



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Hazardous Waste Bureau

2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6313
Phone (505) 476-6000 Fax (505) 476-6030
www.env.nm.gov



James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 2, 2019

Mark Patterson
BRAC Environmental Coordinator
Fort Wingate Depot Activity
13497 Elton Road
North Lima, OH 44452

Steve Smith
USACE
CESWF-PER-DD
819 Taylor Street, Room 3B06
Fort Worth, TX 76102

**RE: SETTLEMENT LETTER TO RESOLVE
NOTICES OF VIOLATION
FORT WINGATE DEPOT ACTIVITY
EPA IDENTIFICATION NUMBER: NM6213820974**

Dear Messrs. Patterson and Smith:

On June 6, 2019, the New Mexico Environment Department ("NMED") issued a Notice of Violation with Proposed Penalties ("NOV #1") to the Fort Wingate Depot Activity ("FWDA" or "Permittee") based on the Permittee's failure to submit a document required by the FWDA Resource Conservation and Recovery Act ("RCRA") Permit. Based on the lack of response by FWDA to NOV #1, NMED issued a second Notice of Violation with Proposed Penalties ("NOV #2") to the Permittee on June 20, 2019 for failure to submit seven documents required by due dates established under the corrective action process included in the RCRA Permit. The NOV's that each violation was originally cited in are provided on the attached table.

NMED and FWDA conducted a conference call to discuss the NOV's on August 8, 2019. The Permittee did not offer actions or a timeline for returning to compliance with their RCRA Permit at that time. The Permittee did agree at that time to propose actions and a schedule that would result in a return to compliance. On August 27, 2019, the Permittee submitted a "Proposal to Reset Enforceable Schedule" outlining what appears to be blanket extensions for almost all existing document submittal dates for up to and over six years in the future. This proposal is not

acceptable in lieu of appropriate actions by the Permittee to submit the outstanding documents and return to compliance.

Since issuance of NOV #2 on June 20, 2019, the Permittee has failed to submit at least eight other required documents. In addition, NMED records indicate that there are at least nine other documents required to be submitted by the end of the calendar year 2019. NMED has attached a schedule for submittal of all currently outstanding documents. The Permittee shall comply with the NMED proposed schedule and provide payment of the penalty as described below in order to resolve this matter. Failure to comply with the terms set forth in this letter may result in further penalties being assessed for additional outstanding documents.

Based on the Permittee's responses to the NOVs and the Proposal to Reset Enforceable Schedule, NMED has the following comments:

1. Failure to meet the submittal and schedule requirements is a violation of Section VII.L.2 of the Permit and the schedule set forth in Table VII.2 of the Permit. Specifically, FWDA failed to submit the required Work Plan in accordance with the Permit schedule.

FWDA response: In initial responses to NOV #1, the Permittee only requested that NMED not enforce on any other noncompliance issues and that NMED not collect penalties. In their Proposal to Reset Enforceable Schedule, the Permittee proposed an extension of over three years to revise and submit the outstanding work plan. This extension would be in addition to two previous extensions that moved the submittal date out by over two years. In total, the extensions would exceed five years for the revision of a work plan.

NMED maintains that that the Permittee has not proposed acceptable actions and a reasonable schedule to return to compliance. The penalty calculation will not be revised and remains at \$305,000.

2. Failure to meet the submittal and schedule requirements, which is a violation of Sections VII.L.2 and VII.L.4 of the Permit. Specifically, FWDA failed to submit the required *Kickout Area MEC Clearance Report* in accordance with the NMED-approved submittal date of November 15, 2018.

FWDA Response: In their Proposal to Reset Enforceable Schedule, the Permittee proposed an extension of over six years to submit the outstanding report.

NMED maintains that that the Permittee has not proposed acceptable actions and a reasonable schedule to return to compliance. The penalty calculation will not be revised and remains at \$305,000.

3. Failure to meet the submittal and schedule requirements, which is a violation of Sections VII.L.2 and VII.L.4 of the Permit. Specifically, FWDA failed to submit the required *Groundwater Supplemental RCRA Facility Investigation Report* in accordance with the NMED-approved submittal date of February 8, 2019.

FWDA Response: In their Proposal to Reset Enforceable Schedule, the Permittee proposed an extension of a year and a half to submit the outstanding report.

NMED maintains that that the Permittee has not proposed acceptable actions and a reasonable schedule to return to compliance. The penalty calculation will not be revised and remains at \$305,000.

4. Failure to meet the submittal and schedule requirements, which is a violation of Sections VII.L.2 and VII.L.4 of the Permit. Specifically, FWDA failed to submit the required *Parcel 11 Phase 2 RCRA Investigation Work Plan, Revision 1* in accordance with the NMED-approved submittal date of February 25, 2018.

FWDA Response: In their Proposal to Reset Enforceable Schedule, the Permittee proposed an extension of over two years to submit a revision of the work plan.

NMED maintains that that the Permittee has not proposed acceptable actions and a reasonable schedule to return to compliance. The penalty calculation will not be revised and remains at \$305,000.

5. Failure to meet the submittal and schedule requirements, which is a violation of Sections VII.L.2 and VII.L.4 of the Permit. Specifically, FWDA failed to submit the required *Parcel 6 Permittee-Initiated Interim Measures Report, Revision 1* in accordance with the NMED-approved submittal date of April 1, 2019.

FWDA Response: In their Proposal to Reset Enforceable Schedule, the Permittee proposed an extension of over a year to submit a revision of the report.

NMED maintains that that the Permittee has not proposed acceptable actions and a reasonable schedule to return to compliance. The penalty calculation will not be revised and remains at \$305,000.

6. Failure to meet the submittal and schedule requirements, which is a violation of Sections VII.L.2 and VII.L.4 of the Permit. Specifically, FWDA failed to submit the required *Parcel 3 Southern Area Groundwater Monitoring Investigation Report* in accordance with the NMED-approved submittal date of April 2, 2019.

FWDA Response: In their Proposal to Reset Enforceable Schedule, the Permittee proposed an extension of over three and a half years to submit the outstanding periodic monitoring report.

NMED maintains that that the Permittee has not proposed acceptable actions and a reasonable schedule to return to compliance. The penalty calculation will not be revised and remains at \$305,000.

7. Failure to meet the submittal and schedule requirements, which is a violation of Sections VII.L.2 and VII.L.4 of the Permit. Specifically, FWDA failed to submit the required *Parcel 3 Southern Area Groundwater Monitoring Plan* in accordance with the NMED-approved submittal date of April 2, 2019.

FWDA Response: In their Proposal to Reset Enforceable Schedule, the Permittee proposed an extension of almost four years to submit the outstanding groundwater monitoring plan.

NMED maintains that that the Permittee has not proposed acceptable actions and a reasonable schedule to return to compliance. The penalty calculation will not be revised and remains at \$305,000.

8. Failure to meet the submittal and schedule requirements, which is a violation of Sections VII.L.2 and VII.L.4 of the Permit. Specifically, FWDA failed to submit the required *Parcel 7 RCRA Facility Investigation Report, Revision 2* in accordance with the NMED-approved submittal date of April 30, 2019.

FWDA Response: In their Proposal to Reset Enforceable Schedule, the Permittee proposed an extension of over a year to submit a revision of the report.

NMED maintains that that the Permittee has not proposed acceptable actions and a reasonable schedule to return to compliance. The penalty calculation will not be revised and remains at \$255,000.

The proposed schedule to return the Permittee into compliance is attached. The penalties have not been revised and the total remains at \$2,390,000. The Permittee must respond in writing within 10 days of receipt of this Settlement Letter. Should the Permittee accept the terms of this settlement offer, NMED will prepare a Consent Agreement and Final Order for signature.

Messrs. Patterson and Smith
October 2, 2019
Page 5

If you have any questions regarding this Settlement Offer, please contact Dave Cobrain at (505) 476-6055 or by email at dave.cobrain@state.nm.us.

Sincerely,



John E. Kieling
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
B. Wear, NMED HWB
J. Verheul, NMED OGC
L. King, EPA Region 6 (6LCRRC)
C. Hendrickson, EPA Region 6 (6LCRRC)

File: FWDA and CTAP# 2397

Attachment 1: NMED - FWDA Settlement Schedule

Document Name	Original Submittal Date	Status	Past Due Date	NOV	Army Proposed Submittal Date	NMED Proposed Submittal Date
GW Well Installation Report (Northern Area)	6/28/2019	New Submittal	6/28/2019	Not Issued	NA	11/27/2019
Parcel 22 RFI Report, Rev 2	12/9/2011	Disapproved	8/12/2019	Not Issued	1/31/2021	12/31/2019
Parcel 3 Southern Area GW Monitoring Investigation Report (PMR)	4/2/2019	New Submittal	4/2/2019	#2	10/31/2022	1/31/2020
GW Supplemental RFI Report	2/8/2019	New Submittal	2/8/2019	#2	8/30/2020	2/28/2020
Parcel 21 Phase 2 Investigation Report	7/31/2014	New Submittal	6/28/2019	Not Issued	10/31/2021	3/31/2020
Parcel 3 Southern Area GMP	4/2/2019	New Submittal	4/2/2019	#2	1/31/2023	4/30/2020
Parcel 11 Phase 2 Investigation Work Plan, Rev 1	10/29/2015	Disapproved	2/25/2019	#2	4/30/2021	5/29/2020
Parcel 6 PIIM Report, Rev 1	2/27/2016	Disapproved	4/1/2019	#2	7/31/2020	7/31/2020
Parcel 7 RFI Report, Rev	12/27/2014	Disapproved	4/30/2019	#2	7/31/2020	7/31/2020
Parcel 21 PIIM Report	9/12/2018	Disapproved	6/30/2019	Not Issued	10/31/2020	10/30/2020
Parcel 13 RFI Report	8/3/2018	Disapproved	6/30/2019	Not Issued	1/31/2022	12/31/2020
Parcel 22 IM Report TNT Leaching Beds	6/22/2019	New Submittal	6/22/2019	Not Issued	NA	1/29/2021
IMWP for SWMUs and AOCs in KO Area	7/11/2016	Withdrawn	4/1/2019	#1	7/31/2022	3/31/2021
Parcel 7 Phase 2 Investigation Work Plan	9/5/2019	New Submittal	9/5/2019	Not Issued	NA	6/30/2021
Parcel 24 Phase 2 Investigation Work Plan	6/28/2019	New Submittal	6/28/2019	Not Issued	4/30/2022	9/30/2021
KO Area MEC Clearance Report	11/15/2018	New Submittal	11/15/2018	#2	12/31/2024	12/30/2022