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**NEW MEXICO
ENVIRONMENT DEPARTMENT**

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James C. Kenney
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Deputy Secretary

Certified Mail – Return Receipt Requested No. 7019 1640 0000 7894 4738

October 28, 2020

Douglas Shimic, District Manager
Waste Management of New Mexico, Inc.
P.O. Box 15700
Rio Rancho, New Mexico 87174

Re: Notice of Violation – Rio Rancho Landfill

Dear Mr. Shimic:

The New Mexico Environment Department's (NMED) Solid Waste Bureau (SWB) recently verified the acceptance and disposal of multiple loads of special waste at the Rio Rancho Landfill during the period of March 2, 2018 through March 15, 2018. Our investigation determined that the special waste received at the landfill was sludge from a water treatment system. The Rio Rancho Landfill is authorized to accept sludge in accordance with its special waste permit, No. SWM-012339(SP).

The sludge was a precipitate of treated water from two test wells originating from the Rio West Deep Saline Well Site, located approximately five miles west of Rio Rancho. The NMED's Ground Water Quality Bureau (GWQB) referred to the sludge as a solid evaporite material produced during pilot tests in 2009 and 2011 for the two wells when purge water from both wells was treated, discharged and managed in a synthetically-lined impoundment. The surface impoundment also received liquids produced by a desalination water treatment process to assess suitability of the aquifer as a future water supply. In 2017, the GWQB required clean out and repair of the liner.

Analysis of the ground water for the two wells indicates concentrations of arsenic, radium-226 and radium-228 elevated above ground water standards. In addition to these contaminants, the discharged water to the impoundment also contained a high concentration of total dissolved solids.

On or about March 2018, IMH Financial Corporation, landowner of the well site, hired a waste hauler, Alpha Southwest, Inc., to transport the sludge to the Rio Rancho Landfill for disposal. The SWB reviewed landfill disposal tickets provided to the GWQB documenting the disposal of 51 loads of probable sludge from the Rio West Deep Saline Well Site impoundment at the landfill during the period of March 2, 2018, through March 15, 2018. Although the disposal tickets contained areas in which to enter information for waste codes, manifests and profile, the entries were not completed, indicating acceptance of the sludge as solid waste, but not special waste.

On July 30, 2020, and August 10, 2020, Douglas Shimic, District Manager, Waste Management of New Mexico, Inc. (WMI), spoke telephonically with Chuck Akeley, Enforcement Manager, SWB, regarding the impoundment-related disposal tickets. Mr. Akeley electronically forwarded the disposal tickets to Mr. Shimic, who verified the tickets were valid customer copies and noted that the word "Salt" annotated on top of most of the tickets had not been placed there by the landfill, as the landfill's tickets did not have such annotation. Mr. Shimic stated that the landfill was unable to locate any other documents relating to the sludge disposal, including a waste profile or special waste manifests. He further stated that the loads were probably stockpiled and used for daily cover, and that there was no record of Alpha Southwest, Inc. being a registered commercial or special waste hauler with a WMI account.

Given the discharge of water treatment wastes to the large surface impoundment, the solid materials from the surface impoundment meet the definition of sludge in the Solid Waste Rules (SWR), 20.9.2 – 20.9.10 NMAC. The SWR, 20.9.2.7.S(7) NMAC, defines sludge as "any solid, semi-solid or liquid waste generated by a municipal, commercial, or industrial waste water treatment plant [or] water supply treatment plant...". The SWR, 20.9.2.7.S(13)(f) NMAC, defines sludge as a special waste, meaning the waste has unique management, transportation and disposal requirements. The aforementioned loads of sludge disposed at Rio Rancho Landfill during the period March 2, 2018, through March 15, 2018, were not assessed or characterized as a special waste in accordance with the landfill's waste acceptance protocol, including the completion of a waste profile based on generator knowledge. The resulting generator-specific disposal management plan (DMP) required by the SWR, 20.9.8.16.B NMAC, would have contained information assuring the sludge was sampled and analyzed for all relevant test parameters in accordance with the SWR, 20.9.8.16.C and D NMAC.

Based on the above information, the following violations are cited:

1. **Improper acceptance and disposal of sludge (special waste).** During the period of March 2-15, 2018, the operator of the Rio Rancho Landfill accepted approximately 51 loads of sludge – a special waste, in contrast to the landfill's waste acceptance protocol, included as part of the permit, Special Waste Disposal Management Plan, Vol. IV, Att. 711-1, Sec. 3.0, Special Waste Identification Program. WMI failed to deem this waste a special waste and profile it accordingly with the required laboratory analyses of the sludge.

The SWR, 20.9.3.20.A NMAC, states that any terms or conditions of the permit shall be enforceable to the same extent as a regulation of the Environmental Improvement Board.

The SWR, 20.9.2.10.B NMAC, further states that any person who generates, stores, process, transports or disposes of solid waste shall take reasonable measures to determine the characteristics of the waste being handled to assure that no prohibited act is being performed.

2. **Acceptance of sludge without NMED approval.** On or before March 2, 2018, WMI accepted approximately 51 loads of sludge at the Rio Rancho Landfill without first obtaining and incorporating into the operating record a NMED-approved, generator-specific DMP for the sludge in accordance with the permit's Sludge Disposal Management Plan, Vol. IV, Att. 709-1, Sec. 2.0, Sludge Acceptance Criteria.

The SWR, 20.9.3.20.A NMAC, states that any terms or conditions of the permit shall be enforceable to the same extent as a regulation of the Environmental Improvement Board.

The SWR, 20.9.8.16.B NMAC, states that the owner or operator of a solid waste facility authorized to accept sludge shall have an approved DMP, that shall, at a minimum, describe the methods used to obtain representative samples for analysis, analyze the sludge for the required parameters demonstrating it is non-hazardous and passes the paint filter liquids test, describe the anticipated volumes to be transported and total time period for disposal, and describe any plans for continuing landfill disposal – including the frequency of testing, transport to the landfill and length of storage prior to disposal.

The SWR, 20.9.2.10.A(1) NMAC, further states that no person shall store, process or dispose of solid waste except by means approved by the NMED Cabinet Secretary and in accordance with Environmental Improvement Board rules.

Pursuant to the NMED Delegation Order dated September 14, 2020, the Cabinet Secretary has delegated the authority to issue SWB Notices of Violation to the Chief of the SWB in the Resource Protection Division. Please respond in writing within 10 calendar days of receipt of this notice as to what action you have taken, or plan to take, to correct the violations and to prevent recurrence in the future. All documentation submitted to NMED's SWB related to this Notice of Violation must include the following certification, signed by you or a delegated responsible official:

"I certify under penalty of law that this document and all its attachments were prepared under my directions or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for the gathering of the information, the information submitted is, to the best of my knowledge and belief, true, accurate,

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and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Send your response to George W. Akeley, Jr. (Chuck), Manager, Enforcement Section, Solid Waste Bureau, NMED District I, 121 Tijeras Avenue NE, Suite 1000, Albuquerque, New Mexico 87102-3400.

The failure to assure corrective action or continued non-compliance may result in additional enforcement action. NMED reserves its right to take additional enforcement action for the violations identified in this Notice of Violation, including the issuance of an Administrative Compliance Order compelling compliance and assessing a civil penalty of up to \$5,000 per day, per violation.

If you have questions related to this Notice of Violation, please contact Mr. Akeley at (505) 670-3283 or chuck.akeley@state.nm.us.

Sincerely,

Joan M. Snider
Chief, Solid Waste Bureau

JMS:gwa:tdm

cc: Stephanie Stringer, Director, Resource Protection Division *[via electronic mail]*
Chuck Akeley, Manager, Enforcement Section, Solid Waste Bureau *[via electronic mail]*
Teri D. Monaghan, Enforcement Coordinator, Solid Waste Bureau *[via electronic mail]*