

**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**

WQCC 17-03(R)

**UNITED STATES AIR FORCE, DEPARTMENT OF DEFENSE
WRITTEN REBUTTAL TECHNICAL TESTIMONY OF SCOTT CLARK**

1 My name is Scott Clark and I am the Remedial Project Manager for Kirtland Air Force
2 Base (AFB) and the senior Restoration Lead for the New Mexico Air Force Installations. My
3 corrected direct testimony filed in this matter on October 3, 2017, ("USAF/DoD Exhibit 3"),
4 discusses proposed changes to Title 20, Chapter 6, Part 2 of the NMAC, titled the Ground and
5 Surface Water Protection Rules" ("Rules") that seek to streamline the permitting process and
6 eliminate confusion and redundancy in the Rules. My rebuttal testimony will focus on three
7 areas: (1) other party testimony and/or proposed changes to the Rules that involve the same or
8 similar issues as discussed in my direct testimony; (2) other party testimony and/or proposed
9 changes to the Rules not addressed in my direct testimony that we support; (3) other party
10 testimony and/or proposed changes to the Rules not addressed in my direct testimony that we
11 oppose.

12 **I. Other Party Proposed Changes Similar to USAF/DoD Proposed Changes**

13 As indicated in my direct testimony, we fully understand the need for permitting as a tool
14 to protect the environment as well as to demonstrate compliance, and we whole-heartedly
15 support the regulatory agencies' mission. My direct testimony discusses proposed changes to the
16 Rules that we believe will streamline the permitting process and eliminate confusion and
17 redundancy in current regulations and improve the regulations. Other parties have submitted
18 comments and testimony in this proceeding that involve the same or similar issues discussed in
19 my direct testimony.

20 Los Alamos National Security, LLC (LANS) comments and testimony propose
21 substantially the same comments on exceptions or limitations to the Rules as I discussed in my
22 direct testimony. Specifically, LANS proposes an exception to the Rules at 20.6.2.10 NMAC,
23 that is nearly identical to the provision offered by USAF/DoD except that LANS' proposed

1 provision has a slightly different reference to the Oil and Gas Act. *Compare* LANS September
2 11, 2017 Direct Testimony (“LANS Direct Testimony”) pg. 5, lns 5-15 *with* USAF/DoD Exhibit
3 3, pg. 4, lns 11-18. We support LANS’ proposed provision for the reasons articulated in its
4 direct testimony and our testimony on this issue. For clarification’s sake, however, we suggest
5 that USAF/DoD’s version be adopted because USAF/DoD reference is to the entire Oil and Gas
6 Act, not just a provision of that act.

7 LANS also proposes similar changes as USAF/DoD on 20.6.2.3105 NMAC. LANS
8 proposes the substantially the same changes as USAF/DoD to 20.6.2.3105.O NMAC, and
9 proposes to delete 20.6.2.3105.J & M NMAC. *See* LANS August 7, 2017 Corrected Proposed
10 Changes to Regulations and Statement of Basis (“LANS Corrected Changes”) at pg. 2; *see also*
11 LANS Direct Testimony at pg. 5-6 lns. 20-18. We believe that LANS proposed changes to
12 subsections J and M offer slightly better revisions to the Rules than suggested by USAF/DoD
13 and, thus we support LANS proposed deletion of these provisions for the reasons articulated in
14 their Direct Testimony and my Corrected Direct Testimony.

15 The New Mexico Municipal League Environmental Quality Association (“NMML”)
16 proposes changes to 20.6.2.3105.A NMAC that would expand upon changes proposed by NMED
17 relating to an exemption from discharge permit requirements. NMED proposes to limit this
18 exemption (20.6.2.3105.A NMAC) if treatment or blending is required to reach the standards.
19 NMML proposes to expand the exception to apply to recharge projects used to replenish the
20 aquifer where the source water is regulated by the federal Safe Drinking Water Act and meets all
21 drinking water standards and the source water chemistry is shown to be compatible with the
22 chemistry of the ground water. *See* NMML Notice of Intent to Present Technical Testimony,
23 Exhibit 6 at lns. 111-120. NMML explains that these changes are proposed to because when the

1 source water is drinking water, it is already highly regulated by the federal Safe Drinking Water
2 Act, and its proposed changes are similar to discharges permitted under the National Pollutant
3 Discharge Elimination System (NPDES) that do not require a discharge permit. *See* NMML
4 Notice of Intent to Present Technical Testimony, Exhibit 5 at pg. 4. NMML also proposes to
5 modify NMED's proposed changes to discharge permit requirements for certain injection wells
6 (20.6.2.5006 NMAC) for consistency with NMML proposed expansion of the exemption in
7 20.6.2.3105.A NMAC, to make monitoring requirements only apply to contaminants in the
8 source water, and allow the permittee the opportunity to reduce or eliminate sampling
9 requirements after a time. *See* NMML Notice of Intent to Present Technical Testimony, Exhibit
10 5 at p. 4; Exhibit 6 at lns. 122-132. USAF/DoD supports NMML's proposed changes to
11 20.6.2.3105.A and 20.6.2.5006 NMAC for the reasons articulated in NMML's testimony.

12 **II. Other Party Proposed Changes USAF/DoD Supports**

13 USAF/DoD also supports proposed changes to the Rules proposed by other parties that
14 involve issues that were not raised in my direct testimony. Specifically, LANS proposes several
15 changes to 20.6.2.3108.H, I & K, and 20.6.2.3109.C NMAC that are similar to those raised in
16 our July 21, 2017 Statement of Reasons for Proposed Changes. As we indicated in our
17 Statement of Reasons, changes such as these would be consistent with the NPDES permit
18 process, promote transparency, alleviate confusion and will likely lead to fewer conflicts and
19 disputes. LANS explains that these changes are proposed to help provide greater transparency,
20 and make it easier and better for the applicant, public and NMED to evaluate and interact on
21 issues related to permit determinations. *See* LANS Corrected Changes at pgs. 4-5. LANS also
22 explains that provisions are proposed to be added to subsection H to limit monitoring and
23 reporting requirements to contaminants that have a reasonable potential for being in permitted

1 effluent. *See* LANS Direct Testimony at pgs. 9-10, lns. 6-14. LANS claims that its proposed
2 changes to 20.6.2.3108.H(1) present no increased threat to human health and the environment
3 and would eliminate unnecessary sampling and related analysis, create a more streamlined, cost-
4 effective process. *See* LANS Direct Testimony at pg. 10, lns. 1-7.

5 LANS also proposes to include a requirement that NMED produce statements of basis
6 and fact sheets and the content to be contained therein in its proposed changes to
7 20.6.2.3108.H(2)-(3), as well as consistency edits to subsections H(4), I(3) & K. LANS explains
8 that statements of basis and fact sheets provide clarity and transparency about the process,
9 provide better information to interested parties, and may help avoid disputes. *See* LANS Direct
10 Testimony at pgs. 11-12, lns. 1-14. LANS also claims that statements of basis and fact sheets
11 would formalize NMED's decision-making, bring certain programs into compliance with federal
12 Safe Drinking Water Act regulations, and reduce strains on resources on both the regulator and
13 regulated community without imposing an undue burden on NMED. *Id.*

14 Similarly, LANS proposes that 20.6.2.3109.C NMAC be modified to require that NMED
15 provide a response to comments, which LANS explains would align the process with other New
16 Mexico and federal permitting programs, allow for greater transparency on how NMED arrived
17 at its decision and help avoid future disputes. *See* LANS Corrected Changes at pg. 5, *see also*
18 LANS Direct Testimony at pgs. 12-13, lns. 18-19. LANS proposed changes to 20.6.2.3108.H, I,
19 and K and 20.6.2.3109.C NMAC are aligned with AF/DoD's proposed changes to the Rules and
20 USAF/DoD's comments and testimony on duplicative permitting and reporting requirements.
21 USAF/DoD supports LANS proposed changes for the reasons specified in LANS Direct
22 Testimony.

1 Dairy Producers of New Mexico and Dairy Industry Group for a Cleaner Environment
2 (“Dairies”) propose changes to 20.6.2.4114 NMAC that appear to seek to improve on the Rules.
3 *See Dairies Notice of Intent to Present Direct Testimony, Exhibit A, pgs. 9-10.* Dairies argue
4 dispute resolution should be encouraged and the Rules should remove a disincentive to invoke
5 dispute resolution because a party may not be able to appeal a decision from that process. *Id.*
6 USAF/DoD believes that Dairies proposed changes to 20.6.2.4114 NMAC would help clarify the
7 Rules and we support for the reasons articulated in Dairies’ Direct Testimony.

8 **III. Other Party Testimony and/or Proposed Changes AF/DoD Opposes**

9 William C. Olson proposes changes to 20.6.2.4108 NMAC that would require public
10 notice and participation for proposals for alternative abatement plans or significant modifications
11 to stage 2 abatement plans. *See Olson Direct Testimony at pgs. 13-15.* Mr. Olson claims that the
12 procedures for reviewing alternative abatement standards provide insufficient public notice and
13 his proposed changes would allow more time for the public to review the content of alternative
14 abatement petitions. *See Olson Direct Testimony at p. 14-15.* Mr. Olson acknowledges that
15 NMED’s proposed changes to the Rules (at 20.6.2.4103(F)(5) NMAC) states that alternative
16 abatement standards are reviewed by the Commission in accordance with the variance petition
17 procedures, but seeks to add a provision to 20.6.2.4108 that Mr. Olson claims makes it clear that
18 hearings are before the Commission, not NMED. USAF/DoD believes that the alternative
19 abatement standards process need not be expanded as proposed by Mr. Olson. In addition, Mr.
20 Olson’s proposed additional provision relating to hearings is unnecessary as it is already covered
21 by the NMED’s Petition to change the Rules. Accordingly, USAF/DoD opposes Mr. Olson’s
22 proposed changes to 20.6.2.4108 NMAC.

1 William C. Olson also proposes to change to a provision to 20.6.2.3105.A NMAC that
2 would make the exception for effluent and leachate only apply if no toxic pollutants are present.
3 Mr. Olson claims that this may have been an inadvertent error and requested the change for
4 clarity and convenience sake. *See* William C. Olson, Notice of Intent to Present Expert
5 Testimony, Exhibit 1, Written Direct Testimony of William C. Olson (“Olson Direct
6 Testimony”) at p. 9. USAF/DoD believes NMED’s proposed change to this section was not an
7 inadvertent error and believe Mr. Olson’s changes would too severely limit the exception to the
8 Rule. Therefore, we oppose Mr. Olson’s proposed changes to 20.6.2.3105.A NMAC.

9 Thank you for your consideration. This concludes my written rebuttal testimony.

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2017, a true and correct copy of the Notice of Filing of Written Rebuttal Technical Testimony and attachments were served via electronic mail to:

Ms. Pam Castaneda, Administrator*
Water Quality Control Commission
Room N-2168, Runnels Building
1190 St. Francis Dr.
Santa Fe, New Mexico 87505
pam.castaneda@state.nm.us
*Originals, 2 hard copies and 10 electronic
copies also sent via Federal Express

New Mexico Environment Department
Office of General Counsel
John Verheul
Lara Katz
P.O. Box 5469
Santa Fe, New Mexico 87502
john.verheul@state.nm.us
lara.katz@state.nm.us

Pete Domenici
Lorraine Hollingsworth
Reed C. Easterwood
Domenici Law Firm, P.C.
320 Gold Ave. SW, Suite 1000
Albuquerque, NM 87102
pdomenici@domenicilaw.com
lhollingsworth@domenicilaw.com
reasterwood@domenicilaw.com

Louis W. Rose
Kari Olson
P.O. Box 2307
Santa Fe, NM 87504
lrose@montand.com
kolson@montand.com

Timothy A. Dolan
Office of Laboratory Counsel
Los Alamos National Laboratory
P.O. Box 1663, MS A187
Los Alamos, NM 87545
tdolan@lanl.gov

Rachel Conn
Projects Director
Amigos Bravos
P.O. Box 238
Taos, NM 87571
Rconn@amigosbravos.org

Dalva L. Moellenberg
1239 Paseo de Peralta
Santa Fe, NM 87501
DLM@gknet.com

Michael Bowen
Executive Director
1470 St. Francis Drive
Santa Fe, NM 87505
nmma@comcast.net

Jaimie Park
Douglas Meiklejohn
Eric Jantz
Jonathan Block
New Mexico Law Center
1405 Luisa Street, Suite 5
Santa Fe, NM 87505
ipark@nmelc.org
dmeiklejohn@nmelc.org

William C. Olson
14 Cosmic Way
Lamy, NM 87540
Billjeanie.olson@gmail.com

John Grubescic
Office of the Attorney General
Post Office Drawer 1508
Santa Fe, NM 87504-1508
jgrubescic@nmag.gov

William Brancard
Cheryl Bada
Energy, Minerals and Natural Resources
Department
1220 South St. Francis Drive
Santa Fe, NM 87505
bill.brancard@state.nm.us
cheryl.bada@state.nm.us

Stuart R. Butzier
Christina C. Sheehan
Modrall, Sperling, Roehl, Harris & Sisk,
P.A.
P.O. Box 2168
Albuquerque, NM 87103-2168
stuart.butzier@modrall.com
Christina.sheehan@modrall.com

Russel Church
NMML EQA Subsection
New Mexico Municipal League
P.O. Box 846
Santa Fe, NM 87504
rchurch@redriver.org



Michael L. Casillo, Litigation Attorney
AFLOA/JACE