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

Commissioner: Michael D. Jarrett

Board: John B. Pate, MD, Chairman
William E. Applegate, III, Vice Chairman
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Promoting Health, Protecting the Environment

August 30, 1991

CERTIFIED MAIL

SEP 04 REC'D

Mr. S. R. Wright, Director
Environmental Division
Department of Energy
Savannah River Operations Office
Post Box A
Aiken, South Carolina 29802

File Reference: Savannah River Site
Aiken, Allendale, and Barnwell Counties
SCD1890008989

Dear Mr. Wright:

Enclosed is a completely executed copy of Settlement Agreement 91-51-SW signed by the Commissioner and effective on August 26, 1991. This agreement between the South Carolina Department of Health and Environmental Control and The United States Department of Energy addresses violations related to the disposal of solvent rags at the Savannah River Site. Please be aware of the first compliance date of October 31, 1991, for the submission of a revised Part A and the compliance with interim status standards for those portions of the sanitary landfill and the Low Level Radioactive Waste Disposal Facility which received solvent rags.

If there are any questions, please telephone me at 734-4658.

Very truly yours,

Gail Rawls Jeter

Gail Rawls Jeter
Enforcement Section
Bureau of Solid and Hazardous
Waste Management

c: Samuel L. Finklea, III, Office of General Counsel
R. Alan Coffey, Hazardous Waste Permitting
John D. McGlohorn, Compliance Monitoring
G. Kendall Taylor, Hydrogeology
Kim Cauthen, Lower Savannah, EQC

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THIS IS A TRUE COPY OF DEPARTMENT OF HEALTH
& ENVIRONMENTAL CONTROL RECORDS
Helen Grant

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

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

SETTLEMENT AGREEMENT
91-51-SW

The United States Department of Energy ("DOE") owns and is responsible for the operation of the Savannah River Site ("SRS"), (SC1890008989), a national defense nuclear materials production facility located in Aiken, Allendale, and Barnwell Counties in South Carolina.

Operations at SRS have involved the handling and disposal of various forms of wastes, including chemical, solid, liquid, hazardous, and mixed wastes.

Under Section 6001 of the Resource Conservation and Recovery Act ("RCRA"), federal facilities and activities "... shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges."

FINDINGS OF FACT

1) DOE owns and is responsible for the operation of SRS, a national defense nuclear materials production facility located in Aiken, Allendale, and Barnwell Counties in South Carolina.

2) On June 12, 1978, the South Carolina Department of Health and Environmental Control ("DHEC") issued a permit, DWP-087, to DOE for the operation of a sanitary landfill accepting inert and domestic solid waste for disposal.

3) On September 21, 1979, DHEC instituted emergency hazardous waste management regulations. On March 31, 1980, DHEC promulgated the South Carolina Hazardous Waste Management Regulations ("SCHWMR"). These regulations were amended on January 29, 1984; on January 24, 1986; on March 19, 1987; on November 27, 1987; on October 28, 1988; on June 23, 1989; and on November 23, 1990.

4) Pursuant to the emergency regulations, on December 19, 1979, DOE submitted to DHEC a notification of its hazardous waste activities. On September 29, 1980, DOE submitted to DHEC an application for a hazardous waste facility permit ("Part A") for storage and for disposal in seepage basins. At that time, DOE and the U.S. Justice Department questioned the extent of RCRA and state jurisdiction over DOE hazardous waste activities. The September 29, 1980, submission modified the December 19, 1979, notification by excluding certain waste management units which DOE had determined were not covered by the Federal program.

5) On April 2, 1981, the U.S. Environmental Protection Agency ("EPA") granted DHEC interim authorization to conduct Phase I of the Federal hazardous waste program. Phase II, Components A and B were granted November 18, 1982. Phase II, Component C was granted December 22, 1983. DHEC's Final Authorization application was approved by EPA on November 8, 1985.

6) DOE and DHEC entered into a Memorandum of Agreement ("MOA") on April 8, 1985, which was amended on April 6, 1988.

7) On July 3, 1986, EPA published a Federal Register Notice (51 FR 24504) which provided guidance on obtaining authorization from EPA to regulate radioactive mixed waste.

8) On September 9, 1986, DHEC approved an expansion of the sanitary landfill at SRS, DWP - 087 (A), for the disposal of domestic and inert solid waste.

9) DHEC received authorization from EPA to regulate radioactive mixed waste on September 13, 1987.

10) On January 26, 1990, DOE notified DHEC that rags and wipes used with F listed solvents (R.61-79.261 Subpart D) for cleaning and radioactive decontamination had been disposed in portions of the Low Level Radioactive Waste Disposal Facility ("LLRWDF", Building Number 643-7G) and the SRS Sanitary Waste Landfill DWP-087(A) ("sanitary landfill", Building Number 740-G). This verbal notification was followed by a letter dated February 23, 1990. DOE asserts that the issue of RCRA applicability to solvent rags and wipes used to remove radioactive contamination has historically been subject to some confusion. In light of this confusion, SRS sought guidance from DHEC in early January 1990. In response, DHEC advised SRS that certain solvent rags and wipes did constitute hazardous waste subject to RCRA regulation.

11) In response to this guidance, as SRS' February 23, 1990, letter asserts, as of January 19, 1990, a program to segregate F listed solvent contaminated rags was being implemented, that such wastes generated in the future would not be disposed of at the sanitary landfill and the LLRWDF, and that containers awaiting disposal that might contain such wastes would be managed in a ninety (90) day accumulation area.

12) On April 16, 1990, DHEC approved DOE's request to expand interim status to allow for the construction of Transuranic pads numbers fourteen through seventeen (14-17). This expansion allowed space for the interim status storage of the containers of mixed wastes, including solvent laden rags and wipes.

13) On May 10, 1991, DHEC executed an amendment to Settlement Agreement 87-52-SW, regarding the Part B Permit Application for the Mixed Waste Management Facility ("MWMF"). The amended Settlement Agreement requires SRS to provide status reports on the preparation of the Post-Closure Part B Permit Application on or before June 17, 1991, December 16, 1991, and June 15, 1992, and to submit a revised Part B Permit Application for the MWMF to include the LLRWDF and to contain sufficient information, supporting data, and analyses to

establish an alternate concentration limit demonstration ("ACL") on or before November 30, 1992. If, based on the status reports or the final submission of the ACL, DHEC or DOE determine that an ACL is not appropriate, then DOE will submit a corrective action plan on November 30, 1993. Completion of the work identified in these provisions of Settlement Agreement 87-52-SW, as amended, will satisfy the requirement to submit a Post Closure Part B Permit Application for those portions of the LLRWDF that received solvent rags and wipes.

CONCLUSIONS OF LAW

DHEC has determined that DOE has violated the following SCHWMR promulgated pursuant to Section 44-56-10 et seq., of the 1976 South Carolina Code of Laws, as amended, as follows:

R.61-79.265 Subpart B, C, D, E, F, G, and N, for failure to comply with interim status standards for the operation of the LLRWDF and the sanitary landfill;

R.61-79.268.30, for the land disposal of spent solvent wastes specified in R.61-79.261.31 as EPA Hazardous Waste Nos: F001, F002, F004, and F005 after November 8, 1986; and

R.61-70.270.1, for the disposal of hazardous waste at the LLRWDF and the sanitary landfill without having applied for or received a permit for the operation of these units.

In accordance with the SCHWMR R.61-79.261, rags or wipes contaminated with F001, F002, F004, and F005 listed solvents (R.61-79.261 Subpart D) are hazardous waste when discarded. If rags or wipes contaminated with F003 listed solvents, which are listed only for ignitability, do not exhibit the characteristic of ignitability under SCHWMR R.61-79.261.21 or any of the other characteristics of hazardous waste identified in R.61-79.261 Subpart C, then they are not hazardous waste when discarded.

AGREEMENT

WHEREAS, without trial or adjudication of any issue of fact or law, the parties have agreed to execute this Settlement Agreement,

thereby resolving disputes set forth as described above, without this Settlement Agreement constituting an admission by DOE with respect to any such issue(s) of fact or law alleged herein or through their attorneys and authorized officials;

Whereas, the question of DHEC's authority to access civil penalties for violations of the South Carolina Hazardous Waste Management Regulations at the SRS remains in litigation (Natural Resources Defense Council, Inc., Energy Research Foundation, South Carolina League of Women Voters, and the Georgia Conservancy; Plaintiffs: DHEC, Intervenor - Plaintiffs; V. DOE, Secretary John S. Herrington and Acting Assistant Secretary William E. Vaughn; Civil Action No. 1:85-2583-6), DHEC agrees to delay assessment and/or negotiation of a monetary payment or penalty until a decision is rendered in the aforementioned suit. Furthermore, DHEC and DOE agree to stay negotiation of a payment and/or penalty pending the outcome of this suit; however, DOE does not admit that any penalty and/or payment should be assessed given the facts as set forth in the Findings of Fact;

NOW THEREFORE, in the spirit of mutual cooperation between DHEC and DOE and in settlement of existing disputes stated herein, and consistent with the MOA between DOE and DHEC dated April 8, 1985, as amended April 6, 1988, DOE shall perform the following:

1) Refrain from the further disposal of F listed solvent contaminated rags and wipes in the LLRWDF and sanitary landfill or any other facility not specifically permitted for such disposal. DOE may use those portions of the LLRWDF and the sanitary landfill that have not received hazardous waste as long as the use does not impede 265 closure of the units;

2) On or before October 31, 1991, amend the Part A Permit Application to include the solvent rags and wipes and those portions of the LLRWDF and sanitary landfill which have received these wastes.

3) On or before October 31, 1991, comply with all applicable portions of R.61-79.265 Subparts B, C, D, E, and N for those portions of the LLRWDF which have received solvent rags and wipes

until such time as this unit is properly closed and the certification is accepted by DHEC.

4) Comply with R.61-79.265 Subpart F for the LLRWDF. DOE may use the SRS MWMF Groundwater Quarterly Assessment Report to meet the assessment reporting requirements of R.61-79.265 Subpart F for the LLRWDF;

5) On or before August 31, 1993, submit to DHEC an amendment to the closure plans for the MWMF addressing those portions of the LLRWDF which have received solvent rags and wipes in accordance with R.61-79.265 Subpart G. Also, on or before August 31, 1993, submit a post-closure plan for those portions of the LLRWDF which have received solvent rags and wipes in accordance with R.61-79.265.118;

6) On or before October 31, 1991, comply with all applicable portions of R.61-79.265 Subparts B, C, D, E, and N for the portions of the sanitary landfill that received solvent rags and wipes until such time as those portions of the sanitary landfill are closed and the certification is accepted by DHEC;

7) Comply with R.61-79.265 Subpart F for the portions of the sanitary landfill that have received solvent rags and wipes. DOE may use the Groundwater Quality Assessment Plan for the sanitary landfill submitted to DHEC in August 1990 to meet the assessment proposal requirement of R.61-79.265.93(d)(2);

8) On or before February 28, 1993, submit to DHEC a closure plan for the portions of the sanitary landfill that have received solvent rags and wipes in accordance with R.61-79.265 Subpart G. Also, on or before February 28, 1993, submit to DHEC a post-closure plan for those portions of the sanitary landfill which have received solvent rags and wipes in accordance with R.61-79.265.118;

9) On or before October 15, 1991, April 15, 1992, and October 15, 1992, submit to DHEC status reports on the preparation of the Post-Closure Part B Permit Application for the sanitary landfill;

10) On or before March 31, 1993, submit to DHEC a Post-Closure Part B Permit Application for the portions of the sanitary

landfill that have received solvent rags and wipes. This application shall contain sufficient information, supporting data, and analyses to establish an ACL demonstration . If, based on the status reports or the final submission of the ACL, DHEC or DOE determine that an ACL is not appropriate, then DOE shall submit a corrective action plan on or before March 31, 1994.

IT IS FURTHER AGREED THAT:

(a) DOE shall be permitted to exceed the time schedule set forth in this Agreement only to the extent that the delay is caused by reasons entirely beyond the control of DOE or the control of any entity controlled by or under common control of DOE. In any event, the burden of establishing a basis for an extension shall be exclusively on DOE.

(b) If DOE determines it may fail to achieve any deadline set forth in this Agreement, DOE shall submit a written report by messenger or certified mail to DHEC. Such report shall be submitted at least five (5) working days prior to the deadline anticipated to be missed and shall include the following:

(1) An explanation for the anticipated failure to meet the deadline;

(2) The measures taken and to be taken by DOE to minimize the delay;

(3) The time table by which those measures will be implemented which will not be beyond the period of time reasonably necessary for completion of those activities on an expedited schedule calculated to minimize the delay; and,

(4) Any documentation relevant to (a) and (b).

(c) DHEC will respond in writing within five (5) working days to any report by DOE pursuant to Paragraphs (a) and (b) of this Section, by indication whether DHEC approved DOE's proposed date or time period for completion of the delayed activities. DHEC's

written approval will be incorporated into this Settlement Agreement. If DHEC does not so approve, DHEC will so state in writing, and also state the date by which, or the time period within which, DOE shall achieve the tasks as to which the deadline applied, which written response shall be deemed to be incorporated into this Settlement Agreement.

IT IS FURTHER AGREED that failure to meet the requirements of this Settlement Agreement shall be deemed a violation of the Hazardous Waste Management Act and therefore shall be deemed unlawful. Upon ascertaining any such violation, DHEC shall promptly initiate appropriate action(s) to obtain compliance with both this Settlement Agreement and the aforesaid Act. Such action shall be consistent with the MOA between DOE and DHEC dated April 8, 1985, as amended April 6, 1988.

THE SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL CONTROL

DATE: [illegible] BY: [signature]
Michael D. Jarrett, Commissioner

WE CONSENT:

United States Department of Energy

[signature] DATE: 8/19/91
Assistant Manager for
Environmental Restoration
and Waste Management

[signature] DATE: 8/19/91
Office of Chief Counsel

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

[signature] DATE: [illegible]
Hartsill W. Truesdale, P.E.,
Chief
Bureau of Solid and Hazardous
Waste Management

[signature] DATE: Aug 21, 1991
Approved by: Legal Office