



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Harold Runnels Building

1190 South St. Francis Drive (87505)
P.O. Box 5469, Santa Fe, New Mexico 87502-5469
Phone (505) 827-2900 Fax (505) 827-2965

www.env.nm.gov



BUTCH TONGATE
Cabinet Secretary

J.C. BORREGO
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 16, 2017

Mr. Keith Fronk
Fronk Oil
900 E Industrial Rd.
Booker, TX 79005

RE: Notice of Deficiency, Diesel and Gasoline Spill Into the Cimarron River and Associated Clean-Up near Cimarron, New Mexico

Dear Mr. Fronk:

At approximately 11:30am on December 27, 2016, a Fronk Oil tanker truck carrying unleaded gasoline was involved in an accident near mile marker 290 on Highway 64, approximately 5 miles east of Eagle Nest, which caused a release of approximately 1100 gallons of diesel fuel (from the saddle tanks) and unleaded gasoline to the Cimarron River. Subsequent to the spill, your representative (D&H United Fueling Solutions) has performed spill response actions including removal of fuel, installation of sorbent booms and surface water sampling. In a letter dated February 14, 2017, the New Mexico Environment Department (NMED) provided notification that the spill required compliance and response actions consistent with regulations found at 20.6.2.1203 NMAC.

Specific to compliance with those regulations, written notifications and updates are required to be submitted in accordance with 20.6.2.1203 (3) and (6) NMAC. Of primary concern, is the lack of submission of a corrective action report (CAR) that summarizes prior actions taken and specifies a plan for future remediation. In accordance with 20.6.2.1203 (7) NMAC, the CAR must be approved by the Bureau Chief. The overall objective of the CAR is to characterize the discharge, immediately, control the source of the discharge (cease the discharge or propose a plan to cease discharge), and propose corrective actions or abatement.

It is our understanding that your representative has tentatively scheduled additional work at the spill site for March 20, 2017. NMED cannot allow additional removal of contaminated soil or vegetation without an approved CAR. As you are aware, the Cimarron River (at the crash site) is a perennial classified water of the state subject to 20.6.4.309 NMAC with the designated uses of domestic water supply, irrigation, high quality coldwater aquatic life, livestock watering, wildlife habitat, and primary contact; and public water supply on the Cimarron River upstream from Cimarron. The NMDGF also recognizes this stretch of the river as a "Special Trout Water".

Submission of a CAR for approval is of critical importance to move forward with the initial abatement activities. The CAR should include the methods for removal of contaminated soil by *mechanical or manual means* (no chemical treatment is authorized) that preserve streambank stability with the least destruction of riparian habitat and vegetative cover in the areas to be remediated. Please have your representative continue all other activities that have been directed by the Surface Water Quality Bureau which includes but is not limited to boom maintenance, water sample collection and analysis, and proper collection, storage and disposal of solid waste. The CAR should also include measures for rapid bank stabilization due to pending spring runoff and releases of water from upstream dams, and contingency plans for weather or other schedule interruptions.

The CAR should be submitted for approval no later than March 20, 2017. With pending snowmelt and scheduled releases from Eagle Nest Lake for downstream users of water from the Cimarron River, we require that mitigation of contaminated media (soil and vegetation) be concluded no later than April 1, 2017. Once the CAR is received and approved, your representative (contractor) should be prepared to sustain continual, daytime operations until such time NMED determines initial abatement activities have concluded. To the extent possible, conclusion of initial abatement activities requires the cessation of discharge of a sheen of hydrocarbons associated with the spill to the Cimarron River. As previously indicated to your contractor, water samples taken should also show non-detect for hydrocarbon constituents, and soil samples collected must show levels of the same constituents that are below the SSL with a Dissolved Attenuation Factor of 1 included in NMED's *Risk Assessment Guidance for Site Investigations and Remediation* located at the following link: https://www.env.nm.gov/HWB/documents/SSLs_RA_Guidance_for_SI_and_Remediation_July_2015.pdf Additional surface water sampling and monitoring are required after initial abatement activities have concluded for a yet undetermined time. Sample results are required to be expedited (within 24 hours for water) because downstream communities are dependent upon the Cimarron River for drinking water.

Please provide this information to NMED in written form at the following address, but it must be emailed **by March 20, 2017:**

Sarah Holcomb (sarah.holcomb@state.nm.us)
Program Manager, Point Source Regulation Section
Surface Water Quality Bureau
New Mexico Environment Department
PO Box 5469
1190 St. Francis Dr.
Santa Fe, NM 87502

If you have any questions, please feel free to contact Sarah Holcomb of my staff by telephone at (505) 827-2798 or by e-mail at sarah.holcomb@state.nm.us. Thank you for your attention to this matter.

Mr. Keith Fronk
March 16, 2017
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Sincerely,



Shelly Lemon, Acting Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department



Michelle Hunter, Bureau Chief
Ground Water Quality Bureau
New Mexico Environment Department

cc:

Bruce Yurdin, NMED Water Protection Division Director (by email)
Wyatt Medley, US Army Corps of Engineers (by email)
Eric Frey, NMDGF (by email)
Tim Farmer, NM OSE (by email)
Tim Butler, Energi (by email)
Rosalio Guillen, D&H United Fueling Solutions (by email)
April Riggs, NM Livestock Board (by email)
Stephen Connolly, NMED Hazardous Waste Bureau (by email)
Thomas Hicks, NM Department of Public Safety (by email)

SL/MH/jl