



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUIRED

January 9, 2024

Colonel Michael J. Power
Commander
377 ABW/CC
2000 Wyoming Blvd. SE
Kirtland AFB, NM 87117-5600

Israel Tavarez
Chief, Environmental Management
377 MSG/CEIE
2050 Wyoming Blvd. SE, Bldg. 20685
Kirtland AFB, NM 87117-5663

**RE: FY-22 INSPECTION
NOTICE OF VIOLATION WITH PROPOSED PENALTIES
KIRTLAND AIR FORCE BASE
EPA ID# NM9570024423**

Dear Col. Power and Mr. Tavarez:

Beginning on June 13, 2022, the New Mexico Environment Department ("NMED") conducted a hazardous waste Compliance Evaluation Inspection ("Inspection") at Kirtland Air Force Base ("KAFB") located at 2000 Wyoming Blvd. SE, KAFB, New Mexico ("Installation"). KAFB is a United States Air Force ("USAF") military installation tasked with the maintenance of USAF aircraft and other assets, research and development of USAF technologies, and training of USAF airmen. Major waste streams generated at this facility include flammable liquids and solids, contaminated wipes, used oil, and groundwater remediation wastes.

Based on observations and review of the information obtained, NMED has determined that your Facility is a Large Quantity Generator ("LQG") of hazardous waste as defined in 40 Code of Federal Regulations ("CFR") 262.13. Furthermore, NMED has determined that KAFB has violated the New Mexico Hazardous Waste Management Regulations ("HWMR") 20.4.1 New Mexico Administrative Code ("NMAC") as specified below.

NMED inspectors observed the following violations:

- 1. Failure to make a hazardous waste determination. Specifically, KAFB had four occurrences in which a complete and/or accurate hazardous waste determination had not been completed at the following locations:**

SCIENCE | INNOVATION | COLLABORATION | COMPLIANCE

Hazardous Waste Bureau - 2905 Rodeo Park Drive East, Building 1 Santa Fe, New Mexico 87505-6313
Telephone (505) 476-6000 - www.env.nm.gov

- a. **At IAP78, Building 1001, NMED Inspectors observed a container of hazardous waste (201700585) that was labeled as pending analysis. The waste has accumulated at the IAP since 2017. Based on a review of the information obtained, the sample for this waste stream was taken in 2019 and a waste determination was never finalized.**
- b. **At the Corrosion Control Facility, Building 985, NMED Inspectors observed a large number of containers of expired hazardous materials coatings, paint, and other similar items on shelving labeled "Expired Materials Awaiting". Based on a review of the information obtained, these items expired between 2 months and up to over a year prior to the inspection, and do not have any demonstrated pathway for re-use. Therefore these containers are not considered to be Commercial Chemical Products accumulated for legitimate reuse or reclamation.**
- c. **At IAP88, Building 979, NMED Inspectors observed three 5-gallon containers of spent parts washer fluid. Based on a review of the information obtained, this waste was generated prior to May 25, 2022 and had not been sampled or characterized to determine whether or not the liquid is a hazardous waste.**
- d. **At a transportable storage container near IAP 75A, Building 992, NMED observed a large number of expired and excess hazardous materials , some of which was labeled as "hazardous waste pending characterization". Based on a review of the information obtained, many of these items had expired over a year prior to the inspection, and do not have any demonstrated pathway for reuse. Therefore these containers are not considered to be Commercial Chemical Products accumulated for legitimate reuse or reclamation.**

These are violations of 20.4.1.300 NMAC, incorporating 40 CFR 262.11.

Civil Penalty

As a result of Violation 1, NMED has assessed a civil penalty of \$6,240.00

Corrective Action

KAFB must provide NMED with documentation, such as waste profiles, disposal documentation, and photographs, demonstrating that KAFB has obtained sufficient information for characterization of these wastes and have made appropriate hazardous waste determinations. Furthermore, KAFB must provide NMED with corrective action documentation showing improvements to the process for managing expired and excess hazardous materials at the Installation, such that expired and excess hazardous materials are processed within a reasonable period of time (i.e. less than one month) and properly managed either as hazardous waste in an appropriate Satellite Accumulation Area or processed for potential reuse or waste management at a central location at the Installation.

- 2. Failure to label a satellite container of hazardous waste with the words "Hazardous Waste". Specifically, at 58-1, Building 1001A, NMED observed 8 spent waste chemlight units that were not labeled and were not located in the nearby waste container. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.15(a)(5)(i).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$720.00

Corrective Action

This violation was corrected during the inspection.

- 3. Failure to label a satellite container of hazardous waste with an indication of the relevant hazard(s). Specifically, at IAP 58-1, Building 1001A, NMED observed 8 spent waste chemlight units that were not labeled and were not located in the nearby waste container. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.15(a)(5)(ii).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$720.00.

Corrective Action

This violation was corrected during the inspection.

- 4. Failure to maintain and operate the facility to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health and the environment. Specifically, at a transportable storage container near IAP 75A, Building 992, NMED observed a flammable storage cabinet containing a large amount of waste being managed as "hazardous waste pending characterization". One of the shelves for this flammable storage cabinet was broken such that the waste spilled onto the facility escort when the flammable cabinet was opened. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.251.**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$2,300.00

Corrective Action

KAFB provided NMED with photographic documentation on July 12, 2022, showing that this violation has been corrected.

- 5. Failure to test and maintain emergency equipment. Specifically, at IAP 61, Building 482, NMED observed that the fire extinguisher at the hazardous waste storage had not been inspected since December 1, 2021. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.253.**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$690.00

Corrective Action

KAFB provided NMED with photographic documentation on July 12, 2022, showing that this violation has been corrected.

- 6. Failure to label universal waste batteries with the words “universal waste,” or with other wording to identify contents. Specifically, at IAP 58-3A, Building 1002, NMED observed an unlabeled small plastic bag containing spent universal waste lithium ion batteries. This is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR 273.14(a) and 20.4.1.1001(B) NMAC.**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$360.00

Corrective Action

KAFB provided NMED with photographic documentation on July 12, 2022, showing that this violation has been corrected.

- 7. Failure to demonstrate the length of time universal waste has accumulated. Specifically, NMED Inspectors observed two locations of universal waste without an accumulation start date or a log to indicate the amount of the time the universal waste had been accumulating:**

- a. **At IAP 58-3A, Building 1002, NMED observed an small plastic bag containing spent universal waste lithium ion batteries that was not marked with an accumulation start date or associated with a log.**
- b. **At IAP 127A, Building 27494, NMED observed a 1-gallon plastic container of universal waste batteries that was not marked with an accumulation start date or associated with a waste log.**

This is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR 273.15(c).

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$960.00

Corrective Action

KAFB provided NMED with disposal documentation on July 12, 2022, showing that this violation has been corrected.

- 8. Failure to keep satellite containers of hazardous waste closed, except when adding or removing waste or for proper operation of equipment. Specifically, at IAP 22X, Building 1058, NMED observed an open 55-gallon drum of hazardous waste rags. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.15(a)(4).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$2,400.00

Corrective Action

This violation was corrected during the inspection.

- 9. Failure to maintain documentation in the facility record of the type and amount of both introductory and continuing training that will be given to each person filling a position related to management of hazardous wastes at a Central Accumulation Area. Specifically, KAFB had not developed documentation of a training program for EA Engineering Personnel operating at the active restoration Central Accumulation Areas that included a description of the initial or annual hazardous waste training provided. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a)(7)(iv)(C).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$1,495.00

Corrective Action

KAFB provided NMED with training program documentation on July 12, 2022, showing that this violation has been corrected.

Regarding the Corrective Actions described above, KAFB shall provide to NMED within thirty (30) days of receipt of this letter a written description of the actions taken by KAFB to address the violation 1 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 may include a suspension or revocation of any permit issued by NMED.

Pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-4-1 to 14, NMED is assessing a total civil penalty of **\$15,885.00** to settle the violations of the HWA and the Hazardous Waste Management Regulations set forth in the FY-22 Inspection Notice of Violation.

History of Violations

On March 18, 2013, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed three (3) violations including failure to label containers of hazardous waste, failure to keep hazardous waste containers closed, and failure to demonstrate the length of time universal waste has accumulated. KAFB was subject to an informal enforcement action as a result of that inspection.

On January 27, 2014, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed seven (7) violations including failure to label containers of hazardous waste, failure to perform a hazardous waste determination, failure to submit an exception report to NMED for hazardous waste manifests not received with a signature of the destination facility within 45 days, failure to properly station satellite storage of hazardous waste, failure to properly contain universal waste, and failure to demonstrate the length of time universal waste has accumulated. KAFB was subject to an informal enforcement action as a result of that inspection.

On February 23, 2015, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed eight (8) violations including failure to perform a hazardous waste determination, inappropriate acceptance and disposal of hazardous waste into a construction and demolition landfill that was not a permitted RCRA disposal facility, failure to properly contain universal waste, failure to label universal waste containers, accumulation of universal waste for greater than 1 year, and failure to demonstrate the length of time universal waste has accumulated. KAFB was subject to an informal enforcement action as a result of that inspection.

On March 8, 2016, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed seven (7) violations including failure to label containers of hazardous waste, failure to perform weekly inspections of a <90-day accumulation area, failure to amend the Facility Contingency Plan, failure to keep containers of universal waste closed, failure to perform testing of emergency response equipment, storage of universal waste for greater than one year, and failure to demonstrate the length of time universal waste has accumulated. KAFB was subject to an informal enforcement action as a result of that inspection.

On May 22, 2017, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed eleven (11) violations including failure to properly label hazardous waste and universal waste containers, failure to maintain appropriate training documentation, failure to store hazardous waste in closed containers in good condition, failure to properly contain universal waste, failure to demonstrate the length of time universal waste has accumulated, and failure to properly perform hazardous waste determinations. KAFB paid a civil penalty of \$22,285.00 as a result of that inspection.

On February 26, 2018, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed nine (9) violations including failure to properly station satellite storage of hazardous waste, failure to properly label hazardous waste and universal waste containers, failure to store hazardous waste and universal waste in closed containers, storage of universal waste for greater than one year, failure to demonstrate the length of time universal waste has accumulated, and failure to properly perform hazardous waste determinations. KAFB paid a civil penalty of \$17,420.00 as a result of that inspection.

On December 3, 2018, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed six (6) violations including failure to properly label hazardous waste containers, storage of greater than 55 gallons hazardous waste at a satellite storage for greater than 3 days, failure to distribute copies of the Facility Contingency Plan to appropriate emergency response authorities, failure to demonstrate the length of time universal waste has accumulated, and failure to properly perform hazardous waste determinations. KAFB was subject to an informal enforcement action as a result of that inspection.

On October 21, 2019, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed six (6) violations including failure to properly station satellite storage of hazardous waste, failure to store hazardous waste in containers in good condition, failure to properly label containers of hazardous waste, failure to demonstrate the length of time universal waste has accumulated, and failure to properly perform hazardous waste determinations. KAFB was subject to an informal enforcement action as a result of that inspection.

On September 21, 2020, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed fourteen (14) violations including failure to properly perform hazardous waste determinations, failure to properly station satellite storage of hazardous waste, failure to station spill response equipment at hazardous waste storage areas, failure to properly label containers of hazardous waste and universal waste, failure to keep containers of hazardous waste closed, failure to store hazardous waste in a container that is in good condition, failure to properly contain universal waste, failure to demonstrate the length of time universal waste has accumulated, and storage of universal waste for greater than one year. KAFB paid a civil penalty of \$29,210.00 as a result of that inspection.

Please note that your facility will appear on the Department's Enforcement Watch as a result of this NOV (see: <https://www.env.nm.gov/enforcement-watch/>). Further, the Department will issue a press release to local media highlighting your facility as appearing on this webpage. Your facility will remain on the Enforcement Watch website as an active matter until this matter is fully resolved, including the payment of the assessed civil penalty.

Col. Power and Mr. Tavaréz, FY-22 Inspection

January 9, 2024

Page 8 of 8

Pursuant to the NMED Delegation Order dated March 24, 2023, the Cabinet Secretary has delegated the authority to issue Notices of Violation with Proposed Penalties under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau. If you have any questions regarding this letter or would like to discuss the civil penalty, please contact Aaron Coffman of my staff at 505-690-5211 or by email at aaron.coffman@env.nm.gov within 30 days of receipt of this notice to schedule an informal conference concerning resolution of this matter. If no response is received from you within 30 days a Stipulated Final Order will be mailed for your signature.

Sincerely,

Ricardo Maestas
Acting Chief
Hazardous Waste Bureau

RM: ac

cc: Aaron Coffman, NMED HWB
Levi Cole, NMED District I Manager
Christina Eads, NMED HWB
Andrew Knight, NMED OGC

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