

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

Water Protection Division of the)
New Mexico Environment Department,)
Complainant,)
)
)
)
)
)
v.)
)
Cannon Air Force Base,)
Respondent.)
 _____)

No. WQCC 20-08 (CO)

**RESPONDENT’S FIRST SET OF REQUESTS FOR PRODUCTION
TO THE COMPLAINANT**

Pursuant to 20.1.3.19.F NMAC the Respondent, Cannon Air Force Base, propounds the following First Set of Requests for Production upon the Complainant, the Water Protection Division of the New Mexico Environment Department. Respondent requests that the Complainant provide within 20 days of service copies in PDF or Microsoft word format of all responsive documents or, at a minimum, pursuant to 20.1.3.20.F(2) NMAC allow Respondent to inspect and copy all responsive documents. Respondent reserves the right to serve additional document requests.

DEFINITIONS

All words in these Requests shall be read to have both their ordinary meaning and, where applicable, their meanings as defined in the New Mexico Water Quality Act, NMSA 1978 §§ 74-6-1 to -17 (1967, as amended through 2019), or Ground and Surface Water Protection Regulations 20.6.2 NMAC (01/04/1968 as amended through 12/21/2018). The following definitions apply to the use of the following words or terms as used herein, whether or not

capitalized.

1. “2014 Permit” means New Mexico Ground Water Discharge Permit Number 873, dated March 31, 2014.

2. “Compliance Order” means the Administrative Order Requiring Compliance and Assessing a Civil Penalty issue by the Complainant to Respondent signed January 9, 2020.

3. “Document” and “documents” take the definition provided in 20.1.3.19(F)(1) NMAC.

4. “Include” and “including” shall mean “include without limitation” and “including without limitation,” respectively.

5. “Letter” means the March 29, 2019 correspondence between the Complainant and Colonel Stewart Hammonds signed by Ms. Michelle Hunter.

6. “Person” and “Persons” mean “person” as defined in N.M. Adm. Code § 20.6.2.7.P(2).

7. “PFCs” means perfluorinated-chemicals as defined under 20.6.2.7.T(2)(s) NMAC.

8. “Relating to,” “Referring to,” “Regarding,” “Concerning,” or “With respect to” refers to, without limitation, the following concepts: discussing, describing, reflecting, concerning, relating to, referring to, regarding, concerning, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.

9. “You” and “Your,” unless otherwise indicated, mean the Complainant, as well as any director, employee or former employee, independent contractor, agent, attorney or other

Person acting or purporting to act on behalf of the Complainant.

GENERAL INSTRUCTIONS

1. Scope of Requests. These Requests for Production of Documents are directed to the Complainant and apply to all documents within the possession, custody, or control of the Complainant and any other agents, representatives and employees acting on behalf of the Complainant.

2. Supplemental Responses. These Requests for Production of Documents are continuing; supplemental productions must be provided pursuant to and in accordance with 20.1.3.19.D(3) NMAC.

3. To the extent that You withhold or redact any Documents or other information responsive to these Requests for Production of Documents, provide a log in accordance with the requirements of 20.1.3.19.F(2) NMAC.

4. Relation to Particular Document Requests. For each Document produced, indicate the numbered Document Request to which it responds.

5. Production of Original and Unique Copies. Each Document Request shall be deemed to call for the production of a legible copy of all of the original Document or Documents responsive to the request. If the original is not available for copying, then copies of the available reproductions of the Documents shall be produced. In addition, any copy of a Document shall be produced if it differs in any respect from the original (*e.g.*, by reason of handwritten notes, comments, marginalia, or any addition or deletion to the copy which does not appear in the original).

6. Inability to Respond. Whenever You are unable to produce Documents in response to a Request, You shall state the steps taken to locate responsive Documents.

7. Document No Longer In Possession. If any Document requested is no longer in Your possession, custody, or Control, describe the substance of the Document and state:

- a. what was done with the Document;
- b. when such Document was made;
- c. the identity and address of the current custodian of the Document;
- d. the Person who made the decision to transfer or dispose of the Document;
- e. when the Document was transferred or disposed of, if reasonably known; and
- f. the reasons for the transfer or disposition.

8. Deletions from Documents. Where anything has been deleted from a Document produced in response to a production request:

- a. specify the nature of the material deleted;
- b. specify the reason for the deletion; and
- c. identify the Person responsible for the deletion.

9. Retention of Documents. The Respondent is to retain custody or control over, and to refrain from destroying, any Document requested herein or provided in response hereto that is in the Respondent's custody or control as of the date of service of these Requests.

10. Lost Documents. If any Document responsive to these Requests has been lost or mislaid, identify the Document, the date of its loss or mislaying, and each reason for its loss or mislaying.

11. Vague or Burdensome. It is anticipated that You may object to a particular discovery request as vague or burdensome. Respondent cannot always determine in advance which requests might truly be burdensome to You. It is anticipated that You will respond to all discovery requests to the best of Your abilities and in good faith, preserving any bona fide

objections if necessary. It is further anticipated that You will attempt to obtain clarification or delimiting of Respondent's discovery requests from the undersigned (who stands ready and willing to do so) if the facts of the particular situation so require.

REQUESTS FOR PRODUCTION

Request for Production No. 1: Produce all documents that support, refute or otherwise relate to the violations alleged in the Compliance Order at paragraphs 29 and 30.

Request for Production No. 2: Produce all documents that identify Persons with knowledge of facts supporting the violations alleged in the Compliance Order at paragraphs 29 and 30.

Request for Production No. 3: Produce all documents related to the detection of PFCs in monitoring wells as alleged in paragraph 14 of the Compliance Order.

Request for Production No. 4: Produce all documents related to the allegation in paragraph 14 of the Compliance Order that the PFC concentrations detected in monitoring wells "violate the standard of 20.6.2.3103(A)(2) [*sic*] NMAC."

Request for Production No. 5: Produce all documents related to Your September 26, 2018 determination that Respondent's September 10, 2018 application to renew the 2014 Permit was administratively complete.

Request for Production No. 6: Produce all documents related to the allegation in paragraph 18 in the Compliance Order that "[b]ecause Respondent's permit renewal application does not address the inclusion of PFCs, the application cannot be deemed technically complete pursuant to 20.6.2.3108.H NMAC."

Request for Production No. 7: Produce all documents related to the allegation in paragraph 19 of the Compliance Order that "the presence of PFCs in the discharge constitutes a

significant change in the discharge quality.”

Request for Production No. 8: Produce all documents related to the allegation in the Letter that Respondent was out of compliance with the 2014 Permit on March 29, 2019.

Request for Production No. 9: Produce all documents related to the allegation in paragraph 28 of the Compliance Order that “[s]ince April 1, 2019, Respondent has been continually discharging effluent . . . without a valid discharge permit.”

Request for Production No. 10: Produce all documents relating to the amount of the civil penalty assessed in paragraph 36 of the Compliance Order.

Request for Production No. 11: Produce all administrative orders of consent, notices of violation, or any other official document You have issued in the last ten (10) years assessing civil penalties against non-federal government Persons for allegations related to discharging effluent without a NMED-issued discharge permit. These documents are necessary to determine whether the United States has waived sovereign immunity for the civil penalty assessed in this case.

Request for Production No. 12: Produce all administrative orders of consent, notices of violation, or any other official document You have issued in the last ten (10) years assessing civil penalties against non-federal government Persons for allegations related to not submitting a complete permit application, renewal application or modification application to address changes in the quality of the discharge as defined under 20.6.2.7.D(2) NMAC. These documents are necessary to determine whether the United States has waived sovereign immunity for the civil penalty assessed in this case.

Requests for Production No. 13: Produce all documents provided or otherwise sent to You from the Office of the Secretary of the New Mexico Environment Department, the Office of

the Attorney General of New Mexico, and the Office of the Governor of New Mexico relating to Respondent's application to renew the 2014 Permit and the Compliance Order.

May 6, 2020

Respectfully submitted,

//signedMarkECoon6May20//

Major Mark E. Coon, Regional Counsel
United States Air Force Legal Operations Agency
Environmental Law and Litigation Division
1492 First Street, Ste 213
Dobbins Air Reserve Base, Georgia 30069
Phone: 678-655-9535

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondent's First Set of Requests for Production was sent on May 6, 2020 to:

Cody Barnes, Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, New Mexico 87502

Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102

//signedMarkECoon6May20//

Signature: _____
Major Mark Coon