

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF PROPOSED
AMENDMENTS TO GROUND
AND SURFACE WATER PROTECTION
REGULATIONS, 20.6.2 NMAC

No. WQCC 17-03 (R)

**LOS ALAMOS NATIONAL SECURITY, LLC'S
PROPOSED CHANGES TO REGULATIONS AND STATEMENT OF BASIS**

Pursuant to the Revised Procedural Order in this matter, Los Alamos National Security, LLC hereby submits its proposed changes amendments to 20.6.2 NMAC not contained in the New Mexico Environment Department's Petition and a statement of reasons for the proposed amendments.

Respectfully submitted,

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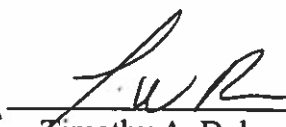
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CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, a true and correct copy of the foregoing *Los Alamos National Security, LLL's Proposed Changes to Regulations and Statement of Basis* was served via electronic mail or hand-delivered to the following:

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**LOS ALAMOS NATIONAL SECURITY, LLC'S
PROPOSED AMENDMENTS TO 20.6.2 NMAC AND STATEMENT OF REASONS**

1. Revise proposed 20.6.2.7.T.2 NMAC (definition of Toxic Pollutant) to include the Chemical Abstract Service (CAS) numbers for each pollutant listed. See attached Table 1.

Reasons: LANS proposes to add the CAS numbers, the number assigned by the Chemical Abstract Service to identify the substance, to help identify the pollutants listed as toxic pollutants and to make the listing consistent with the Standards for Interstate and Intrastate Surface Waters, 20.6.4.900 NMAC. CAS is a division of the American Chemical Society.

2. Adopt a new 20.6.2.10 NMAC as follows:

20.6.2.10 LIMITATIONS/EXEMPTIONS: These regulations do not apply to:

A. except as provided in Part 4, any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, NMSA 1978, §§74-1-1 to -14, the Ground Water Protection Act, NMSA 1978, §§ 74-6B-1 to -14, or the Solid Waste Act, NMSA 1978, §§ 74-9-1 to -25; or

B. any activity or condition subject to the authority of the oil conservation commission pursuant to the Oil and Gas Act, NMSA 1978, §§ 70-2-12, or other laws conferring power on the commission to prevent or abate water pollution.

Reasons: The addition of the proposed exemptions for activities or conditions subject to the authority of the Environmental Improvement Board under the Hazardous Waste Act, the Ground Water Protection Act, or the Solid Waste Act, or the authority of the Oil Conservation Commission under the Oil and Gas Act would conform the regulations to the Water Quality Act ("WQA") NMSA 1978, § 74-6-12 (1999). Those activities and conditions are expressly exempted from the Commission's authority. The proposed language clarifies the coverage of 20.6.2 NMAC and advises regulated entities of the activities and conditions that are statutorily exempted from the regulations.

3. Revise proposed 20.6.2.3103 NMAC to include the CAS numbers for each pollutant listed. See attached Table 2.

Reasons: The CAS numbers for each pollutant in 20.6.2.3103 NMAC should be added for the reasons stated in paragraph 1 above.

4. Revise proposed 20.6.2.3105 NMAC by deleting subsections 3105.L and M, and revising subsection 3105.O to read as follows:

O. Any activity or condition regulated under the federal Solid Waste Disposal Act, 42 U.S.C. §§6901 to 6992k, or any removal or remedial action under the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 to 9675.

Reasons: LANS proposes to delete subsections 20.6.2.3105.L & M NMAC because the proposed addition of 20.6.2.10 NMAC incorporates the statutory exemptions of § 74-6-12, making proposed 20.6.2.3105.L & M NMAC unnecessary and redundant. The proposed revisions to 20.6.2.3105.O NMAC clarify that the exemptions for hazardous waste and solid waste and extend the exemption to activities and conditions already subject to federal authority under the federal Solid Waste Disposal Act, which includes the Resource Conservation and Recovery Act.

Similarly, the exemption for activities or conditions subject to the federal Comprehensive Environmental Response, Compensation and Liability Act will avoid duplication and will acknowledge that federal law preempts the necessity to obtain state permits for removal or remedial actions. Section 121(e)(1) of CERCLA, 42 USC §9621(e)(1), provides that "[n]o Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with [Section 121]."

5. Revise proposed 20.6.2.3106 NMAC as follows:

B. Any person who intends to begin, after June 18, 1977, discharging any of the water contaminants listed in 20.6.2.3103 NMAC so that they may move directly or indirectly into ground water shall notify the secretary giving the information enumerated in Subsection B of 20.6.2.1201 NMAC; the secretary shall, within ~~60~~30 days, notify such person if a discharge permit is required . . .

Reasons: Under the current rules, NMED (or OCD for oil and gas facilities) has 60 days to review a notice of intent and determine whether a permit is required and 15 days to review a permit application and determine whether it is complete. The review of a notice of intent should be limited to determining whether the discharge is of "effluent or leachate" and whether the discharge "may move directly or indirectly into ground water." 20.6.2.3104 NMAC. Once the agency makes that determination, a permit is required unless the discharge is exempt from permitting under 20.6.2.3105 NMAC. Based on experience, that review should not take 60 days to complete. A reduction in that review from 60 to 30 days should allow sufficient time to make the requisite review and determination, and will expedite the permitting process and eliminate an undue delay in the process. Note that LANS is also proposing to increase the time allowed for the agency to review a permit application and make the administrative completeness determination.

6. Revise proposed 20.6.2.3108 NMAC as follows:

A. Within ~~45~~30 days of receipt of an application for a discharge permit, modification or renewal, the department shall review the application for administrative completeness. . . .

J. In the event that the draft permit or proposed approval or disapproval of an application for a discharge permit, modification or renewal is available for review within 30 days of deeming the application administratively complete, the department may combine the public notice procedures of Subsections E and H of 20.6.2.3108 NMAC.

H. Within 60 days after the department makes its administrative completeness determination and all required technical information is available, the department shall make available a ~~proposed approval or disapproval of the application for a discharge permit, modification or renewal, including conditions for approval proposed by the department~~ draft permit or the reasons for notice of disapproval.

(1) The draft permit shall include all proposed effluent limitations or other conditions on the proposed discharge, and all proposed monitoring, recordkeeping and reporting requirements. The proposed effluent limitations or conditions on the proposed discharge, and proposed monitoring conditions shall apply only to those pollutants that the department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any standard of 20.6.2.3103 NMAC.

(2) The department shall prepare a statement of basis for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the basis for approval of the application, the derivation of the conditions of the draft permit and the reasons for them, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record.

(3) If the Secretary, in his or her discretion, determines that providing additional information regarding the draft permit would better inform the public or the applicant, or upon written request by the applicant, the department shall prepare a fact sheet for the draft permit. The fact sheet shall include:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The quantity of effluent or leachate proposed to be discharged;

(c) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

(d) Any calculations or other necessary explanation of the derivation of specific effluent limitations and other conditions, including a citation to the applicable regulations or standards and reasons why they are applicable;

(d) A description of the procedures for reaching a final decision on the draft permit, including the beginning and ending dates of the public comment period and the address where comments will be received; procedures for requesting a hearing and the nature of that hearing; and any other procedures by which the public may participate in the final decision; and

(e) Name and telephone number of a person to contact for additional information.

(4) The department shall mail by certified mail a copy of the ~~proposed approval draft permit and statement of basis/fact sheet or notice of proposed~~ disapproval to the applicant and shall provide notice of the draft permit or the proposed approval or disapproval of the application for a discharge permit, modification or renewal by:

I. The public notice issued under Subsection H shall include the information in Subsection F of 20.6.2.3108 NMAC and the following information:

. . .

(3) the address and telephone number at which interested persons may obtain a copy of the draft permit, and any statement of basis or fact sheet prepared for the draft permit, or the proposed approval or disapproval of an application for a discharge permit, modification or renewal.

K. Following the public notice of the draft permit or proposed approval or disapproval of an application . . . Requests for a hearing shall be in writing, and shall set forth the reasons why a hearing should be held

Reasons: The proposal revises the permit process by: (1) increasing the time for the agency to determine that the application is complete from 15 to 30 days from receipt of an application; (2) clarifying that the requirement for preparing the proposed approval, including conditions for approval proposed by the agency, is a requirement for preparation of a draft permit; (3) specifying that the content of the draft permit includes effluent limits or conditions on the discharge and monitoring requirements; (4) requiring that the agency prepare a statement of basis for each draft permit, which explains the basis for any proposed permit term or condition; (5) requiring that the agency prepare a fact sheet for certain draft permits and specifying the content of the fact sheet; and (6) revising the public notice requirement to advise the public where a copy of the draft permit and any statement of basis or fact sheet for the draft permit may be obtained.

Increasing the time for the agency to determine whether an application is complete allows the agency to more closely review the application. The increase is offset by the proposed amendment to 20.6.2.3106.B NMAC reducing the time allowed to review the notice of intent. The preparation of a draft permit and a statement of basis or fact sheet on the draft permit will clarify

the permitting process and will allow the applicant and the public to better evaluate the draft permit, including proposed permit conditions, and prepare comments and suggested changes on the draft. More information at this point in the process should also help to avoid requests to agency staff to explain the language of the draft and the basis for that language. The issuance of a draft permit and statement of basis/fact sheet will conform the discharge permit process with NMED's processes for hazardous waste permits (20.4.1.901.A(1) & (2) NMAC) and EPA's process for NPDES, UIC, and RCRA permits (40 CFR §124.6, 124.7, and 124.8). Additionally, it would make the WQCC's UIC program compliant with federal requirements for delegated programs (40 CFR §145.11(a)(26) & (27)).

7. Revise proposed 20.6.2.3109.C NMAC as follows:

C. The secretary shall, within 30 days after the administrative record is complete and all required information is available, approve, approve with conditions or disapprove the proposed discharge permit, modification or renewal based on the administrative record. The secretary shall issue a response to comments received on the draft permit or proposed disapproval. The secretary . . . notify the applicant or permittee by certified mail of the action taken, and the reasons for such action, and shall include a copy of the response to comments. . . .

Reasons: The proposal adds a requirement that the agency issue a response to comments on the draft permit or proposed disapproval at the time it makes a final decision to approve, approve with conditions, or disapprove the permit. The proposed response to comments would allow those participants that submitted comments to know how the agency evaluated and addressed those comments in the final decision. That information allows commenters to better evaluate whether to pursue an appeal of the permitting decision and allows any such appeal to be focused on areas of disagreement. The issuance of a response to comments would conform the discharge permit process to NMED's processes for hazardous waste permits (20.4.1.901.A(9) NMAC) and EPA's process for NPDES, UIC, and RCRA permits (40 CFR §124.17). Additionally, it would make the WQCC's UIC program compliant with federal requirements for delegated programs (40 CFR §145.11(a)(31)). Finally, the requirement for providing the applicant with a copy of the response to comments assures that a permit applicant has all of the information necessary to review the final permitting decision and determine whether to initiate a challenge.

TABLE 1
20.6.2.7 NMAC--TOXIC POLLUTANTS

Toxic Pollutants (proposed)	CAS #
acrolein	107-02-8
acrylonitrile	107-13-1
benzene and alkylbenzenes	
benzene	71-43-2
toluene (methylbenzene)	108-88-3
ethylbenzene	100-41-4
xylene (dimethyl benzene isomers)	
o-xylene	95-47-6
m-xylene	108-38-3
p-xylene	106-42-3
styrene (ethenylbenzene)	100-42-5
chlorinated benzenes	
monochlorobenzene	108-90-7
1,2-dichlorobenzene (ortho-dichlorobenzene)	95-50-1
1,4-dichlorobenzene (para-dichlorobenzene)	106-46-7
1,2,4-trichlorobenzene	120-82-1
1,2,4,5-tetrachlorobenzene	95-94-3
pentachlorobenzene	608-93-5
hexachlorobenzene	118-74-1
chlorinated phenols	
2,4-dichlorophenol	120-83-2
2,4,5-trichlorophenol	95-95-4
2,4,6-trichlorophenol	88-06-2
pentachlorophenol (PCP)	87-86-5
chloroalkyl ethers	
bis (2-chloroethyl) ether	111-44-4
bis (2-chloroisopropyl) ether	108-60-1

bis (chloromethyl) ether	542-88-1
1,2-dichloropropane (propylene dichloride, PDC)	78-87-5
dichloropropenes	542-75-6
1,4-dioxane	123-91-1
halogenated ethanes	
1,2-dibromoethane (ethylene dibromide, EDB)	106-93-4
1,1-dichloroethane (1,2-DCA)	75-34-3
1,2-dichloroethane (ethylene dichloride, EDC)	107-06-2
1,1,1-trichloroethane (TCA)	71-55-6
1,1,2-trichloroethane (1,1,2-TCA)	79-00-5
1,1,2,2-tetrachloroethane	79-34-5
hexachloroethane	67-72-1
halogenated ethenes	
chlorinated ethene (vinyl chloride)	75-01-4
1,1-dichloroethene (1,1-DCE)	75-35-4
cis-1,2-dichloroethene (cis-1,2-DCE)	156-59-2
trans-1,2-dichloroethene (trans-1,2-DCE)	156-60-5
trichloroethene (trichloroethylene, TCE)	79-01-6
tetrachloroethene (perchloroethylene, PCE)	127-18-4
halogenated methanes	
bromodichloromethane	75-27-4
bromomethane	74-83-9
chloromethane	74-87-3
dichlorodifluoromethane (fluorocarbon-12)	75-71-8
dichloromethane (methylene chloride)	75-09-2
tribromomethane (bromoform)	75-25-2
trichloromethane (chloroform)	67-66-3
tetrachloromethane (carbon tetrachloride)	56-23-5
trichlorofluoromethane (fluorocarbon-11)	75-69-4
hexachlorobutadiene	87-68-3
isophorone	78-59-1
methyl tertiary butyl ether (MTBE)	1634-04-4

nitroaromatics and high explosives (HE)	
nitrobenzene	98-95-3
2,4-dinitrotoluene (2,4,DNT)	121-14-2
2,6-dinitrotoluene (2,6,DNT)	606-20-2
octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine (HMX)	2691-41-0
hexahydro-1,3,5-trinitro-s-triazine (RDX)	121-82-4
2,4,6-trinitrotoluene (TNT)	118-96-7
2,4-dinitro-o-cresol	534-52-1
dinitrophenols	51-28-5
nitrosamines	
N-nitrosodiethylamine	55-18-5
N-nitrosodimethylamine	62-75-9
N-nitrosodibutylamine	924-16-3
N-nitrosodiphenylamine	86-30-6
N-nitrosopyrrolidine	930-55-2
perchlorate	14797-73-0
perfluorinated chemicals (PFCs)	
perfluorohexane sulfonic acid (PFHxS)	355-46-4
perfluorooctane sulfonate (PFOS)	1763-23-1
perfluorooctanoic acid (PFOA)	335-67-1
pesticides	
aldrin	309-00-2
atrazine	1912-24-9
chlordane	57-74-9
DDT	50-29-3
dieldrin	60-57-1
endosulfan	115-29-7
endrin	72-20-8
heptachlor	76-44-8
hexachlorocyclohexane (HCH, lindane)	
alpha-HCH	319-84-6
beta-HCH	319-85-7
gamma-HCH	58-89-9
technical HCH	608-73-1

hexachlorocyclopentadiene	77-47-4
prometon	1610-18-0
toxaphene	8001-35-2
phenol	108-95-2
phthalate esters	
dibutyl phthalate	84-74-2
di-2-ethylhexyl phthalate (DEHP)	117-81-7
diethyl phthalate (DEP)	84-66-2
dimethyl phthalate (DMP)	131-11-3
polycyclic compounds	
benzidine	92-87-5
dichlorobenzidine	91-94-1
diphenylhydrazine	122-66-7
polychlorinated biphenyls (PCB's)	1336-36-3
polynuclear aromatic hydrocarbons (PAHs)	
anthracene	120-12-7
benzo-a-pyrene	50-32-8
3,4-benzofluoranthene	205-99-2
benzo (k) fluoranthene	207-08-9
fluoranthene	206-44-0
fluorene	86-73-7
naphthalene	91-20-3
1-methylnaphthalene	90-12-0
2-methylnaphthalene	91-57-6
phenanthrene	85-01-8
pyrene	129-00-0
thiolane-1,1-dioxide (sulfolane)	126-33-0

TABLE 2
20.6.2.3103 NMAC—GROUND WATER STANDARDS

Ground Water Contaminants (proposed)	CAS #
A. Human Health Standards	
Antimony (Sb)	7440-36-0
Arsenic (As)	7440-38-2
Barium (Ba)	7440-39-3
Beryllium (Be)	7440-41-7
Cadmium (Cd)	7440-43-9
Chromium (Cr)	7440-47-3
Cyanide (CN)	57-12-5
Fluoride (F)	16984-48-8
Lead (Pb)	7439-92-1
Total Mercury (Hg)	7439-97-6
Nitrate (NO ₃ as N)	NA
Nitrite (NO ₂ as N)	NA
Selenium (Se)	7782-49-2
Silver (Ag)	7440-22-4
Thallium (Tl)	7440-28-0
Uranium (U)	7440-61-1
Radioactivity: Combined Radium-226 & 228	NA
Benzene	71-43-2
Polychlorinated biphenyls (PCB's)	1336-36-3
Toluene	108-88-3
Carbon Tetrachloride	56-23-5
1,2-dichloroethane (EDC)	107-06-2
1,1-dichloroethylene (1,1-DCE)	75-35-4
1,1,2,2-tetrachloroethylene (PCE)	127-18-4
1,1,2-trichloroethylene (TCE)	79-01-6
ethylbenzene	100-41-4
total xylenes	1330-20-7
methylene chloride	75-09-2
chloroform	67-66-3
1,1-dichloroethane	75-34-3
ethylene dibromide (EDB)	106-93-4
1,1,1-trichloroethane (TCA)	71-55-6
1,1,2-trichloroethane	79-00-5
1,1,2,2-tetrachloroethane	79-34-5
vinyl chloride	75-01-4
PAHs: total naphthalene plus monomethylnaphthalenes	NA
benzo-a-pyrene	50-32-8
cis-1,2-dichloroethene	156-59-2

trans-1,2-dichloroethene	156-60-5
1,2-dichloropropane (PDC)	78-87-5
styrene	100-42-5
1,2-dichlorobenzene	95-50-1
1,4-dichlorobenzene	106-46-7
1,2,4-trichlorobenzene	120-82-1
pentachlorophenol	87-86-5
atrazine	1912-24-9
B. Other Standards for Domestic Water Supply	
Chloride (Cl)	16887-00-6
Copper (Cu)	7440-50-8
Iron (Fe)	7439-89-6
Manganese (Mn)	7439-96-5
Phenols	
Sulfate (SO ₄)	14808-79-8
Total Dissolved Solids (TDS)	TDS
Zinc (Zn)	7440-66-6
pH	
methyl tertiary-butyl ether (MTBE)	1634-04-4
C. Standards for Irrigation Use	
Aluminum (Al)	7429-90-5
Boron (B)	7440-42-8
Cobalt (Co)	7440-48-4
Molybdenum (Mo)	7439-98-7
Nickel (Ni)	7440-02-0