



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

**WATER PROTECTION DIVISION OF THE
NEW MEXICO ENVIRONMENT DEPARTMENT,**

Complainant,

**ADMINISTRATIVE ORDER
WQCC 20-08 (CO)**

v.

CANNON AIR FORCE BASE,

Respondent.

SETTLEMENT AGREEMENT

The Ground Water Quality Bureau of the Water Protection Division of the New Mexico Environment Department (“Department”) and Cannon Air Force Base (or “Respondent”) (collectively, the “Parties”), pursuant to 20.1.3.22.B(1) NMAC, stipulate to resolve the violations, allegations, orders and civil money assessed in the Administrative Compliance Order issued by the Department to the Respondent on January 9, 2020 (“ACO”) (Attachment 1). The Parties have agreed on the terms and conditions specified in this Settlement Agreement (“Agreement”).

BACKGROUND

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, § 9-7A-4. The Department is authorized to administer and enforce the New Mexico Water Quality Act (“WQA”), NMSA 1978, §§ 74-6-1 to -17, and the Ground and Surface Water Protection Regulations (“the Regulations”), 20.6.2 NMAC, including issuing compliance orders for violations thereof pursuant to authorization contained within the WQA. NMSA 1978 § 74-6-10(A)(1).

2. The Respondent is a United States military reservation located approximately 7 miles west of Clovis, New Mexico managed by the United States Air Force. The Department issued Respondent a Discharge Permit (“DP-873”) on December 8, 1994; the Department renewed DP-873 on March 31, 2014 (Attachment 2). DP-873 authorizes the discharge of up to 1,500,000 gallons per day (“gpd”) of domestic and industrial wastewater from Cannon Air Force Base to a mechanical wastewater treatment plant and to fourteen septic tank leachfield systems. DP-873 also authorizes treated wastewater to be stored in a four-acre synthetically lined impoundment, a partially lined golf course impoundment, and a playa lake, and reclaimed wastewater from the golf course impoundment to be used to irrigate approximately 117 acres of turf.

3. On August 14, 2018, the New Mexico Water Quality Control Commission (the “Commission”) adopted amendments to 20.6.2 NMAC, including the addition of three perfluorinated chemicals (“PFCs”) – perfluorohexane sulfonic acid (PFHxS”), perfluorooctane sulfonate (“PFOS”), and perfluorooctanoic acid (“PFOA”) – to the toxic pollutants defined at 20.6.2.7T(2) NMAC. Those amendments became effective December 21, 2018.

4. On September 10, 2018, Respondent submitted a permit renewal application. The Department determined the application was administratively complete on September 26, 2018, and sent a letter to Respondent indicating its administrative completeness on October 24, 2018.

5. On March 29, 2019, the Department notified Respondent in writing that DP-873 would not be considered to be administratively continued after March 31, 2019 and that Respondent would be considered to be discharging without a permit pursuant to 20.6.2.3104 NMAC after that time because Respondent’s permit renewal application did not address PFC-related information necessitated by the likely presence of PFCs in Respondent’s discharge.

6. In that same letter, the Department gave Respondent until April 28, 2019, to submit information about the presence of PFCs and a proposed treatment or other remedy.

7. Despite subsequent extensions, Respondent had not submitted the PFC-related information by January 9, 2020. On that date, the Department issued the ACO identifying violations, requiring compliance and assessing a civil penalty to the Respondent.

ALLEGED VIOLATIONS

8. The ACO alleged the following violations:

a) Discharging effluent from Respondent's wastewater treatment facilities so that it could move directly or indirectly into groundwater without a discharge permit issued by the Department in violation of 20.6.2.3104 NMAC, and

b) Failing to submit a complete permit renewal and modification application to address the significant change in the quality of Cannon's discharge in violation of 20.6.2.3106.C NMAC.

9. The ACO also ordered Respondent to submit a complete Discharge Permit renewal and modification to the Department, including data and provisions addressing PFCs in Respondent's discharge no later than January 31, 2020.

10. The ACO assessed a civil penalty in the amount of \$1,699,872.60.

COMPROMISE AND SETTLEMENT

11. The Parties agree that by submitting an application dated January 15, 2020, Respondent timely complied with the order in the ACO for Respondent to submit a complete discharge permit renewal and modification application.

12. The Parties agree that, except as otherwise provided herein, Respondent may continue operating and discharging effluent from its wastewater treatment facility consistent with the terms

and conditions of the DP-873 renewed March 31, 2014 (Attachment 2), until a final determination is made on Respondent's January 15, 2020 permit renewal application.

13. The Respondent does not admit to any of the allegations contained within or suggested by the ACO. Entry into this settlement agreement shall not constitute an admission of liability in any administrative or judicial proceeding, nor shall evidence of settlement be admissible in any such proceeding, except for proceedings to enforce this Agreement and a related final order of the Commission.

14. Pursuant to 20.1.3.22.B(1) NMAC, the Respondent admits the jurisdictional allegations of this Agreement and consents to the terms specified in the Agreement, including the payment of an administrative fee.

15. To avoid further legal proceedings, the Department and the Respondent agree to the terms and conditions in this Agreement to resolve all matters related to the ACO. In compromise and settlement of the alleged violations in the ACO, the Parties agree that the Respondent shall pay an administrative fee of \$250,947.60. The administrative fee and this Agreement are the result of good-faith, arms-length negotiations by the Parties. The Parties recommend the Commission approve this Agreement pursuant to 20.1.3.22.B(1) NMAC.

16. Payments shall be made by certified check or other guaranteed negotiable instrument, payable to the State of New Mexico and shall be sent to the Department at the following address:

Bureau Chief
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Dr., Suite N-2250
Santa Fe, New Mexico 87505

17. Payments of the administrative fee shall be accompanied by a transmittal letter referencing this Agreement.

18. The Respondent shall make timely and complete payment of the administrative fee within 90 days of final signature of the stipulated final order by the duly authorized representative of the Commission. Nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. Any requirement for payment or obligation of funds by a particular date established by the terms of this agreement shall be subject to the availability of funds. In cases where payment or obligation of funds would constitute violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. Such requests for adjustments to civil penalty payment dates based upon unavailability of funds or potential violations of the Anti-Deficiency Act must be made in writing to the Department. Nothing herein shall be interpreted as consenting to jurisdiction in any forum, or interpreted as a waiver of Federal sovereign immunity, or an admission of such waiver.

OTHER TERMS AND CONDITIONS

ENFORCEMENT

19. Except as otherwise provided herein, the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the WQA, the Regulations, or DP-873, for any past, present or future violations not addressed in the ACO. In any such action, the Respondent reserves the right to assert any defenses that it may have.

20. The Department retains its right to enforce this Agreement by administrative or judicial action should Respondent fail to comply with its terms, and the Respondent reserves the right to assert any defenses that it may have.

COVENANTS NOT TO SUE

21. The Department covenants not to sue or take any administrative or civil action against the Respondent under the WQA, the Regulations, and this settlement for any matters related to the ACO or this Agreement, including Respondent's right to continue to discharge consistent with the terms and conditions of the DP-873 renewed on March 31, 2014 (Attachment 2) until a final determination is made on Respondent's January 15, 2020 permit renewal application. This covenant not to sue extends to the Respondent and its respective officers, directors, agents, employees, successors, and assigns and does not extend to any other person. This Covenant does not extend to future violations of the WQA, the Regulations, or Conditions in this Agreement.
22. The Respondent covenants not to sue the State of New Mexico for any claims deriving from the ACO.

EFFECTIVE DATE

23. This Agreement shall become effective on the date it is approved and a stipulated final order signed by the duly authorized representative of the Commission.

INTEGRATION

24. This Agreement merges all prior written and oral communications between the Department and the Respondent concerning the subject matter of the Agreement and contains the entire agreement between the Department and the Respondent.

BINDING EFFECT

25. This Agreement shall be binding upon the Department and its successor agencies and shall be binding upon the Respondent and on its successors.

AUTHORITY OF SIGNATORIES

26. The persons executing this Agreement represent that they have the requisite authority to

bind either the Department or the Respondent, as appropriate, to this Agreement, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondent to this Agreement.

[SIGNATURE PAGES TO FOLLOW]

For the **NEW MEXICO ENVIRONMENT DEPARTMENT.**

Rebecca Roose

Digitally signed by Rebecca Roose
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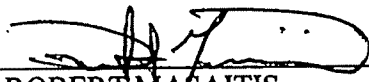
By:

REBECCA ROOSE
DIRECTOR
WATER PROTECTION DIVISION

Date: _____

For: **CANNON AIR FORCE BASE**

By:



ROBERT MASAITIS
COLONEL, USAF
COMMANDER, CANNON AIR FORCE BASE

Date: 3 JUL 20