



DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF, G-9
600 ARMY PENTAGON
WASHINGTON, DC 20310-0600

November 25, 2019



Base Realignment and Closure Division

Mr. John E. Kieling
Chief, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6313

Re: Notice of Violation Fort Wingate Depot Activity, McKinley County, NM, EPA # 6213820974

Dear Mr. Kieling,

On 26 October 2019, the Army received your Notice of Violation (NOV) letter dated 22 October, that alleges document submittal dates have not been met as required under the Fort Wingate Depot Activity (FWDA) Resource Conservation and Recovery Act (RCRA) Permit.

The Army is committed to its environmental responsibilities at FWDA and looks forward to actively working with your office in this regard. In response to previous NOV's issued by your office, the Army requested formal and informal conferences with your team to discuss several issues that impede timely compliance with the existing permit. The Army needs participation and support from the New Mexico Environment Department (NMED) to resolve these impediments. This letter is another formal request by the Army for a conference to be followed by a series of engagements with NMED so we can work together.

Prior to the issuance of the NOV's in June 2019, the Army self-identified shortfalls in its remediation program at FWDA. As a result, the Army timely requested extensions and the opportunity to discuss these shortfalls with NMED officials. Unfortunately, the Army's request to discuss issues with NMED was instead met with the issuance of the June 2019 NOV's. The Army and NMED did briefly conferenced on 8 August 2019. As a result of this meeting, the Army provided further information on 16 and 29 August 2019. This included a schedule of compliance and a list of 12 issues that need to be resolved before the Army can solicit new contracts, which are necessary to continue to meet the Army's obligations. To date, NMED has not responded to these issues and, as a result, the Army lacks the certainty needed to solicit new contracts. To remedy these shortfalls, the Army respectfully requests these violations be rescinded or held in abeyance while we work together to resolve these issues and to address NMED's concerns in adequate detail.

The unresolved issues represent a high level of uncertainty that fundamentally impacts the Army's ability to put in place activities that would resolve the NOV's and return the FWDA RCRA program to compliance. While some of the 12 issues are not complete impediments, we need to at least resolve the lack of accredited laboratories which can meet NMED's specified Limit of Quantification (LOQ) for analytical testing, NMED changes to how usage of Incremental Sampling Methodology (ISM) after fieldwork has been completed by contractors, and NMED's shifting Risk Assessment Guidance after contracts have been awarded and work performed.

We look forward to working with NMED to resolve these matters and continue remediating FWDA.

Regarding the 22 October 2019 NOV, which NMED issued for "failure to meet the submittal and schedule requirements", the Army provides the following responses for each document:

a. Parcel 21 SWMU-1 TNT Leaching Beds Interim Measures Report: NMED granted the Army an extension on 21 May 2019 until 26 December 2019. The Army is on track to meet the previously approved 26 December 2019 deadline and asks this violation be rescinded.

b. Parcel 21 Phase 2 RCRA Facility Investigation Report: The Army submitted an extension request to NMED on 13 December 2018 requesting a deadline of 31 Dec 2019 as NMED requested the full Phase 2 RFI Report to be submitted as a separate document. The Army's original contract's Period of Performance (POP) ended in July 2019, and a new contract and funding are required. The Army asks that this violation be held in abeyance while new funding and a new contract are obtained.

c. Parcel 24 Phase 2 RCRA Investigation Work Plan: NMED issued a Notice of Disapproval letter (NOD) on 19 November 2018 for the Parcel 24 Permittee-Initiated Interim Measures (PIIM) Report. The NMED stated "the Permittee must submit a work plan that proposes further characterization and remediation of soil at the locations specified." The Army is working with NMED to complete Parcel 24 PIIM report and believes it is premature to start a Phase 2 investigation until the Army and NMED can agree on the Parcel 24 PIIM Report. We ask that this violation be held in abeyance until the Parcel 24 PIIM report is approved.

d. Groundwater Background Well Installation Report: This document was requested per the NMED Disapproval of the 14 June 2019 Final Groundwater Periodic Monitoring Report January through June 2018 and assigned a deadline of 25 October 2019. The Army submitted the requested document on 24 October 2019 and therefore requests this violation be rescinded.

e. Parcel 13 RCRA Facility Investigation Report Revision: NMED issued a NOD letter on 7 December 2018, however the work required in the NOD was outside the scope of the current contract. The Army's 15 May 2019 letter requested this project be postponed until the Army and NMED can resolve the 12 issues or at a minimum for this report, resolve the LOQ, the ISM, and the risk guidance usage issues mentioned above. Once the Army and NMED resolve these issues, the Army can restart the contracting process. Until that time, the Army asks for this violation to be held in abeyance.

f. Parcel 21 Permittee Initiated Interim Measures Report Revision: NMED issued a NOD on 6 February 2019 and the contract was due to expire 1 July 2019. The Army's informal communication to NMED in February 2019 identified that addressing and or summarizing investigation activities as specified in the NOD was outside the scope of the soon to expire contract and would require a new contract. Additionally, the Army cannot proceed forward with this report until the 12 issues are resolved or at a minimum for this report, resolve the LOQ, ISM, and the risk guidance usage issues mentioned above. The Army asks this violation be held in abeyance so these issues can be resolved and the Army can then move forward with the contract solicitation process.

g. Parcel 22 RCRA Facility Investigation Report Revision: After several NMED NODs and several NMED extensions, a revised document was due to NMED no later than 12 November 2018. On 31 October 2018 the Army requested an extension to 12 August 2019 to resolve numerous NMED comments that were not in the original NOD. NMED granted the extension per letter dated 19 November 2018. On 15 May 2019, the Army submitted a letter requesting this project be postponed until a resolution of the LOQ and the risk guidance usage issues mentioned above are resolved. The Army asks this violation be held in abeyance so these issues can be resolved and the Army can then move forward with the contracting process.

h. Parcel 7 Phase 2 RCRA Investigation Work Plan: In a 29 October 2018 NMED NOD of the Parcel 7 RFI Report the NMED requested a Phase 2 RFI Work Plan. The Army did not anticipate the need for a Phase 2 RFI work plan as the Army had planned to perform a PIIM. The Army is working with NMED to complete the Parcel 7 RFI report and believes it is premature to start a Phase 2 Work Plan until the Army and NMED agree on the Parcel 7 RFI Report. The Army asks that this violation be held in abeyance until the RFI Report is approved.

i. Parcel 13 Phase 2 RCRA Investigation Work Plan: In a 7 December 2018 NMED NOD of the Parcel 13 RFI Report NMED requested a Phase 2 RFI Work Plan. The Army did not anticipate the need for a Phase 2 RFI work plan as the Army had planned to perform PIIM. The Army is working with NMED to complete the Parcel 13 RFI report and believes it is premature to start a Phase 2 Work Plan until the Army and NMED agree on the Parcel 13 RFI Report. The Army asks that this violation be held in abeyance until the RFI Report is approved.

j. Parcel 3 Hazardous Waste Management Unit Removal Progress Report: Per a 1 January 2019 NMED letter titled "Submittal Dates for Multiple Documents", NMED requested the Hazardous Waste Management Unit (HWMU) Report be submitted by 22 September 2015. Because this date was many years prior the January 2019 letter, the letter requested the Army submit an extension as soon as possible. On 3 April 2019, the Army sent a letter to NMED outlining the actions that had been taken on the HWMU project and requested a report submittal date of 29 March 2023. On 18 April 2019, NMED granted the extension but required the Army to submit yearly status reports due by 30 June, with the first yearly report being due by 30 September 2019. The Army has been working on the modification to the contract and expects it to be completed by January 2020. The Army asks this violation be rescinded as there was insufficient time for the Army to modify the current contract to meet this requirement and little additional information to provide from the previous 3 April 2019 update.

In order to further address and resolve the NOVs, the Army again respectfully requests to meet with NMED staff on the RCRA permit compliance issues faced at FWDA. The Army remains committed to working in a cooperative manner with NMED. Please contact me or my point of contact, Mr. Ian Thomas, FWDA Program Manager to set up these meetings. He can be reached at (703) 545-2536 or ian.m.thomas2.civ@mail.mil.

Sincerely,



Thomas E. Lederle
Chief, BRAC Division
Office of the Deputy Chief of Staff, G-9

cc:

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