



THE MEMPHIS DEPOT TENNESSEE

ADMINISTRATIVE RECORD COVER SHEET

AR File Number 814



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

File: 549.700.000
C.H.

AR# 814

NOV 15 2004

4WD-RPB

Mr. Mike Apple, Director
Division of Solid Waste Management
Tennessee Department of Environment
and Conservation
5th Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243-1535

SUBJ: Final RCRA Permit for Defense Depot Memphis, Tennessee
EPA Identification Number TN4 210 020 570

Dear Mr. Apple:

I am writing to acknowledge receipt of a letter dated September 24, 2004, from Michael Dobbs, Environmental Program Manager for the Defense Logistics Agency. Mr. Dobbs directed his letter to the Tennessee Department of Environment and Conservation (TDEC) during the public comment period in which TDEC announced its intention to issue a draft Resource Conservation and Recovery Act (RCRA) permit to Defense Depot Memphis, Tennessee (DDMT). I am also writing to respond to an e-mail inquiry from William Krispin of your staff. Mr. Krispin solicited the Environmental Protection Agency's (EPA) comments on a proposed reply to Mr. Dobbs. The inquiries from Messrs. Dobbs and Krispin raise the question: should TDEC issue a RCRA permit to DDMT if the Federal Facilities Agreement (FFA) for the site ensures that a clean-up equivalent to that required by RCRA will result under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended?

In consideration of DDMT's status as a Base Re-alignment and Closure facility, my staff and I elevated the question and conferred with our colleagues in the Office of Regional Counsel, the Office of General Counsel, and the Office of Enforcement and Compliance Assurance of EPA, Headquarters. We were interested in knowing whether this question had been raised by similarly situated installations. We learned that it has not due to the uniqueness of DDMT's circumstances.

In light of the fact that DDMT never constructed any units regulated under RCRA and since the site is successfully being remediated under CERCLA with TDEC and EPA oversight, TDEC has the discretion to manage the clean-up at DDMT with or without issuing a RCRA permit. The CERCLA provisions of the FFA are sufficient to ensure that the owner(s) of the property will meet remedial standards equivalent to RCRA's standards. Accordingly, I would support you using your discretion to determine that a permit is not required, thereby streamlining the clean-up program without any loss of protectiveness.

I appreciate this opportunity to assist you and your staff. If you have any questions, please feel free to direct them to me at (404) 562-8527.

Sincerely,



Jon D. Johnston
Chief, RCRA Programs Branch
Waste Management Division

cc: Michael A. Dobbs, Environmental Program Manager
Defense Logistics Agency

David M. Buxbaum, Regional Environmental Counsel
Department of the Army
Southern Regional Environmental Office

RESPONSE TO COMMENTS**ON DRAFT CORRECTIVE ACTION PERMIT**

This document has been prepared in accordance with Tennessee Rule 1200-1-11-.07(7) (j). It has resulted from the Tennessee Department of Environment and Conservation (TDEC) Division of Solid Waste Management's (DSWM) reissuance of a draft corrective action permit to the U.S. Department of Army, owner of Defense Depot Memphis Tennessee (DDMT), and the Defense Logistics Agency (DLA). The facility is located in Memphis, Tennessee and is identified by EPA Installation I.D. Number TN4 210 020 570.

The draft permit identified known solid waste management units (SWMUs) and areas of concern (AOCs) at DDMT. The owner and operator (permittee) would be required to investigate any releases of hazardous waste or hazardous constituents pursuant to the permit, regardless of the time at which waste was placed in a unit, and to take appropriate corrective action for any such releases. The DLA, EPA and TDEC entered into a Federal Facility Agreement (FFA), effective March 6, 1995, to conduct investigation and implement appropriate response actions at the DDMT as necessary to protect the public health and the environment. In accordance with the FFA, all corrective action under the permit would be deferred to, and be performed under, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. Part A of this document describes the efforts made by the DSWM to obtain public input. Part B summarizes and responds to all significant comments received.

A. Public Involvement Opportunities

DSWM issued a public notice of the proposed reissuance of the corrective action permit in the August 13, 2004 edition of the Commercial Appeal. Three 30-second announcements of the action, referencing the notice published in the newspapers, were also provided over each of the following radio stations: WJRK (FM) and WDLA (AM) both in Memphis. The public notice advised that copies of the draft permit and modification with associated materials were available for review at the TDEC Memphis Environmental Assistance Center and Memphis/Shelby County Public Library - Cherokee Branch. The public notice also advised that copies of the fact sheet and draft permit were available. It further announced a public hearing set for September 21, 2004 at the South Memphis Senior Citizens Center, established a 45-day comment period (ending September 27, 2004) and described how interested persons could comment in writing or at the hearing on the proposed action.

B. Public Comment/Response Summary

Based on discussions with TDEC and EPA, the Defense Logistics Agency submitted a request to withdraw their permit application after the draft permit and a notice for a public hearing were issued. Five local members of the community attended the public hearing and three college students filmed the proceedings. Only one attendee provided oral comments at the hearing. A member of the facility Restoration Advisory Board provided a comment by e-mail during the 45-day draft permit comment period. A brief summary of the comments that are relevant to the permit decision and responses to those comments on the draft permit follow.

FACILITY COMMENT

COMMENT: The following excerpts from the September 24, 2004 letter from DLA to TDEC, provide the request to withdraw their application:

Due to recent discussions between TDEC and U.S. Environmental Protection Agency (EPA) Region 4 Chief Resource Conservation and Recovery Act (RCRA) Programs, on behalf of Defense Logistics Agency (DLA) and the Department of Army (permittee), I respectfully withdraw the RCRA permit renewal application submitted for the DDMT on March 29, 2004.

It (sic) my understanding that all parties have agreed that the permit is not necessary considering: 1) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) cleanup being conducted pursuant to a Federal Facilities Agreement (FFA), effective March 6, 1995, between DLA, TDEC and EPA; 2) the fact that permittee does not operate a hazardous waste management unit; and 3) the EPA policy to integrate RCRA and CERCLA cleanup programs at sites such as DDMT.

We are pleased the parties acknowledge that any corrective action which otherwise might be required under a RCRA permit for releases from all of the known SWMUs and areas of concern (AOCs) has been and shall to continue to be deferred to the CERCLA response action process consistent with the FFA Section IX. RCRA/CERCLA INTEGRATION. The cleanup of DDMT under CERCLA pursuant to the FFA satisfies the requirements of RCRA Section 3004(u) and (v), as well as TCA 68-212-101 et seq. and TDEC regulations [Chapter 1200-1-11-.06(6)(1)]. As requested, a list of all the SWMUs and AOCs identified to date at the facility, along with the current status of the unit/area under the CERCLA response action process, is included with this letter [Attachment 1] for your files.

RESPONSE: The State agrees to allow DLA to withdraw their application for a corrective action permit.

In accordance with the FFA, all corrective action under this permit is deferred to, and being performed under, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. At the time the permit application was submitted in March 2004, the Record of Decision for Dunn Field had not been finalized. Also, the list of solid waste management units (SWMUs) and areas of concern (AOCs) did not appear to agree with the Record of Decision (ROD) when it was finalized in April 2004. The summary table in the ROD listed several SWMUs for planned remedial action, though the permit application stated that no further action was required. As part of the request to withdraw their application, DLA updated the status of the SWMUs and AOCs listed in the draft permit attachment. Included in this Response to Comments, the attachment lists all the current SWMUs and AOCs, a summary of their status and the decision document for remedy selection. All the units and areas at DDMT have been investigated and now have a selected remedy under CERCLA. Since no hazardous waste activity that would require a permit is being performed at DDMT and because TDEC and EPA will have full authority to continue to enforce implementation of the selected remedies under CERCLA, DSWM will not issue the renewal permit.

PUBLIC COMMENTS

WRITTEN COMMENT: As a Restoration Advisory Board Member and community representative, I am in favor of the renewal of the correction action permit as detailed in the Notice of Public Meeting on September 21, 2004 fact sheet.

RESPONSE: Although the draft permit was public noticed for reissuance, TDEC has decided not to proceed with the issuance of the permit. Based on opinions from EPA a permit is not necessary to enforce any corrective action at the site.

The draft permit was an administrative tool for corrective action that incorporated the work as performed under CERCLA. As all remedy selections are in place, the Commissioner of TDEC can fully enforce the implementation of those remedies under the state's Division of Superfund and/or the Division of Solid Waste Management. As the hazardous waste corrective action permit would only incorporate the work and decisions already made under CERCLA (Division of Superfund) and since all remedies are selected, TDEC has decided not to finalize the permit.

ORAL COMMENT: The commenter requested a 90-day waiting period before issuing the permit. She claimed the public had very limited involvement during past investigations and cleanups at the facility, and during the final selection process. Also, the venue for review and input from the public was not conducive with the government overseeing the meetings. She would like the time to review the records of decisions and remedial design plans, and to allow her to organize and head a community meeting. Another comment concerned leaving contaminated media in place and not returning the site to pristine and safe for residential uses.

RESPONSE: As noted and for the reasoning in the previous responses, TDEC is denying the permit and will not have a 90-day waiting period before making the permit decision.

TDEC will attend a community meeting if one is organized and provide assistance to the community in understanding the remedial selections.

The cleanup levels for each area have been selected to limit any unreasonable exposures for on-site workers, members of the surrounding community and the environment. The site will be remediated to a level that is protective of human health and the environment based on the future uses of the property. These cleanup levels and remedies have already been public noticed on the CERCLA Records of Decision.

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