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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 17, 2019

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

**RE: ADDITIONAL INFORMATION RELATED TO THE AUGUST 16, 2019 PROPOSAL
TO RESET ENFORCEABLE SCHEDULE AND RESOLVE PROGRAMMATIC ISSUES
AT FORT WINGATE DEPOT ACTIVITY
FORT WINGATE DEPOT ACTIVITY
MCKINLEY COUNTY, NEW MEXICO
EPA # NM6213820974
HWB-FWDA-MISC**

Dear Mr. Patterson:

The New Mexico Environment Department (NMED) is in receipt of the Fort Wingate Depot Activity (Permittee) *Additional Information Related to the August 16, 2019 Proposal to Reset Enforceable Schedule and Resolve Programmatic Issues at Fort Wingate Depot Activity* (Issues Table), dated August 16, 2019. The Permittee provided twelve issues that they claim are affecting the outstanding documents identified in the August 16, 2019 Proposal.

NMED has provided responses to all twelve of the Permittee's provided issues. Italicized information below (other than document titles) was provided by the Permittee. NMED's responses are provided below.

Issue #1

Topic: Limit of Detection (LOD)/Limit of Quantitation (LOQ) for analytical testing at laboratories

Description: NMED has requested that the Army use analytical laboratories that can achieve quantitation limits below regulatory screening levels.

Action Taken To Date: Army has researched which DoD Environmental Laboratory Accreditation Program (ELAP) certified analytical laboratories can achieve what LOQs for the required analytes. None of the laboratories can achieve LOQs below screening levels for all required analytes.

Proposal for Discussion: Army and NMED meet to come to agreement on how to resolve this concern, potentially including how to prioritize which analytes are most important for ensuring the LOQ is below regulatory screening levels.

NMED Response: The Permittee is required to use analytical laboratories and methods that can achieve LOQs at or below the screening levels for all constituents of concern. The Permittee has proposed using labs where the LOQ for an analyte is multiple orders of magnitude above the screening level. This is not acceptable. The Permittee will likely need to use more than one lab to achieve the requirement. Other NMED-regulated facilities have been using multiple labs to achieve appropriate LOQs for many years. NMED cannot defend an assertion that a site is clean without data that support such a conclusion. Therefore, any future CAC requests may be disapproved based on NMED's inability to defend that a site is clean based on the Permittee's inability to demonstrate that contaminants are not present above applicable cleanup levels.

Issue #2

Topic: Searchable Electronic Database

Description: NMED has requested that the Army provide analytical data in a searchable electronic database (for both historical data and newly collected data).

Action Taken to Date: Army has committed to providing all newly collected data in Excel or Access database format. Army has considered how to address the request to provide historic data in this searchable format, and determined it would be exceedingly difficult to provide historic data in this format unless it is already in a searchable format.

Proposal for Discussion: Army is requesting that NMED accept that historical data will not be provided in searchable electronic format unless it is already available in that format.

NMED Response: Any data that the Permittee uses for decision-making must be included in a searchable electronic format. If the data is not used for decision-making, it may be excluded. NMED does not consider data entry to be "exceedingly difficult".

Issue #3

Topic: Incremental Sampling Methodology (ISM)

Description: In response to Army proposals, NMED has given direction on how and where it might be appropriate to use ISM for soil sampling at Fort Wingate.

Action Taken to Date: Army has considered NMED's direction on the use of ISM, and is seeking clarification on the use of ISM data, particularly for data that has already been collected (e.g. igloo aprons and revetments at Fort Wingate).

Proposal for Discussion: Army and NMED meet to clarify the criteria that should be used to determine when and how ISM might be used at Fort Wingate.

NMED Response: Comment 3 of NMED's June 4, 2019 Disapproval Final RCRA Facility Investigation Report Parcel 6, Revision 1.0 resolved this issue by stating, "[t]he NMED does not accept the inappropriate use of the incremental sampling method. NMED will only accept multi-incremental or ISM samples for explosives and metals in large-area surface releases with detonation or airborne distribution as the contaminant release source. The Permittee must review all planned work and revise any plans that propose ISM sampling to propose an alternate sampling approach. NMED hereby rescinds approval of all proposed ISM or MI sampling that was previously approved, but has not yet been conducted at the Facility."

Previously, ISM sampling was allowed to be used, as a screening tool only, on sites where contaminants were not distributed by surface releases with detonations as the contaminant release source. The Permittee has continually attempted to misuse the ISM results for these sites; therefore, the Permittee is no longer allowed to use this method on sites that do not involve airborne contaminant distribution caused by detonations. The multiplication by the number of increments for comparison to compliance standards was required by NMED based on the Permittees continued attempts to inappropriately use ISM data for compliance purposes instead of for screening purposes. The Permittee has not complied with NMED's repeated direction on the subject. Therefore, ISM sampling can only be used at FWDA as described above and EPA Method 8330B and the ITRC *Incremental Sampling Methodology* must be strictly adhered to, including triplicate sampling. NMED and the Permittee have had multiple conference calls discussing this issue and the Permittee has yet to acknowledge NMED's longstanding position. NMED's position on this subject is clear.

Issue #4

Topic: *Additional Characterization vs. Remedial Actions and Confirmation Sampling*

Description: *To further define nature and extent of contamination, NMED has requested that Army perform step-out sampling at locations five to ten feet from the original sample location in at least four directions.*

Action Taken to Date: *Army considered this direction from NMED. Army is requesting that NMED provide flexibility in how to address such contamination, either by determining the scale of step-out sampling for characterization of nature and extent, or by proceeding to an interim removal action followed by confirmation sampling. Army understands that it assumes all risk for needing to remediate any areas not characterized as clean.*

Proposal for Discussion: *Army is requesting that NMED allow Army to determine how best to address potential contamination, either by determining the scale of step-out sampling, or by implementing remedial actions and confirmation sampling. Regardless, Army understands it assumes all risks related to this determination.*

NMED Response: The FWDA RCRA Permit requires the Permittee to determine nature and extent of contamination prior to implementing remedial actions. NMED has previously allowed the Permittee to determine how best to address potential contamination and their response was to utilize samples collected 50 feet away as step-out samples to define nature and extent,

which is not appropriate. NMED provides specifics when the Permittee does not propose appropriate sampling.

Issue #5

Topic: Requests for follow-on work plans prior to approval of initial reports

Description: NMED has requested that Army submit follow-on work plans before initial reports are approved (e.g. requesting a Phase 2 work plan in a Notice of Disapproval on an initial report).

Action Taken to Date: Army has considered this request. Preparing a follow-on work plan before an initial report is approved creates significant uncertainty for Army funding and contracting requirements. Army proposes to submit work plans for follow-on phases of work only after receiving approval of reports on previous phases of work.

Proposal for Discussion: Army is requesting that NMED approve initial reports before requiring submittal of work plans for follow-on phases of work.

NMED Response: The Permittee has proposed Interim Measures prior to initial reports being approved many times in the past. In addition, the Permittee has a number of initial reports that are up to over nine years past the original submittal date. Basically, this amounts to a "stop work" on the projects. The request the Permittee has proposed would allow them to indefinitely delay any work on a project by not adequately responding to NMED's comments. If the Permittee provides adequate responses to NMED comments, reports would be approved in a more timely manner. In addition, requirements for submittal of work plans for follow-on phases of work are typically scheduled out months beyond the requirement for document revision. If the Permittee were to provide document revisions without requesting often multiple extensions and with adequate responses to comments, the initial reports would be approved prior to the required submittal date for work plans that address follow-on work. NMED is open to working towards this goal, but cannot accept work delays based on non-responsive submittals from the Permittee.

Issue #6

Topic: Providing additional comments on previously reviewed documents

Description: NMED has generated new comments and raised new issues that were not identified in earlier reviews of the same document.

Action Taken to Date: Army has identified numerous examples of NMED generating new comments on previously reviewed sections of documents. This creates significant uncertainty for Army funding and contracting requirements.

Proposal for Discussion: For revised document submittals, Army is requesting that NMED only comment on the parts of the document that were revised.

NMED Response: NMED must review every document in full as the Permittee has frequently not provided accurate redline-strikeout versions of their revisions, including making changes to portions of the documents that were not required by NMED comments. This requires NMED to review the entire document to account for undocumented changes.

In addition, the Permittee has requested multiple extensions for multiple years on many documents, with documents received up to over nine years past the original submittal date; therefore, many times when the revisions are provided, there are different reviewers looking at the document. Also, regulations and Department priorities change over time; therefore, review of a document several years or almost a decade after the initial version was submitted will likely require new comments.

Also, in many instances, the initial review of a document is hindered by format issues, data presentation issues, lack of page numbers, etc., so the initial review may require revision to the document before a full review can be conducted. Were the Permittee to submit revisions in a timely manner, or submit initial submittals in appropriate formats, this issue would likely resolve itself. The purpose of the comments that NMED provides are to ensure that all aspects of an investigation or remediation action are addressed so that upon submittal of a Corrective Action Complete (CAC) petition by the Permittee, there are no outstanding issues that would prevent NMED from approving the CAC determination and defending the decision to do so. The Permittee must resolve its contracting issues to ensure that document revision is conducted in a timely manner.

Issue #7

Topic: NMED Risk Assessment Guidance version

Description: There has been inconsistent direction on which version of the NMED Risk Assessment Guidance to use.

Action Taken to Date: Army reviewed the historical record and found differing direction on this topic, including to use the risk guidance in place when the field work begins, when the field work ends, and when the risk screening is being performed. Army proposes to use the work plan to document which version of the risk assessment guidance will be used. Then, when performing the risk screening, Army will use the screening levels in place at that time.

Proposal for Discussion: Army and NMED meet to consider this proposal and come to agreement on how to resolve this concern.

NMED Response: The Permittee has been directed to use the Risk Assessment Guidance that is in effect when all of the field work for a particular project is completed. NMED has also allowed the Permittee to use the Risk Assessment Guidance that is most current. The work plan is not the appropriate document to specify which version of the risk assessment will be used, as the results of the investigation are unknown and the project may require more phases of investigation and/or remediation prior to conducting a risk assessment. The Permittee must resolve its contracting issues to ensure that document submittals and revisions are conducted in a timely manner.

Issue #8

Topic: Field Changes protocol- Notification to NMED

Description: Army is seeking to confirm protocol.

Action Taken to Date: Army proposes to contact NMED by telephone regarding field change proposals, seek concurrence verbally, then follow up with email to NMED documenting the change. This change would then be documented in the report.

Proposal for Discussion: Army is requesting that NMED consider this proposal.

NMED Response: The Permittee is allowed to make changes in the field if they are justified and discussed in a report section titled "Deviations from Work Plan". If the Permittee is unsure of their ability to justify the change, or the change is significant, the Permittee may request NMED concurrence of the change through email. All changes, or requests for changes, must be documented in the Administrative Record; therefore, communication solely by telephone regarding deviations is not appropriate. Depending on the significance of the change, a formal letter may also be required.

Issue #9

Topic: NMED Assigned Deadlines

Description: NMED is assigning deadlines in NOD/Approval letters that are sometimes not feasible for the Army to meet (for logistical/contractual/funding reasons).

Action Taken to Date: Army has requested to discuss schedules with NMED before assigning deadlines in NOD/Approval letters to avoid the need for requesting extensions. Army is again requesting that NMED consult with Army prior to assigning deadlines for future submittals.

Proposal for Discussion: Army is requesting that NMED consider this proposal.

NMED Response: When the Permittee made this request initially, NMED consulted with Mr. Mark Patterson requesting a date for a future submittal. After two weeks with no response, NMED assigned a date for the submittal to meet its internal deadline. Following the failure to respond, NMED abandoned the effort. This request will be considered, but the Permittee will be required to provide a timely response (e.g., within 48 hours) with a reasonable date. Two to five years to revise a document is not reasonable. The Permittee must resolve its contracting issues to ensure that timely document revision is included.

Issue #10

Topic: Appendices in Documents

Description: Army is requesting clarification on what to include (and not include) in [the] appendices section of work plans and reports.

Action Taken to Date: Army reviewed the historical record and found the following examples of items that NMED directed not to include as appendices in work plans/reports:

Explosives Management Plan

Environmental Protection Plan

Property Management Plan

Interim Holding Facility Siting Plan for Chemical Warfare Materiel

Physical Security Plan for Recovered Chemical Warfare Materiel

Accident Prevention Plan

Uniform Federal Policy - Quality Assurance Project Plan (UFP-QAPP)

Explosives Safety Submission

Landfill Disposal Management Plan/Documentation
Final Installation Spill Contingency Plan
NRCS Soil Survey of McKinley County, New Mexico
[Cultural Resources] Programmatic Agreement
Asphalt Road Construction Specifications
Laboratory Quality Control Limits
Building Post-Demolition Sampling Report
USACE Sampling and Analysis Plans
Aquifer Test Package

Proposal for Discussion: Army and NMED meet to clarify the criteria that should be used to determine what to include in appendices on Army submittals to NMED.

NMED Response: The Permittee has been repeatedly directed not to include full reports as appendices, but rather submit them as supporting documentation for the Administrative Record. In addition, the list the Permittee provided is fairly comprehensive.

There should be nothing included in the appendices of a document that is not project specific. For example, Level II Analytical Laboratory Reports for samples collected specifically for the project being documented are appropriate; a soil survey for McKinley county included as an appendix for every document submitted for the facility is not. The list provided by the Permittee includes documents that may or may not be appropriate for inclusion depending on the project. If the project is an aquifer test, then the Aquifer Test Package would be appropriate. If the aquifer test report has already been submitted to NMED, then there is no need to include the Aquifer Test Package that is already in the Administrative Record.

Many times these non-site-specific appendices appear to be included to bulk up the document in order to make it appear substantial. This practice causes NMED to be unable to approve a document unless all of the appendices are reviewed. Most of the documents listed by the Permittee are not site specific, but facility or Army related, and should be submitted only once for the Administrative Record, not included in every document submitted.

Issue #11

Topic: *Groundwater Risk Assessment*

Description: *In reviewing the Northern Area Groundwater RFI Report, NMED commented that it is not appropriate to perform a Risk Assessment as part of the RFI.*

Action Taken to Date: *Army considered this comment and sought clarification from NMED. Ben Wear provided the following clarification on 22 August, 2019: "...in NM, all groundwater is considered a potential drinking water source, therefore, if any contaminant exceeds it's screening level, the site will fail risk." Army considered this response and is seeking to better understand how NMED views risk mitigation options for groundwater contamination.*

Proposal for Discussion: *Army and NMED meet to further explore this topic.*

NMED Response: *There are no risk mitigation options for groundwater other than meeting the groundwater cleanup levels established in the Permit.*

Issue #12

Topic: NMED Statement

Description: NMED has included the following statement in document approval letters:
"Approval of this document does not constitute agreement with all information or every statement presented in the document."

Action Taken to Date: N/A

Proposal for Discussion: Army is requesting clarification from NMED on the implication of including this statement in document approval letters.

NMED Response: This statement is added to all approval letters issued by NMED.

If you have any questions regarding this letter, please contact Ben Wear at (505) 476-6041.

Sincerely,



Dave Cobrain
Acting Chief
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cc: B. Wear, NMED HWB
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