

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**NEW MEXICO ENVIRONMENT
DEPARTMENT,
Complainant,**

V.

**UNITED STATES, DEPARTMENT OF
AIR FORCE, CANNON AIR FORCE BASE,
EPA ID #: NM7572124454
Respondent.**

ADMINISTRATIVE ORDER
NO. HWB-25-_____

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Hazardous Waste Act (“HWA”), New Mexico Statutes Annotated (“NMSA”) 1978, Sections 74-4-1 to -14, the Hazardous Waste Bureau (“HWB”) of the Resource Protection Division (“Division”) of the New Mexico Environment Department (“NMED”), issues this Administrative Compliance Order (“Order”) to the United States, Department of Air Force, Cannon Air Force Base (“Cannon” or “Respondent”). This Order requires that Cannon, located in Curry County, New Mexico, comply with the HWA and the Hazardous Waste Management Regulations (“HWMR”), 20.4.1 New Mexico Administrative Code (“NMAC”), and assesses civil penalties for violations of the HWA and the HWMR.

As set forth in the detailed allegations below, Respondent has violated hazardous waste regulations and conditions of its permit.

I. FINDINGS

A. PARTIES

1. Pursuant to the Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -15, NMED is an agency of the executive branch within the government of the State of New

Mexico.

2. NMED, through its HWB, is charged with the administration and enforcement of the HWA and HWMR.

3. The U.S. Environmental Protection Agency (“EPA”) has granted the State of New Mexico delegated authority to implement the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 to 6992k, within the state. The HWMR incorporate portions of the Code of Federal Regulation (“CFR”), Title 40 Parts 260 through 270, Part 279, and related federal regulations, by reference.

4. The State of New Mexico adopted the federal hazardous waste regulations by reference on June 14, 2000. The State of New Mexico subsequently amended the HWMR on March 1, 2009, and on December 1, 2018, to adopt changes to the federal hazardous waste regulations.

5. Respondent is the owner and operator of Cannon Air Force Base, located in Curry County, New Mexico. The Facility EPA ID number is NM7572124454.

6. Respondent is a “person” within the meaning of NMSA 1978, Section 74-4-3(M) of the HWA.

7. Respondent operates under a RCRA Corrective Action Permit No. NM7572124454 issued under authority of HWA (the “Permit”). **[NMED EXHIBIT 1]**.

B. HISTORY OF NONCOMPLIANCE

8. During the 10-year period between August 2014 and August 2024, NMED conducted a total of two (2) Compliance Evaluation Inspections (“CEI”) at Respondent’s facility and conducted one (1) Non-Financial Records Review of documentation submitted by Respondent.

9. During the CEI on October 16, 2018, NMED observed two (2) violations including:
 - a. Failure to mark containers of hazardous waste with the date upon which accumulation began, in violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.34(a)(2).
 - b. Failure to label or mark containers accumulating hazardous waste at or near the point of generation with the words “Hazardous Waste”, or with other words to identify contents, in violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.34(c)(1)(ii).
10. On January 11, 2019, NMED sent Respondent a Resolution of Notice of Violation (“RTC”) as an informal enforcement action, acknowledging the completion of corrective actions for violations observed during the CEI performed October 16, 2018.
11. During the NRR performed July 9, 2019, NMED observed one violation:
 - a. Failure to provide information relating to the generation, storage, treatment, transportation, disposal, or handling of hazardous waste upon request, in violation of NMSA 1978, Section 74-4-4.3(A).
12. On October 10, 2019, NMED sent Respondent a Notice of Violation (“NOV”) as an informal enforcement action, requiring corrective action within 30 days for the violation observed during the NRR performed July 9, 2019.
13. Additionally, Respondent has continuously refused to perform corrective actions for PFAS under NMED oversight demonstrating a willing disregard for the conditions of its corrective action permit as well as the state’s hazardous waste laws and regulations, and NMED’s regulatory authority. **[NMED EXHIBIT 2]**.

C. FACTS

14. In a letter dated August 30, 2024 (the “Notification”), Respondent stated that on or about July 9, 2024, and on or about July 15, 2024, Cannon Air Force Base personnel deposited approximately 7,300 gallons of fire department rinsate release with traces of aqueous film forming foam (“AFFF”) into a lined retention pond within the Active Fire Training Area and Adjacent Ponding Area (the “Release”). **[NMED EXHIBIT 3]**.

15. AFFF contains, among other things, perfluorooctanoic acid (“PFOA”) and perfluorooctane sulfonic acid (“PFOS”), two chemicals that are part of a group of chemicals called per- and poly-fluorinated alkyl substances (“PFAS”).

16. According to the Notification, the Active FTA retention pond liner had been inspected by a third-party contractor and found compliant on March 4, 2024.

17. On August 14, 2024, Cannon Air Force Base personnel pumped all the remaining liquid from the Active FTA retention pond and placed it in 330-gallon totes. A total of approximately 3,600 gallons were recovered.

18. On August 23, 2024, a third-party contractor inspected the Active FTA retention pond and found that the liner had been compromised in several areas, including approximately 13 tears in the material.

19. In an October 7, 2024, email, Respondent provided analytical sample results for sediments, rainwater, and rinsate removed from the Active FTA retention pond and the respective chemical analysis data report. The chemical analysis results provided with the email confirmed that the rinsate and rainwater were PFAS contaminated at concentrations several orders of magnitude above the EPA Maximum Contaminant Level (“MCL”) for those compounds. Furthermore, the chemical analysis results for sediment samples provided with the email

confirmed the presence of PFAS contamination exceeding the EPA Region 6 Regional Screening Level and NMED Soil Screening Level. **[NMED EXHIBIT 4].**

20. PFAS are emerging contaminants of concern and meet the statutory definition for hazardous waste defined in the NMSA 1978, Section 74-4-3(K), Section 1004(5) of the Solid Waste Disposal Act, and Section 6903(5) of the RCRA. In April 2024 the EPA proposed to list 9 PFAS as hazardous constituents as hazardous constituents under RCRA (a preliminary step to listing as hazardous waste).

21. PFAS are also defined as hazardous waste in the Permit as required by 40 CFR § 270.32(b)(2).

22. PFAS are also defined as a toxic pollutant in 20.6.2.7(T)(2)(s) NMAC.

23. Permit Condition 1.13.10.3.1 states “[t]he Permittee shall orally report to NMED any noncompliance which may endanger human health or the environment within 24 hours from the time that the Permittee becomes aware of the circumstances in accordance with 40 CFR 270.30(1)(6)(i). The report shall include the following: (1) any information concerning the release of any hazardous waste that may cause an endangerment to public drinking water supplies; and (2) any information of a release or discharge of hazardous waste, or of a fire or explosion at the Facility, which could threaten the environment or human health outside the Facility.”

24. Respondent was aware of the Release by August 14, 2024, at the latest, when it recovered only 3,600 gallons of the 7,300 gallons of PFAS contaminated rinsate. Respondent did not verbally notify NMED of the Release until August 24, 2024, at least 10 days after it became aware of the noncompliance, which is a violation of Permit Condition 1.13.10.3.1.

25. Permit Condition 1.13.10.3.3 states “[t]he Permittee shall submit a written report to NMED within five calendar days from the time the Permittee becomes aware of the noncompliance

(40 CFR 270.30(1)(6)(iii)). The written report shall contain the following: (1) a description of the noncompliance and its cause; (2) the period of the noncompliance including exact date and time, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and (3) steps taken or planned to reduce, eliminate, and prevent the recurrence of the noncompliance.”

26. Respondent was aware of the Release by August 14, 2024, at the latest, when it recovered only 3,600 gallons of the 7,300 gallons of PFAS contaminated rinsate. Respondent did not notify NMED of the Release in writing until August 30, 2024, at least 16 days after it became aware of the noncompliance, which is a violation of Permit Condition 1.13.10.3.3.

27. Permit Condition 2.7.1 states “[t]he Permittee shall maintain and operate the Facility to minimize the possibility of a fire, explosion, or any unplanned, sudden or non-sudden release of hazardous waste or constituents to air, soil, groundwater, or surface water that could threaten health or the environment in accordance with 40 CFR 264.31.”

28. Respondent either failed to maintain the retention pond for its intended use or failed to ensure the retention pond liner was not damaged during the transfer of the remaining PFAS contaminated rinsate on August 14, 2024, causing a sudden or non-sudden release of hazardous waste or constituents which is a violation of Permit Condition 2.7.1.

29. Permit Condition 2.3 states “[t]he permittee shall inspect the Facility and remedy any deterioration, malfunction, or discharge which may lead to the release of hazardous waste constituents or other contaminants to the environment or pose a threat to human health as required in 40 CFR 264.15. The Permittee must develop and follow a written schedule for inspecting, monitoring equipment, security devices, and operating and structural equipment that are important to preventing, detecting, or responding to environmental or human health hazard <sic>. The record

of inspections must be maintained by the Facility.”

30. Permit Section 6.2 states, in part, “[t]he permittee shall fulfill the requirements acceptable to the NMED for preparation of work plan for unit-specific or corrective action activities at the Facility using the general outline [in Sections 6.2.1 to 6.2.13].”

31. In an email dated September 12, 2024, Respondent stated that it planned to “initiate a contract for soil sample collection beneath the liner immediately,” and that “[o]ur aim is to finalize and award the contract for these sampling services before September 30, 2024.” [NMED EXHIBIT 5].

II. VIOLATIONS

32. The Respondent failed to provide the required 24-hour oral notification in accordance with Permit Condition 1.13.10.3.1 and 40 CFR 270.30(1)(6)(i), upon discovery of a release of PFAS contamination at Cannon.

33. The Respondent failed to provide written notification within 5 days of the initial discovery of a release of PFAS contamination to the environment at Cannon in accordance with Permit Condition 1.13.10.3.3 and 40 CFR 270.30(1)(6)(iii).

34. The Respondent failed to maintain the integrity of the Active FTA retention pond and minimize and prevent the possibility of any unplanned, sudden, or non-sudden release of hazardous waste, hazardous constituents, or other contaminants to air, soil, groundwater, or surface water in violation of Permit Condition 2.7.1 and 40 CFR 264.31.

III. SCHEDULE OF COMPLIANCE

35. Based upon the foregoing findings and conclusions, Respondent is hereby ordered to take the following corrective actions, according to the following schedule, to achieve compliance with the HWA and the HWMR:

a. Respondent shall implement appropriate corrective action to prevent any further migration of any identified contaminants in the surface soil, subsurface soil, and in the regional groundwater aquifer at CAFB and the surrounding area in accordance with the applicable sections of Permit Part 3, Corrective Action for SWMUs and AOCs, and Permit Part 4, Investigation and Sampling Methods and Procedures. All existing work plans, reports or other documents, and a respective submittal schedule for work plans, reports and other documents to be developed must be submitted to NMED as required by Permit Section 1.13.7, Duty to Provide Information, within 30 days of the receipt of this order. NMED will review the submitted documents in accordance with Permit Section 1.17.1, Approval of Submittals, as deemed applicable.

b. Respondent shall within 30 days of the receipt of this order: (1) provide accurate information about the volume of PFAS contaminated rinsate liquid released at the Active FTA retention pond due to the reported improper waste disposal event; (2) identify any other locations where contaminated fire department rinsate may have been disposed; (3) provide the exact location of the current storage area for the 330-gallon totes containing the remaining PFAS contaminated rinsate, and provide all relevant detailed information for planned off-site disposal of the PFAS contaminated rinsate waste; and (4) provide NMED with proof of any applicable written Facility handling and spill prevention and contingency plans used as standard operation procedures during collection, transport, and disposal of soil, sediments, rinsates, water, groundwater, or other environmental investigation or remediation derived waste media contaminated with PFAS or other contaminants.

c. Respondent shall provide all records for the March 4, 2024, and August 14, 2024, Active FTA retention pond inspections in accordance with Permit Section 1.13.7.

d. Respondent shall provide the administrative investigation results referenced in the Notification for the Release and all related documents, correspondence, or written reports to NMED within 30 days of the entry of this Order.

e. Respondent shall submit a comprehensive work plan that meets Permit specifications for work plans. The required work plan must be provided to NMED for review at least 90 days before initiation of proposed corrective action investigation field work. Failure to submit a work plan and to continue to investigate the release under a “Comprehensive Environmental Response Compensation and Liability Act (CERCLA)-like process” may result in the collection of data that is not valid for use during risk assessment required by the Permit and may result in future direction by NMED to conduct additional sampling and corrective action.

36. All submittals to NMED must contain a certification by a responsible official stating, “I certify under penalty of law that the information in this letter and all attachments were prepared under my direction or supervision in accordance with 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 gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

IV. CIVIL PENALTY

37. Pursuant to NMSA 1978, Sections 74-4-10(B) and 74-4-12 of the HWA, the Department hereby assesses a civil penalty of \$67,300.00 against the Respondent for the HWA violations described above, itemized as follows:

a. Failure to provide the required 24-hour oral notification, which is a violation of Permit Condition 1.13.10.3.1 and 40 CFR 270.30(1)(6)(i): \$51,750.00;

b. Failure to provide written notification within 5 days of the initial discovery of a release of PFAS contamination to the environment, which is a violation of Permit Condition 1.13.10.3.3 and 40 CFR 270.30(1)(6)(iii): \$5,980.00; and

c. Failure to maintain the integrity of the Active FTA retention pond and minimize and prevent the possibility of any unplanned, sudden, or non-sudden release of hazardous waste, hazardous constituents, or other contaminants to air, soil, groundwater, or surface water, which is a violation of Permit Condition 2.7.1 and 40 CFR 264.31: \$10,000.00.

38. No later than thirty (30) days after this Order becomes final, the Respondent shall make payment to the New Mexico Environment Department by certified check, bank draft or other guaranteed negotiable instrument, and mailed or had delivered to:

Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

A copy of the transmittal letter shall be sent to counsel for the Department.

V. NOTICE OF POTENTIAL ADDITIONAL PENALTIES

39. If the Respondent fails to comply in a timely manner with the Schedule of Compliance, the Secretary may assess additional civil penalties of up to \$25,000.00 for each day of continued noncompliance pursuant to NMSA 1978, Section 74-4-10(C) of the HWA.

VI. SHOW CAUSE

40. Due to Respondent's repeated and severe violations of the HWA, HWMRs, and the conditions of the Permit, and pursuant to Section 20.4.1.901(B) NMAC, within 30 days from the

date of this ACO's issuance the Respondent must show justification for why there is no cause to modify, suspend, or revoke Respondent's Corrective Action Permit No. NM7572124454.

41. Pursuant to NMSA 1978, Section 74-4-4.2(H) of the HWA, no ruling shall be made on permit issuance, major modification, suspension, or revocation without an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing; provided, however, that the secretary may, pursuant to NMSA 1978, Section 74-4-10, order the immediate termination of a research development and demonstration permit whenever the secretary determines that termination is necessary to protect human health or the environment and may order the immediate suspension or revocation of a permit for a facility that has been ordered to take corrective action or other response measures for releases of hazardous waste into the environment.

VII. RIGHT TO ANSWER AND REQUEST A HEARING

42. Pursuant to NMSA 1978, Section 74-4-10(H) of the HWA, and NMED's Adjudicatory Procedures, 20.1.5.200 NMAC, the Respondent may file a written request for a public hearing with the Hearing Clerk no later than 30 days from the receipt of this Order. An Answer must be filed with the Request for Hearing. The Answer shall:

- a. Clearly and directly admit, deny, or explain each of the factual assertions contained in this Order with regard to which the Respondent has knowledge. Where the Respondent has no knowledge of a particular factual allegation, the Respondent shall so state, and the Respondent may deny the allegations on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. 20.1.5.200(A)(2)(a) NMAC.
- b. Indicate any affirmative defenses upon which the Respondent intends to

rely. Any affirmative defenses not asserted in the Request for Hearing, except a defense asserting a lack of subject matter jurisdiction, shall be deemed waived.

200.1.5.200(A)(2)(b) NMAC.

c. Be signed under oath or affirmation that the information contained therein is, to the best of the signer's knowledge, believed to be true and correct.

20.1.5.200(A)(2)(c) NMAC.

d. Include a copy of this Order attached. 20.1.5.200(A)(2)(d) NMAC. The Answer and Request for Hearing shall be filed with the Hearing Clerk at the following address:

Hearing Clerk
New Mexico Environment Department
1190 Saint Francis Drive, S-2103
P.O. Box 5469
Santa Fe, New Mexico 87502
pamela.jones@env.nm.gov

Respondent must also serve a copy of the Answer and Request for Hearing on counsel for HWB (see paragraph 46), pursuant to 20.1.5.200(A)(1) NMAC.

VIII. FINALITY OF ORDER

43. This Order shall become final unless the Respondent files a Request for Hearing and Answer with the Hearing Clerk within thirty (30) days after the date of receipt of the Order pursuant to NMSA 1978, Section 74-4-10(H).

IX. SETTLEMENT CONFERENCE

44. Whether or not the Respondent requests a hearing and files an Answer, the Respondent may confer with the HWB concerning settlement, pursuant to 20.1.5.600(B) NMAC. Settlement is encouraged at any time if the settlement is consistent with the provisions and objectives of the HWA and regulations. Settlement discussions do not extend the 30-day deadline

for filing the Respondent's Answer and Request for Hearing or alter the deadlines for compliance with this Order. 20.1.5.600(B)(1) NMAC. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. The Respondent may appear at the settlement conference on its own behalf or may be represented by legal counsel.

45. Any settlement reached by the Parties shall be finalized by written settlement agreement and stipulated final order. A settlement agreement must serve to resolve all issues raised in the Order, shall be final and binding on all Parties to the Order, and shall not be appealable.

46. To explore the possibility of settlement in this matter the Respondent may contact Gregory S. Smithkier, Assistant General Counsel, Office of General Counsel, New Mexico Environment Department, PO Box 5469, Santa Fe, New Mexico, 87502, (505) 531-7736, gregory.smithkier@env.nm.gov.

X. TERMINATION

47. This Order shall terminate when the Respondent certifies that all requirements of this Order have been met and the Department has approved such certification, or when the Secretary of the Environment approves a settlement agreement and signs a stipulated final order.


XI. COMPLIANCE WITH OTHER LAWS

48. Compliance with the requirements of this Order does not remove the obligation to comply with all other applicable laws and regulations.

AUTHORITY OF SIGNATORIES

49. Pursuant to the NMED Delegation Order dated November 26, 2024, the Cabinet Secretary has delegated the authority to issue Compliance Orders under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau, with the concurrence of the Cabinet

Secretary.

DocuSigned by:

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DATE: 1/7/2025

JD NANCE, CHIEF
HAZARDOUS WASTE BUREAU

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid on this 7th day of January 2025, via Certified Mail (70210950000122028041), Return Receipt Requested, to the following:

Commander, 27th Special Operations Mission Support Group
110 Allison Avenue, Suite 1098
Cannon Air Force Base
New Mexico 88103-5167

Signed by:

744F0E96C19E4C4...
Gregory S. Smithkier, Assistant General Counsel
New Mexico Environment Department