

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  
STATEMENT OF POSITION ON THE AMENDMENTS PROPOSED  
BY THE NEW MEXICO ENVIRONMENT DEPARTMENT

In response to the Revised Procedural Order dated June 2, 2017, Los Alamos National Security, LLC ("LANS"), operator of Los Alamos National Laboratory, hereby submits the following statement of position indicating its support of, opposition to, or no position taken on the amendments proposed by the New Mexico Environment Department ("NMED") in its Petition filed May 1, 2017.

**Non-substantive proposed amendments**

As an initial matter, LANS generally supports all of NMED's non-substantive proposed amendments, which include, but are not limited to, changes to section identification, formatting, numbering, and headings, in furtherance of NMED's goal of improved clarity in the Regulations.

**Substantive proposed amendments**

Each of NMED's substantive proposed amendments are addressed in turn below.

**1.     20.6.2.7 NMAC - *Definitions***

LANS supports the proposed addition of a definition for "discharge permit amendment" at 20.6.2.7.D(4) NMAC. LANS also supports the proposed amendment to the definition for "discharge permit modification" to take into account the new proposed definition for "discharge permit amendment."

LANS takes no position on NMED's proposed deletion of a portion of the definition of "hazard to public health" at 20.6.2.7.H.

NMED proposes to amend the definition of "toxic pollutant" at 20.6.2.7.T(2) by deleting the narrative definition, moving the narrative language to a new "Standards for Toxic Pollutants" section, and instead only referring to the list of toxic pollutants. Additionally, NMED has proposed to add several pollutants to the list of toxic pollutants. LANS generally supports this proposed amendment, although LANS is proposing to include Chemical Abstract Service (CAS) numbers for each toxic pollutant listed for ease of identification and reference.

**2.     20.6.2.1201 NMAC – Notice of Intent to Discharge**

LANS takes no position on the proposed amendments to this section.

**3.     20.6.2.1210 NMAC – Variance Petitions**

LANS takes no position on the proposed amendments to this section.

**4.     20.6.2.3103 NMAC – Standards for ground water of 10,000 mg/l TDS concentration or less**

NMED proposes to add language requiring a discharger to test for both filtered and nonfiltered portions of inorganic contaminants in the event that the Secretary determines that there is a reasonable probability of facilitated contaminant transport by colloids or organic macromolecules. LANS takes no position on this proposed amendment.

LANS takes no position on NMED's proposal to delete the introductory narrative language at 20.6.2.3103.A NMAC.

NMED proposes to amend the standards for ground water by making numeric standards for several of the listed contaminants more or less stringent, in part, to conform to the federal Maximum Contaminant Levels (MCL) for public water systems. LANS supports the proposed amendments conforming the numerical standards to the MCLs, but takes no position on the

remaining proposed changes to the numeric standards. LANS additionally is proposing to include the CAS numbers for each pollutant listed.

NMED proposes to move the narrative standard for toxic pollutants to this section, at 20.6.2.3103.A (2) NMAC. As noted above, LANS supports moving the narrative standard to this section for the purposes of increasing clarity in the Regulations.

LANS takes no position on NMED's proposed addition of a single-sentence narrative standard for non-aqueous phase liquids.

Lastly, in this section, NMED also seeks to add language regarding the amended numeric standards for particular contaminants. LANS takes no position on this.

**5.     *20.6.2.3105 NMAC – Exemptions from discharge permit requirement***

In Subsection A, NMED proposes to amend this portion of the Regulations to clarify that effluent treated or blended to meet standards prior to discharge is not exempt. LANS supports this proposed change, as it brings the Regulations in conformance with longstanding practice.

In Subsections L through O of this section of the Regulations, NMED's proposed amendment exempts activity subject to the authority of the Environmental Improvement Board or the federal Resource Conservation and Recovery Act. LANS generally supports this proposed amendment in furtherance of NMED's purpose of recognizing statutory exemptions in the Regulations.

However, LANS proposes the deletion of 3105.L and M, and revising the language of 3105.O, as set forth in greater detail in LANS' proposed amendments.

**6.     *20.6.3106 NMAC – Application for discharge permits, renewals, modifications, and amendments***

In 3106.C, NMED proposes to require that any request for modification of a discharge permit must include all of the elements of a discharge plan under 3106.D (1)-(8). NMED also proposes to add 3106.H, allowing a permittee to submit a request for discharge permit amendment to the department at any time during the term of a discharge permit. LANS takes no position on these proposed amendments.

Additionally, LANS proposes to reduce the time period for making a decision on whether a permit is required from 60 days to 30 days in 3106.B.

**7.     *20.6.2.3107 NMAC – Monitoring, reporting, and other requirements***

LANS supports NMED's proposed deletion of the language "or the presence of a toxic pollutant" at Subsection A(11). This change is necessary because of the moving of the narrative standard to 20.6.2.3103 NMAC.

**8.     *20.6.2.3108 NMAC – Public notice and participation***

LANS takes no position on NMED's proposed change to Subsection A, requiring NMED to notify an applicant of deficiencies within 15 days of the application being deemed administratively incomplete rather than within 15 days of receipt of the application.

LANS supports the proposed change at Subsection B(2) to add electronic mail to the ways in which written notification may be provided of a discharge.

LANS proposes additional amendments to this Section, as set forth in its proposed amendments.

**9.     *20.6.2.3109 NMAC – Secretary approval, disapproval, modification, amendment or termination of discharge permits, and requirements for abatement plans***

NMED proposes to add Subsection B, requiring NMED to either approve, approve with conditions, disapprove or request additional information within 30 days from a request for a

discharge permit amendment. LANS supports this amendment and proposes further changes to this section of the Regulation, as set forth in its proposed amendments.

In Subsection C, NMED proposes to amend the notice requirements, requiring that the Secretary give notice via certified mail of a permitting action taken and the reasons for doing so, as well as giving written notice of the action to all participating parties, irrespective of whether the parties requested a written copy. LANS supports this proposed change. In addition, as set forth in more detail in its proposed amendments, LANS proposes to amend 20.6.2.3109.C NMAC by requiring the Secretary to issue a response to comments received on the draft permit or proposed disapproval.

LANS supports NMED's proposed deletion of the language "or the presence of a toxic pollutant" at Subsection D(2), for the reasons discussed above.

At Subsection F, LANS supports NMED's proposed deletion of the language "or a toxic pollutant as defined in 20.6.2.7 NMAC is present." At Subsection F(4), NMED proposes requiring the Secretary, if a discharge permit is terminated, to notify a permittee in writing of the actions and the reasons for taking that action. LANS supports this proposed change.

Also at Subsection G, LANS supports NMED's proposed deletion of the language "or a toxic pollutant as defined in 20.6.2.7 NMAC is present."

**10. 20.6.2.3112 NMAC – Appeals of Secretary's decisions**

NMED seeks to include language that the Secretary's decision to approve an amendment would be subject to appeal. LANS supports this proposed amendment.

**11. 20.6.2.3114 NMAC – Fees**

LANS supports the proposed amendment to Subsection E, allowing the Secretary to waive or reduce fees for discharge permit amendments as well.

**12. 20.6.2.4103 NMAC – Abatement standards and requirements**

LANS takes no position on any of the amendments proposed to this Section. With respect to the proposed addition of a narrative abatement standard for “subsurface water contaminants” at Subsection B, LANS also takes no position, but asks that NMED consider clarifying whether it refers to abatement of contaminants found in soil, or in subsurface water that does not fall within the definition of ground water.

**13. 20.6.2.4104 NMAC – Abatement plan required**

LANS takes no position on the proposed amendments to this Section.

**14. 20.6.2.4105 NMAC – Exemptions from abatement plan requirements**

LANS takes no position on the proposed amendments to this Section.

**15. 20.6.2.4106 NMAC – Abatement plan proposal**

LANS takes no position on the proposed amendments to this Section, regarding extensions of time for Stage 2 abatement plans.

**16. 20.6.2.4108 NMAC – Public notice and participation**

LANS takes no position on the proposed amendments to this Section.

**17. 20.6.2.4109 NMAC – Secretary approval or notice of deficiency of submittals**

LANS takes no position on the proposed amendments to this Section.

**18. 20.6.2.4114 NMAC – Appeals from Secretary’s decisions**

LANS takes no position on the proposed amendments to this Section.

**19. 20.6.2.5004 NMAC – Prohibited underground injection control activities and wells**

LANS takes no position on the proposed change to Subsection A(4)(a), changing “contaminant” to “constituent or exhibit a physical parameter (which could include pH, redox condition or temperature).”

**20. 20.6.2.5005 NMAC – Pre-closure notification and closure requirements**

NMED seeks to add Subsection A(17), regarding a well plugging plan. LANS takes no position on this.

**21. 20.6.2.5006 NMAC – Discharge permits for Class V injection wells**

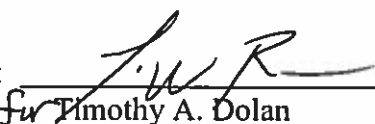
LANS takes no position on this proposed amendment. LANS notes, however, that the reference to 19.25.5 NMAC appears to be a clerical error, as this Section discusses forms and fees. LANS suggests that citation to 19.25.8 NMAC may be more appropriate.

Respectfully submitted,

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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, LLC's Statement of Position on the Amendments Proposed by the New Mexico Environment Department* was served via electronic mail or hand-delivered to the following:

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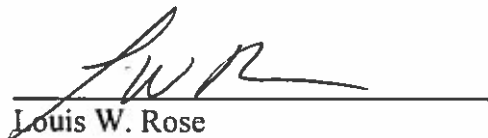
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