

**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)

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

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I. WITNESS BACKGROUND AND QUALIFICATIONS

Q. Please state your name and business address.

A. My name is 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 rebuttal testimony?

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

Q. Have you provided previous testimony in this case?

A. Yes, I provided direct testimony, which includes a summary of my qualifications and
experience; an explanation of my duties and responsibilities in my current position; and a
discussion of LANS' proposed changes. That testimony was submitted with LANS'
Notice of Intent to Present Technical Testimony, filed on September 11, 2017.

II. PURPOSE OF TESTIMONY

Q. Please describe the purpose of this rebuttal testimony?

A. I am responding to the direct testimony submitted by NMED and other parties to this
proceeding relating to NMED's proposed amendments to 20.6.2 NMAC and additional
changes submitted by the other parties. Specifically, I will address and rebut (1)
comments and proposals related to the addition of a definition of and process for
discharge permit amendments, and (2) comments and proposals related to toxic
pollutants.

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III. DISCHARGE PERMIT AMENDMENT

Q. Why is it necessary for the WQCC to provide an opportunity to amend a previously issued discharge permit?

A. Discharge permit applications are generally submitted prior to beginning construction and operation of a source and are usually based on anticipated water quality and engineering judgment, including expected pollutant removal efficiencies. During operation, changes in conditions and operational experience may necessitate changes to equipment, processes, or other facility components identified in a discharge permit that will have little or no impact on the discharge or the affected ground water. Permittees should be afforded the flexibility to make these changes in a timely manner without going through the lengthy and involved permit modification process. Based on current experience, permit modifications may take nine to twelve months to complete. That delay and the cost involved in procuring a modification are unnecessary and inconsistent with the insignificant impact of the above described minor changes to a discharge permit.

Q. Have you reviewed NMED's proposed amendment to 20.6.2.7 NMAC to add a definition for the term "discharge permit amendment" and proposed changes to 20.6.2.3106 NMAC and 20.6.2.3109 NMAC establishing procedures for processing discharge permit amendments?

A. Yes. I have reviewed the proposed language in NMED's Petition to Amend the Ground and Surface Water Protection Regulations filed May 1, 2017, and NMED's Notice of Amended Petition, filed July 27, 2017, as well as NMED's Statement of Reasons for the proposed amendments. I have also reviewed the written direct testimony of NMED's

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1 witness, Kurt Vollbrecht, addressing NMED's proposal to add a definition and
2 procedures for "discharge permit amendments."

3 **Q. Can you please summarize your understanding of NMED's proposal?**

4 A. NMED's proposal provides a defined process to permittees and the public for requested
5 amendments to existing permits that do not meet the regulatory definition of a "permit
6 modification." Under the proposed process, permittees will be timely authorized to make
7 changes at facilities that do not substantially effect the permitted discharge. The
8 Department is required to make a decision on an amendment within 30 days from receipt
9 of such request. *See* NMED's proposed 20.6.3109.B(1) NMAC. After the Department
10 renders its decision, interested members of the public are provided with notice of
11 amendment approvals or denials and have the opportunity to appeal those decisions. *See*
12 NMED's proposed 20.6.3.3109.C and 20.6.3.3112.A NMAC.

13 **Q Are the types of amendments that would constitute "permit amendments" under**
14 **NMED's proposal currently processed as permit modifications?**

15 A. No. As expressed in Mr. Vollbrecht's direct testimony, NMED Exhibit 13, the regulatory
16 definition of "discharge permit modification" does not encompass all permit changes at a
17 facility. It does not encompass changes that do not result in "significant" changes to the
18 quantity, quality, or location of the discharge. However, without a definition of
19 "significant" NMED is left to determine whether a requested change will have a
20 significant impact and thus necessitate the full public process of a permit modification.

21 Without an established formal process, NMED has adopted an informal practice
22 of issuing discharge amendments for these excluded types of changes that NMED
23 determines do not arise to a "significant impact". NMED's proposal to add process for

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1 requests for “discharge permit amendments” will in effect formalizes the NMED’s
2 longstanding practice, striking a reasonable balance between facility flexibility and the
3 public’s notice and the ability to challenge the department’s determination on an
4 amendment request. LANS believes that this proposed formal, defined process will be
5 beneficial to both permittees and the public. Accordingly, LANS recommends that the
6 WQCC adopt NMED’s proposed language providing for amendments to ground water
7 discharge permits.

8 **Q. Can you provide examples of requested changes to discharge permits LANS has**
9 **submitted to NMED that would have benefitted from this proposed process and**
10 **would not have been subject to the definition and process for “permit**
11 **modifications?”**

12 A. Based on my review, LANS has requested changes to discharge permits that did not meet
13 the definition of a “discharge permit modification,” on four occasions, each explained in
14 more detail below. Consistent with the examples provided in Mr. Vollbrecht’s testimony,
15 these requested amendments to LANS permits were not requests for a “discharge permit
16 modification” as defined under 20.6.2.7.P NMAC because they did not involve “a change
17 in the location of the discharge, a significant increase in the quantity of a discharge, [or] a
18 significant change in the quality of the discharge.”

19 The specific permits amendments LANL requested and were granted are as follows:

20 (i) A November 2016 change to DP-1589. DP-1589 authorizes discharge of
21 domestic wastewater to eleven septic tank-disposal systems throughout the facility and
22 specifies the buildings serviced by each system. The change eliminated two buildings
23 erroneously identified in the permit as being serviced by tank TA-33-0375;

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1 (ii) A March 2017 change to DP-1589. The change removed three septic
2 tank-disposal systems that were taken out of service;

3 (iii) An August 2017 change to DP-1589. The change revised Condition 10 of
4 the permit, which specified periodic inspections of the septic tanks and the criteria for
5 accumulated scum and solids requiring pumping the units. The revised condition
6 requires all septic tanks to be pumped annually to remove the accumulated scum and
7 solids; and

8 (iv), A July 2017 change to DP-1835. DP-1835 authorized the discharge of up
9 to 648,000 gallons per day of treated contaminated ground water from three extraction
10 wells as part of a plume control interim measure. The extracted ground water is treated
11 and then injected through six permitted Class V Underground Injection Control Wells.
12 The amendment eliminated the permit limit on the number of wells from which ground
13 water may be extracted. This permit change did not result in a change to the location,
14 quantity or quality of the permitted discharge.

15 **Q. Why in these examples would it have been problematic to provide the same process**
16 **that would have been required had the request been considered a permit**
17 **modification?**

18 A. Processing minor changes to discharge permits as permit modifications would likely be
19 impracticable for permittees or NMED. Processing these changes as discharge permit
20 modifications would require satisfaction of all public notice and participation
21 requirements contained in 20.6.2.3108 NMAC. Under those provisions, the permittee
22 must provide notice of its proposed modification by mail, posting signs and publication in
23 a newspaper of general circulation. The Department similarly must provide notice by

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1 written and electronic mail and by publication on its website. If the modification request
2 is approved, then NMED must again provide notice, open a period for public comment
3 and provide an opportunity for a public hearing.

4 Operational decisions often may result in changes being made to equipment,
5 processes or other facility components identified in a discharge permit, but that have no
6 effect on the quantity or quality of the discharge. Facility operators should be afforded
7 the flexibility to make these changes in a timely manner without going through the
8 lengthy and involved permit modification process, and possible curtailment or cessation
9 of operations. In the same vein, if NMED were to implement the modification process
10 for all changes to permits across the state, regardless of the effect on the discharge, the
11 increased workload would likely cause significant additional permitting delays.

12 **Q. What is your position on NMED's proposed amendment procedure?**

13 A. LANS supports NMED's proposal to provide for a codified amendment procedure to
14 allow for changes to ground water discharge permits that do not substantially change the
15 location of a discharge, increase the volume of a discharge beyond a prescribed amount,
16 increase an effluent limit or introduce a new water contaminant. LANS views the
17 proposed procedure as adoption of a tiered process similar to those contained in
18 numerous other environmental permitting regimes. A tiered permit process allows
19 timely administrative processing of relatively minor changes that have no impact to the
20 ground water resource and, for proposed changes that may substantially impact the
21 discharge, provides for full review, including public notice and comment and the
22 opportunity for a hearing.

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Q. Have you reviewed the modifications to the proposed definition of discharge permit amendment and process for applying that definition submitted by other parties to this proceeding?

A. Yes, I have reviewed the proposed language and respective written direct testimony related to that amendment.

Q. What is your opinion on the alternative language proposed by Amigos Bravos and GRIP?

A. Amigos Bravos (AB) and GRIP propose alternative permit amendment language in their Statement of Position on the [NMED] Petition to Amend the Ground and Surface Water Protection Regulations (20.6.2 NMAC) with Statement of Reasons and Proposed Changes (AB / GRIP Statement of Position). LANS opposes adoption of this language. Specifically, LANS is opposed to the following AB and GRIP proposals:

- “Option 1,” proposed at page 6 of their Statement of Position to adopt the language of 40 CFR §122.63, which governs minor modifications to EPA issued NPDES permits.
- The proposal at pages 16-18 of the AB / GRIP Statement of Position changing 20.6.2.3109 NMAC to make all of the notice, public comment and opportunity for hearing requirements that currently apply to permit applications and modifications applicable to a request for a permit amendment.

In my opinion, this proposed language will not provide operators with sufficient flexibility in making minor changes to permits, which defeats the purpose of adopting a discharge permit amendment process. Modern ground water discharge permits have

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1 become highly detailed, and typically include references to specific equipment and
2 descriptions of processes located upstream from the discharge. This level of detail is why
3 Option 1 is too narrow and unsuitable for New Mexico's ground water permitting
4 program.

5 For example, under AB and GRIP's language, only certain clerical changes,
6 increased monitoring, the elimination of outfalls and other limited activities may be
7 accomplished through an amendment. The language mirrors the minor permit
8 modification provision contained in the federal NPDES permitting regulations. However,
9 NPDES permits do not contain the comprehensive and substantial information or
10 conditions related to upstream processes and equipment. Accordingly, facility changes
11 that do not affect the discharge generally may be undertaken without the need for agency
12 oversight or a permit modification. Thus, this procedure proposed by AB and GRIP
13 would be ill-suited for NMED's detailed discharge permits.

14 For example, LANL's DP-1835 authorizes discharges from a system of six
15 injection wells that support work on a ground water contamination plume. The permit
16 also specifically identified three wells from which ground water may be extracted (these
17 wells are named CrEX-1, -2 and -3). Extracted water is treated to below ground water
18 standards and then discharged through the injection wells. As project planning evolved,
19 it became apparent that ground water extracted from the same aquifer, but from wells
20 other than the three identified wells, might need to be treated and injected through the
21 permitted injection wells to effectuate project objectives. Though the permitted location,
22 quantity, and quality of the discharge remained the same, the permit was changed so that
23 water from sources other than CrEX-1, -2 and -3 can be treated and injected. This change

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1 did not meet the WQCC's definition of discharge permit modification, but did require a
2 change to the language of the permit. NMED's proposed amendment procedure would
3 give the Department, the permittee and the public a defined process for these types of
4 minor changes.

5 LANS also disagrees with the proposal to make notice, comment, and hearing
6 procedures applicable to permit amendments. AB / GRIP Statement of Position, Pages
7 16-18. Adoption of this language would subject the amendment procedure, which is
8 designed to facilitate minor, non-substantive permit changes, to all of the procedural
9 requirements applicable to permit applications and modifications. This would simply
10 equate amendments with applications and modifications, thereby rendering the
11 amendment procedure superfluous.

12 NMED's proposal strikes a superior balance by requiring that notice of a request
13 for an amendment be provided to persons who have expressed interest in a facility by
14 signing up to a facility-specific list. This language requires notice to interested persons,
15 but still allows the Department and the permittee to make timely minor permit changes.
16 Importantly, decisions on amendments may be appealed to the WQCC. This proposal
17 makes the level of process proportionate to the minor nature of permit amendments.

18 Finally, LANS opposes language in the AB / GRIP Statement of Position that
19 proposes a once per year limitation on permit amendments. AB / GRIP Statement of
20 Position, Page 12. Because amendments by definition do not result in a change to the
21 location of a discharge, increase any effluent limit, add any new contaminants to the
22 effluent or substantially increase the volume of the discharge, there is no rational basis
23 for arbitrarily limiting amendments to once per year.

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Q. Do you have comments in support or opposition of any of the other proposals pertaining to the definition of discharge permit amendments?

A. I do not have comments on any other proposal.

IV. TOXIC POLLUTANTS

Q. Have you reviewed NMED's proposed amendment to 20.6.2.3103(a)(2) NMAC to add a narrative standard for toxic pollutants?

A. Yes. I have reviewed NMED's proposed language and statement of bases. I have also reviewed the direct written testimony of Dennis McQuillan, addressing this proposal. NMED's proposal incorporates changes proposed by LANS during the public outreach phase of this proceeding to clarify how toxic pollutants are addressed under the discharge permit program. The current definition identifies those pollutants that are treated as toxic pollutants and specifies, in narrative form, the level of those pollutants in groundwater that are allowed. In effect, the current definition establishes a narrative standard for those pollutants. NMED's proposal makes it clear that the narrative criteria in the definition are narrative groundwater standards and identifies all of the standards in one location.

Q. Have you reviewed the testimony of other parties related to NMED's proposed amendment?

A. Yes.

Q. Has that testimony changed LANS support of the NMED proposal?

A. No. LANS continues to support the proposal. However, LANS agrees with the Air Force that it would be beneficial to add a more defined process for deciding acceptable levels of a toxic pollutant. LANS is committed to work with NMED on the development of such a process.

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V. OTHER AMENDMENTS

Q. Have you reviewed the direct testimony of the other parties to this proceeding?

A. Yes.

Q. Has that testimony changed LANS' position on the NMED's proposed amendments?

A. No. LANS' position on the NMED proposed amendments has not changed from its position submitted in its Corrected Statement of Position on the Amendments Proposed by the New Mexico Environment Department, filed August 7, 2017.

CONCLUSION

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.