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Subject: FW: Status Update Concerning FWDA NOVs and On-going Remedial Actions
Date: Wednesday, November 16, 2022 8:30:26 AM
Attachments: [FWDA Projects NOV.xlsx](#)

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From: Cushman, George H IV CIV USARMY HQDA DCS G-9 (USA)
Sent: Tuesday, November 15, 2022 4:47 PM
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Subject: Status Update Concerning FWDA NOVs and On-going Remedial Actions

Dear Mr. Shean,

Thank you for contacting me on Thursday, 11/3/22, to discuss on-going remedial actions at Fort Wingate Depot Activity (FWDA), and for speaking with us later that day. As we discussed, I am writing to provide a status update on the Notices of Violation (NOV) issued by New Mexico Environment Department (NMED) to the Army on 6/6/19, 6/20/19, and 10/22/19. On 11/25/19, the Army responded to the NOV letters with additional information and several requests. The Army has continued to implement remedial actions at Fort Wingate, obligating an additional \$15 million annually and over 500,000 person hours of effort toward on the ground remediation. Since then, the Army has made continued progress to address the NOVs presented in the NMED letters. However, we strongly believe greater progress can be made through open, targeted verbal communication between the Army and NMED. To that end, we renew our request for opportunities to discuss appropriate resolution of these matters.

The three NOVs listed eighteen (18) documents found to be deficient. For each of the 18 documents, the NOV cited the failure to meet submission schedules. We have listed the 18 documents in the attached table, with separate entries for status at the time of the 2019 NOVs, actions taken to address the violation, and the proposed path forward for each of the parcels/regulated sites at FWDA. Please note the Army self-reported anticipated non-compliance to NMED on 5/15/19, prior to issuance of the first NOV.

To further guide your review of the attachment, there are four areas/documents where substantial progress has been made. They are:

I. Document #6 (second NOV): *Final Groundwater Supplemental RCRA Facility Investigation (RFI) Report*

Initial submittal to NMED on 9/30/21, first revision submitted 5/12/22, and a second revision scheduled for submittal by 12/31/22.

II. Document #9 (second NOV): *Interim Measure Report Parcel 21 – Solid Waste Management Unit (SWMU) 1 - TNT Leaching Beds*

NMED issued an Approval with Modifications for the Permittee-Initiated Interim Measures (PIIM) Report on 6/6/22.

III. Document #12 (third NOV): *Background Well Installation Completion Report*

NMED issued an Approval with Modifications on 8/5/20.

IV. Document #18 (third NOV): *Hazardous Waste Management Unit (HWMU) Removal Report - Progress Report*

NMED issued an Approval of the Progress Report summarizing work from 2012-2018 on 3/29/21. NMED issued an Approval with Modifications for the 2019 Progress Report on 3/8/21, and the 2020 Progress Report on 3/9/22. Army submitted the 2021 Progress Report on 6/26/22.

There has also been substantial progress on the investigation of Parcel 3 Groundwater (Document #7 and Document #8 in the attached table). NMED issued an Approval with Modification for the Parcel 3 Groundwater RFI Report on 6/14/19. The approval included a requirement to complete eight (8) rounds of quarterly groundwater sampling to confirm the results of the RFI. The Army is currently installing replacement and background monitoring wells on Parcel 3 under an NMED approved work plan. The Army proposes to submit the work plan for the ensuing sampling to NMED by 3/1/23. Additionally, the Army is well underway with the investigation and abandonment of Wells 68 and 69, in order to resolve the groundwater mounding issue in and around Parcel 11.

The remaining documents subject to NOVs (Documents #1-5, 10-11 and 13-17) are RFI and PIIM work plans and reports. For the Army to complete these work plans and reports, it must first resolve with NMED several outstanding programmatic issues such as Limits of Quantitation (LOQ)/Limits of Detection (LOD) and Incremental Sampling Methodology (ISM). The Army is currently pursuing contract actions to address completion of these documents. For the documents in the Northern Area (Documents #3-5, 10-11, 13-17), the Army is preparing a Northern Area Document Completion contract, tentatively scheduled for award by 3/1/23. The new contract will address outstanding RFI and PIIM work plans and reports. For Document #1 and Document #2, involving work in Parcel 3, the Army is preparing a new Parcel 3 contract to address these documents, along with related requirements when the current Parcel 3 munitions removal contract expires (i.e., Document #18). The new contract is tentatively scheduled for award by 11/1/23 to align with the end of Parcel 3 field work in the current contract.

As described in the Army's 11/25/19 letter, please consider the following updates regarding the above two critical and unresolved issues that have impacted progress on multiple documents:

Limits of Quantitation: The Army has been working to address the NMED requirement to explore additional analytical methods in situations where current laboratories, instructions, and/or methods cannot produce LOQs below the NMED screening levels. The Army queried 66 DoD Environmental Laboratory Accreditation

Program (ELAP) certified labs on their method execution and analytical performance, and submitted the information received to NMED on 7/18/22. Upon submittal, NMED responded by noting that labs may not have been queried for alternative methods, as requested. Based on this correspondence, the Army is following up with a review of other U.S. EPA approved methods performed by DoD ELAP certified labs that may be able to provide improved analytical performance for certain compounds, as requested by NMED. The Army is in the process of completing the review and analysis of the data, and expects to submit the response to satisfy NMED's entire request not later than 12/30/22. The Army requests, and looks forward to, further discussions with NMED on this topic.

Incremental Sampling Methodology: The Army understands NMED's position on ISM, and when to propose ISM sampling at FWDA. Unless otherwise agreed, the Army is prepared to

use discrete sampling methods going forward for environmental characterization at FWDA, though we have requested an audience with NMED to discuss the benefits and uses of ISM,

including its application and success at all other Army environmental restoration sites across the country. However, several RFIs and PIIMs that are subject to NOVs include data that

was collected using ISM. The Army intends to discuss with NMED how to use previously collected data (e.g., MI, composite, etc.) to complete outstanding PIIM and RFI Reports.

Thank you for considering this update on the Army's progress to address the NOVs. Please do not hesitate to contact us with your questions. We are readily available to discuss any of our on-going efforts at FWDA. We look forward to continuing to work with NMED to complete the environmental remediation at Fort Wingate. Please also let us know if you believe a discussion between the NMED Office of General Counsel and our own legal support, the Army's Environmental Law Division (ELD), would help resolve the outstanding NOVs. To date, there have been no discussions between our respective legal offices.

If you have questions or require further information, please contact me at George.h.cushman.civ@army.mil, 703-455-3234 (Temporary Home Office, preferred) or 703-608-2245 (Mobile).

I hope you enjoy a wonderful Thanksgiving.

Very respectfully,

George Cushman
FWDA BRAC Environmental Coordinator