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**Certified Mail - Return Receipt Requested**

October 31, 2022

Colonel Terence G. Taylor  
Commander, 27th Special Operations Wing  
100 Air Commando Way, Suite 100  
Cannon Air Force Base  
New Mexico 88103-5214

**RE: NOTICE OF VIOLATION  
GROUNDWATER MONITORING FIELD SAMPLING PLAN-REVISION 2  
MELROSE AIR FORCE RANGE  
EPA ID# NM5572124456  
HWB-MELR-19-002**

Dear Colonel Taylor:

The New Mexico Environment Department (NMED) hereby issues this Notice of Violation (NOV) in response to Cannon Air Force Base's (Permittee) March 2, 2022 letter titled *RE: Disapproval Groundwater Monitoring Field Sampling Plan [FSP]-Revision 2* (Disapproval Response), which was submitted in response to NMED's December 14, 2021 *Disapproval Groundwater Monitoring Field Sampling Plan-Revision 2* (December 2021 Disapproval).

In the Disapproval Response, the Permittee states that "[t]he Air Force cannot tolerate the permit any longer because NMED's demands under it go beyond monitoring groundwater. The Air Force will continue monitoring groundwater under the Department of Defense Operational Range Assessment Program, but will no longer submit sampling plans and reports pursuant to RCRA permit requirements." The Permittee also requested that the hazardous waste permit for Melrose Air Force Range (MAFR) be "withdrawn or cancelled".

Melrose Air Force Range (formerly Melrose Bombing Range) operated an interim status hazardous waste open burn treatment unit prior to and through the 1980s in addition to the unit permitted in 1994, which subjects the Facility to regulation under RCRA. A 1987 RCRA Facility Assessment (RFA) conducted by EPA identified solid waste management units at Melrose that require corrective action. The 1994 permit included corrective action under the Hazardous and Solid Waste Amendments (HSWA), which at the time was administered by EPA. NMED was authorized to implement HSWA (RCRA corrective action) oversight in January 1996. The Air Force submitted a timely corrective action only permit renewal application. The existing permit continues to be effective in accordance with 40 CFR 270.51. The Air Force

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decision not to renew the subpart X treatment portion of the permit does not relieve the Air Force of its RCRA corrective action obligations.

When the Air Force declared the entire facility to be active range, all active corrective action at the SWMUs and AOCs at MAFR was deferred as a courtesy even though some of the SWMUs and AOCs are not located within areas that could safely be used as active range. NMED has only required continued groundwater monitoring and the Air Force has conducted groundwater monitoring as directed by NMED by submitting plans and reports for NMED approval until 2022. The Air Force is not relieved of its corrective action groundwater monitoring obligation under the RCRA permit and therefore is required to comply with NMED requirements. The Air Force has the option to propose alternatives to approved work in annual updates to the groundwater monitoring program. NMED will review Air Force written justification for proposed alternatives to NMED requirements but NMED has regulatory authority to determine whether any proposed alternatives comply with RCRA and the New Mexico Hazardous Waste Act. Regarding the permit renewal, NMED will respond to the Air Force comments on the draft MAFR Corrective Action Only permit, which continues to defer corrective action at SWMUs and AOCs pending full or partial range closure and only requires ongoing groundwater monitoring, after the litigation regarding the Cannon Air Force Base permit is resolved.

Under the existing Permit authority, NMED requires groundwater monitoring at MAFR in accordance with the NMED-Approved April 2015 *Groundwater Monitoring Field Sampling Plan* (2015 FSP) as it may be updated. Upon NMED-Approval, the 2015 FSP became an enforceable component of the Permit. The Permittee's failure to meet the March 31, 2022 deadline requirement for submittal of a revised FSP update that addresses all comment requirements in the December 2021 Disapproval, and to continue groundwater monitoring on a semiannual schedule in accordance with the 2015 FSP and NMED's May 7, 2019 *Update to the Groundwater Monitoring Field Sampling Plan Melrose Air Force Range* (FSP Update Requirement) letter constitutes noncompliance with Permit Module IV, Section B.8, Plans and Schedules Incorporation Into Permit, and Section E, Corrective Action.

Groundwater monitoring under the "Department of Defense Operational Range Assessment Program" does not substitute for compliance with the effective RCRA Permit and NMED's groundwater cleanup standards established by the New Mexico Water Quality Control Commission for groundwater (20.6.2.3103 New Mexico Administrative Code (NMAC)), the cleanup levels for toxic pollutants listed in 20.6.2.7.T(2) NMAC, the drinking water maximum contaminant levels (MCLs) adopted by the United States Environmental Protection Agency (USEPA) under the federal Safe Drinking Water Act (42 U.S.C. 300f to 300j-26), and the tap water screening levels listed in Table A-1, NMED Soil Screening Levels of NMED's June 2022 *Risk Assessment Guidance for Site Investigations and Remediation*, as updated. Furthermore, in the absence of NMED-approved groundwater field sampling plans and periodic monitoring reports, the Permittee has no defensible means of confirming with NMED, the regulatory authority, that the State and federal groundwater and drinking water standards have been met for protection

of human health and the environment at MAFR. This constitutes noncompliance with Permit Module IV, Section E, Corrective Action.

The Permittee's failure to submit a revised FSP and address NMED's comment requirements detailed in the December 2021 Disapproval and to continue groundwater monitoring under RCRA regulatory authority is in violation of Permit Module IV, HSWA Permit Conditions and the New Mexico Hazardous Waste Management Regulations (20.4.1.500 NMAC incorporating 40 CFR 264.101) and the New Mexico Hazardous Waste Act (HWA) (74-4-NMSA). The basis for issuance of this NOV is listed below:

#### Findings of Fact

1. The Hazardous Waste Permit for MAFR was issued jointly by the USEPA and NMED based on the Permit application submitted by the Permittee and was transmitted to the Permittee on October 28, 1994. The Permit established MAFR as a Treatment, Storage, and Disposal Facility (TSDF). The Permit remains in effect in accordance with 40 CFR 270.51.
2. NMED was granted corrective action authority that includes administration of the HSWA Permit in January 1996 by the USEPA.
3. Conditions for required corrective action at MAFR SWMUs and AOCs are outlined in Permit Module IV, in accordance with RCRA Sections 3004(u) and (v) and 3013, 40 CFR 264.101, and HWA Section 74-4-10.1.
4. All seven MAFR SWMUs currently regulated under the Permit are landfill sites where hazardous waste and hazardous constituent disposal has occurred in the past.
5. Following USEPA-Approval of the September 1995 *Work Plan RCRA Facility Investigation Phase I for Melrose Air Force Range*, the Permittee submitted the November 7, 1996 *Draft Volume 1 Phase I RCRA Facility Investigation for Melrose Air Force Range* (Phase I RFI Report) documenting required corrective action investigation at MAFR SWMUs and AOCs. NMED's and USEPA's review of the Phase I RFI Report resulted in various Notices of Deficiency (NODs) or Disapprovals between 1997 and 1999.
6. To further address the NODs and Disapprovals, the Permittee submitted the March 10, 2003 *Final RCRA Facility Investigation Report Addendum* (RFI Addendum). Following review, NMED issued the February 1, 2006 *Notice of Deficiency Final RCRA Facility Investigation Addendum Report for Melrose Bombing Range*. NMED's NOD specified that the Phase I RFI Report and RFI Addendum were technically deficient and additional investigation at MAFR SWMUs and AOCs is required.

7. The Permittee submitted the May 9, 2007 *Review of the Map of Impact Area* (Investigation Deferral Request) letter correspondence that included an attached site plan, and requested indefinite deferral of investigation at all MAFR SWMUs and AOCs. The stated basis for the requested deferral was the active use of the entire range. In addition, the Permittee stated as a stipulation to the Investigation Deferral Request that “CAFB will maintain and monitor all areas of Solid Waste Management Units and Areas of Concern at the Range in accordance with the Hazardous Waste Permit.”
8. In response to additional revision of the RFI Addendum, NMED issued the May 10, 2007 *Notice of Disapproval Final RCRA Facility Investigation Addendum Report for Melrose Bombing Range* (May 2007 Notice of Disapproval).
9. Deferment of investigations at MAFR SWMUs and AOCs was approved by NMED in the June 19, 2007 *Deferment for the Submittal of the Revised RCRA Facility Investigation Work Plan* (Investigation Deferral) response letter.
10. As required by the Investigation Deferral, the Permittee submitted a December 20, 2007 *Revised Part A Permit Application* that included the Part B Application required for RCRA corrective action permitting with descriptions of MAFR SWMUs and AOCs. The 2007 Part A and B application were determined to be administratively complete as documented by NMED’s April 3, 2008 *Administrative Completeness Determination RCRA Corrective Action Only Permit* response letter. Although NMED had previously granted closure of the open detonation/open burn (OD/OB) hazardous waste treatment unit, as documented in the July 8, 2005 *Verification of Closure of the Open Detonation Unit at Melrose Air Force Range*, the Permit application was submitted because corrective action at MAFR SWMUs and AOCs in accordance with 40 CFR 264.101 is not contingent on construction or operation of the treatment unit; it is a regulatory requirement for protection of human health and the environment that is applicable to all facilities that attained status as hazardous waste TSDFs regardless of the time at which waste was placed in SWMUs, AOCs, or other units.
11. As required by NMED under Permit authority, groundwater monitoring at MAFR has been ongoing since at least 2000 as evidenced by the sampling plans and periodic monitoring reports submitted to NMED by the Permittee and NMED’s respective response letters included in the MAFR administrative record. The NMED-approved 2015 FSP is currently the applicable sampling plan for MAFR and is an enforceable component of the Permit per Module IV, Section B.8, Plans and Schedules Incorporation Into Permit.
12. Following updates to the New Mexico Groundwater Quality Regulations (20.6.2 NMAC) in December 2018, NMED issued the May 7, 2019 FSP Update Requirement correspondence letter. The letter specified that groundwater monitoring at MAFR must continue for the foreseeable future on a semiannual schedule in compliance with Permit Module IV, Section

E, Corrective Action, until all corrective action is complete at all SWMUs and AOCs at MAFR. A due date of July 1, 2019 was established by NMED for the MAFR FSP update.

13. On June 20, 2019, the Permittee submitted a ninety-day time extension request for submittal of the FSP update. NMED approved the ninety-day time extension request on July 1, 2019 and required the Permittee to submit the FSP update no later than September 29, 2019.
14. The Permittee submitted the September 25, 2019 *Groundwater Monitoring Field Sampling Plan Melrose Air Force Range*. Following review, NMED issued the July 2, 2020 *Disapproval Groundwater Monitoring Field Sampling Plan* (July 2020 FSP Disapproval) and required the Permittee to address twelve technical comments and submit a revised FSP by August 31, 2020.
15. On August 5, 2020, the Permittee submitted a one-hundred-and-eighty-day time extension request to respond to the July 2020 FSP Disapproval and submit a revised FSP update. NMED approved the time extension request for ninety-days on September 8, 2020 and required that the Permittee submit the revised FSP update no later than November 30, 2020.
16. The Permittee subsequently submitted the October 16, 2020 *Groundwater Monitoring Field Sampling Plan-Revision 1*. Following review, NMED issued the April 30, 2021 *Disapproval Groundwater Monitoring Field Sampling Plan Revision 1* (April 2021 Disapproval) and required the Permittee to address seven technical comments and submit a revised FSP by July 30, 2021.
17. On July 6, 2021, the Permittee submitted a thirty-day time extension request to respond to the April 2021 Disapproval and submit a revised FSP update. NMED approved the time extension request on July 23, 2021 and required that the Permittee submit the revised FSP update no later than August 29, 2021.
18. The Permittee submitted the *Groundwater Monitoring Field Sampling Plan-Revision 2* on August 20, 2021. Following review, NMED issued the December 2021 Disapproval and required the Permittee to address five technical comments and submit a revised FSP by March 31, 2022.
19. As response to the NMED's December 2021 Disapproval, the Permittee submitted the Disapproval Response that is the subject of this NOV. The Disapproval Response is not an appropriate response to the December 2021 Disapproval. The Disapproval Response indicates that the Permittee has failed to meet the March 31, 2022 deadline requirement for submittal of a revised MAFR groundwater FSP update and refuses to continue groundwater

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monitoring at MAFR under the RCRA Permit and NMED regulatory authority. As a result, the Permittee is in violation of the conditions of Permit Module IV, HSWA Permit Conditions.

The Permittee must provide to NMED by **December 5, 2022**, a description of the actions taken by the Permittee to address this NOV. The response must include a proposed schedule for submittal of the required revised FSP update that addresses all December 2021 Disapproval comment requirements and specifies the Permittee's intent to continue groundwater monitoring at MAFR in accordance with the NMED-Approved 2015 FSP and established schedules until NMED approval of the FSP update.

In accordance with NMSA 1978, Section 74-4-10, NMED may: (1) issue a Compliance Order requiring compliance immediately or within a specified time period or assess a civil penalty for any past or current violations of up to \$10,000 per day of non-compliance for each violation, or both; or (2) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction.

NMED will review the Permittee's response to this NOV prior to determining the appropriate enforcement action. Any action taken by NMED in response to this letter does not relieve the Permittee of its obligation to comply with any other applicable laws and regulations.

If you have any questions regarding this letter, please contact Gabriel Acevedo at (505) 690-5760.

Sincerely,

**Rick Shean**

Digitally signed by Rick  
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Rick Shean  
Chief  
Hazardous Waste Bureau

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