



KAFB BFFS
ST-106/SS-111
GW and SV Sampling

From: Cobrain, Dave, NMENV
Sent: Wednesday, October 14, 2020 3:44 PM
To: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Subject: RE: Follow up from KAFB call

Feel free to talk to Michelle. She'll tell you that obtaining a variance has a very high bar. The Air Force would have to go before the WQCC and we would be there to oppose at the hearing with plenty of evidence that a remedy that can cleanup petroleum in groundwater to meet WQCC standards at the BFFS is not technically infeasible and that it's entirely affordable for the Air Force.

From: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Sent: Wednesday, October 14, 2020 2:03 PM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: RE: Follow up from KAFB call

I was just reading those. Sounds like they have options so we better be prepared. Would a discussion with Jennifer or Michelle on this?

From: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Sent: Wednesday, October 14, 2020 1:56 PM
To: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Subject: RE: Follow up from KAFB call

See attached from the groundwater regulations. Now I know where the 20 years came from. Kate is obviously well aware of the variance regs just not how they're applied. She worked for FMI (copper mining) and is well aware of the copper rule. She wants it to apply everywhere so industry won't have to clean anything up. When I said a variance has been granted twice since the regs came out decades ago, I'm either right on or off by one.

From: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Sent: Wednesday, October 14, 2020 1:48 PM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: RE: Follow up from KAFB call

We will be expected to tell them what the protocol for such a demonstration is, what is the process, and what guidance or regulation we will use in considering such a request. We can not simply say its up to them to submit something. This will likely be the one and only item we discuss with them next week. Should we set up a time for a discussion on this with Jennifer? Attorney's wont be involved in

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our call next week but they likely will be involved in a follow up to next weeks call.

From: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Sent: Wednesday, October 14, 2020 1:07 PM
To: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Subject: RE: Follow up from KAFB call

The burden is on them to prove impracticability. The technology exists and the Air Force has a huge amount of money. They don't have a case except that they don't want to meet their corrective action obligations.

From: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Sent: Wednesday, October 14, 2020 1:03 PM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: RE: Follow up from KAFB call

That's what they will contend

From: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Sent: Wednesday, October 14, 2020 1:01 PM
To: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Subject: RE: Follow up from KAFB call

The variance referenced in the permit is related to technical impracticability for groundwater standards (see the permit language below). It's a tall order and only been approved by the WQCC twice ever as far as I know. There's no way the Air Force can show that achieving the WQCC standards are impossible at the BFFS. Difficult or expensive have never been acceptable reasons for requesting a variance.

6.2.3.8. Requests for Variance from Cleanup Levels

The Permittee may request a variance from a particular cleanup level. The nature of the request

shall differ depending on whether a WQCC standard is involved. If a WQCC standard is involved, the Permittee may request an alternative abatement standard in accordance with the process specified in the WQCC Regulations at 20.6.2.4103.E and F NMAC.

For all other instances in which the Permittee requests a variance from a cleanup level, the Permittee shall submit a demonstration to the Department that achievement of the cleanup level

is impracticable. In making such demonstration, the Permittee may propose consideration of such factors as technical or physical infeasibility of the project, ineffectiveness of proposed solutions, cost of the project, potential hazards to workers or to the public, and any other basis that may support a finding of project impracticability. In addition to demonstrating the basis for

its impracticability request, the Permittee's written submittal shall propose the action to be taken

by the Permittee if the Department approves the impracticability demonstration. Such action

shall include, but is not limited to, completion of a site-specific risk assessment and identification of alternate clean-up levels. The proposed alternative cleanup level will be subject to the Department's review and approval.

From: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Sent: Wednesday, October 14, 2020 12:34 PM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: RE: Follow up from KAFB call

That is what I will give them. Understand that they will look to invoke an alternative per the permit and we will need to prep for that.

From: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Sent: Wednesday, October 14, 2020 12:09 PM
To: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Subject: RE: Follow up from KAFB call

Then that would be the friction point. Since they're required to meet the cleanup standards listed in the permit, not agreeing is the beginning of an enforcement action.

From: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Sent: Wednesday, October 14, 2020 11:06 AM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: RE: Follow up from KAFB call

They wont agree to that. As I mentioned they are moving to justify an alternate clean up standard. So is our only friction point "cleanup standards"?

From: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Sent: Wednesday, October 14, 2020 10:47 AM
To: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Subject: RE: Follow up from KAFB call

If they agree to stop trying to avoid meeting the cleanup standards specified in the permit in the shortest time possible using a method that can be adequately monitored, what else is there? Everything Kate throws out is intended to distract from having to meet that objective and aligns with the approach the Air Force has been using for two decades. There's no benefit to New Mexico or the City of Albuquerque of allowing the Air Force to avoid having to achieve the cleanup standards. If we don't require that the cleanup levels specified in the permit are met, it will also help the Air Force with the lawsuit they're dealing with so the Air Force has more than one motivation to try to get out of meeting the cleanup standards. It also has much larger implications within the State beyond this one SWMU starting with the rest of KAFB and future permits.

From: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Sent: Wednesday, October 14, 2020 10:34 AM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: RE: Follow up from KAFB call

So in my reply to Kate you suggest simply saying we have one friction point, "cleanup standards" and leave it at that?

From: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Sent: Wednesday, October 14, 2020 10:25 AM
To: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Subject: RE: Follow up from KAFB call

It all comes down to meeting or not having to meet the permit and WQCC cleanup standards. All the other "friction points" are directly related to that. The standards are spelled out in their permit and in NMED risk assessment guidance. The human exposure-related cleanup requirements are pretty much achieved for soils. The remaining cleanup related to soils is related to DAF and the effects on groundwater contamination and as a source for soil vapor contamination. The Air Force can't demonstrate that cleanup is achieved for soil vapor and it's clearly not done for groundwater. Bioremediation will never achieve the standards within the artificial time limit of 20 years or even a century. But no other approach would achieve cleanup in 20 years. We don't need to treat this as a negotiation, we can simply state that they have to figure out how to clean up in the shortest amount of time possible, which optimistically is probably 40 or more years with a properly designed pump and treat system. They are not in compliance with the permit but we're not taking steps to set them up for a compliance action based on our current approach. Those kinds of steps will certainly result in creating friction points but that would require an overall change in the NMED approach to this project.

From: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Sent: Wednesday, October 14, 2020 10:07 AM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: RE: Follow up from KAFB call

I assume the biggest friction point is the corrective action objective or cleanup standards. I don't know if we should separately list source area pump and treat or if this would be included in the corrective action objective. I don't know if we had discussed this in the past. If not it will catch them by surprise. Seems shallow soil vapor and possibly deep soil vapor should be included, do you disagree? Not sure if we have other issues or not. They mentioned that we had required other studies but I don't have those details. I believe we suggested an additional study in the EDB bioremediation comments but I am not certain of that. We might be able to capture this as "additional study requirements".

We better be prepared to discuss alternative clean up criteria and the process for that. That's what they are shooting for.

What I need is a list to send to the AF. I don't think listing only cleanup requirements captures all the current friction points. If we leave some out and they come up later it would be a problem so being more inclusive is the way to go. The AF intends to provide us with their list of friction points after receiving ours.

Please look at this more closely and provide me with a response. thanks

From: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Sent: Wednesday, October 14, 2020 9:44 AM
To: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Cc: Andress, Lane, NMENV <Lane.Andress@state.nm.us>; Wear, Benjamin, NMENV <Benjamin.Wear@state.nm.us>
Subject: RE: Follow up from KAFB call

I wasn't at the meeting so I didn't hear the conversation but there's really only one friction point from our standpoint. The Air Force doesn't want to comply with the cleanup requirements listed in their permit. They never have, and they've been stonewalling for 20 years. RCRA First is stonewalling. They are required to meet the cleanup standards listed in the permit and comply with the WQCC regs. NMED's regulatory authority to require corrective action and compel cleanup to the standards listed in the permit is clear in the Solid Waste Act, HSWA, HWA, 40 CFR 264.101, and their permit.

From: Pierard, Kevin, NMENV <Kevin.Pierard@state.nm.us>
Sent: Wednesday, October 14, 2020 9:19 AM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: FW: Follow up from KAFB call

I need our list of friction points ASAP.

From: Pierard, Kevin, NMENV
Sent: Saturday, October 10, 2020 11:53 AM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: Follow up from KAFB call

I will just hit a few highlights then get to the next steps that require action by us.

Everyone is happy with communication; AF want to use a results based approach rather than a process approach; any agreement on how to move forward must be memorialized in a enforceable document but AF doesn't want a consent order; all 3Q monitoring north of ridgecrest was either ND or below MCL.

They want to discuss the shallow soil vapor with us as soon as we can.

They want to complete the conceptual site model and present it to stakeholders before the phase 2

is scoped

They will do a new risk assessment that they already know will show no risk

Mark Correll was anxious to have us declare whether we would follow the RCRA first approach or traditional approach; and schedule RCRA first training for us. We agreed to think about it. In the sidebar with Stephanie, Jennifer and the Sec. I explained the problems with RCRA first. Stephanie mentioned a hybrid which I think we are following now with enhanced communication and timely elevation, which is part of the RCRA first approach.

Next step by **Wednesday** is to give the AF a list of "friction points" and a date to discuss these **before Nov. 6**. This discussion will be you, me, Ben and Lane and probably Stephanie. Our next call with Correll and the Secretary is **Nov. 6** with the expectation that we identify friction points that have been resolved or where we have reached an impasse and to tell the AF if we will agree to follow RCRA first or the traditional approach.

I think the list of friction points should include 1. a discussion of the corrective action objective – this should include the permit requirement of MCLs or WQCC criteria AND the process for documenting impracticability and petitioning for alternative abatement (what guidance would we use in making this determination). This is the big ticket item. There will be a discussion on how long to meet MCLs and if its impractical to meet them in 20 years can they propose alternative abatement. This may get us to the discussion of pump and treat in the source zone. We need to get our ducks in a row on this topic. The AF suggested we have a person from the GWB on the call. I ignored that suggestion.

2. Next would be the shallow soil vapor –
3. current pilot studies – I don't view this as a major thing. They say these are not related to nature and extent so not necessary for completion of the study.
4. RFI phase 2 scope – I also don't view this as a major issue at this point but we do need to agree upon the scope of this. The AF raised that we have required additional studies and reports so I think we need to discuss these and whether they would be incorporated into phase 2 or done on there own timeline and, if so, how this would mesh with the phase 2 timeline.
5. Not sure if LNAPL is a sticking point or not

Please have the list of "friction points" back to me on Tuesday. I blocked the only significant amount of time that all four of us are available for a call with the AF on this. If you have other suggestions on when to do the call let me know.

The attorney's are supposed to continue discussions on the enforceable vehicle that could be used. Jennifer asked if we had authority under 3008h, I told her we did not.

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NM Environment Department

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