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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 6, 2019

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

Steve Smith
USACE
CESWF-PER-DD
819 Taylor Street, Room 3B06
Fort Worth, TX 76102

**RE: NOTICE OF VIOLATION WITH PROPOSED PENALTIES
FORT WINGATE DEPOT ACTIVITY
MCKINLEY COUNTY, NEW MEXICO
EPA # NM6213820974
NMED-FWDA-16-006**

Dear Messrs. Patterson and Smith:

The New Mexico Environment Department ("NMED") received the Fort Wingate Depot Activity ("Permittee" or "FWDA") letter titled *Final Interim Measures Work Plan Areas of Concern and Solid Waste Management Units in the Kickout Area, Parcel 3 ("Work Plan") Withdrawal Letter ("Withdrawal Letter")*, dated March 20, 2019, on March 21, 2019.

The Withdrawal Letter states that "...the Army is withdrawing this document from further review due to contract termination and lack of available funding for a follow-on contract to complete the work." However, it is incumbent upon the Permittee to provide appropriate funding to meet the requirements of the FWDA Resource Conservation and Recovery Act ("RCRA") Permit ("Permit").

NMED has reviewed the letter and determined that FWDA has violated the New Mexico Hazardous Waste Management Regulations (20.4.1 NMAC) and the Permit as specified below.

RECEIVED
10 June 19

Findings of Fact

1. Table VII.2, Schedule for RFI Work Plan, Historical Information Assessment and Release Assessment Submittals, of the Permit requires a Work Plan for the investigation of Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs) within Parcel 3 to be submitted to NMED no later than May 1, 2017.
2. The Permittee provided a Document Review Table to NMED on January 28, 2016 that prioritized documents for review based on the Permittee's needs. The table depicted the Work Plan as the number three priority for documents that had yet to be submitted.
3. The Permittee initially satisfied the Permit requirement by submitting the Work Plan, dated July 5, 2016, on July 11, 2016.
4. On July 21, 2016, the Permittee sent an email to NMED requesting that the Work Plan be positioned as the number one priority for review by NMED.
5. NMED expedited review of the Work Plan and provided comments in a Disapproval letter to the Permittee on September 7, 2016, less than two months after receiving the document, and over two months prior to receiving the document review fee from the Permittee. The Disapproval letter required a response and submittal of a revision of the Work Plan by December 30, 2016.
6. On December 6, 2016, the Permittee requested an extension for the submittal date of the revised Work Plan. The Permittee requested that the submittal date be extended to June 30, 2017. The reason provided in the request was "...additional time being needed to respond to and clarify comments from NMED, and prepare the revised work plan."
7. Based on the numerous extension requests for a variety of documents received from the Permittee during this time period, NMED approved the request on December 20, 2016 and provided the Permittee with an additional six months beyond the time requested. The submittal date for the Work Plan was extended to December 29, 2017.
8. On December 18, 2017, the Permittee requested that the date for submittal be extended another fifteen months to April 1, 2019. The reason provided in the request was "...due to additional time needed to address contract delays and to respond to NMED's disapproval letter dated September 7, 2016."
9. On January 3, 2018, NMED granted the extension and the submittal date was extended to April 1, 2019, as requested.
10. On March 21, 2019, NMED received a Withdrawal Letter stating that the Army is withdrawing the document from further review.
11. Withdrawal of the Work Plan nullifies the previous satisfaction of the Permit requirement, which results in the Permittee being in violation of the Permit.

NMED is citing the following violation(s):

1. Failure to meet the submittal and schedule requirements, which is a violation of Section VII.L.2 and the schedule set forth in Table VII.2 of the Permit. Specifically, FWDA failed to submit the required Work Plan in accordance with the Permit schedule.

The Permittee must provide to NMED within 30 days of receipt of this letter a written description of the actions taken by FWDA to address the violation described above, or a schedule for implementation of corrective actions not yet completed.

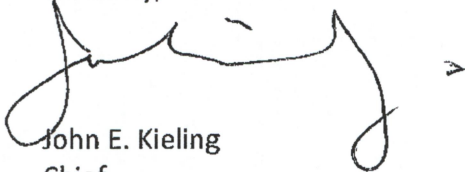
In accordance with NMSA 1978, Section 74-4-10, NMED may: (1) issue a Compliance Order requiring compliance immediately or within a specified time period, or assess a civil penalty for any past or current violations of up to \$10,000 per day of non-compliance for each violation, or both; or (2) commence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

Due to the nature and severity of the violation listed above, NMED will propose a civil penalty for this violation in the Notice of Proposed Penalty letter, which will follow as a separate, settlement privileged document.

In addition, FWDA has missed deadlines for seven other documents in recent months. These missed deadlines are also subject to enforcement. NMED will review the Permittee's response to this Notice of Violation prior to making a decision regarding the enforcement of those violations.

Any action taken in response to this letter does not relieve FWDA of its obligation to comply with any other applicable laws and regulations. If you have any questions regarding this letter, please contact Ben Wear of my staff at (505) 476-6041.

Sincerely,



John E. Kieling
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
B. Wear, NMED HWB
M. Suzuki, NMED HWB
J. Verheul, NMED OGC
L. King, EPA Region 6 (6LCRRC)
C. Hendrickson, EPA Region 6 (6LCRRC)

file: FWDA-16-006 and CTAP # 2397