IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA, and STATE OF ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT	)	CIVIL ACTION NO.
Plaintiffs,	)	
v.	)	
NORTHROP GRUMMAN SYSTEMS CORPORATION,	)	
Defendant.	)	

COMPLAINT

The United States of America, by the authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the Alabama Department of Environmental Regulation ("ADEM") file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and the assessment of civil penalties pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a) and (g), for violations of Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and the implementing regulations and pursuant to the Alabama Waste Minimization Act of 1978, Code of Alabama 1975, §§ 22-30-1 through 22-30-24, as amended and the ADEM Administrative Code for the State of Alabama.

2. The claims based upon violations of federal and state environmental statutes and the regulations and permits issued pursuant thereto, for which EPA and ADEM seek injunctive relief and civil penalties, include: 1) failure to maintain a written description of the type and amount of both introductory and continuing training that will be given to

employees managing hazardous waste; 2) improper waste determination on one drum of F003 hazardous waste; 3) shipping one drum of F003 hazardous waste without manifest; 4) transporting one drum of F003 hazardous waste without a permit; 5) failing to label a drum of hazardous waste with an accumulation start date; 6) failing to close a satellite accumulation drum; 7) compressing hazardous waste without providing appropriate notification; 8) not providing access to all personnel training records at the time of initial inspection; 9) failing to notify the hazardous waste generator of appropriate hazardous waste storage permits; and 10) storing waste without a permit.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

3. The United States District Court for the Northern District of Alabama has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345 and 1355. This Court has jurisdiction over the subject matter of ADEM's claims under 28 U.S.C. § 1367(a) (Supplemental jurisdiction) because ADEM's claims are so related to the United States' claims that they form part of the same case or controversy.

4. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), venue is proper in this Court because the violations occurred in this judicial district.

5. Authority to bring this civil action is vested in the Attorney General of the United States pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 516 and 519.

6. Venue is proper pursuant to 28 U.S.C. Section 1391(b) because all events giving rise to the claims occurred in this district and because Defendant conducts business in a facility located in this district.

7. Notice of the commencement of this action has been given to ADEM in accordance with RCRA Section 3008(a)(2).

DEFENDANT

8. Northrop Grumman Systems Corporation (NG or Northrop Grumman) is a corporation organized and existing under the laws of Delaware and licensed to do business in the State of Alabama.

9. NG leases several buildings from Redstone Arsenal in Huntsville, Alabama (NG Redstone facility), including Buildings 7346, 7347, 7357, 7378, and 7631, among others, and at Cummings Research Park, also in Huntsville. NG is a Department of Defense contractor for the Army Tactical Missile System and Brilliant Anti-Armor Submunition missile program (ATACMS-BAT missile) and the Longbow Hellfire missile system.

10. The facility has notified as a Small Quantity Generator of hazardous waste and was assigned the USEPA Identification Number AL0000593061. The U.S. Army Aviation and Missile Command at Redstone is the acquisition agency for NG's Longbow weapon system. The NG Longbow facility integrates the Longbow Hellfire missile's sensor group with its guidance group, and assembles and tests the complete missile guidance system.

STATUTORY AND REGULATORY BACKGROUND

11. RCRA was enacted in 1976 to establish a regulatory program for the management of hazardous wastes to be administered by EPA. RCRA established a comprehensive regulatory program for generators and transporters of hazardous waste and for owners and operators of facilities that treat, store or dispose of hazardous wastes.

12. Section 3002 of RCRA, 42 U.S.C. § 6922, requires that EPA promulgate regulations establishing standards applicable to generators of hazardous waste. EPA regulations specifying standards for generators of hazardous waste are codified at 40 C.F.R. Part 262.

13. Section 3004 of RCRA, 42 U.S.C. § 6924, requires that EPA promulgate regulations establishing performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste. Section 3004 of RCRA, 42

U.S.C. § 6924, also required EPA to, whenever appropriate, distinguish between requirements appropriate for new facilities and for facilities in existence on the date of the promulgation of such regulations.

14. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that States may be authorized to administer and enforce State hazardous waste management programs under RCRA rather than the federal program. The State of Alabama was authorized to administer its RCRA hazardous waste management program on or about December 22, 1987. The requirements of Alabama's authorized State program are found at Alabama Code §§ 22-30-1 through 22-30-24. The Alabama "Hazardous Waste Management Regulations" as authorized by EPA are set forth at Alabama Department of Environmental Management (ADEM) Admin. Code R. 335-14-1 through 335-14-9.

15. The United States has concurrent authority under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), to enforce those portions of the RCRA hazardous waste management program that the State of Alabama has been authorized to enforce.

16. The United States has exclusive authority pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), to enforce those portions of the RCRA program added by the Hazardous and Solid Waste Amendments of 1984 until the State program is authorized with respect to those requirements. The State of Alabama had been authorized for HSWA.

17. 40 C.F.R. Part 262 and ADEM Admin. Code R. 335-14-3 contain the regulations that establish standards for generators of hazardous waste. A person who generates a hazardous waste as defined by 40 C.F.R. Part 261 and ADEM Admin. Code R. 335-14-2 is subject to the compliance requirements and penalties prescribed in Section 3008 of RCRA if that person fails to comply with any of the requirements of these parts.

18. Under 40 C.F.R. § 262.11 and ADEM Admin. Code R. 335-14-3-.01(2), a person who generates a solid waste, as defined in 40 C.F.R. § 261.2 and ADEM Admin. Code R. 335-14-2-.01(2), must determine if that waste is a hazardous waste using a method

prescribed in the regulation. If the waste is determined to be hazardous, the generator must refer to 40 C.F.R. Parts 261, 264, 265, 266, and 268 and ADEM Admin. Code R. 335-14-2, 335-14-5, 335-14-6, 335-14-7, 335-14-9, and 335-14-11 for possible exclusions or restrictions pertaining to management of his specific waste. 40 C.F.R. § 262.11(d); ADEM Admin. Code R. 335-14-3-.01(2)(d).

19. 40 C.F.R. Part 264 and ADEM Admin. Code R. 335-14-5 contain the regulations which establish minimum standards for the acceptable management of hazardous waste. These minimum standards apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste. A person who treats, stores, or disposes of hazardous waste as defined by 40 C.F.R. Part 261 and ADEM Admin. Code R. 335-14-2 also is subject to the compliance requirements and penalties prescribed in Section 3008 of RCRA, 42 U.S.C. § 6928, if that person fails to comply with any of the requirements of the referenced regulations.

20. Pursuant to Alabama Code § 22-30-12, Alabama promulgated regulations requiring each owner or operator of a facility for the treatment, storage, or disposal of hazardous waste to have an operating permit. These regulations are codified at ADEM Admin. Code R. 335-14-5, 335-14-6 and 335-14-8.

21. Section 3004 of RCRA, 42 U.S.C. § 6924, as amended by the Hazardous and Solid Waste Amendments of 1984, restricts or prohibits the land disposal of certain hazardous wastes.

22. Section 3005 of RCRA, 42 U.S.C. § 6925 and Alabama Code § 22-30-12, require every owner or operator of a treatment, storage or disposal (TSD) facility to obtain a permit to operate the facility. These regulations are codified at 40 C.F.R. Parts 264, 265 and 270. Because Congress realized that it would be impossible to issue permits to all hazardous waste facilities before the permit program became effective it created a mechanism whereby TSD facilities could operate under "interim status."

23. Under Section 3005 of RCRA and Alabama Code § 22-30-12, a facility had to meet the following criteria to achieve interim status: (1) be in existence on November 19, 1980, or the effective date of the statutory or regulatory changes that rendered the facility subject to the permit requirement; (2) be in compliance with the preliminary notification requirements of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a); and (3) file an accurate and complete Part A application. Facilities that failed to submit Part A applications and/or failed to provide notice pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, never received interim status. Hazardous waste facilities with interim status in the State of Alabama must comply with the regulations governing treatment, storage or disposal of hazardous wastes found at ADEM Admin Code R. 335-14-6. See 40 C.F.R. Part 265.

24. ADEM Administrative Code Rule 335-14-3-.03(5)(a)4/335-14-6-.02(7)(c) states that facility personnel must take part in an annual review of the initial training required in 335-14-6-.02(7)(a) not later than 365 days from the date of the initial training session or prior annual training review.

25. ADEM Administrative Code Rule 335-14-3-.03(5)(a)2 states that a generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that the date at which each period of accumulation begins is clearly marked and visible for inspection on each container.

26. ADEM Administrative Code Rule 335-14-3-.03(5)(c)1(i) states that a generator that accumulates hazardous waste at or near any point of generation where wastes initially accumulate, must also comply with R. 335-14-6-.09(4)(a) to always keep containers of hazardous waste closed during storage, except when it is necessary to add or remove waste.

27. ADEM Administrative Code Rule 335-14-3.03(5)(a)4/335-14-6-.02(7)(d)3 states that the owner or operator must maintain at the facility a written description of the type and amount of both introductory and continuing training that will be given to each person listed under R. 335-14-6-.02(7)(d)1.

28. ADEM Administrative Code Rule 335-14-3-.01(2) requires that a generator of solid waste must determine if that waste is hazardous.

29. ADEM Administrative Code Rule 335-14-8-.01(1)(c)2.(x) provides the standards for generators who treat on-site generated wastes using physical or mechanical purposes solely for the purpose of reducing the bulk volume of the waste which must be subsequently managed as a hazardous waste. A requirement of this Rule is that generators provide written documentation of this activity at least 60 days prior to the initiation of waste treatment.

30. ADEM Administrative Code Rule 335-14-4.01(2)(c) states that a non-rail transporter must not transport hazardous wastes without having received an Alabama Hazardous Waste Permit in compliance with Rules 335-14-8-.09 through 335-14-8-.13.

31. Alabama Hazardous Waste Management and Minimization Act § 22-30-19(d) states that for purposes of developing or assisting in the development of any regulation or enforcing the provision of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or had handled hazardous waste shall, upon request of any officer, employee or representative of the EPA or officer, employee or representative of the State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to and to copy all records relating to such wastes.

32. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes EPA to seek a civil penalty not to exceed $25,000 per day for each violation.

33. Pursuant to 40 C.F.R. Part 19, EPA authorized an upward adjustment of ten percent to $27,500 of the civil penalty to be assessed for each violation of Subtitle C of RCRA and the regulations promulgated thereunder occurring after January 30, 1997.

GENERAL ALLEGATIONS

34. Northrop Grumman signed a lease agreement with the Mobile District U.S. Army Corps of Engineers to lease buildings within Redstone Arsenal for the production of Brilliant Antiarmor Submunition. The lease states that the Lessee shall comply with any laws, regulations, etc. issued by EPA or any Federal, State, interstate or local government agency having jurisdiction to abate or prevent pollution.

35. When Northrop Grumman first leased the facilities at Redstone Arsenal, it was briefed on the U.S. Army procedures at the Redstone Arsenal for disposing of hazardous waste. Northrop-Grumman was informed that a Department of Defense Address Activity Code (DODAAC) number would be needed for proper disposal of hazardous waste via the Defense Reutilization and Marketing Office (DRMO).

36. During the October-November 2000 time frame, one 55-gallon container of hazardous waste from the NG Redstone facility was loaded onto a truck and transported to the loading dock at NG's Longbow facility and placed in a hazardous storage shed for pickup by a hazardous waste carrier. There was no manifest accompanying the container and the NG Redstone facility had no permit to transport hazardous waste off-site. Subsequent profiling, either through generator knowledge determination or additional sampling, was not performed on the subject drum at NG's Longbow facility.

37. On December 18, 2001, February 1, 2002, and February 4, 2002, ADEM conducted a series of inspections of the NG Redstone facility to determine whether it met the generator requirements of Division 14 of ADEM Administrative Code and to investigate a complaint that the facility improperly handled, stored, transported, and disposed of hazardous waste.

38. During the inspections, it was documented that the NG Longbow facility, an unpermitted facility, received a 55 gallon drum of F003 hazardous waste from the NG Redstone facility. The 55 gallon drum of F003 hazardous waste was stored at the NG Redstone

facility until December 7, 2000, although the facility did not have a permit to store such waste.

39. In Building 7347 of the NG Redstone facility, an ADEM investigator observed one partially full, 55-gallon drum of hazardous waste that was not closed. Also, in the same satellite accumulation area, another full 55-gallon drum of hazardous waste was not marked with the accumulation start date. Both discrepancies were corrected during the inspection tour, as noted in the inspector's Memorandum To: Hazardous Waste File, Subject: Trip Report, dated February 15, 2002.

40. On February 1, 2002, an ADEM inspector attempted to conduct a follow-up inspection of NG's Redstone facility. The purpose of the inspection was to gather additional information about the waste determination procedures at the facility and the circumstances surrounding the off-site shipment. The inspector asked to review the facility's personnel hazardous waste training records. Attendance rosters for hazardous waste training conducted in 2000 and 2001 were provided. However, personnel training records were not made available as the Human Resources Office was closed for the day. During the inspector's review of the records, ADEM's inspector was advised that he should stop the inspection, submit a written request for the records, and allow the facility time to gather up the information. NG's legal counsel was instructed that this denial of access to training records would be reported to ADEM's Office of General Counsel.

41. On February 4, 2002, ADEM's inspector returned to the NG Redstone facility to recommence his examination of Northrop Grumman's BAT production facility personnel training records, and was provided with all requested documents, including additional personnel training records. According to the personnel training records database, hazardous waste management training for one employee working at NG's Longbow facility was conducted May 25, 2000 and June 20, 2001. The elapsed time between

these training dates is greater than 365 days. The ADEM inspector also reviewed the written position description (PD) for one of the Safety Coordinators. The PD did not contain any references to hazardous waste management duties or the type and amount of training required for the position. After reviewing these personnel records, the inspection was concluded.

42. During one of the inspections, the inspector observed personnel at NG Redstone compressing F003 hazardous waste. The NG Redstone facility had not provided ADEM with written documentation sixty (60) days prior to this treatment.

43. NG is the "owner" and/or "operator" of the NG Redstone "facility" and the NG Longbow "facility" as those terms are defined in 40 C.F.R. § 260.10.

FIRST CLAIM FOR RELIEF
(Transporting Hazardous Waste without a Permit to a Facility not Permitted to Receive Hazardous Waste)

44. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

45. The Redstone drum containing F003 waste was transported from the NG Redstone facility to the NG Longbow facility and staged with hazardous waste drums, and sent for disposal with drums of hazardous waste to a hazardous waste disposal facility.

46. The NG Redstone facility does not have an Alabama Hazardous Waste Transporter Permit. The NG Longbow facility does not have a RCRA permit.

47. NG's Redstone facility violated ADEM Administrative Code R. 335-14-4-.01(2)(c), which states that a non-rail transporter must not transport hazardous wastes without having received an Alabama Hazardous Waste Transporter Permit in compliance with Rules 335-14-8-.09 through 335-14-8-.13. The NG Redstone facility is also in violation of Alabama Hazardous Waste Management and Minimization Act (AHWMMA) § 22-30-15/Section 3003(a) of RCRA, 42 U.S.C. § 6923, for transporting the waste to a facility

that is not permitted for receipt of hazardous waste.

SECOND CLAIM FOR RELIEF

(Failure to Make Hazardous Waste Determinations)

48. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

49. At various times relevant to this Complaint, NG's Redstone and Longbow facilities generated "solid waste," as that term is defined in 40 C.F.R. § 261.2.

50. 40 C.F.R. § 262.11 requires that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste.

51. NG failed to conduct a proper waste determination on the Redstone drum generated at NG's Redstone. The actions of NG regarding the failure to make the required hazardous waste determination violates ADEM Administrative Code Rule 33-14-3-.01(2).

THIRD CLAIM FOR RELIEF

(Failure to Mark Drum with Accumulation Start Date)

52. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

53. 40 C.F.R. § 262.34 allows the accumulation of hazardous waste on-site for ninety (90) days or less (commonly known as less than ninety (90) day storage) without a permit provided that certain requirements are met, including that weekly inspections occur, that all containers of hazardous waste be marked with start dates of accumulation and labeled or marked clearly with the words "Hazardous Waste" as required by 40 C.F.R. §§ 262.34(a)(2) and (3).

54. At the time of the ADEM inspection, a start accumulation date was not marked on one 55-gallon drum of hazardous waste in Building 7347 of the NG Redstone facility.

55. Thus, the storage of the drum referenced in Paragraph 54, above, does not meet the

requirements for the less than ninety (90) day storage exemption and NG's Redstone facility was illegally storing hazardous waste in violation of RCRA Section 3005.

FOURTH CLAIM FOR RELIEF

(Failure to Close Drum)

56. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

57. 40 C.F.R. §262.34(c)(1)(I) and 40 C.F.R. § 265.173(a) require that containers of hazardous waste be closed during storage, except when necessary to add or remove waste.

58. At the time of the ADEM inspection, one partially full 55-gallon drum of D001/F003 hazardous waste in Building 7347 of the NG Redstone facility was not closed in accordance with this regulation.

59. A condition for exemption from storage permitting requirements under AHWMMA § 22-30-16(a)(1) and Section 3005(a) of RCRA, 42 U.S.C. § 6925 given in ADEM R. 335-14-3-.03(5)(c)1(i) and ADEM R. 335-14-6-.09(4)(a) and in 40 C.F.R. §§ 262.34(c)(1)(i) & 265.173(a) allow a generator to accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status, provided that the container holding hazardous waste is always closed during storage, except when it is necessary to add or remove waste.

60. Thus, the failure to properly close the 55 gallon drum referenced in Paragraph 58, above, does not meet the requirements for the less than ninety (90) day storage exemption, and NG's Redstone facility was illegally storing hazardous waste in violation of RCRA Section 3005. As such, NG's Redstone facility was illegally storing hazardous waste in violation of RCRA Section 3005.

FIFTH CLAIM FOR RELIEF

(Failure to Conduct Annual Reviews)

61. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

62. 40 C.F.R. § 264.16 requires that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this section.

63. 40 C.F.R. § 264.16(c) requires that all personnel take part in an annual review of the initial training required by 40 C.F.R. § 16(b).

64. During the document review of the Inspection, records indicated that the required training was not conducted within 365 days for one of NG's employees.

65. ADEM Administrative Code Rule 335-14-3-.03(5)(a)4 /335-14-6-.02(7)(c) states that facility personnel must take part in an annual review of the initial training required in 335-14-5-.02(7)(a) not later than 365 days from the date of the initial training session or prior annual training review. The actions of NG regarding the failure to properly train its employees constitute a violation of ADEM Administrative Code Rule 335-14-3-.03(5)(a)4.

SIXTH CLAIM FOR RELIEF

(Failure to Maintain Records)

66. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

67. 40 C.F.R. § 264.16(d)(3) requires that an owner or operator maintain at the facility a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 40 C.F.R. § 264.16(d)(1). At the time of inspection, the written position for four NG employees did not include the type and amount of training required for their positions.

68. ADEM Administrative Code Rule 335-14-3.03(5)(a)4/335-14-6(2)(7)(d)3 states that the

owner or operator must maintain at the facility a written description of the type and amount of both introductory and continuing training that will be given to each person listed under R. 335-14-6-.02(7)(d)1. The actions of NG regarding the failure to maintain required records on their employees at the NG Redstone facility constitute a violation of ADEM Administrative Code Rule 335-14-3.03(5)(a)4 and R.335-14-6(2)(7)(d)3.

SEVENTH CLAIM FOR RELIEF

(Failure to Provide Written Documentation Prior to Treatment)

69. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

70. ADEM Administrative Code Rule 335-14-8-.01(1)(c)2.(x) provides the standards for generators who treat on-site generated wastes using physical or mechanical purposes *solely for the purpose of reducing the bulk volume of the waste which must be* subsequently managed as a hazardous waste. A requirement of this Rule is that generators provide written documentation of this activity at least 60 days prior to the initiation of waste treatment.

71. At the time of inspection, NG was compressing F003 hazardous waste at its NG Redstone facility and had not provided the documentation required by this regulation. As such, NG violated ADEM Administrative Code Rule 335-14-8-.01(1)(c)2.(x).

EIGHTH CLAIM FOR RELIEF

(Failure to Provide Training Records)

72. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

73. Alabama Hazardous Waste Management and Minimization Act § 22-30-19(d) states that for purposes of developing or assisting in the development of any regulation or enforcing the provision of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or had handled hazardous waste shall,

upon request of any officer, employee or representative of the EPA or officer, employee or representative of the State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to and to copy all records relating to such wastes.

74. An ADEM employee was not provided access to all personnel training records at the time of inspection. The actions of NG regarding the failure to provide personnel training records at its NG Redstone facility constitute a violation of Alabama Hazardous Waste Management and Minimization Act § 22-30-19(d).

NINTH CLAIM FOR RELIEF

(Receipt of Hazardous Waste by an Unpermitted Facility)

75. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

76. ADEM R. 335-14-5-.02(3)(b) states that an owner or operator of a facility that receives hazardous waste from an off-site source must inform the generator in writing that he has the appropriate permits for, and will accept the waste the generator is shipping. The owner or operator must keep a copy of this notice as part of the operating record.

77. During the December 18, 2001, February 1, 2002, and February 4, 2002, inspections, it was documented that the NG Longbow facility, an unpermitted facility, received a 55-gallon drum of waste from the NG Redstone facility. Plaintiffs allege that the drum contained F003 hazardous waste.

78. Thus, NG violated ADEM R. 335-14-5-.02(3)(b).

TENTH CLAIM FOR RELIEF

(Storing Hazardous Waste without a Permit or Interim Status)

79. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 43, above.

80. AHWMMA § 22-30-16 (a)(1)/Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) require that

the owner or operator of a facility that treats, stores, or disposes of hazardous waste obtain a permit or interim status.

81. A 55-gallon drum of waste was stored at the NG Longbow facility until December 7, 2000. Plaintiffs allege that the drum contained F003 hazardous waste. The NG Longbow facility does not have a permit or interim status to store hazardous waste.

82. Thus, NG violated AHWMMA § 22-30-16 (a)(1)/Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and ADEM, respectfully pray that this Court provide the following relief:

1. A permanent injunction directing NG at its NG Redstone facility to:

   a. Conduct a hazardous waste determination in accordance with ADEM Admin. Code R. 335-14-3-.01(2) on any waste generated during the conduct of business;

   b. Comply with ADEM Admin. Code R. 335-14-3-.03(5)(a)2 by labeling all hazardous waste containers with the date of accumulation, except as otherwise specified by ADEM Admin. Code R. 335-14-3-.03(5)(c)1;

   c. Comply with ADEM Admin. Code R. 335-14-6-.09(4)(a) by keeping containers of hazardous waste closed, except when adding or removing waste;

   d. Comply with ADEM Administrative Code R. 335-14-3-.03(5)(a)4/335-14-6-.02(7)(d)3 and maintain at the facility a written description of the type and amount of introductory and continuing training that will be given to each person listed under R. 335-14-6-.02(7)(d)1;

   e. Comply with ADEM Administrative Code R. 335-14-3-.02(1) and prepare a hazardous waste manifest containing all the information required on the

manifest for all hazardous waste shipped offsite;

f. Ensure as stated in ADEM Administrative Code R. 335-14-4-.01(2)(c) that non-rail transporters must not transport hazardous waste without an Alabama Hazardous Waste Permit in compliance with Rules 335-14-8-.09 through 335-14-8-.13;

g. Cease to treat on-site generated wastes using physical or mechanical processes solely for the purpose of reducing the bulk volume of the waste which must be subsequently managed as hazardous without compliance with the standards provided in ADEM Administrative Code R. 335-14-8-.01(c)2.(x) and provide written documentation at least sixty (60) days prior to the initiation of waste treatment; and

h. Comply with Alabama Hazardous Waste Management and Minimization Act § 22-30-19(d) which states in part, that for purposes of developing or assisting in the development of any regulation or enforcing the provision of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste shall, upon request of any officer, employee, or representative of the Environmental Protection Agency, duly assigned by the Administrator, or upon request of any duly designated officer, employee, or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to and to copy all records relating to such wastes.

2. A permanent injunction directing NG at its NG Longbow facility to refuse receipt of hazardous waste unless in compliance with ADEM Administrative Code R. 335-14-5-.02(3)(b) and store all hazardous waste in compliance with Section

3005(a) of RCRA, 42 U.S.C. § 6925(a) and ADEM Code R. 335-14 and Ala. Code 22-30-12.

3. A judgment assessing civil penalties against NG in an amount not to exceed $27,500 per day for each violation of RCRA;

4. A judgment awarding the United States and ADEM the costs of this action; and

5. Such further relief as this Court may deem appropriate.

Respectfully submitted,

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