

**STATE OF NEW MEXICO
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
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY**

Los Alamos National Security, LLC ("LANS"), pursuant to 20.1.6.202 NMAC and the Revised Procedural Order, issued June 2, 2017, submits this Notice of Intent to Present Technical Testimony.

1. **Identify the person for whom the witness(es) will testify.**

Los Alamos National Security, LLC

2. **Identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background.**

LANS expects to offer the following technical witness at the hearing:

Robert S. Beers
Los Alamos National Security, LLC

Mr. Beers' qualifications and background are described in detail in his direct testimony.

3. **Include a copy of the direct testimony of each technical witness and state the estimated duration of the direct testimony of that witness.**

A copy of Mr. Beers' direct testimony is attached to this Notice. LANS anticipates that the duration of Mr. Beers' direct testimony will be approximately 30 minutes.

4. **Include the text of any recommended modification to the proposed regulatory change.**

LANS submitted proposed modifications to the New Mexico Environment Department's proposal on July 17, 2017. It submitted corrections to those modifications on August 7, 2017. LANS does not propose any further modification to the Department's proposal.

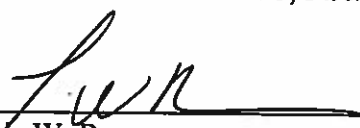
6. **List and attach all exhibits to be offered by the person at the hearing.**

LANS does not expect to offer any exhibits at the hearing.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: _____


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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2017, a true and correct copy of the foregoing *Los Alamos National Security, LLL's Notice of Intent to Present Technical Testimony* was served via electronic mail or hand-delivered to the following:

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Louis W. Rose

**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)

**DIRECT TESTIMONY OF ROBERT S. BEERS
LOS ALAMOS NATIONAL SECURITY, LLC.**

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**Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)**

I. INTRODUCTION

Q. Please state your name and business address.

A. Robert S. Beers. My business address is Los Alamos National Laboratory, Mail Stop K490, Los Alamos, New Mexico 87545.

Q. On whose behalf are you submitting direct testimony?

A. I am submitting this direct testimony on behalf of Los Alamos National Security, LLC ("LANS").

Q. By whom are you employed and what is your position?

A. I am currently employed by LANS as Environmental Professional 4.

Q. What are your responsibilities as Environmental Professional 4?

A. I support oversight and management of Los Alamos National Laboratory's ("LANL" or "Laboratory") ground water discharge permit programs. In this capacity, I provide advice, analysis, and assistance to plan, coordinate, and track groundwater discharge applications and compliance. My responsibilities include support in the preparation and management of LANL's ground water discharge permit applications to the New Mexico Environment Department ("NMED" or the "Department"). Once the permit is issued, I am also responsible for monitoring and reporting compliance with the terms set forth in LANL's groundwater discharge permits. I interact with the staff from the NMED Ground Water Quality Bureau regarding questions, issues, or compliance with permit requirements. I currently manage four of LANL's ground water discharge permits and one pending ground water discharge permit application.

Q. Please describe your experience with groundwater management before becoming Environmental Professional 4.

Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)

1 A. In total, I have approximately 22 years of experience as a staff member in environmental
2 project management at LANL. While I was a Masters student at the University of New
3 Mexico, I was employed by LANL as a Graduate Research Assistant. In this role, I
4 supported technical staff with Safe Drinking Water Act compliance. Upon graduation, I
5 obtained a technical staff position at LANL.

6 For the first several years of my career at LANL, I focused on the Safe Drinking
7 Water Act and New Mexico Water Quality Act compliance. At that time, DOE owned
8 and operated the water supply system for the County of Los Alamos. I was responsible
9 for sampling and reporting to the NMED Drinking Water Bureau. In this role, I gained
10 extensive experience with the federal Environmental Protection Agency's Maximum
11 Contaminant Levels and their implementation.

12 My exclusive focus for approximately the last twenty years has been on ground
13 water discharge permits issued by NMED. In this capacity, I support permit applications,
14 analysis of monitoring and sampling results, and preparation of reports submitted to
15 NMED. Recent permit applications I have been involved with are the applications for
16 DP-1793 (LANL's land application permit), DP-1835 (LANL's permit to operate
17 injection wells), and the pending application for DP-1132 (the discharge permit relating
18 to LANL's Radioactive Liquid Wastewater Treatment Facility). I also supported the
19 recent renewal of DP-857 (LANL's permit for domestic and industrial wastewater
20 facilities) and provide ongoing support of DP-1589 (LANL's permit for active septic
21 systems). My work on the applications for these permits, as well as my ongoing
22 compliance and reporting responsibilities, have given me a sound understanding of the

**Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)**

1 Water Quality Control Commission's ("WQCC" or "Commission") regulations and how
2 they are implemented within the regulated community.

3 **Q. Please summarize your educational experience.**

4 A. I have a Bachelor of Science degree in biology from Cornell University in Ithaca, New
5 York, as well as a Masters degree in Water Resources Administration from the University
6 of New Mexico.

7 **Q. Have you previously provided testimony before this Commission?**

8 A. Yes. I have provided testimony before this Commission in a proceeding involving a
9 challenge to DP-1793. I have also presented testimony before the NMED Secretary in
10 DP-1835, a public hearing involving a groundwater discharge permit application.

11 **II. PURPOSE OF TESTIMONY**

12 **Q. What is the purpose of your testimony?**

13 A. The purpose of my testimony is to provide the Commission with the technical bases for
14 LANS' proposed amendments to 20.6.2 NMAC.

15 **III. SUMMARY OF AND BASIS FOR LANS' PROPOSED CHANGES**

16 **1. Inclusion of CAS Numbers**

17 **Q. Please summarize LANS' proposed amendments to 20.6.2.7.T.2 (definition of toxic
18 pollutant) and 20.6.2.3103 (numeric standards for ground water).**

19 A. LANS proposes to add the Chemical Abstract Service Registry Number ("CAS
20 Number") for each pollutant currently listed at 20.6.7.WW and 20.6.2.3.3103, and those
21 proposed by NMED to be listed at 20.6.2.7.T.2 NMAC to create consistency and ease of
22 identification and reference. This proposed amendment is set forth in detail in numbered
23 paragraphs 1 and 3 of LANS' proposed changes and statement of reasons.

**Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)**

1 **Q. Please explain what a CAS number is, including how it ensures consistency and**
2 **assists with ease of identification and reference.**

3 **A. The CAS Registry is comprised of scientific data from patents, journals, and chemical**
4 **catalogs dating from 1957 to the present. The database is updated daily and considered**
5 **the most comprehensive collection of disclosed chemical substance information in the**
6 **world. Each substance in the CAS Registry is assigned a CAS Registry Number, a**
7 **unique, unmistakable, and, universally recognized identifier for every known chemical**
8 **substance.**

9 Reference to the CAS number, as opposed to the generic name provides an
10 unambiguous way to identify a chemical substance or molecular structure when there are
11 many possible alternative systematic, generic, proprietary or trivial names for that
12 substance. Inclusion of the unique CAS Number for each contaminant identified in the
13 regulations will serve to standardize references throughout the regulations. Using the
14 CAS number will also ensure for the Department, as well as the regulated community,
15 that regulated contaminants are properly and consistently identified and regulated. The
16 Commission identifies contaminants by CAS Number in the surface water standards in
17 20.6.4.900.J NMAC, the use-specific numeric criteria.

18 **2. Incorporation of Statutory Exemptions Into Regulations**

19 **Q. Please summarize and provide the basis for LANS' proposed additions to 20.6.2.10**
20 **NMAC and 20.6.2.3105 NMAC related to statutory exemptions.**

21 **A. The current regulations do not conform to the exemptions provided under federal statutes**
22 **and, in certain instances, fail to provide exemptions for certain activities and conditions**
23 **that are expressly exempted from the Commission's authority under the Water Quality**

Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)

1 Act, NMSA 1978, Section 74-6-12 (1999). To rectify this, LANS has set forth two
2 proposed changes. The basis for these proposals is set forth in paragraphs 2 and 4 of
3 LANS proposed changes and statement of reasons and summarized below.

4 *(a) Adoption of a new 20.6.2.10 NMAC*

5 First, LANS proposes to adopt a new 20.6.2.10 NMAC, providing that except as
6 set forth in Part 4 of the regulations, activities or conditions subject to the authority of the
7 Environmental Improvement Board under the Hazardous Waste Act, the Ground Water
8 Protection Act, the Solid Waste Act, or the authority of the Oil Conservation Commission
9 under the Oil and Gas Act are exempt from the regulations. This added language would
10 bring the regulations into conformity with the Water Quality Act, as these activities are
11 expressly exempted by statute from the Commission's authority. In addition, separating
12 these specific exemptions from the specific permitting and abatement exemptions, and
13 incorporating them in a separate section will better inform the regulated community and
14 the public on the scope of the regulations, without the need to review the Act, as well as
15 the regulations.

16 *(b) Amending 20.6.2.3105 NMAC*

17 Second, LANS proposes to amend 20.6.2.3105 NMAC by deleting subsections
18 3105.J and .M and revising subsection 3105.O. LANS' proposed addition of 20.6.2.10
19 NMAC would incorporate the statutory exemptions of the Water Quality Act (Section 74-
20 6-12). This addition would make the language of 20.6.2.3105.J (exempting leachate from
21 material disposed of under the Solid Waste Management Regulations adopted by the New
22 Mexico Environmental Improvement Board) and 3105.M (exempting effluent or leachate

**Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)**

1 discharges which are regulated by the Oil Conservation Commission pursuant to
2 statutorily-granted exclusive authority) redundant, and therefore, unnecessary.

3 LANS' proposed revision to 3105.O would clarify that activities regulated under
4 (1) the Solid Waste Disposal Act, 42 U.S.C. §§ 6091 to 6992k, and (2) the
5 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA),
6 42 U.S.C. § 9601 to 9675, are exempt from the regulations because these activities are
7 already subject to federal authority. Addition of this language will clarify the exemptions
8 for hazardous waste and solid waste, and also will extend the exemption to activities and
9 conditions already subject to regulation under the federal Solid Waste Disposal Act.
10 Similarly, with respect to federal CERCLA regulation, it is important to clarify that
11 duplicative regulation was not intended. Section 121(e)(1) of CERCLA (42 U.S.C. §
12 9621(e)(1)) specifically provides that "[n]o Federal, State, or local permit shall be
13 required for the portion of any removal or remedial action conducted entirely onsite,
14 where such remedial action is selected and carried out in compliance with [Section 121]."

15 Adding language to explain that activities conducted under these statutes are not
16 subject to the regulations will bring the regulations into conformity with statutory
17 authority. The added language recognizing statutory exemptions will also provide greater
18 clarity to the Department and the regulated community.

3. Revisions to Permit Application Procedures

20 **Q. Please summarize and provide the basis for LANS' proposed changes to 20.6.2.3106**
21 **and 20.6.2.3108 NMAC.**

22 **A.** The objective of these proposed changes is to better allocate the time allowed for review
23 of notices of intent and review for administrative completeness of an application for a

Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)

1 discharge permit, limit monitoring and reporting requirements to contaminants that have
2 a reasonable potential to be present in the effluent and provide increased transparency in
3 the permitting process. Based on my experience, I expect that these proposed changes
4 will benefit the Department, the regulated community, and the public by better allocating
5 review time, reducing unnecessary permit requirements, and providing the public and
6 regulated entities a better understanding of the permitting process. The basis for these
7 proposed amendments is set forth in numbered paragraphs 5 and 6 of LANS' proposed
8 changes and statement of reasons and is further elaborated on in turn below.

9 *(a) Determination of discharge permit requirement*

10 First, LANS proposes to reduce the time period in which the Department must
11 make a decision whether a discharge permit is required. The current time period is 60
12 days; LANS proposes a change to 30 days. Experience has shown that the 60-day time
13 period is unnecessarily long and that, in practice, the determination on whether a permit
14 is required is generally straightforward. Shortening the time period allowed for a
15 decision on a notice of intent will allow entities proposing a discharge for which no
16 permit is required to commence work more quickly. Where a permit is required, the
17 party will be provided notice sooner and can begin preparation of application for a
18 discharge permit, thereby expediting the process.

19 *(b) Determination of administrative completeness of application*

20 The second change that LANS proposes would increase the time allowed for the
21 Department to make a determination on whether an application is administratively
22 complete. LANS proposes increasing this period from 15 to 30 days. LANS believes
23 that 30 days is a more reasonable time period in which to determine whether an

Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)

1 application is complete. In practice, the Department often takes longer than 15 days to
2 reach a conclusion on completeness and, accordingly, a longer time period should be
3 provided to reflect practical considerations. Moreover, the 30-day completeness review
4 period is consistent with other Department permitting programs. For example, the
5 Department has 30 days to determine whether an application for a pre-construction air
6 permit is administratively complete. See 20.2.72.207.A NMAC ("The department shall,
7 within thirty (30) days after its receipt of an application for a permit or significant permit
8 revision, review such application and determine whether it is administratively
9 complete.").

4. Limitation of Monitoring and Reporting Requirements

11 **Q. Please summarize and provide the basis for LANS' proposed changes to**
12 **20.6.2.3108.H.**

13 **A.** LANS proposes two substantive amendments to 20.6.2.3108.H NMAC. The first
14 involves a requirement that the Department prepare a draft permit and that the draft
15 permit includes proposed effluent limitations or other conditions, and all proposed
16 monitoring, recordkeeping and reporting requirements. The second proposed change
17 involves preparation of either a statement of basis or, alternatively, a fact sheet for certain
18 draft permits prepared by the Department. The basis for these changes is set forth in
19 numbered paragraph 6 of LANS' proposed changes and statement of reasons and further
20 elaborated on in turn below.

(a) Inclusion of certain conditions and requirements in draft permits

22 The first amendment to this section is to subsection 3108.H(1). LANS proposes to
23 include a requirement that the Department prepare a draft permit, which includes

Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)

1 proposed effluent limitations or other conditions, and all proposed monitoring,
2 recordkeeping and reporting requirements. Importantly, these requirements would only
3 apply “to those pollutants that the Department determines are or may be discharged at a
4 level which will cause, have the reasonable potential to cause, or contribute to an
5 excursion above any standard of 20.6.2.3103 NMAC.”

6 The objective of this proposal is to limit monitoring and reporting requirements to
7 contaminants that have a reasonable potential of being in the permitted effluent. It is
8 LANS’ experience that even after submission of detailed process information and data
9 establishing the type and quantity of constituents within a proposed discharge, the
10 Department requires sampling and analysis for all contaminants listed in 20.6.2.3103 and
11 all toxic pollutants as currently defined in 20.6.2.7.WW. A recent example is Discharge
12 Permit DP-1835, issued to LANL on August 31, 2016. The application for that permit
13 identified seven contaminants that had the reasonable potential to be present in the
14 effluent. Those seven contaminants were identified based on extensive sampling,
15 modeling and process knowledge. Nevertheless, the Department required annual
16 sampling for all 48 contaminants listed in Section 3103 and all 93 toxic pollutants listed
17 at Section 20.6.2.7.WW.

18 Similar requirements are imposed in other ground water discharge permits issued
19 to LANL, and presumably in permits issued statewide. In the case of LANL, the majority
20 of the contaminants and toxic pollutants sampled for are constituents that never have
21 been, nor ever will be, used in any process at the Laboratory. The annual cost of
22 sampling, monitoring and reporting for these contaminants is approximately \$100,000 per
23 year.

Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)

Limiting monitoring, recordkeeping and reporting only to contaminants that have a reasonable potential of being present in effluent is more efficient for both the permittee and the Department because it eliminates unnecessary sampling and related analysis of results. At the same time, there is no increased threat to human health or the environment because if there is no reasonable potential for a given contaminant to be present in the effluent, then it is simply not present in the discharge. Overall, this proposed change would create a more cost-effective and streamlined compliance process.

LANS recognizes that for some processes or systems there may be reasonable potential for unexpected toxic pollutants or other contaminants to enter a waste stream. Examples include septic systems or sanitary wastewater treatment facilities that have numerous inputs from diverse sources. For those specific types of systems, including a broad suite of analytes in a discharge permit may be appropriate. However, reasonable potential should nevertheless be evaluated even where that analysis results in sampling requirements for numerous constituents.

(b) Statements of basis or fact sheets

LANS proposes preparation of either a statement of basis or, alternatively, a fact sheet for each draft permit prepared by the Department. LANS' proposal is drafted in such a way that requires a statement of basis for all draft permits for which no fact sheet is prepared. Fact sheets will be prepared by the Department at the discretion of the Secretary or upon request by the applicant. LANS' proposal would conform the discharge permit process to the process currently in place for hazardous waste permits under the Hazardous Waste Act, air permits under the Air Quality Control Act, and federal NPDES permits under the Clean Water Act.

Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)

1 The intent of this proposal is that statements of basis be prepared for the majority
2 of draft permits and that fact sheets be prepared for those draft permits that are likely to
3 be of interest to the public, that may be controversial, or that contain numerous and
4 complex conditions. Statements of basis and fact sheets illuminate the Department's
5 reasoning, provide clarity in the process, and clearly delineate the nature of the discharge
6 and the requirements imposed by the proposed permit. In addition to better informing all
7 parties interested in a draft permit, statements of basis and fact sheets will aid in the
8 creation of a more complete and defensible administrative record, which is useful in the
9 event the discharge permit is challenged.

10 Another benefit of statements of basis or fact sheets is the formalization of the
11 Department's decision making. In the Laboratory's experience as a permit applicant, we
12 frequently receive draft permits that include conditions that require some level of
13 interpretation to determine the nature of the requirement. In practice, these issues have
14 been resolved through informal calls, emails or meetings with the Department. However,
15 the public is not involved in these discussions and, over time, as the permit is
16 implemented and renewed, personnel changes at the Department and at the Laboratory
17 can result in different interpretations of the same conditions. Statements of basis or fact
18 sheets would set forth the Department's reasoning in a way that informs the public and
19 remains consistent regardless of the term of the permit and its subsequent renewals.
20 Statements of basis and fact sheets will also bring the WQCC's underground injection
21 control (UIC) program (20.6.2.5000-5363 NMAC) into compliance with permitting
22 requirements imposed by federal Safe Drinking Water Act (SDWA) regulations. Those
23 regulations require that states that are delegated authority to implement UIC programs

**Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)**

1 follow certain permitting protocols, including issuance of statements of basis and fact
2 sheets. 40 CFR § 145.11(a)(26) & (27); 40 CFR §§ 124.6 and 124.8. Currently, the
3 WQCC regulations do not require statements of basis or fact sheets and in practice, those
4 documents are not prepared by NMED. LANS' proposal fills the gap between federal
5 requirements and the WQCC's regulations.

6 Finally, the requirement to prepare statements of basis or fact sheets would not
7 impose undue burden on the Department. All of the analyses included in either document
8 necessarily are already performed by the Department on all applications because the
9 Department cannot grant or deny any discharge permit application without considering
10 the basis for approval or disapproval, the conditions included in the permit and the
11 reasons for the conditions, or the quantity and quality of the effluent. Providing that
12 information to the public and the applicant should not be overly burdensome, and could
13 ultimately save the Department time and resources by reducing informal contact between
14 the permittee and Department staff.

5. Written response requirement

16 **Q. Please summarize and provide the basis for LANS' proposed changes to**
17 **20.6.2.3109.C NMAC.**

18 **A.** LANS' final proposal would require the Department to prepare a written response to
19 comments on a draft permit or proposed disapproval at the time it makes a final decision
20 to approve, approve with conditions or disapprove the permit. The responses would state
21 specifically how the Department evaluated and addressed the comments to create a record
22 of how the Department arrived at its final decision. The basis for this proposed

Direct Testimony of Robert S. Beers
Case No. WQCC 17-03 (R)

1 amendment is set forth in numbered paragraph 7 of LANS' proposed changes and
2 statement of reasons and set forth in detail below.

3 Requiring the Department to submit a written response serves two primary
4 purposes. First, it conforms the ground water discharge permit process to other New
5 Mexico and federal environmental permitting programs, including the Department's
6 process for hazardous waste permits and EPA's process for NPDES, UIC¹ and RCRA
7 permits. Second, requiring the Department to provide a written response to comments
8 would allow commenters to better evaluate whether to challenge the Department's
9 decision and, if an appeal is pursued, can narrow the issues in dispute.

10 LANL's recent experience with Discharge Permit DP-1793 serves as an example
11 of how responses to comments may have avoided disputed issues. In that permit
12 proceeding, numerous comments were received, but no response was provided to the
13 commenters. The permit was challenged in an appeal to the WQCC and is now under
14 review by the New Mexico Court of Appeals. Though the focus of the appeal is on
15 whether a hearing should have been held, a written response to comments may have
16 narrowed the issues that may remain in any subsequent proceeding. A response to
17 comments by the Department explaining its reasoning may have avoided the added costs,
18 delays, and other hurdles of the appeal process, which would have benefited all parties
19 involved, including the Department.

20 **Q. Does this conclude your direct testimony?**

21 **A. Yes.**

¹ Like statements of basis and fact sheets, states delegated authority to administer UIC programs are required to respond in writing to comments. 40 CFR §§ 145.11(a)(31) and 124.17.