



NEW MEXICO
ENVIRONMENT DEPARTMENT



Ground Water Quality Bureau

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Governor
DIANE DENISH
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RON CURRY
Secretary
SARAH COTTRELL
Deputy Secretary

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

March 31, 2010

Mr. Ed Brister
Helena Chemical Company
225 Schilling Boulevard, Suite 300
Collierville, Tennessee 38107

RE: Notice of Violation Regarding Failure to Cure Deficiencies in Proposed Stage 2 Abatement Plan, Helena Chemical Company, Mesquite, New Mexico

Dear Mr. Brister:

The New Mexico Environment Department (NMED) hereby notifies Helena Chemical Company (Helena) that it is in violation of the New Mexico Water Quality Act (WQA) and the New Mexico Water Quality Control Commission (WQCC) Regulations for its failure to submit a modified Stage 2 Abatement Plan (AP) proposal that addresses deficiencies identified in a May 18, 2007 Notice of Deficiency (NOD) issued by NMED to Helena's Mesquite, New Mexico facility. *See* NMSA 1978, § 74-6-10(A); 20.6.2.4109.E NMAC. The Mesquite facility is located at 251 John Grisham Drive in Mesquite, New Mexico.

On January 26, 2005, pursuant to WQCC 20.6.2.4103 – 4115 NMAC, NMED notified Helena that it was required to abate ground water contamination at its Mesquite facility and submit a Stage 1 AP. Contaminants in exceedance of ground water quality standards included nitrate, sulfate, fluoride, chloride and total dissolved solids (TDS). On April 5, 2005, Helena submitted the Stage 1 AP proposal to NMED. On May 27, 2005, NMED approved Helena's proposed Stage 1 AP. On October 13, 2006, NMED required the submittal of a Stage 2 AP. On December 15, 2006, Helena submitted a proposed Stage 2 AP to NMED. Nitrate was the only contaminant of potential concern identified by Helena in its proposed Stage 2 AP.

On May 18, 2007, NMED issued the NOD to Helena identifying deficiencies in its proposed Stage 2 AP. *See* 20.6.2.4114.A NMAC. The NOD identified, among other deficiencies, that Helena's proposed Stage 2 AP did not include development and assessment of abatement options to address the contamination above WQCC ground water quality standards of sulfate, fluoride,

chloride, and total dissolved solids (TDS).

On August 31, 2009, Helena submitted a modified Stage 2 AP proposal to NMED. The August 31, 2009 modified Stage 2 AP did not include assessment of any of the additional contaminants identified by NMED in its NOD. In response to a November 30, 2009 e-mail and telephone call from NMED, Helena submitted, on December 15, 2009, a supplement to its proposed Stage 2 AP stating that it would monitor and remediate for sulfate, but that it would not monitor for fluoride, chloride, or TDS.¹

The WQCC abatement regulations provide:

If the secretary [of NMED] notifies a responsible person of any deficiencies in a site investigation report, or in a Stage 1 or Stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies specified by the secretary within thirty (30) days of receipt of the notice of deficiency. The responsible person shall be in violation of Sections 206.6.2.4000 through 20.6.2.4115 NMAC if he fails to submit a modified document within the required time . . . to cure the deficiencies specified by the secretary.

20.6.2.4109. E NMAC.

Helena has failed to submit a proposed Stage 2 AP to cure the deficiencies identified by NMED in the NOD. Specifically, Helena has failed to include fluoride, chloride, and TDS in its AP monitoring program.

Within 30 days of receipt of this Notice of Violation, Helena shall submit to NMED a modified proposed Stage 2 AP that includes fluoride, chloride, and TDS in its proposed Stage 2 AP monitoring program, and ground water analytical results for these constituents shall be included in the next ground water quarterly monitoring report submitted to NMED.

If Helena fails to cure the deficiencies in its proposed Stage 2 AP, pursuant to Section 74-6-10(A) of the WQA, NMED may issue a compliance order that assesses a civil penalty or may commence a civil action in district court for violations of the act, regulations promulgated under the act, or water quality standards adopted pursuant to the act. Penalties of up to \$10,000 per day per violation for violations of the WQA, regulations, or water quality standards may be assessed. NMSA 1978, § 74-6-10(C)(2).

If you have any questions, please contact Ray Montes, Project Manager, at (575) 647-7932 or Alex Puglisi, Program Manager, at (505) 827-2754. Thank you for your attention to this matter.

¹ Corrective action eventually proposed by Helena for its Stage 2 AP includes installation of three additional shallow monitoring wells, two deep vertical wells, sampling of soil and ground water, removal of contaminated soil at source areas, and evaluation of data to determine the necessity of injecting a carbon source into ground water.

Mr. Ed Brister
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Sincerely,

A handwritten signature in black ink, appearing to read "W. Olson", written over a light blue horizontal line.

William C. Olson
Chief, Ground Water Quality Bureau

cc: Jeff Elmore, Helena Chemical Company, P.O. Box 629, Mesquite, NM 88048
Dave Backus, Ensafe, Inc., 5724 Summer Trees Dr., Memphis, TN 38134
Greg Temple, Ensafe, Inc., 5724 Summer Trees Dr., Memphis, TN 38134
Tannis L, Fox, NMED Office of General Counsel
Frank Fiore, Manager, NMED District III Office
Richard Goodyear, NMED AQB
Ray Montes, NMED GWQB
NMED GWQB ROS Reading File

ENVIRONMENT DEPARTMENT ROUTING SLIP

Document: NOV

FOR APPROVAL BY: Bill Olson

DRAFTED BY: Ray Montes DATE: 3/30/2010

SUBJECT: NOV to Helena Chemical for Failure to Cure Deficiencies in Proposed Stg2 AP

FINAL DECISION NEEDED BY: ASAP REASON: Date on Letter

FEE RECEIVED? FIRST YEAR FULL PAYMENT

REVIEW:

APPROVED: INITIAL DATE REC'D DATE APPR'VD

_____	TEAM LEADER	_____	_____	_____
<u>Alex Puglisi</u>	PROG. MANAGER	<u>AP</u>	<u>3/30/2010</u>	<u>3/30/2010</u>
<u>Bill Olson</u>	BUREAU CHIEF	<u>meo</u>	_____	<u>3/21/10</u>
_____	GRANTS	_____	_____	_____
_____	INTERNAL AUDIT	_____	_____	_____
_____	BUDGETS	_____	_____	_____
_____	WWMD DIRECTOR	_____	_____	_____
_____	Legal	_____	_____	_____
_____	ASD DIRECTOR	_____	_____	_____
_____	ERD DIRECTOR	_____	_____	_____
_____	DEP. SECRETARY	_____	_____	_____
_____	SECRETARY	_____	_____	_____
_____	PPS Prog. Manager	_____	_____	_____
_____	Project Manager	_____	_____	_____
_____	OTHER	_____	_____	_____

COMMENTS BY DRAFTER OR REVIEWER(S):
