

ENTORED

James



DEPARTMENT OF THE ARMY
FORT WINGATE DEPOT ACTIVITY
P.O. BOX 288
FORT WINGATE, NM 87316

March 22, 2011



Mr. James P. Bearzi
Chief, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Dear Mr. Bearzi:

The purpose of this letter is to respond to the New Mexico Environment Department's (NMED) Second Notice of Disapproval letter for the Parcel 6 RCRA Facility Investigation Work Plan, dated October 21, 2010. The NMED granted a deadline extension for the work plan to March 31, 2011. The NMED comments and Army responses are listed below. The referenced revised tables and figures will be sent under a separate cover by the U.S Army Corps of Engineers, Fort Worth District.

COMMENT 1

Where the Permittee proposes to collect soil samples for volatile organic carbon (VOC) analyses, it must ensure that relatively undisturbed discrete soil samples are collected and that the soil is not homogenized prior to analysis.

RESPONSE:

The Army will ensure that relatively undisturbed discrete soil samples are collected and that the soil is not homogenized prior to analysis. No changes were made to the Work Plan.

COMMENT 2

In Section 8.2.2 (Sampling Data), page 8-11, the Permittee states "[f]ollowing the excavation activities, confirmation soil samples were collected from the bottom of the excavations and the site was backfilled with clean soil, regraded, and revegetated." The Permittee did not include the sampling depths for the confirmation soil samples. The sampling depths for the confirmation samples are also not included in the referenced document (*Final Report Removal and Disposal of Western Landfill; USACE, 2005*). The Permittee must revise the Work Plan to specify the depths beneath the ground surface or from the base of the excavation at which confirmation samples were collected. If the sampling depths are unknown, the Permittee must state this in the revised Work Plan.

RESPONSE:

All confirmation samples were taken from the bottom of the excavation as stated in Section 8.2.2, page 8-11, of the April 30, 2010 RFI Work Plan. Appendix E1 of the Historical Information Report, dated February 23, 2009, contains excerpts from the (*Final Report Removal and Disposal of Western Landfill; USACE, 2005*). Section 6.1.1, page 11, of the Historical Information Report describes the confirmation sampling. It states confirmation samples were

taken of in-place soils following excavation and prior to backfilling. If soil samples exceeded the NMED SSLs, then additional soil would have been removed. A pin flag or stake was left at each location until samples confirmed that no additional excavation was required. It goes on to state additional samples would be taken in areas that appeared stained. This process of sampling in place soil prior to additional excavation (without giving a sample depth), staking of sample locations, and visually inspecting the excavation bottom for stains for potential additional sampling is evidence that sampling was performed at the base of the excavation and not at depths below the base of the excavation. The RFI Work Plan was not revised because the information provided on the sample location was confirmed to be accurate and is further explained in the Historical Information Report.

COMMENT 3

In Section 8.3.2 (Media Characterization), page 8-14, the Permittee states "[i]n January, 2009, a low altitude airborne vertical magnetic gradient geophysical survey was conducted over the Fort Wingate Army Depot, New Mexico." The Permittee also states that "[t]he results of the airborne geophysical survey for SWMU 20 are shown in Figure 8-5." Based on the results shown in Figure 8-5, it appears that many geophysical anomalies were not investigated or removed throughout SWMU 20. With the exception of the railroad classification yard and SWMU 25, the Permittee must therefore identify and remove all waste associated with geophysical anomalies at the locations identified by NMED in the attached Figure 8-5. The Permittee must also determine whether hazardous constituents have been released to the environment. The waste must also be profiled for proper disposal. The Permittee must revise the Work Plan to include the proposed characterization and removal actions.

RESPONSE:

The Army will comply with this comment in a future RCRA phase by preparing a Corrective Measures Implementation (CMI) work plan. The surfaces in the areas identified by the airborne survey are littered with metal debris. The CMI work plan will lay out the approach for further anomaly investigation, waste identification and disposal methods. It is difficult to determine a submittal date for the CMI work plan because the RFI and Corrective Measures Study (if needed) are not complete. Based on the latest FWDA schedule, the CMI work plan will be submitted in 2015. This date may be accelerated if NMED and the Army agree a Corrective Measures Study is not needed for the parcel. The RFI work plan was not revised.

COMMENT 4

In Section 12.4 (Scope of Activities), page 12-4, the Permittee proposes to collect one discrete soil sample from 1 to 6 inches below ground surface (bgs) at each transformer location. The Permittee does not discuss sample collection for the pad-mounted transformer. As specified in Comment 31 of NMED's February 4, 2010 Notice of Disapproval, the Permittee must ensure that one soil sample is collected from each side of the concrete pad transformer, from 1 to 6 inches bgs. The soil samples may be composited for analyses. The Permittee must revise the Work Plan accordingly.

RESPONSE:

During the summer of 2010 the subject pad-mounted transformer (Transformer 04) was removed as part of the building demolition project but the pad remains. A hole where the piping rises from below the ground was under the transformer. The Army will obtain one sample composited from each side of the pad and at the hole in the middle of the pad. Transformer 01 (and pole) and Transformer 03 (and pole) were also removed during 2010. All four transformer sites will be sampled.

Section 12.4 and Table 12-1 will be revised to change the discrete sample at the pad to a composite sample. A simple figure will be added on page 12-5 showing the sampling layout. Text will be added to Section 12.3.2 describing the transformer removal.

COMMENT 5

In Appendix N (Comment Response Table) Comment Number 29, the Permittee states "[t]he Army BRAC Headquarters will be providing a letter to the NMED on the sampling of igloo interiors in Parcel 22. The sampling of igloo interiors in Parcel 4 and 6 will be similar to those proposed for Parcel 22." NMED received the letter from BRAC Headquarters, dated June 11, 2010. In the letter the Permittee requested a description for swipe sampling protocol and regulatory criteria to be used. NMED provided a response, dated October 1, 2010 which included the requested protocol for sampling igloo interiors. The Permittee must refer to NMED's letter and revise the Work Plan to include proposed sampling methods for igloo interior sampling.

RESPONSE: Refer to the Memorandum for DAIM-ODB-RA by the U.S. Army Legal Services Agency dated March 3, 2011 concerning the Army position on sampling of the igloo interiors at Fort Wingate. To address the 12 igloos in the memorandum the Army proposes submitting an addendum to the Parcel 6 RFI Work Plan containing interior igloo sample protocol pending the resolution of the interior igloo sampling issue. The 12 igloos include B1005, B1008, B1009, B1015, B1021, B1022, B1047, B1048, B1056, B1080, B1081, and C1103. The sampling methods for the igloos specified in the U.S. Army Legal Services Agency letter will comply with the protocol in the October 1, 2010 NMED letter. In the meantime, the Army will implement all the field sampling requirements of the April 30, 2010 RFI Work Plan to include addressing all comments in NMED's second NOD letter dated October 21, 2010 excluding the igloo interiors. The Army plans to begin fieldwork during the week of April 4, 2011.

COMMENT 6

In Section 13.3.8 (Scope of Activities), page 13-13, the Permittee requests "NFA" at AOC 78/82. Based on the geophysical survey results, the soil sampling results and the metallic anomaly intrusive investigation, NMED concurs that no further characterization is necessary at AOC 78/82.

RESPONSE: Acknowledged.

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COMMENT 7

In Section 17.2.1 (Nonsampling Data) (Final Report on Airborne Geophysical Survey, Batelle, 2009), page 17-4, the Permittee states "[t]he results of the airborne geophysical survey for AOC 83 are shown in Figure 17-2. The magnetic anomalies visible in AOC 83 are related to gravel imported to the site for the temporary building pad and road base." Based on Figure 17-2 it appears that there are geophysical anomalies and ground disturbance. The Permittee must propose to excavate three exploratory test pits to determine if waste was buried at the site. The Permittee must revise the Work Plan to include the proposed investigations at this AOC.

RESPONSE:

Further visual observation and inspection by an Army Ordnance and Explosives Safety Specialist (OESS) with a Schonstedt magnetometer indicates the site has numerous nails. The Army believes it is unlikely waste is buried on-site, however the Army will excavate three trenches in areas where the aerial magnetometry indicates anomalies. The trenches will be 3' – 5' deep and 5' – 6' long and the width of the backhoe bucket. The Army will use visual observation to determine if waste is buried at the site. If waste is encountered, the Army will recommend further investigation under a second RFI phase. All excavated material will be placed back in the hole. An OESS will monitor the excavation.

Section 17.4.2 will be added to the work plan describing the trenching effort. Trench locations will be added to Figure 17-4.

COMMENT 8

In Section 18.4.1 (Multi-Incremental Soil Sampling), page 18-12, the Permittee proposes to collect multi-incremental soil samples from AOC 84. NMED concurs with this sampling approach for this phase of investigation; however, based on the results the Permittee may be required to conduct further investigations AOC 84. No revisions to the Work Plan are necessary.

RESPONSE: Acknowledged.

If you have questions or require further information, please call me at 330-358-7312.

Sincerely,



Mark Patterson
BRAC Environmental Coordinator

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JALS-EL

3 March 2011

MEMORANDUM FOR DAIM-ODB-RA

SUBJECT: Fort Wingate Depot Activity RCRA Facility Investigation Work Plan

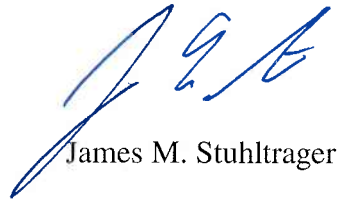
1. The United States Army Legal Services Agency, Environmental Law Division has reviewed letters of June 23, 2009, July 22, 2009, and February 4, 2010 sent from the New Mexico Environment Department ("NMED") regarding the Resource Conservation and Recovery Act ("RCRA") Facility Investigation Work Plan at Fort Wingate Depot Activity ("FWDA"). In those letters, NMED purports to require the Army to sample the inside of munitions storage igloos in Parcels 4a, 6, and 22 under the terms of the Army's RCRA hazardous waste permit. Because such a requirement is outside the scope of RCRA, the Army cannot sample the inside of these igloos, with the exception of 12 igloos that FWDA's contractor used to store waste military munitions.
2. There is no evidence that the Army or its contractor stored hazardous wastes in any of the igloos in these parcels (with the exception of 12 igloos specifically identified and used for the storage of waste military munitions, discussed below). New Mexico has adopted the federal regulations regarding the management of specific hazardous wastes. *See* 20.4.1.700 NMAC ("Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 266 through July 1, 2008 are hereby incorporated by reference."). Pursuant to 40 C.F.R. §266.202 (a)(2), unused munitions, or components thereof, are not a solid waste if they are being repaired, reused, recycled, reclaimed, disassembled, or reconfigured. The igloos in these parcels were used for the storage of unused munitions awaiting use (or reuse) and unused components of munitions (propellant) awaiting recycling. Therefore, there could not have been any release of hazardous waste subject to the RCRA permit.
3. Moreover, New Mexico cannot claim there was ever a spill of a hazardous waste in the igloos. New Mexico has adopted the federal regulations regarding the identification and listing of hazardous waste. *See* 20.4.1.200 NMAC ("Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 261 through July 1, 2008 are hereby incorporated by reference."). Pursuant to 40 C.F.R. §261.33, spills of commercial chemical products ("CCPs") may be hazardous waste. Those specific CCPs are listed at 40 C.F.R. §261.33(e) and (f). However, at FWDA, there is no evidence that any listed CCPs were stored – let alone spilled – in igloos in these parcels. Although the unused propellants that were stored in Parcel 22 contained a combination of chemicals that may have included CCPs, because there is no evidence that these CCPs were stored in their pure form, they cannot be hazardous waste. *See* RCRA Online 11161 ("If you cannot show that the products are listed under §261.33(e) and (f) (e.g., if the pesticides contained a combination of chemicals, rather than the pure chemicals), the residues would not be a hazardous waste under §261.33.").

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SUBJECT: Fort Wingate Depot Activity RCRA Facility Investigation Work Plan

4. Because there is no evidence the igloos on these parcels ever stored RCRA hazardous waste, New Mexico cannot require sampling of the interior of these igloos. The only exceptions to this analysis are the 12 igloos in Block B, Parcel 6 that were used by FWDA's facility use contractor, TPL, specifically to store waste military munitions. These igloos are: B105, B1008, B1009, B1015, B1021, B1022, B1047, B1048, B1056, B1080, B1081, C1103. Although the waste military munitions stored in these igloos were exempt from RCRA regulation pursuant to 40 C.F.R. §266.205, sampling in these 12 igloos is appropriate.

5. The Point of Contact is James Stuhltrager at james.stuhltrager@us.army.mil or (703) 696-1663.



James M. Stuhltrager