



THE MEMPHIS DEPOT TENNESSEE

ADMINISTRATIVE RECORD COVER SHEET

AR File Number 819



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Management
Fifth Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243-1535

A24 819

January 19, 2005

Mr. Michael A. Dobbs
Environmental Program Manager
Defense Logistics Agency (DLA)
Defense Distribution Center
2001 Mission Drive
New Cumberland, PA 17070-5000

CERTIFIED MAIL 7003 1680 0005 5753 4556
RETURN RECEIPT REQUESTED

RE: Denial to Reissue the Hazardous Waste Corrective Action Permit
Defense Depot Memphis Tennessee (DDMT)
EPA LD. Number: TN4 210 020 570
TN Permit Number: TNHWA-053

Dear Mr. Dobbs:

Enclosed is a copy of the Notice to Deny the Renewal of a Corrective Action Permit, which terminates the requirement for the permittee to continue corrective action under the hazardous waste management regulations at DDMT. Included is the Response to Comments on the Draft Corrective Action Permit. Denial of this permit is in accordance with Tennessee Hazardous Waste Management Rule 1200-1-11-.07(7) and it is effective as of January 19, 2005. All corrective action activities shall continue to be performed under CERCLA authority.

Please note that Rule 1200-1-11-.07(7)(k) outlines the process for appeals to a final permit decision. If you have any questions or comments, please contact Clayton Bullington at (615) 532-0859 or at clayton.bullington@state.tn.us.

Sincerely,


Charles Burroughs
Manager, Corrective Action Section

cc: Jon Johnston, Chief, RCRA Branch, EPA, Region 4
Thomas Holmes, MACTEC
David M. Buxbaum, Regional Attorney, US Army SREO
William Krispin, Manager, Permitting Sections, DSWM
Jamie Burroughs, Manager, TSD Section, DSWM
Phil Davis, Memphis Field Office, DSWM

State of Tennessee
Department of Environment and
Conservation
Division of Solid Waste Management

Hazardous Waste Management Program
5th Floor L & C Tower
401 Church Street
Nashville, Tennessee 37243-1535

NOTICE OF DENIAL TO RENEW CORRECTIVE ACTION PERMIT

Permittee: U.S. Defense Logistics Agency
Facility: Defense Depot Memphis Tennessee
Identification Number: TN4 210 020 570
Owner: U.S. Department of the Army
Operator: Defense Logistics Agency
Permit Number: TNHW-053

Pursuant to the Tennessee Hazardous Waste Management Act of 1977, as amended (Tennessee Code Annotated 68, Chapter 212, Part 1) and the regulations promulgated thereunder by the Tennessee Solid Waste Disposal Control Board (found at Tennessee Rule Chapter 1200-1-11), it has been decided to deny renewal of the above referenced permit that required corrective action. This decision resulted from the Permittee's request to withdraw the permit application, as per letter dated September 24, 2004, and with agreement between the US Environmental Protection Agency and the Tennessee Department of Environment and Conservation to allow corrective action at Defense Depot Memphis Tennessee to continue under the authority of an enforceable CERCLA Federal Facilities Agreement.

All activities authorized in the permit as part of the corrective action requirements will terminate on the effective date this document is signed. After the effective date, all corrective action shall continue to be performed as authorized under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Federal Facility Agreement as entered into by the Defense Logistics Agency, the US Environmental Protection Agency and the State of Tennessee on March 6, 1995.

This permit termination action is being processed as set forth in Rule 1200-1-11-.07(7) and can be appealed pursuant to the Hazardous Waste Management Act, T.C.A. 68-212-113 and Rule 1200-1-11-.07(7)(k).

January 19, 2005
Effective Date



Mike Apple, Director
Division of Solid Waste Management

**NOTICE OF FINAL DECISION TO DENY A HAZARDOUS WASTE CORRECTIVE ACTION
PERMIT UNDER THE TENNESSEE HAZARDOUS WASTE MANAGEMENT ACT**

The Tennessee Department of Environment and Conservation's (TDEC), Division of Solid Waste Management (DSWM) has made a final decision, effective as of January 19, 2005, to deny the renewal of hazardous waste permit (Permit Number: TNHW-053, EPA ID Number: TN4 210 020 570) for Defense Depot Memphis Tennessee (DDMT). This decision is based on the Defense Logistics Agency's (DLA) request to withdraw the RCRA (hazardous waste) permit renewal application (as per the reasons in the request letter dated September 24, 2004). This action follows a 45-day public comment period, which ended on September 27, 2004. It included a public hearing held on September 21, 2004. Two comments were received from the public during this comment period. This decision can be appealed pursuant to the Hazardous Waste Management Act, T.C.A. 68-212-113 and Rule 1200-1-11-.07(7)(k).

The draft permit identified known solid waste management units (SWMUs) and areas of concern (AOCs) at DDMT and required DLA 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 investigate 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 was deferred to, and being performed under, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. As part of the request to withdraw their application, DLA updated the status of the SWMUs and AOCs listed in the draft permit attachment. 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.

A copy of the Response to Comments is available for public inspection at the Memphis/Shelby County Public Library - Cherokee Branch, 3300 Sharpe Ave., Memphis, Tennessee 38111(901-743-3655). These materials are also available for public inspection during normal business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, at the TDEC Memphis Environmental Assistance Center, Public Access Area, Perimeter Park, 2510 Mt. Moriah, Suite E-645, Memphis, TN 38115 (901-368-7939).

For further information contact: Mr. Clayton Bullington; Corrective Action Section; Division of Solid Waste Management; Tennessee Department of Environment and Conservation; 5th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615-532-0859; fax 615-532-0886 or e-mail to clayton.bullington@state.tn.us.

TDEC is committed to principles of equal opportunity, equal access and affirmative action. Contact the EEO/AA Coordinator or the ADA Coordinator at 1-888-867-2757 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Persons who wish to be added to the DSWM's mailing list should request a Mailing List Request form by calling or writing: Public Participation Officer; Division of Solid Waste Management; Tennessee Department of Environment and Conservation; 5th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615-532-0798; or e-mail Solid.Waste@state.tn.us.

PUBLIC NOTICE ISSUED: _____

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) public notice of intent to reissue 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 WDIA (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 paragraphs, as excerpted 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 is 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 continue to be deferred to the CERCLA response action process consistent with the FFA Section IX. RCRA/CERCLA INTEGRATION.

RESPONSE: The State agrees to allow DLA to withdraw their application for a corrective action permit. Prior to finalizing the decision to terminate the correction action permit, the State solicited comments from EPA on DLA's request, including submitting a draft copy of this Response to Comments for EPA's review. On November 24, 2004, the DSWM received a letter from EPA supporting TDEC's decision not to require a permit for DDMT. EPA agreed with the circumstances DLA cited as described in the above comment and as follows:

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 said that several SWMUs had remedial action planned, 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. 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 have full authority to continue to enforce implementation of the selected remedies under the FFA, DSWM will not issue the renewal permit. 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)].

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: TDEC has decided not to proceed with issuance of the permit. 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 by the Division of Superfund and EPA in accordance with the FFA, and since all remedies are already selected, TDEC has decided not to renew 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, nor 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: TDEC has not received any notice for a community meeting, but will attend a meeting if one is held and provide assistance to the community in understanding the remedial selections. At the public hearing for the draft hazardous waste corrective action permit, TDEC noted receipt of DLA's request to withdraw their permit application and explained that TDEC intended to grant the withdrawal. As noted and for the reasoning in the previous responses, TDEC is not renewing the permit.

TDEC agrees that the facility will not be returned to pristine state. The cleanup levels for each area have been selected to limit any unreasonable exposures for on-site workers, members of the surrounding community or the environment. The site will be remediated to a level that is protective of human health and the environment based on the current and future uses of the property.

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