

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'S NOTICE OF  
CORRECTED TECHNICAL TESTIMONY**

The United States Air Force, Department of Defense ("USAF/DoD") submits the attached corrected, abbreviated testimony of Mr. Scott Clark, to replace USAF/DoD Exhibit 3 to its Notice of Intent to File Expert Testimony filed in this matter on September 11, 2017. The attached abbreviated testimony deletes the comments contained in lines 1-19 of page 7 of Mr. Clark's previously filed testimony. USAF/DoD's Notice of Intent to File Expert Testimony and Exhibits 1, 2 & 4 thereto are to remain unchanged.

DATED this 3<sup>rd</sup> day of October 2017.

Respectfully submitted,

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*Attachment:*

*United States Air Force, Department of Defense Corrected Written Technical Testimony of Scott Clark*

## CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2017, a true and correct copy of the Notice of Corrected Technical Testimony were served via electronic mail to the following:

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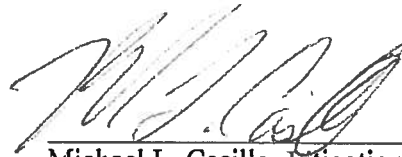
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**UNITED STATES AIR FORCE, DEPARTMENT OF DEFENSE  
CORRECTED WRITTEN TECHNICAL TESTIMONY OF SCOTT CLARK**

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. I have  
3   worked as a federal employee with the Air Force since 2006, and prior to that I worked as a  
4   contractor at Kirtland AFB for Engineering/Environmental Management (E2M). I am presenting  
5   this written testimony on the behalf of the United States Air Force, Department of Defense on  
6   the proposed amendments to ground and surface water protection for the State of New Mexico.  
7   My resume is attached to my testimony as **USAF/DOD Exhibit 4**.

8           I have a Bachelor's of Science in Environmental Management from Northeastern  
9   Oklahoma State University (1998) and that coursework included numerous courses in  
10   environmental regulatory compliance. I have 15+ years of experience in New Mexico working  
11   environmental compliance and environmental restoration issues for the Air Force. In this  
12   capacity, I have worked as the Kirtland AFB Air Quality Program manager, the Military  
13   Munitions Response Program manager, and have worked numerous environmental cleanup  
14   projects prior to moving into the Environmental Remedial Project Manager position. During my  
15   career, environmental permitting has been an ever-present companion and something that  
16   informs every aspect of the job from evaluating clean-up remedies to programming and  
17   budgeting of money to accomplish mission goals.

18           We fully understand the need for permitting as a tool to protect the environment as well  
19   as to demonstrate compliance, and we whole-heartedly support the regulatory agencies' mission.  
20   Our goal in testimony today is to provide comments that we believe will streamline the  
21   permitting process and eliminate confusion and redundancy in current regulations and hopefully  
22   improve the regulations.

Petitioner proposes changes to 20.6.2.3105.O that would exempt facilities or activities from the discharge permit requirement under the Water Quality Act, NMSA 1978 74-6-1 to – 17 (1963, as amended through 2013) (the “Act”) and Title 20, Chapter 6, Part 2 of the NMAC, titled the Ground and Surface Water Protection Rules” (“Rules”) that Petitioner claims are “designed to minimize the duplication of regulatory oversight and better reflect [ Section 74-6-12(B)].” *See* Petition, Attachment (“Atch”) 2, p. 24, lns 50-54 & Atch 3 at ¶ 9.

The statutory exemptions contained in Sections 74-6-12(B) & (G), however, apply to all the requirements under the Act, not just the discharge permit requirements. One of the three laws identified in the statutory exemption in Section 74-6-12(B) is Hazardous Waste Act, NMSA 1978, Sections 74-4-1 to -14 (1977, as amended through 2010). The Hazardous Waste Act authorizes the New Mexico Environmental Improvement Board to adopt rules for the management of hazardous waste necessary to protect human health and the environment. *See* NMSA 1978 § 74-4-4(A) (1977, amended 2010). The Hazardous Waste Act also requires that the permits issued for hazardous waste treatment, storage and disposal facilities contain “corrective action” provisions relating to clean-up of certain releases of hazardous wastes or hazardous constituents. *See* §§ 74-4-4(A)(5)(h) – (i) (2010) ;74-4-4.2(B) (2006). “Corrective action” is defined broadly, meaning “action taken in accordance with the rules of the board to investigated, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment.” *See* § 74-4-3(C) (2010). In addition, I understand the Hazardous Waste Act’s enforcement and compliance provisions authorize NMED to issue compliance orders, assess civil penalties of up to \$25,000/day, suspend or revoke permits, file an action in court, seeking injunctive and other relief and otherwise direct a party to take responsive action it deems necessary to protect human health and the environment. *See* § 74-4-10(A)-(C), (E) – (F)

1 (2001). Thus, the Hazardous Waste Act grants broad powers to NMED over facilities and  
2 entities regulated under the Hazardous Waste Act. In addition, as I explained earlier, I am ever  
3 mindful of environmental permitting requirements in every aspect of my duties, from evaluating  
4 clean-up remedies to programming and budgeting of money to accomplish mission goals. My  
5 experience has shown me that NMED exercises its broad corrective action powers it has under  
6 the Hazardous Waste Act to ensure the clean-up of releases of hazardous wastes or hazardous  
7 constituents at such facilities, including the type of activities addressed in the Rules.

8 DoD proposes to add a provision to the Rules, as Section 20.6.2.10 NMAC, which would  
9 streamline the permitting process and eliminate confusion and redundancy in the Rules. The  
10 language of this proposed added provision would read as follows:

11 *"20.6.2.10 LIMITATIONS: These regulations do not apply to:*

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

16 *B. Any activity or condition subject to the authority of the oil conservation commission*  
17 *pursuant to the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to - 38, or other laws conferring power*  
18 *on the commission to prevent or abate water pollution."*

19 To be clear, we fully understand the need for permitting as a tool to protect the  
20 environment as well as to demonstrate compliance, and we whole-heartedly support the  
21 Petitioner's mission. It is our position, however, that duplicative reporting and permitting  
22 requirements do not do not result in greater protection of the environment and human health.  
23 Instead, duplicative permitting and reporting requirements result in additional cost and staff time

1 for both the regulator and the regulated community. In addition, potentially competing  
2 requirements results in confusion amongst the regulated community as to whether and how the  
3 various environmental statutes and regulations apply to activities undertaken pursuant to another  
4 environmental statute such as corrective action under the Hazardous Waste Act, making the  
5 regulated community vulnerable to inadvertent noncompliance.

6 I respectfully suggest that the compliance redundancies are appropriately addressed by  
7 (1) ensuring that the proposed amendments to the Rules mirrors the text in Section 74-6-12(B) of  
8 the Act; and (2) the bureau with primary oversight of a cleanup be charged with internal  
9 coordination amongst the various compartmental units of the regulator. Such an approach will  
10 streamline the process and ensure that activities undertaken by the regulated community is  
11 protective of human health and the environment, without adding unnecessary layers of confusing  
12 and duplicative regulatory requirements.

13 DoD is open to other possible ways to improve on the drafting of the language of its  
14 proposed section 20.6.2.10 NMAC. In fact, for consistency and clarification purposes,  
15 subsection A of the proposed 20.6.2.10 NMAC could arguably also include a reference to the  
16 federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").  
17 Such a reference would arguably add clarity to the limits of the proposed regulation where  
18 federal laws apply. Again, the goal of such proposed changes is to streamline the permitting  
19 process and eliminate confusion and redundancy in the Rules.

20 Additionally, if the Rules are modified to add 20.6.2.10 NMAC (or substantially the same  
21 language), DoD also proposes changes to 20.6.2.3105.O NMAC to reflect these changes.  
22 Specifically, the Petition proposes changes to 20.6.2.3105.M and proposes to add subsections N  
23 & O to 20.6.2.3105 NMAC. Subsection M is an exemption from the discharge permit

1 requirement of the Rules for effluent or leachate discharges regulated under the Oil Conservation  
2 Commission Act and the regulations of the Water Quality Control Commission. Since DoD  
3 proposes to limit the application of the Rules to any activity or condition subject to the authority  
4 of the Oil Conservation Commission under the Oil and Gas Act, DoD's proposes to delete  
5 subsection M of 20.6.2.3105 because it would become duplicative and unnecessary. DoD also  
6 proposes to change what would become subsection N (proposed as subsection O in the Petition)  
7 from:

8 *"O. Any activity or condition subject to the authority of the environmental*  
9 *improvement board pursuant to the Hazardous Waste Act, NMSA 1978, §§ 74-4-1*  
10 *to -14, the Ground Water Protection Act, NMSA 1978, §§ 74-6B-1 to -14, or the*  
11 *Solid Waste Act NMSA 1978, §§ 74-9-1 to -25, or regulated under the federal*  
12 *Resource Conservation and Recovery Act, except to abate water pollution or to*  
13 *control the disposal or use of septage and sludge."*

14 to:

15 *"N. Any activity or condition regulated under the federal Resource*  
16 *Conservation and Recovery Act or the federal Comprehensive Environmental*  
17 *Response, Compensation and Liability Act."*

18 Similar to DoD's proposed language for its proposed addition of Section 20.6.2.10  
19 NMAC, we are open to other possible ways to draft this language. In fact, while DoD reserves  
20 all rights to comment, oppose, rebut or otherwise take any action concerning comments by other  
21 Parties on Petitioner's proposed changes to the Rules, DoD may be willing to support the Los  
22 Alamos National Security, LLC's proposed changes to 20.6.2.3105 NMAC.

1 Thank you for your consideration. This concludes my written testimony.