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GOVERNOR

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ENVIRONMENT DEPARTMENT

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 10, 2003

Major General Green
Commander - USAADACENFB
Attn: ATZC-CG
Fort Bliss, TX 79916-6816

SUBJECT: NFA PETITION DENIAL
CORRECTIVE MEASURES STUDY FOR SWMUS 19, 27B, and 76
U.S. ARMY AIR DEFENSE ARTILLERY CENTER AND FORT BLISS
EPA ID No. NM4213720101-01
HWB-FB-00-004

Dear General Green:

The New Mexico Environment Department (NMED) hereby denies Fort Bliss' *No Further Action Petition for Six New Mexico Sites*, dated January 25, 2002 (NFA Petition) for failure to comply with the requirements of the Notice of Deficiency (NOD) issued by NMED on February 20, 2002. NMED denies Fort Bliss' NFA Petition *in toto* because two of the sites, SWMUs 27B and 76, are still active and lack ground water monitoring programs and therefore are not eligible for a No Further Action (NFA) determination. NMED has also determined that Fort Bliss must submit a Corrective Measures Study (CMS) to implement a long-term ground water monitoring program and install effluent monitoring devices at its three wastewater treatment lagoons.

NOTICE OF NONCOMPLIANCE

NMED's NOD of February 20, 2002 required Fort Bliss to submit a Notice of Intent To Discharge (NOI) to the NMED Ground Water Quality Bureau (GWQB) for each of Fort Bliss' wastewater treatment lagoons in New Mexico. Fort Bliss has failed to do so, asserting instead in a response letter dated March 15, 2002, that "...the New Mexico Ground Water Protection regulations are not applicable to the Doña Ana and Meyer Range Camp wastewater treatment

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oxidation ponds, and that the federal government has not waived sovereign immunity with respect to state ground water protection regulations.”

NMED urges Fort Bliss to fulfill its requirements under Executive Order 12088, which is reiterated in both Army policy (Section D of DODI 4715.6) and in Army regulations (Chapter 2 of Army Regulation 200-1). In pertinent part, Executive Order 12088 and Army Policy and Regulations require the Army to comply with federal, state, interstate, and local regulations. NMED believes that Fort Bliss has not complied with those authorities, in part by refusing, to comply with New Mexico's Water Quality Act. To underscore this point, NMED has mailed this document directly to you and has copied Mr. Connaughton, Chairman, Council on Environmental Quality, and Dr. Fiori, Assistant Secretary of the Army for Installations and Environment.

To address the concerns raised with respect to groundwater, Fort Bliss must submit a Corrective Measures Study (CMS) to implement a long-term ground water monitoring program, and install effluent monitoring devices in accordance with Section V.R of its RCRA permit. If Fort Bliss chooses to comply with NMED's Ground and Surface Water Protection regulations as an alternative to submittal of a CMS, then Fort Bliss must submit an NOI meeting the requirements specified in 20.6.2.1201 NMAC to the GWQB and, if determined to be necessary by the GWQB, obtain and comply with a discharge permit for each of your New Mexico wastewater treatment lagoons. The NMED Hazardous Waste Bureau will consider whether compliance with a GWQB Discharge Plan meets the groundwater monitoring requirements of Ft. Bliss' RCRA Permit.

NO FURTHER ACTION PETITION

As noted above, NMED hereby denies Fort Bliss' NFA Petition of January 25, 2002 and will notify the public of our decision in accordance with 20.4.1.901 NMAC (Permitting Procedures). Fort Bliss may submit at this time a NFA Petition for SWMUs 21, 22, 66, and 78.

Fort Bliss' request for a decision on the pending NFA Petition in a letter dated October 22, 2002 referred to Subsection A (7) of 20 NMAC 4.2.200. This section addresses the administrative requirements for processing corrective action documents. NFA Petitions are permit modification requests and are addressed as such in 20.4.2.201.6 NMAC. Please note that New Mexico's Hazardous Waste Fees regulations do not specify a time frame within which permit modifications must be processed.

CORRECTIVE MEASURES STUDY

Fort Bliss' investigations of SWMUs 27B and 76 confirmed the presence of hazardous waste or constituents and documented that these units are not presently being operated so as to prevent the release of hazardous waste or constituents. Therefore, Fort Bliss must implement a long term RCRA ground water monitoring program and install effluent monitoring devices to ensure that releases will not go undetected in the future. In accordance with Section V.R of its RCRA

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Permit, Fort Bliss must submit CMSs for SWMUs 19, 27B, and 76 within forty-five (45) days of your receipt of this letter. The CMSs must include the following:

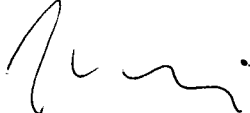
- work plans for the implementation of RCRA ground water and vadose zone monitoring programs at SWMUs 19, 27B, and 76;
- work plans to retrofit SWMUs 19, 27B, and 76 with a liner system so that wastes are prevented from migrating from the SWMUs into the soil or to ground water;
- work plans to investigate the sewer systems that drain into SWMUs 19, 27B, and 76;
- work plans for the installation, use, and maintenance of effluent monitoring devices; and
- work plans for the pretreatment of effluent.

NMED will review and approve or modify and approve Fort Bliss CMS submittals as appropriate. In accordance with Section V.S of its RCRA Permit, Fort Bliss will have fourteen calendar days to implement the selected corrective measures following NMED's approval. Fort Bliss must implement the approved corrective measures for as long as these SWMUs are active and for an appropriate post-closure period. When these units close or become inactive, Fort Bliss must submit a CMS to close these SWMUs appropriately. Please contact Mr. Glenn von Gonten of my staff at 505-428-2551 to discuss the required work plans in detail. Please note that similar requirements will also apply to the wastewater treatment lagoon (SWMU 25B) located on the White Sands Missile Range (WSMR) that is presently operated by Fort Bliss, if WSMR fails to submit NOIs and obtain any required discharge permits for its wastewater lagoon(s).

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Failure to satisfactorily address this requirement for submittal of a CMS may result in formal enforcement action. Please contact Mr. Dave Cobrain of my staff at 505-428-2553 if you have any questions.

Sincerely,



James Bearzi
Chief
Hazardous Waste Bureau

JPB:dc:gvg

cc: Keith Landreth, Fort Bliss
T.A. Ladd, WSMR
Laurie King, EPA Region 6
Charles Lundstom, NMED-WWMD
M. Leavitt, NMED-GWQB
J. Kieling, NMED-HWB
M. Hanning, NMED-GWQB
D. Cobrain, NMED-HWB
G. von Gonten, NMED-HWB
J. Mullen, NMED-OGC

Dr. Mario Fiori, Assistant Secretary of the Army for Installations and Environment
110 Army Pentagon Room 3E464, Washington, D.C. 20310-0110

Mr. James Connaughton, Chairman, Council on Environmental Quality
722 Jackson Place, N.W., Washington, D.C. 20503

~~HWB-FB-00-004~~, Reading File, FB Red File