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Columbia, SC 29201-1708

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A. B. Gould, Director
Environmental Compliance Division
The United States Department
of Energy
Savannah River Site
Post Office Box A
Building 703
Aiken, South Carolina 29802

J. V. Odum, Manager
Facility Support Section
Environmental Protection
Department
Westinghouse Savannah River
Company
Building 742A
Aiken, South Carolina 29808

ACTION

Re: Savannah River Site
SC1890008989
Aiken, Allendale, and Barnwell Counties

Dear Messrs. Gould and Odum:

Enclosed is a copy of the executed Consent Order 99-41-HW for the United States Department of Energy (USDOE) and Westinghouse Savannah River Company (WSRC) in Aiken, Allendale, and Barnwell Counties in South Carolina.

The USDOE and WSRC should be aware that paragraphs 1) and 4) in the NOW THEREFORE section require the facility to submit certain information to the Department no later than October 28, 1999. Additionally, paragraph 7) of the aforementioned section requires the USDOE and WSRC to pay a civil penalty in the amount of thirty eight thousand nine hundred forty dollars ($38,940.00) to the Department no later than October 31, 1999. The information and the penalty payment should be sent to the following address:

South Carolina Department of Health and
Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
Attention: Kim K. Hagan

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

Sincerely,

Kim K. Hagan

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

KKH\kkh
c: John Cooper
Compliance Monitoring and Enforcement Section

Crystal Rippy
Hazardous Waste Permitting

James Burckhalter
Lower Savannah District, EQC

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

THE STATE OF SOUTH CAROLINA
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

IN RE: THE UNITED STATES DEPARTMENT OF ENERGY

AND

WESTINGHOUSE SAVANNAH RIVER COMPANY

SC1890008989

AIKEN, ALLENDALE, AND BARNWELL COUNTIES

CONSENT ORDER

99-41-HW

The United States Department of Energy (USDOE) owns and is the co-operator of the Savannah River Site (SRS), a nuclear materials production facility located in Aiken, Allendale, and Barnwell counties in South Carolina. Westinghouse Savannah River Company (WSRC) is the co-operator of the SRS facility. Operations at the SRS facility include the handling and disposal of various forms of waste, including radioactive, mixed, solid, and hazardous wastes.

FINDINGS OF FACT

1) On October 2, 1998, WSRC personnel notified the Department by telephone that it discovered mercury in approximately 616 gallons of diesel fuel. This fuel had been stored in an old Beta-Gamma Incinerator (BGI) tank at the Savannah River Site (SRS) Consolidated Incinerator Facility (CIF) for approximately ten years.

2) On October 26, 1998, WSRC submitted a letter to the Department that further explained the history of the tank. This letter stated that the BGI tank had been built to demonstrate a process for burning non-hazardous waste (PUREX solvent). The tank operated from 1983 to 1988. Prior to the shutdown of the tank, high activity PUREX solvent material was added to the tank, but due to the high activity of the waste (which equaled a high potential for radioactive contamination), the material was flushed out of the tank into a tanker truck. The BGI tank was rinsed with diesel fuel. This diesel fuel was burned, and additional diesel fuel was added to the tank. This additional fuel was also burned. The material in the tanker truck was sampled in October of 1991, and the results indicated that the material was not a hazardous waste. On August 8, 1998, approximately 450 gallons of material was removed from the BGI tank. Analytical results from a sample of the waste indicated a mercury level of 0.926 mg/l using the Toxic Characteristic Leaching Procedure (TCLP). This sample was reanalyzed, and the results of the reanalysis indicated a TCLP level of 0.837 mg/l for mercury. The analytical results for two additional samples of the BGI material indicated TCLP levels for mercury of 0.993 mg/l and 1.000 mg/l. Approximately 166 gallons of this material remain in the BGI tank.

3) On March 11, 1999, the Department issued a Notice of Violation and Enforcement Conference to the USDOE and WSRC. The Enforcement Conference was held on April 13, 1999.

4) The USDOE and WSRC provided the following information in a letter to the Department, dated July 27, 1999:

a) At the time the BGI incinerator was permitted, the appropriate application of the Resource Conservation and Recovery Act (RCRA) to mixed waste activities conducted by the USDOE under the Atomic Energy Act (AEA) was not clear. This question was not finally resolved until issuance of the "by-product rule" which had an effective date of June 1, 1987.

b) The BGI incinerator was operated under a permit issued by the Department's Bureau of Air Quality Control.

c) The BGI incinerator also burned waste oil contaminated with tritium as an auxiliary fuel. At that time, waste oil was designated as a hazardous waste by the Department. Analytical data was requested by, and provided to, the Department to demonstrate that the waste oil did not contain toxic metals at or above characteristically hazardous limits. The USDOE and WSRC has no record that a toxic metals analysis of canyon solvent was ever requested by or provided to the Department.

d) Diesel fuel was used to flush the BGI solvent tank in 1988. Analytical results from a 1998 sample of the waste indicated that the material was 99.9% diesel fuel and 0.1% aqueous solution.

CONCLUSIONS OF LAW

Based on these findings, the Department has concluded that the USDOE and WSRC have violated the South Carolina Hazardous Waste Management Act, S.C. Code Ann. §44-56-130 and the South Carolina Hazardous Waste Management Regulations, 25 S.C. Code Ann. Regs. 61-79 (Supp. 1998), promulgated pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. §44-56-30 (Supp. 1998) as follows:

1) R.61-79.262.11, A person who generates a solid waste, as defined by R. 61-79.261.2, must accurately determine if that waste is a hazardous waste.

2) R.61-79.262.34(a), A generator may accumulate hazardous waste onsite for 90 days or less without a permit and without interim status, provided that the waste is placed in containers, in tanks, on drip pads, or in containment buildings and the generator complies with all of the requirements of R.61-79.262.34(a)(1) through (5).

3) R.61-79.262.34(a)(3), A generator may accumulate hazardous waste onsite for 90 days or less without a permit and without interim status, provided that he, among other requirements, labels or marks each container and tank with the EPA Hazardous Waste Number and the words: "Hazardous Waste - federal law prohibits improper disposal."

4) R.61-79.262.34(b), A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of R.61-79.264 and R.61-79.265 and the permit requirements of R.61-79.270 unless he has been granted an extension to the 90-day period.

5) R.61-79.268.50(a)(1), The storage of hazardous waste restricted from land disposal is prohibited unless the generator stores such waste in tanks, containers, or containment buildings onsite solely for the purpose of

accumulating of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements of R.61-79.262.34, R.61-79.264, and R.61-79.265.

6) R. 61-79.270.1(b), The transportation, treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

In the interest of resolving this matter without the delay and expense of litigation, USDOE and WSRC agree to the entrance of this Consent Order but does not agree with the Findings of Fact and Conclusions of Law, and therefore agree that this Order shall be deemed an admission of fact or law only as necessary for enforcement of this Order by the Department of subsequent actions relating to USDOE and WSRC by the Department.

The execution of this Consent Order by the Bureau of Land and Waste Management of the South Carolina Department of Health and Environmental Control and the USDOE and WSRC shall resolve all matters between the Bureau and USDOE and WSRC for those incidents which are specifically set forth in this Consent Order.

NOW THEREFORE IT IS ORDERED with the consent of the USDOE and SRC that pursuant to S.C. Code Ann. Sections 44-56-40, 44-56-30, 44-56-130 and 44-56-140 (Supp. 1998):

1) Within thirty (30) days of the execution date of this Order or no later than September 21, 1999, whichever date is later, SRS shall submit to the Department, for approval, a closure plan for the Beta-Gamma Incinerator Tank located at the Consolidated Incinerator Facility. This plan shall meet all applicable requirements of R.61-79.264 Subparts J and G and shall include, but is not limited to details for the closure of the BGI tank and an implementation schedule.

2) Within thirty (30) days of receipt of the Department's comments on the closure plan, SRS shall submit to the Department a revised closure plan that satisfactorily address all of the Department's comments.

3) Within thirty (30) days of the receipt of the Department's approval of the closure plan, SRS shall begin implementation of the approved closure plan in accordance with the implementation schedule contained within said plan.

4) Within thirty (30) days of the execution date of this Order, SRS shall submit to the Department for approval a plan for locating all previously unidentified sources of hazardous or mixed wastes at the

facility, subject to available funding. This plan shall include, but is not limited to, detailed methods for a site-wide survey to locate such waste, including, but not limited to the specific techniques that will be used for conducting the survey and an implementation schedule. A physical walkdown or inspection of all facilities at the Savannah River Site shall not be a required provision of the site-wide survey plan. Wastes or waste sites otherwise addressed under the Federal Facilities Agreement will not be included in this survey.

5) Within thirty (30) days of the receipt of the Department's approval of the plan required by paragraph 4) above, SRS shall begin implementation of the approved plan in accordance with the implementation schedule contained within said plan. The implementation of this plan shall be subject to the availability of funding.

6) Within thirty (30) days of completion of the plan required by paragraph 4) above and subject to available funding, SRS shall submit to the Department a report of all units and/or sources of unidentified wastes. This report shall include, but is not limited to a list of all units and/or sources of unidentified wastes found and a proposed path for the resolution and management of those wastes. The proposed resolution will be prioritized and submitted to the Department for approval.

7) No later than October 31, 1999, the SRS shall pay to the Department a civil penalty in the amount of thirty eight thousand nine hundred forty dollars ($38,~~490~~ 940.00). KH

IT IS FURTHER AGREED that the USDOE and WSRC shall request the funding for the site inventory plan development, implementation, reports, and final resolution, required by paragraphs 4), 5), 6) above, and shall diligently seek such funding until this funding is received.

IT IS FURTHER AGREED that any material found pursuant to the site-wide survey that is stored in containers or tanks and is included in the initial report required by paragraph 6) above, shall not subject SRS to additional enforcement and/or the assessment of additional civil penalties.

IT IS FURTHER AGREED if any *force majeure* event occurs which causes or may cause a delay in meeting any of the scheduled activities of this Order and all approved plans referenced herein, 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 has 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 acquisition 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 AGREED that no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

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

THE SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

DATE: 9/28/99 BY: Douglas E. Bryant
Douglas E. Bryant
Commissioner

We Consent:

THE UNITED STATES DEPARTMENT OF ENERGY

Roy J. Schepens DATE: 9/22/99

_____ DATE: _____

WESTINGHOUSE SAVANNAH RIVER COMPANY

WS Kelly _____ DATE: 9/21/99

_____ DATE: 9/21/99

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Hartsill W. Truesdale _____ DATE: 09/27/99

Hartsill W. Truesdale, P.E.,
Chief
Bureau of Solid and Hazardous
Waste Management

_____ DATE: 9/28/99

Approved by: Legal Office