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**NEW MEXICO  
ENVIRONMENT DEPARTMENT**

**Hazardous Waste Bureau**  
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*James C. Kenney*  
Cabinet Secretary

*Jennifer J. Pruett*  
Deputy Secretary

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

May 13, 2021

Brian Gage  
Owner  
Ludovico dba. Firebrand  
5330 Pan American Frwy. NE  
Albuquerque, NM 87109

**RE: NOTICE OF VIOLATION WITH PROPOSED PENALTIES  
LUDOVICO DBA FIREBRAND  
EPA ID# NMR000023549**

Dear Mr. Gage:

On July 24, 2020, the New Mexico Environment Department (“NMED”) conducted a hazardous waste Compliance Evaluation Inspection (“Inspection”) at Ludovico dba. Firebrand (“Ludovico”), located at 5330 Pan American Frwy. NE, Albuquerque, New Mexico (“Facility”). Ludovico is a manufacturing facility of flavored nicotine solutions. The flavored nicotine solutions are sold online for consumption in electronic cigarettes (“e-cigarettes”).

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

The NMED Inspector observed the following:

1. Failure to label hazardous waste containers with hazard indicators. Specifically, one 55-gallon drum for hazardous waste liquid and one red can for hazardous waste solids were not labeled with hazard indicators, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(5)(i)(B). (Attachment A, Figure 2)

Corrective Action: Ludovico provided pictures on August 10, 2020, indicating the drum was now labeled properly with the hazard indicator labels; however, information was not provided for the red can.

2. Failure to keep hazardous waste containers closed. Specifically, one 55-gallon drum of hazardous waste liquid was open, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(1)(iv)(A). (Attachment A, Figure 3)

Corrective Action: This violation was corrected at the time of the inspection.

3. Failure to properly label hazardous waste containers. Specifically, one 55-gallon drum and one 30-gallon red can both storing hazardous waste were not labeled as hazardous waste, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 262.17(a)(5)(i)(A). (Attachment A, Figures 2 and 5)

Corrective Action: Ludovico provided pictures on August 10, 2020, indicating the drum was labeled properly with hazard waste labels; however, information was not provided for the red can.

4. Failure to properly label hazardous waste containers with an accumulation start date. Specifically, one 55-gallon drum and one 30-gallon red can both storing hazardous waste were not labeled with an accumulation start date, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 262.17(a)(5)(i)(C). (Attachment A, Figures 2 and 5)

Corrective Action: Ludovico provided pictures on August 10, 2020, indicating the drum was labeled properly with the accumulation start date; however, information was not provided for the red can.

5. Failure to conduct weekly inspections. Specifically, Ludovico had not been conducting weekly inspections of central accumulation areas, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 262.17(a)(1)(v).

Corrective Action: Ludovico must conduct weekly inspections of central accumulation areas. Ludovico provided a copy of a weekly inspection dated 8/7/2020.

6. Accumulation of hazardous waste on site for greater than 90 days. Specifically, Ludovico only shipped hazardous waste one time in 2018 and one time in 2019, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 262.17(a).

**Corrective Action:** Ludovico provided a copy of a manifest on August 10, 2020 indicating the 55-gallon drum of liquid hazardous waste, observed during the inspection, had been disposed. No manifest was provided the red can storing hazardous waste solids. Please provide a copy of the manifest for the red can.

7. Failure to have a Quick Reference Guide (QRG) included with the Contingency Plan. Specifically, as a large quantity generator that first became subject to the regulations after May 30, 2017, Ludovico had not drafted a QRG, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 262.262(b).

**Corrective Action:** The QRG was provided on August 11, 2020.

8. Failure to submit a contingency plan to local emergency responders. Specifically, Ludovico had not provided local first responders with copies of its contingency plan, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 262.262(a).

**Corrective Action:** The Contingency Plan provided by Ludovico was revised February 2020. Local emergency responders need to be provided the most current contingency plan and QRG. Please provide confirmation (e.g., U.S. Postal Service return receipts, FedEx or UPS delivery confirmation, attestation of hand-delivery) that these documents have been sent to the local emergency responders including but not limited to the police department, fire department and hospital(s).

9. Failure to provide job titles for each position, position descriptions, training requirements for staff managing hazardous waste. Specifically, position descriptions were not available for any employee managing hazardous waste, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 262.17(a)(7)(iv).

**Corrective Action:** Ludovico must provide NMED the above information for employees managing hazardous waste.

10. Failure to conduct hazardous waste management training annually. Specifically, employee Dana Cotinola last received hazardous waste management training in 2018, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 262.17(a)(7)(iii).

**Corrective Action:** Training records were provided on August 10, 2020; however, the training was conducted after the inspection.

NMED is requesting that Ludovico respond to NMED within thirty (30) days of receipt of this letter a written description of the actions taken by Ludovico to address violations or a schedule for implementation of corrective actions not yet completed.

In accordance with New Mexico Statutory Authority 1978, Section 74-4-10, NMED may: (1) issue a Notice of Violation requesting voluntary compliance within a specified time period; (2) 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 (3) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction.

Due to the nature of the violations listed above, and Ludovico's past history of noncompliance, having been cited for 13 violations of 20.4.1 NMAC during the last inspection, NMED will propose a civil penalty for these violations in a separate Notice of Proposed Penalty letter, a settlement privileged document.

Any action taken in response to this letter does not relieve Ludovico of its obligation to comply with any other applicable laws and regulations. Pursuant to the NMED Delegation Order dated January 15, 2020, the Cabinet Secretary has delegated the authority to issue Notices of Violation under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau. Notification of this Notice of Violation is considered an informal enforcement response in accordance with NMED's Enforcement Response Protocol. Please be aware that failure to address the above violations and any future substantial deviations from regulatory requirements may result in Ludovico being considered for an elevated enforcement action. Also, be aware that any corrective action taken during our Inspection, or in response to this letter, does not relieve Ludovico of its obligation to comply with any and all other applicable laws and regulations.

If you have any questions regarding this letter, please contact Janine Kraemer of my staff at 505-476-4372 or by email at [janine.kraemer@state.nm.us](mailto:janine.kraemer@state.nm.us). Please submit the response to Ms. Kraemer at the address on the letterhead.

Sincerely,

Kevin  
Pierard

Digitally signed  
by Kevin Pierard  
Date: 2021.05.13  
15:01:38 -06'00'

Kevin M. Pierard, Chief  
Hazardous Waste Bureau

KP: jk

cc: Janine Kraemer, NMED HWB  
John Rhoderick, NMED District I Manager  
Dana Cotinola, Chief Operations Officer, [DMC@firebrandamerica.com](mailto:DMC@firebrandamerica.com)

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