently employs approximately eighteen full-time employees at the Omaha facility.

The Respondent admits the allegation contained in paragraph 8 of the complaint.

9. On or about October 1, 1986, Respondent notified EPA that it was a small quantity generator (100 to 1000 kg/month) of hazardous waste in the state of Nebraska.

The Respondent admits the allegation contained in paragraph 9 of the complaint.

10. Respondent has been assigned the facility identification number NE7210890029.

The Respondent admits the allegation contained in paragraph 10 of the complaint.

11. On November 2, 2005 EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. Based on a review of the 2005 manifests and information provided by facility personnel, it was determined that Respondent was operating at that time as a small quantity generator of D006, D007, D008, D009, D010, D018, D020, D028, D029, D030 and D039 characteristic as well as F002, F003 and F005 listed hazardous wastes.

The Respondent admits that at various times any of the stated types of hazardous wastes may be generated at the CMQAL.

12. Based on information obtained during the inspection, Respondent was issued a Notice of Violation (NOV) on November 2, 2005.

The Respondent admits the allegation contained in paragraph 12 of the complaint.

13. On November 14, 2005, the Respondent responded to the November 2, 2005 NOV.

The Respondent admits the allegation contained in paragraph 13 of the complaint.

COUNT 1

**OPERATING AS A TREATMENT, STORAGE OR DISPOSAL FACILITY
WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS**

The Respondent denies the allegation contained in Count 1 of the complaint. Hazardous waste is required by DOD policy to be transported and disposed by contractors of the Defense Reutilization and Marketing Services (DRMS), which arranges for bulk disposal of DOD facilities' wastes. The DRMS arranges for a transporter to come to the CMAQL to pick up the waste for disposal, and ships it to appropriately permitted treatment, storage and disposal facilities at locations that are greater than 200 miles from the CMQAL. As a result, the holding time for hazardous waste accumulated for transport and disposal at this facility is 270 days, in accordance with 40 C.F.R. 262.34 (e). Hazardous waste was not, and is not, accumulated on-site for more than 270 days. The three containers, which were identified with dates in excess of 270 days, had incorrect dates from the initiation of use in a satellite accumulation area. The containers had been moved to the waste storage area and lab personnel failed to place the proper dates on the containers. One container was placed in the hazardous waste storage area on or about 15 July 2005. This container was shipped off-site for proper disposal on 28 November 2005, which was within the 270-day requirement. Based on review of the records, the other two containers were placed in the hazardous waste storage area on or about 15 April 2005 and 15 May 2005. These containers were shipped off-site for proper disposal prior on 28 November 2005, which is within the 270-day requirement. Please see the attached DMRO Manifest.

14. Complainant hereby incorporates the allegations contained in paragraphs 6 through 13 above, as if fully set forth herein.

The Respondent hereby incorporates its responses to paragraphs 6 through 13 of the complaint.

15. The Nebraska regulations at Title 128, Chapter 9, 001.01 (40 C.F.R. § 260.10) state that a small quantity generator is one who generates in a calendar month a total quantity of hazardous waste greater than 100 kilograms and less man 1,000 kilograms. Small quantity generators are subject to this Title 128, Chapter 9.

The Respondent admits the allegation contained in paragraph 15 of the complaint.

16. The Nebraska regulations at Title 128, Chapter 9, 007.03 (40 C.F.R. § 262.34 (e) referring to 40 C.F.R. § 262.34 (d)) state that a small quantity generator may accumulate hazardous waste on-site for 180 days or less (or 270 days if the generator must transport

the waste, or offer that waste for transportation over a distance of 200 miles or more) without a permit or without having interim status provided that he complies with the requirements of Title 128, Chapter 9, 007.03A through 007.03G.

The Respondent admits the allegation contained in paragraph 16 of the complaint.

Failure to Properly Date and Label Hazardous waste Containers

17. The Nebraska regulations at Title 128, Chapter 9, 007.03 (40 C.F.R. § 262.34(e) referring to 40 C.F.R. § 262.34(d) (4) and 40 C.F.R. § 262.34 (a)(2) and (a)(3)) state that a small quantity generator may accumulate hazardous waste on-site for 180 days or less (or for 270 days if the generator must transport the waste, or offer that waste for transportation, over a distance of 200 miles) without a permit or without having interim status provided that the generator complies with the requirements of Title 128, Chapter 9, 007.03A-G.

The Respondent admits the allegation contained in paragraph 17 of the complaint.

18. The Nebraska regulations at Title 128, Chapter 9, 007.03D referring to Title 129, Chapter 10, 004.1F (40 C.F.R. § 262.34(e) referring to 40 C.F.R. § 262.34(d)(4) and 40 C.F.R. § 262.34(a)(2)) require that the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

The Respondent admits the allegations contained in paragraph 18 of the complaint.

19. At the time of the November 2, 2005 EPA inspection, Respondent was accumulating approximately two-hundred ninety (290) containers of hazardous waste in the hazardous waste storage room of the facility which were not properly dated with the accumulation start date.

The Respondent denies the allegation in paragraph 19 in the complaint. At the time of the inspection, the Respondent had moved the 290 containers to the storage area for characterization in preparation for disposal. Not all of the waste was determined to be hazardous waste. However, per ERDC response to paragraph 30 below, it is admitted that some waste containers had erroneous accumulation start dates listed on them.

20. At the time of the November 2, 2005 EPA inspection, Respondent was accumulating one (1) fifty-five gallon lab pack container of hazardous waste in the hazardous waste storage room of the facility which was not properly dated with the accumulation start date.

The Respondent admits the allegation in paragraph 20 of the complaint.

21. The Nebraska regulations at Title 128, Chapter 9, 007.03D referring to Title 128, Chapter 10, 004-1G (40 C.F.R. § 262.34(e) referring to 40 C.F.R. § 262.34(d)(4) and 40

C.F.R. 262.34(a)(3)) require that while being accumulated on-site, each container must be labeled or marked clearly with the words “Hazardous Waste.”

The Respondent admits the allegations in paragraph 21 of the complaint.

22. At time of the November 2, 2005 EPA inspection, Respondent was accumulating approximately two-hundred eight three (283) containers of hazardous waste in the hazardous waste storage room of the facility which were not properly labeled with the words “Hazardous Waste.”

The Respondent admits the allegations in paragraph 22 of the complaint.

Improper Management of Satellite Accumulation Containers

23. The Nebraska regulations at Title 128, Chapter 9, 007.04A referring to Title 128, Chapter 9, 007.04A2 (40 C.F.R. § 262.34 (c)(1)(ii)) states that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acute hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Chapter 9, 007.03 of this Chapter provided that, among other things, the generator complies with and marks the containers either with the words “Hazardous waste” or with other words that identify the contents of the containers.

The Respondent admits the allegations in paragraph 23 of the complaint.

24. The Nebraska regulations at Title 128, Chapter 9, 007.04A referring to Title 128, Chapter 9, 007.04A1 referring to Title 128, Chapter 10, 004.01A2 (40 C.F.R. § 262.34(c)(1)(i) referring to 40 C.F.R. § 265.173(a)) require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

The Respondent admits the allegations in paragraph 24 of the complaint.

25. At the time of the November 2, 2005 EPA inspection, approximately five (5) satellite accumulation containers of hazardous waste located in a lab area of the facility were not kept closed during storage.

The Respondent admits the allegations in paragraph 25 of the complaint. The containers were closed immediately after the EPA Investigator’s inspection in November 2005, and all individual employees were instructed that the satellite accumulation containers must always be closed, except when it is necessary to add or remove waste. The laboratory reviewed all of its satellite accumulation areas. Standard operating procedures were revisited for all areas. SOPs were posted in

the immediate vicinity of all hazardous waste satellite accumulation containers. These SOPs address all requirements outlined in 40 C.F.R. § 262.34 (c).

26. At the time of the November 2, 2005 EPA inspection, approximately three satellite accumulation containers of hazardous waste located in the lab area of the facility were not labeled either with the words “Hazardous Waste” or with other words that identified the contents of the containers.

The Respondent admits the allegations in paragraph 26 of the complaint. The containers were immediately labeled, and all individual employees were instructed that all satellite accumulation containers must be properly labeled and identified with the words “Hazardous waste.” The laboratory reviewed all of its satellite accumulation areas. Standard operating procedures were revisited for all areas. SOPs were posted in the immediate vicinity of all hazardous waste satellite accumulation containers. These SOPs address all requirements as outlined in 40 C.F.R. § 262.34 (c).

Failure to Inspect Hazardous Waste Containers

27. The Nebraska regulations at Title 128, Chapter 9, 007.03 (40 C.F.R. § 262.34(e) referring to 40 C.F.R. § 262.34(d)(4) and 40 C.F.R. § 262.34(a)(2) and (a)(3)) state that a small quantity generator may accumulate hazardous waste on-site for 180 days or less (or for 270 days if the generator must transport the waste, or offer that waste for transportation, over a distance of 200 miles) without a permit or with having interim status provided that the generator complies with the requirements of Chapter 9, 007.03A-G.

The Respondent admits the allegations in paragraph 27 of the complaint.

28. The Nebraska regulations at Title 128, Chapter 9, 007.03C referring to Title 128, Chapter 10, 004.01A referring to Title 128, Chapter 10, 004.01A4 (40 C.F.R. § 262.34(e) referring to 40 C.F.R. § 262.34(d)(2) and 40 C.F.R. § 265.174) require that areas where containers are stored be inspected, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

The Respondent admits the allegations in paragraph 28 of the complaint.

29. At the time of the November 2, 2005 EPA inspection, the Respondent was not conducting weekly inspections of the hazardous waste storage room of the facility to check for leaks or for deterioration.

The Respondent admits the allegations in paragraph 29 of the complaint.

30. Respondent’s failure to comply with the conditions set forth in Nebraska regulations Title 128, Chapter 9, 007 and Title 128, Chapter 10, 004 as alleged in paragraphs 17

through 32, subjects Respondent to the requirements of having a permit or interim status for its storage of hazardous waste.

The Respondent denies the allegation contained in Count 1 and paragraph 30 of the complaint. Hazardous waste was not, and is not, accumulated on-site for more than 270 days. The three containers, which were identified with dates in excess of 270 days, had incorrect dates from the initiation of use in a satellite accumulation area. The containers had been moved to the waste storage area and lab personnel failed to place the proper dates on the containers. One container was placed in the hazardous waste storage area on or about 15 July 2005. This container was shipped off-site for proper disposal on 28 November 2005, which was within both the 180-day and the 270-day requirement. Based on review of the records, the other two containers were placed in the hazardous waste storage area on or about 15 April 2005 and 15 May 2005. These containers were shipped off-site to Calvert City, Kentucky, which is more than 200 miles from the CMQAL, for proper disposal on 28 November 2005, which is within the 270-day requirement. Please see the attached DMRO Manifest.

31. Respondent does not have a RCRA permit or RCRA Interim status to operate as a storage facility, in violation of Section 3005 of RCRA and Title 128, Chapter 12 of the Nebraska Hazardous Waste Regulations.

The Respondent admits the first part of the allegation in paragraph 31 of the complaint that it does not have a RCRA permit or RCRA Interim status, but respondent denies that such is required. Please refer to the answer in paragraph number 30.

32. Pursuant to section 3008(g) of RCRA, 42 U.S.C. § 6928 (g), and based upon the allegations stated above, Complainant proposed that Respondent be assessed a civil penalty of \$63,260.00 for operation of a RCRA storage facility without a RCRA permit or interim status.

The Respondent denies the allegations in paragraph 32 in the complaint regarding operation of a RCRA storage facility without a RCRA permit or interim status. Please refer to the answer in paragraph 30. Respondent does not contest assessment of a reasonable and appropriate civil penalty.

COUNT II

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

33. Complainant hereby incorporates the allegations contained in paragraphs 6 through 32 above, as if fully set forth herein.

The Respondent hereby incorporates its responses to paragraphs 6 through 32 of the complaint.

34. Pursuant to Nebraska regulations at Chapter 9, 001.02 (40 C.F.R. § 262.11) a generator who treats, stores, or disposes of hazardous waste on-site is required to comply with, among other requirements, Chapter 4,002 of Title 128.

The Respondent admits the allegations in paragraph 34 of the complaint.

35. Pursuant to Nebraska regulation Title 128, Chapter 4, 002 (40 C.F.R. § 262.11) a person who generates a solid waste, as defined in Chapter 2, 003, is required to determine if the solid waste is a hazardous waste using the methods stated in Chapter 4, 002.

The Respondent admits the allegations in paragraph 35 of the complaint.

36. At the time of the November 2, 2005 EPA inspection, the inspector observed approximately one-hundred fifty (150) containers of outdated chemicals in the sorting room of the Respondent's facility. Respondent had been collecting the one-hundred fifty (150) containers of outdated chemicals in the sorting room of the facility for approximately six months, Respondent had not conducted a hazardous waste determination on any of the one-hundred fifty (150) containers.

The Respondent admits the allegations in paragraph 36 of the complaint.

37. Following the November 2, 2005 EPA inspection, Respondent performed a hazardous waste determination on the one-hundred fifty (150) containers of outdated chemicals. The Respondent determined that three (3) hazardous waste streams existed within those one-hundred fifty containers.

The Respondent admits that it performed a hazardous waste determination on all of these containers for which it did not previously have process knowledge, and found three type of hazardous waste in some of the containers.

38. Respondent's failure to make hazardous waste determinations on the waste streams noted in paragraph 38 and 39 is a violation of Title 128, Chapter 4, 002 (40 C.F.R. § 262.11).

The Respondent denies the allegations in paragraph 38 of the complaint. At the time of the November 2005 EPA inspection, the material identified by the inspector was in the process of being characterized in preparation for disposal through DRMS.

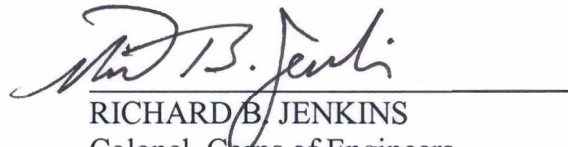
39. Pursuant to Section 3008 (g) of RCRA, 42 U.S.C. § 6928 (g), and based upon the allegations above, it is proposed that a civil penalty of \$3,867.00 be assessed against Respondent for its failure to comply with Title 128, Chapter 4, 002 (40 C.F.R. § 262.11).

The Respondent denies the allegations in paragraph 39 in the complaint. Please refer to the answer in number 38. Based on those facts, assessment of a civil penalty

is not appropriate since there were no violations as alleged in this part of the Complaint.



WILLIAM N. LOVELADY, JR.
ERDC Counsel



RICHARD B. JENKINS
Colonel, Corps of Engineers
Commander

**Responses To Compliance Order and Notice of Opportunity for Hearing
Docket No. RCRA-07-2006-0233**

On November 2, 2005, the EPA conducted a RCRA compliance evaluation inspection of the U.S. Army Engineer Research and Development Center's (ERDC's) Chemical and Materials Quality Assurance Laboratory (CMQAL) located at 420 South 18th Street, Omaha, Nebraska. The EPA inspector issued a Notice of Violation (NOV) at that time.

On November 14, 2005, ERDC responded in writing to the NOV.

On September 28, 2006, ERDC received an EPA Complaint, Compliance Order and Notice of Opportunity for Hearing, Docket No. RCRA-07-2006-0233, based upon the November 2, 2005, inspection.

The CMQAL is a Small Quantity Generator and has the facility identification number NE7210890029.

The Compliance Order required ERDC to submit responses regarding four items:

Compliance Order Item 1:

Respondent shall provide EPA with evidence (e.g., dated photographs) clearly demonstrating that any containers accumulating hazardous waste (including satellite accumulation hazardous waste containers) have been properly labeled "Hazardous Waste" and that any such containers have been clearly marked with the date upon which the accumulation began as set forth in Nebraska regulation Title 128, Chapter 9, 007.04A.

Response:

Dated photographs (numbers 587 through 610), showing accumulation containers in the satellite accumulation areas, are attached (Attachment 1). A table describing each photograph is also included in the attachment. Operationally, as a small quantity generator, the lab moves all satellite accumulation containers to a 180/270-day staging area before 55 gallons of waste is accumulated at any satellite accumulation point. Therefore, the containers are not dated until they enter the 180/270-day staging area. When moved into the 180/270-day staging area, the containers are dated, and the 180/270-day time clock begins.

Compliance Order Item 2:

- a. Documentation which demonstrates that Respondent has performed hazardous waste determinations on all solid waste***

streams produced at the facility. Said documentation should include the following:

- b. A detailed description of the process that generates the waste;*
- c. A determination of whether or not the waste has been excluded from regulation under 40 C.F.R. Part 261;*
- d. A determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and*
- e. A determination of whether or not the waste is identified in 40 C.F.R. Part 261 Subpart C. To determine if the waste fails any of the characteristics in Subpart C, especially the Toxicity Characteristic Leaching Procedure Test (TCLP), the waste needs to be analyzed using the procedures set forth in Subpart C of 40 C.F.R. Part 261, or by applying knowledge of the waste characteristics considering the materials or processes used. Any analyses of the waste generated on site must be provided. If knowledge of the process is used, please provide a detailed explanation regarding the basis for this knowledge.*

Response:

A. A detailed description of the process that generates the waste.

Environmental samples are received at the lab for analytical purposes. Typically, these are either water quality samples from rivers and lakes or water and soil samples from remediation sites. The lab is tasked with running various analytical tests to determine what, if any, chemicals/contaminants are in the media. A portion of the sample is used to run these analyses. The remaining portion of the sample is held pending analysis of the corresponding sample.

In addition, the lab generates waste through the process of analyzing samples. We review each analytical process and characterize any wastes generated by the processes. A variety of analytical tests are conducted at our facility. We have reviewed each process individually and characterized each waste stream. Below is the list of our major analytical processes:

- Media samples are usually not hazardous waste, but are tested using the appropriate methods based on site specific information supplied when the sample comes into the CMAQL.
- EPA Methods 6010/7470/7471 (Metals Analysis) – Acidic Waste. This waste stream is characterized as D002.
- Total Kjeldahl Nitrogen (TKN) Analysis – Sulfuric acid is used during this process resulting in a D002 and D009 waste stream.
- EPA Method 8330 (Nitroaromatics) Flammable Toxic Lab Pack – Acetonitrile and Methanol – waste stream characterized as D001.
- EPA Method 8270 (Base/Neutral/Acid) use of Sodium Sulfate and Methylene Chloride – characterized as F002.

- High Pressure Liquid Chromotography (HPLC) - Flammable/Corrosive Lab Pack – Acetonitrile and Acetic Acid – characterized as D001 and D002.
- EPA Method 8330 (Nitroaromatics) Waste Acetonitrile Solution – characterized as D001.
- EPA Method 8270 (Base/Neutral/Acid) - Methylene Chloride and Water – characterized as F002 as spent solvent.

B. A determination of whether or not the waste has been excluded from regulation under 40 C.F.R. Part 261

The lab claims no exclusion under 40 C.F.R. Part 261.

C. and D. A determination of whether or not the waste has been listed and/or characteristic.

Environmental samples are received at the lab for analytical purposes. Typically, these are water or soil samples from DoD remediation sites. The lab is tasked with running various analytical tests to determine what, if any, chemicals/contaminants are in the media. A portion of the sample is used to run these analyses. The remaining portion of the sample is held pending analysis of the corresponding sample.

In addition, the lab generates waste through the process of analyzing a sample.

Thus, we review each analytical process and characterize any wastes generated from the process.

Below we discuss our two different schemes for characterization of wastes.

Characterization process for environmental samples

The standard process at the laboratory is to analyze the samples based on our customers' needs. In order to ensure proper disposal, the RCRA lab pack provisions in 40 CFR 268.42(c) Land Disposal Treatment Standards are utilized. The Land Disposal provision allows all waste codes except for those listed in Appendix IV to be treated by incineration followed by stabilization. The lab avoids commingling samples, and considers each sample individually. In addition to obtaining analytical results from each sample, the lab also screens against the 40 CFR 268 Appendix IV list of wastes which do not qualify for the lab pack management treatment alternative, in the event that any other constituents may be present. Thus, the lab uses analytical data in conjunction with the Appendix IV provision to ensure proper characterization for disposal.

As discussed above, the laboratory receives samples of environmental media for various types of analysis. A portion of the sample is used during the analysis and a portion remains unused. Upon analysis of the sample, all resulting chemical data and test results

are entered into an analytical data base corresponding to each individual sample called the Laboratory Information Management System (LIMS).

When a sample is characterized for disposal, LIMS is queried for that particular sample to ascertain the analytical results in order to properly characterize the waste and assign waste codes. This is done for all water and soil samples.

Water samples:

- If water samples are characterized as hazardous waste and have been acidic or basic preserved, they are segregated and lab packed as waste corrosive samples (i.e., acidic or basic) with a D002 waste code. Additional waste codes are assigned to the samples (D008; D040; etc.), as appropriate based on the information from the LIMS data base.
- If water samples are determined to be hazardous waste and have not been preserved, they are lab packed as waste non-corrosive samples (DOT class 9) and assigned proper EPA waste codes as determined through analysis (D008; D040; etc.)
- If water samples are hazardous waste solely because of a corrosivity characteristic due to the preservative, elementary neutralization is performed and rendered non-hazardous.
- If water samples are determined not to be a hazardous waste and have not been preserved with an inorganic or organic preservative (pH from 5.0 – 9.0) they are not managed as hazardous waste. They are segregated for proper management and disposal.

Soil samples are characterized using the LIMS data base in a similar fashion:

- If soil samples are determined to be hazardous waste, the sample is lab packed as a solid and the appropriate EPA waste codes determined through analysis are used to characterize the sample (D008; D040; etc.)
- If soil samples are not determined to be hazardous waste, they are still lab packed and disposed of offsite by incineration as a non-RCRA solid waste.

In addition, the portion of the sample that was not used in analysis is correlated back to the portion of the sample used in the analytical process. The waste codes determined through analysis of the sample are then assigned to the unused portion of the sample through our characterization process for proper offsite disposal.

Compliance Order Item 3:

Respondent shall provide EPA with evidence (e.g., dated photographs) clearly demonstrating that any containers accumulating hazardous waste have been properly labeled "Hazardous Waste" and that any such containers have been clearly marked with the date upon which

accumulation began as set forth in Nebraska regulation Title 128, Chapter 10, 004.01.

Response:

The Chemical and Materials Quality Assurance Laboratory (CMQAL) has areas in the garage and on the second floor that are used to manage waste as 180/270 day staging areas. All of the containers in these areas are properly marked "Hazardous Waste" and the containers are clearly marked with the date upon which accumulation began.

Dated photos (numbers 611 through 627) showing the 180/270-day staging areas and the various containers are provided at Attachment 2. The pictures include close-ups of the containers showing the accumulation start dates. All of the pictures were taken at the CMQAL on October 6, 2006 or on October 19, 2006. Also in the attachment is a table listing of the picture number, description of contents, size, color, and accumulation start date for each container. All of the containers of hazardous waste in the staging areas will be scheduled for transportation and disposal in December 2006: or before, therefore, all containers will be disposed of within 180/270 days of the accumulation start date.

Compliance Order Item 4:

Respondent shall provide EPA copies of inspection forms/reports for all weekly inspections of the hazardous waste storage room from December 2005 through May 2006.

Response:

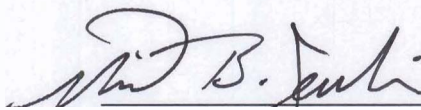
The Chemical and Materials Quality Assurance Laboratory (CMQAL) is a Small Quantity Generator (SQG).

With the exception of the last week of 2005, the CMQAL personnel have performed weekly inspections of hazardous waste containers, checking for leaks and deterioration caused by corrosion or other factors. In the past, these inspections have not been documented because 40 C.F.R. 262 does not require such documentation. Please see the attached affidavit from one Laura Percifield.

However, in order to ensure that inspections are conducted in accordance with 40 C.F.R. 262, CMQAL has developed the attached inspection checklists and has begun using these checklists to document weekly inspections of containers in the 180/270-day staging areas (see Attachments 3) and the satellite accumulation containers (see Attachments 4).



WILLIAM N. LOVELADY, JR.
ERDC Counsel

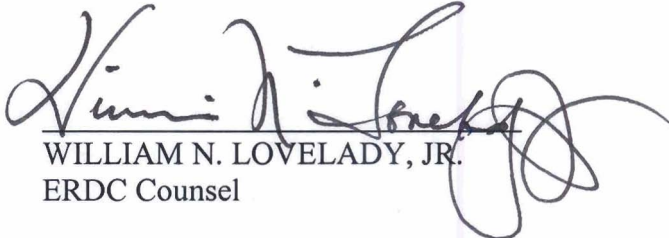


RICHARD B. JENKINS
Colonel, Corps of Engineers
Commander

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONSE TO THE COMPLAINT AND COMPLIANCE ORDER** was served on the following **BY FIRST CLASS MAIL** this **23** day of October 2006:

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