South Carolina
DHEC
Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201

Commissioner: Douglas E. Bryant

Board: John H. Burriss, Chairman
Sandra J. Molander, Secretary

Richard E. Jabbour, DDS
William M. Hull, Jr., MD
Roger Leaks, Jr.

Promoting Health, Protecting the Environment

October 5, 1995

CERTIFIED MAIL

Dr. Mario Fiori, Manager
Savannah River Operations Office
Post Office Box A
Aiken, South Carolina 29802

Re: Savannah River Site
SC1890008989
Aiken, South Carolina

Dear Dr. Fiori:

Enclosed is a copy of the executed Consent Order 95-22-HW for the above referenced facility located in Aiken, South Carolina.

The Savannah River Site should immediately begin implementation of the Approved Site Treatment Plan.

Should any questions arise concerning this matter, please contact me at (803) 896-4152.

Sincerely,

Kim K. Hagan

Kim K. Hagan
Enforcement Section
Bureau of Solid and Hazardous
Waste Management

KKH/kkh
c: Beth Partlow
Deputy Director of the Environment
Office of the Governor

David Wilson
Assistant Bureau Chief
Bureau of Solid and Hazardous
Waste Management

Shelly Sherritt
Hazardous Waste Permitting

James Burckhalter
Lower Savannah District, EQC

recycled paper

THIS IS A TRUE COPY OF SELECTED
& ENVIRONMENTAL CONTROL RECORDS
Kim K. Hagan

THE STATE OF SOUTH CAROLINA

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

IN RE: UNITED STATES DEPARTMENT OF ENERGY
SC1890008989
AIKEN, ALLENDALE, AND BARNWELL COUNTIES

CONSENT ORDER
95-22-HW

The United States Department of Energy (DOE) owns and is responsible for the operation of the Savannah River Site (SRS), a nuclear materials production facility located in Aiken, Allendale, and Barnwell counties in South Carolina. Operations of the SRS include the management of various forms of waste, including radioactive hazardous wastes, hereinafter referred to as mixed waste.

FINDINGS OF FACT

1) On September 13, 1987, the South Carolina Department of Health and Environmental Control (the Department) received authorization to regulate mixed waste.

2) On March 13, 1991, the Federal Facility Compliance Agreement (FFCA) between the United States Environmental Protection Agency (EPA) and SRS became effective. This Agreement established compliance deadlines for the treatment of mixed wastes that were subject to the land disposal restriction regulations.

3) On May 8, 1992, certain mixed waste became subject to all of the land disposal restriction (LDR) regulations of 40 CFR 268, and on December 25, 1992 certain mixed waste became subject to all of the LDR regulations of R. 61-79.268 of the South Carolina Hazardous Waste Management Regulations. At the onset of full regulations, mixed waste subject to the LDR regulations was stored at the SRS facility, and this waste is still currently stored at the facility. The Department contends that the storage of this waste was not solely for the purpose of accumulating sufficient quantities to facilitate proper recovery, treatment, or disposal. SRS states that the waste was stored due to inadequate treatment capacity or lack of treatment technology.

4) On October 6, 1992, The Federal Facility Compliance Act (FFCAct) became effective. Pursuant to the FFCAct, sovereign immunity will be waived on October 6, 1995 for the storage of mixed waste that is not subject to an agreement, permit, or Order.

5) On April 23, 1993, SRS submitted to the Department an Interim Mixed Waste Inventory Report as required by the FFCAct.

6) On October 27, 1993, SRS submitted to the Department a conceptual Site Treatment Plan (STP).

7) On June 20, 1994, an amendment to the LDR Federal Facility Compliance Agreement between EPA and SRS became effective.

8) On August 30, 1994, SRS submitted to the Department a Draft STP.

9) On March 30, 1995, SRS submitted to the Department the Proposed STP.

CONCLUSIONS OF LAW

Pursuant to the Federal Facility Compliance Act P.L. 102-386, §102(c), 106 Stat. 1506 and pursuant to S.C. Code Ann. Sections 44-56-50 and 44-56-140, (Supp. 1994), the Department and SRS have agreed to enter into this Consent Order for the facility's continued generation, storage, and treatment of mixed waste.

NOW THEREFORE IT IS ORDERED with the consent of SRS that pursuant to S.C. Code Ann. Sections 44-56-30, 44-56-130, and 44-56-140 (Supp. 1993):

1) Immediately upon the execution date of this Order, the Proposed Site Treatment Plan shall be known as the Approved Site Treatment Plan (the Approved STP). Immediately upon the execution date of this Order, SRS shall begin implementation of Volume I of the Approved STP in accordance with the implementation schedules and procedures contained within Volume I of the approved STP. The implementation of Volume II and the Reference Volume of the STP is not subject to the provisions of this Order.

2) Immediately upon the execution date of this Order, SRS shall comply with the following requirements:

A) SRS and the Department agree to continue good faith discussions with other states that host DOE facilities regarding any proposed treatment of DOE mixed waste, at a site other than the generating site.

B) Prior to implementing any proposal not identified in the Approved STP that involves the shipment of mixed waste to, or the receipt of mixed waste from, another DOE site, SRS agrees to preform the following:

1) Provide the Department an information package on the proposal that includes the following:

a) proposed shipping and treatment schedules,
b) the location of treatment and pre-treatment storage facilities,
c) provisions for managing mixed waste residuals, including the location and schedule for storage, and disposal if known, and justification if residuals will not be returned to the generating site, and
d) a detailed rationale for the proposal.

2) Solicit the Department's comments on the proposal.

3) Request the Department's approval of the proposal.

C) The Department shall submit to SRS its comments and approve or disapprove the proposal, by a date proposed by SRS and agreed to by the Department. If the Department disapproves the proposal or does not act on the proposal by the agreed upon date, SRS may invoke the process pursuant to paragraph 14 below or take whatever action it deems appropriate, including filing an appeal to the federal district court.

D) The Department and SRS reserve all legal rights and defenses that may be available to either party in any administrative or judic proceeding that addresses any decision by either party on the matters addressed herein. Furthermore, subject to the other provisions of this Order, the Approved STP, and other applicable permits, orders, or agreements between the parties, nothing in this section shall be construed as DOE's agreement that the Department's approval of a proposal is required.

3) No later than April 30, 1996 and annually thereafter, SRS shall submit to the Department an Annual Update to the Approved STP. This Annual Update shall be in compliance with section 3021(b) of the Resource Conservation and Recovery Act (RCRA) as amended by the FFCAct and shall include, but not be limited to, an updated inventory of all untreated mixed waste, the status of all residuals from the treatment of mixed waste, and an updated implementation schedule which complies with paragraph 6) belo Projections of new mixed wastestreams generated or to be generated onsite and proposed to be received from offsite shall be included in the Annual Updates. Proposed changes to the implementation schedule will be limited to future years only unless the Department has previously approved a change to the current year's schedule. A list of all proposed changes to the Approved STP with a justification for requesting such changes shall be provided with the Annual Update. Unless otherwise notified by the Department, SRS shall not propose in the Annual Update modifications or revisions to the Approved STP that have been previously denied by the Department.

4) SRS shall submit to the Department Annual Updates to the Approved STP, in accordance with paragraph 3) above, until the Department provides a written release to SRS from the responsibility to comply with this requirement.

5) SRS shall submit, for Departmental approval, a request for a modification or revision to Volume I of the Approved STP for any change unless the change requires notification only. All requests for modifications or revisions must meet the requirements of Section 3021(b) of RCRA as amended by the FFCAct and shall include a detailed justification for the modification or revision. Additionally, modification or revision requests to add new off-site wastestreams or to ship onsite generated waste to an offsite facility shall meet the requirements of paragraph 2) above. The Department shall ensure that the public notice requirements of the FFCAct are addressed. SRS shall begin implementation of any modification or revision only upon receipt of written approval by the Department. Unless SRS is notified to the contrary by the Department, scheduled dates for which modification or revision requests have been submitted are extended during the Department's review of the requests.

6) SRS shall submit requests for current Federal fiscal year schedule modifications or revisions separate from the submission of the Annual Update. Submissions shall be submitted no later than sixty (60) days prior to the milestone date. In cases where the basis for the modification or revision is not known by SRS in time to submit the request sixty (60) days prior to the milestone date, SRS may request an emergency modification or revision and the

Department will determine if the request is timely considering the circumstances. Unless notified by the Department, SRS shall submit requests for modifications or revisions, other then those described in the previous sentences, in the Annual Update.

7) Within thirty (30) days of discovery, SRS shall notify the Department in writing of new on-site generated mixed wastestreams. Except as provided in Chapter 2 of Volume I of the Approved STP, within twelve (12) months of notification to the Department of a new on-site generated mixed wastestream, SRS shall submit to the Department a treatment strategy in either a modification or revision request or an Annual Update.

8) SRS shall manage mixed waste residuals from the treatment of land disposal restricted mixed waste in accordance with the Approved STP and all applicable standards of the South Carolina Hazardous Waste Manageme Regulations.

9) SRS shall submit to the Department for information only a progress report on the Waste Isolation Pilot Plan (WIPP) with the Annual Update. The progress report must include, but is not limited to, the status of the No-Migration Variance Petition, compliance with disposal standards, and other pertinent technical and/or legal issues related to the WIPP's readiness.

10) Prior to changing the treatment process for any wastestream included in Volume II of the STP, SRS shall submit a written proposal of the changes to the Department. SRS shall implement a treatment process change only upon

a determination by the Department that the change would not subject the waste to the requirements of Volume I of the STP. Determinations by the Department shall be made by a mutually agreed upon date. If the Department does not make a determination by the mutually agreed upon date, SRS shall be given the opportunity to meet with the Department. If the Department determines that the new treatment process would subject the waste to Volume I of the STP, SRS shall submit a request for a modification or revision to Volume I of the STP, if required, on a mutually agreed upon date. The Department agrees to meet with SRS to establish a mutually agreed upon date, if necessary.

11) Any modification or revision to any schedule required by this Order or required by any document in this Order shall be granted at the sole discretion of the Department subject to paragraph 14 below. Approved modifications or revisions to Volume I of the Approved STP shall be incorporated by reference as an enforceable part of this Order.

12) Requests for modification or revisions to the STP may be submitted for the following reasons:

a) An event of *force majeure* as defined in paragraphs 17) below;
b) A delay caused by an approved modification or revision for other scheduled events;
c) A delay caused by additional work agreed to by the Department and SRS;
d) Circumstances unforeseen at the time of approval of the STP that significantly affect the work required in the plan;
e) New information or technological barriers that significantly affect the work required by the plan;
f) An inconsistency with the requirements of an enforceable agreement, permit, or administrative or judicial order to which DOE is a party;
g) A change in the schedule of an offsite facility that impacts a project activity schedule in Volume I of the STP;
h) A delay caused by a problem obtaining funding;

i) A delay caused by the identification of new technologies or the identification of inadequate technologies;
j) A delay caused by the Department's or SRS's determination tl any onsite activity may cause a threat to human health or t environment; and
k) A change in the hazardous constituents in the waste or waste characteristics or the radiological profile.

Requests for modifications or revisions to the STP are not limited to the above list. The Department may or may not approve any request for a modification or revision even for those requests submitted for the reasons stated on the above list. Pursuant to paragraphs 2) and 5) above, requests for modifications or revisions shall include a detailed justification for a modification or revision regardless of the items listed above.

13) Pursuant to S.C. Code Ann. Section 44-56-50, (Supp. 1994), the Department may take such action as it determines to be necessary, including the suspension of the requirements of this Order, to protect human health the environment upon receipt of information that the treatment of any mixed waste may present an imminent and substantial hazard to human health and the environment.

14) Should the Department determine that a violation of this Order may have occurred, SRS shall be given the opportunity to address the alleged violations with the Department. Should the Department render a final decision with which SRS is not in agreement, SRS shall be given the opportunity to address the decision with the Department. SRS may appeal alleged violations and final decisions by the Department in accordance with all applicable laws.

15) No provision of this Order shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. SRS reserves the right to raise lack of funding and Anti-Deficiency Act as a defense in any enforcement action or appeal of a Department denial of a requested modification or revision.

16) Unless the Department and SRS mutually agree that no modification or revision to the Order or Approved STP is warranted, the Department and SRS shall begin a good faith dialogue in January of 1999. This dialogue shall determine the extent to which the milestone and funding structure of the Order and the technical plans and schedules should be modified or revised. The dialogue shall also consider experience in implementing the Order and STP to date, the most recent information on current and projected funding availability, and the status of major technical issues that are expected to affect the management of mixed waste across Department of Energy sites. The Department shall issue a decision on the need for a modification or revision to the Order or the Approved STP by September 30, 1999.

17) If any *force majeure* event occurs which causes or may cause a delay in meeting any of the scheduled activities of this Order and/or the STP, SRS must notify the Department in writing at least one (1) week before the scheduled date, if known, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, if ascertainable, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented.

The Department shall provide written notice as soon as practicable that a specified extension of time has been granted or that no extension been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure* which shall mean any event arising from causes beyond the control of SRS that causes a delay in or prevents the performance of any of the conditions under this Consent Order including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, explosion; b) adverse weather conditions that could not be reasonably anticipated causing an unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisiti procedures, despite the exercise of reasonable diligence by SRS.

Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or any person's failure to exercise due diligence in obtaining governmental permits or fulfilling contractual duties. Such determination will be made at the sole discretion of the Department. SRS may appeal such determinations in accordance with all applicable laws. Any extension shall be incorporated by reference as an enforceable part of this Consent Order.

IT IS FURTHER ORDERED AND AGREED that if determined by the Department SRS shall pay a three thousand dollar ($3,000.00) stipulated penalty per violation for each day for any failure to comply with time requirements established pursuant to this Order, including any implementation schedule approved by the Department. Stipulated penalties under this paragraph shall be made payable to the S.C. Department of Health and Environmental Control.

The stipulated penalty set forth above shall be in addition to any other nonmonetary remedies or sanctions which may be available to the Department by reason of SRS's failure to comply with the requirements of this Order.

IT IS FURTHER AGREED that SRS does not necessarily agree with the Findings of Fact or Conclusions of Law but in the interest of resolving this matter expeditiously and without litigation agrees to the entrance of this Consent Order. However, nothing shall preclude a party from proving issues of law or fact recited herein in subsequent proceedings to the extent that such issues may be relevant to enforcing the Order.

IT IS FURTHER AGREED that failure to meet deadlines established herein or any other violation of the provisions of this Order may be deemed a violation of the South Carolina Hazardous Waste Management Act and therefore may be deemed unlawful. Upon ascertaining any such violation, the Department may initiate action to obtain compliance with this Order and the aforesaid Act.

THE SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

DATE: 9/29/95 BY: Douglas E. Bryant
Douglas E. Bryant
Commissioner

We Consent:

UNITED STATES DEPARTMENT OF ENERGY

Mario P. Fiori DATE: 28 Sept 95
Dr. Mario P. Fiori, Manager
Savannah River Operations Office

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Hartsill W. Truesdale DATE: 09/29/95
Hartsill W. Truesdale, P.E.,
Chief
Bureau of Solid and Hazardous
Waste Management

Sam L. Fuller DATE: 9/29/95
Approved by: Legal Office