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REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON, VA 22203-1837



August 4, 1993

Environmental Law Division

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 6
First Interstate Bank Tower
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: Department of the Army, Camp Stanley Storage
Activity, RCRA Docket No. VI-310-H

Dear Clerk:

Enclosed please find an original and one copy of Camp Stanley Storage Activity's Answer in the above-referenced matter. Please file the original and date stamp the copy and return the copy to the undersigned in the enclosed stamped, self-addressed envelope. Thank you for your customary cooperation in this matter.

Sincerely,

David E. Bell
Major, U.S. Army
Environmental Attorney

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

Department of the Army
Camp Stanley Storage Activity
P.O. Box 690627
San Antonio, Texas 78269-0627

EPA I.D. Number TX2210020739
RESPONDENT

ANSWER

DOCKET NO.
RCRA VI-310-H

The Environmental Law Division of the Office of The Judge Advocate General of the United States Department of the Army, on behalf of Camp Stanley Storage Activity, submits the following Answer to the Complaint, Compliance Order, and Notice of Opportunity for Hearing issued by the United States Environmental Protection Agency (EPA) on June 30, 1993 and served on Respondent on 7 July 1993:

1. Respondent admits the allegations of paragraph "1."
2. Respondent admits the allegations of paragraph "2" to the extent that Respondent is a person effective October 6, 1992, when 42 U.S.C. §6903(15) was amended by the Federal Facility Compliance Act to include federal agencies within the definition of a person. Respondent denies that Respondent was a person within the meaning of 42 U.S.C. §6903(15) prior to October 6, 1992.
3. The allegations of paragraph "3" appear to paraphrase 42 U.S.C. §§6961 and 6964. Respondent states that these sections speak for themselves and no answer is required.
4. The allegations of paragraph "4" appear to paraphrase 42 U.S.C. 6930(a). Respondent states that these sections speak for themselves and no answer is required.
5. Respondent admits the allegations of paragraph "5."
6. Respondent admits the allegations of paragraph "6."

7. Paragraph "7" of the Complaint contains EPA's conclusions of law and not allegations of fact to which a response is required.

8. Paragraph "8" of the Complaint contains EPA's conclusions of law and not allegations of fact to which a response is required.

9. The first sentence of paragraph "9" of the Complaint contains EPA's conclusions of law and not allegations of fact to which a response is required. The second sentence is an administrative statement to which no response is required.

10. Respondent admits the allegations of paragraph "10."

11. Respondent admits so much of the allegations of paragraph "11" as allege that Respondent submitted subsequent hazardous waste notifications, not all of which identified treatment as a hazardous waste activity. Because the term "posted" is ambiguous, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation that the subsequent hazardous waste activity notifications were posted.

12. Respondent admits the allegations of paragraph "12."

13. Respondent denies the allegations of paragraph "13" that it is engaged in the "treatment" or "disposal" of hazardous waste.

14. Respondent admits the allegations of paragraph "14."

15. Respondent admits the allegations in paragraph "15."

16. Respondent admits so much of the allegations of paragraph "16" as allege that the facility was inspected by individuals from EPA Region 6 and the Texas Water Commission, but Respondent is without knowledge or information sufficient to form a belief as to whether the individuals from EPA Region 6 and the Texas Water Commission were authorized to conduct the inspection.

COUNT I - UNPERMITTED TREATMENT

17. Respondent's answers to paragraphs 1 through 16 are incorporated herein by reference.

18. The allegations of paragraph "18" appear to paraphrase 31 TAC §335.43 [40 CFR §§270.1 and 270.10] and 42 U.S.C. 6925(a). Respondent states that these sections speak for themselves and no answer is required.

19. The allegations of paragraph "19" appear to paraphrase 42 U.S.C. 6925(a) and 40 CFR §270.10. Respondent states that these sections speak for themselves and no answer is required.

20. Respondent admits so much of the allegations of paragraph "20" as allege that Respondent submitted its Part A Permit Application on or before November 19, 1980, identifying container and surface impoundment storage activities, but denies that it failed to identify treatment activities or units.

21. The allegations of paragraph "21" appear to paraphrase 42 U.S.C. 6925(e). Respondent states that these sections speak for themselves and no answer is required.

22. The allegations of paragraph "22" appear to paraphrase 40 CFR §270.71(a) and 31 TAC §335.1. Respondent states that these sections speak for themselves and no answer is required.

23. The allegations of paragraph "23" appear to paraphrase 40 CFR §260.10 and 31 TAC §305.51. Respondent states that these sections speak for themselves and no answer is required.

24. The allegations of paragraph "24" appear to paraphrase 40 CFR §265.10 and 40 CFR Part 265 Subpart P, incorporated by reference at 31 TAC §335.112(15). Respondent states that these sections speak for themselves and no answer is required.

25. Respondent denies the allegations in paragraph "25."

26. Respondent denies the allegations in the first sentence of paragraph "26." The remainder of paragraph "26" contains EPA's conclusions of law and not allegations of fact to which a response is required.

27. Respondent denies the allegations in paragraph "27."

28. Respondent admits the allegations of paragraph "28."

29. Respondent denies the allegations of paragraph "29."

COUNT II - FAILURE TO HAVE CLOSURE PLAN

30. Respondent's answers to paragraphs "1" through "16" are incorporated herein by reference.

31. The allegations of paragraph "31" appear to paraphrase 31 TAC §§335.8, 335.112(6) [40 CFR §265.112], and 31 TAC §335.118 [40 CFR §265.111]. Respondent states that these sections speak for themselves and no answer is required.

32. Respondent admits the allegations of paragraph "32."

33. Respondent denies the allegations of paragraph "33."

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

EPA lacks jurisdiction with respect to the subject matter of the allegations in Counts 1 and 2 because the federal statute of limitations, 28 U.S.C. §2462, bars enforcement of any civil fine or penalty unless commenced within five years from the date when the claim first accrued. The federal statute of limitations is applicable because RCRA does not contain a statute of limitations provision.

SECOND DEFENSE

EPA lacks jurisdiction with respect to the subject matter of the allegations in Counts 1 and 2 because the Federal Facility Compliance Act on which EPA relies for authority to impose civil fines and penalties in this case is not retroactive. The Federal Facility Compliance Act was effective on October 6, 1992, and states specifically in Section 102(c) that "the amendments made by subsection (a) [waiver of sovereign immunity as to punitive fines and penalties] shall take effect upon the date of enactment of this Act." Because the relevant provision of the Federal Facility Compliance Act were effective on October 6, 1992, any civil penalty or fine is barred if imposed for alleged violations of RCRA occurring before that date.

THIRD DEFENSE

EPA lacks authority to impose fines and penalties with respect to the subject matter of the allegations in Counts 1 and 2 because it lacked authority to impose fines and penalties for violations of management requirements occurring prior to enactment of the Federal Facility Compliance Act.

FOURTH DEFENSE

EPA lacks authority to enforce the provisions of 40 CFR Parts 264, 265, and 270 with respect to the subject matter of the allegations in Counts 1 and 2 because it failed to comply with the Paperwork Reduction Act, 44 U.S.C. §3501, et. seq.

FIFTH DEFENSE

In calculating the proposed penalties, EPA applied its Civil Penalty Policy in an inappropriate and inequitable manner with respect to violations alleged to have been committed by Camp Stanley Storage Activity, a facility owned and operated by the United States. In particular, EPA improperly applied the gravity-based penalty criteria in a manner that resulted a proposed penalty far in excess of that which has been proposed or assessed in similar cases. In addition, EPA improperly imposed multi-day penalties for alleged violations that occurred prior to enactment of the Federal Facility Compliance Act and, in the case of Count 2, involved a one-time failure to have a written closure plan. EPA further employed the BEN Computer Model in determining that Camp Stanley Storage Activity received an economic benefit of noncompliance, which it did not. Moreover, in instances of delayed compliance, assessing a penalty amount for the economic benefit of noncompliance in effect attempts to charge government entities interest in a manner inconsistent with law and without an explicit waiver of sovereign immunity.

SIXTH DEFENSE

EPA relied on the EPA RCRA Civil Penalty Policy and its BEN Computer Model in calculating its proposed penalty, which Policy and Model constitute an improper and illegal rulemaking.

SEVENTH DEFENSE

EPA lacks jurisdiction with respect to the subject matter of the allegations in Counts 1 and 2 because the true party in interest in this enforcement action is the State of Texas. Prior to enactment of the Federal Facility Compliance Act, states lacked authority to impose fines and penalties for wholly past violations of RCRA.

EIGHTH DEFENSE

Respondent obtained interim status for its Facility upon timely filing of its Part A Permit Application, which status continued throughout all periods during which EPA alleges in Count 1 that Respondent engaged in unpermitted treatment of hazardous waste.

COMPLIANCE

1. Compliance with paragraph "1" of the Compliance Order occurred in April 1987 when Respondent ceased treatment at the Facility.

2. Compliance with paragraph "2" of the Compliance Order commenced July 3, 1993. The final Closure Plan is being submitted under separate cover letter to EPA for review and to TWC for approval in accordance with the Compliance Order.

3. Compliance with paragraph "3" of the Compliance Order commenced on September 29, 1992, with identification of and contracting with Engineering-Science, Inc. of Austin, Texas. Engineering-Science, Inc., has conducted an Environmental Assessment of Camp Stanley and submitted a draft of its recommendations, which are currently under review by Respondent. So as to preclude unnecessary delay and duplication of effort, selection of Engineering-Science, Inc., and the Environmental Assessment prepared by Engineering-Science, Inc., should be accepted in full satisfaction of the requirements set forth in Attachment A to the Complaint.

WHEREFORE, Respondent respectfully requests:

1. Dismissal of all allegations and civil penalties.
2. A joint settlement conference to discuss the issues raised in the Complaint, Compliance Order, Notice of Hearing, and this Answer.
3. A hearing upon the issues, in the event those issues are not resolved in the joint settlement conference.
4. That the Compliance Order be suitably amended.

Dated this ___ day of ___ 1993.

Respectfully submitted,

WILLIAM J. MCGOWAN
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CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____ 1993, the original of the foregoing Answer regarding Camp Stanley Storage Activity, RCRA Docket No. VI-310-H, was forwarded for filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 6, First Interstate Bank Tower, 1445 Ross Avenue, Dallas, Texas, 75202-2733, by express mail, and a true and correct copy of such Answer was placed in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the following:

Patrick Larkin
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 6
First Interstate Bank Tower
1445 Ross Avenue
Dallas, Texas 75202-2733

DAVID E. BELL