

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

Water Protection Division of the)
New Mexico Environment Department,)
Complainant,)
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v.)
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Cannon Air Force Base,)
Respondent.)
_____)

No. WQCC 20-08 (CO)

RESPONDENT’S MOTION FOR ADDITIONAL DISCOVERY

Pursuant to 20.1.3.19.I NMAC, the Respondent, Cannon Air Force Base (Cannon), requests the attached order (Atch. 1) authorizing Respondent to serve the attached interrogatories (Atch. 2). These interrogatories are necessary to collect information for Respondent to prepare a defense in response to the allegations and violations asserted in the Administrative Compliance Order (Compliance Order) the Complainant issued to Respondent subject to review in this matter. To date, the Complainant has not provided sufficient information for Respondent to prepare a defense and requests for admission and the production of documents are insufficient.

FACTUAL BACKGROUND

Cannon has operated under New Mexico Groundwater Discharge Permit Number 873 issued under the New Mexico Water Quality Act, NMSA 1978 §§ 74-6-1 to -17 (1967, as amended through 2019), since December 8, 1994. Administrative Compliance Order, Atch. 3 ¶ 10. On March 31, 2014, the Complainant issued the most recent renewal of Discharge Permit 873 (2014 Permit). *Id.* On September 10, 2018, Respondent timely submitted to the Complainant an application to renew the 2014 Permit. *Id.* ¶ 16; 20.6.2.3106.G NMAC. On

September 26, 2018, the Complainant found Respondent's renewal application to be administratively complete. *Id.* ¶ 16,

On December 21, 2018, the New Mexico Ground and Surface Water Protection Regulations (the Rules), 20.6.2 NMAC, were amended which added perfluorohexane sulfonic acid, perfluorooctane sulfonate, and perfluorooctanoic acid (PFCs) as toxic pollutants.

20.6.2.7.T(2)(s) NMAC; Atch 3 ¶ 8. On March 29, 2019, the Complainant issued a letter (the Letter) directing Respondent to submit a "discharge permit/renewal modification as soon and practicable but no later than April 28, 2019" based on the presence of perfluorinated chemicals in groundwater at Cannon. *See* Atch. 4. The Letter also notified Respondent that the Complainant considered Respondent to be out of compliance with the 2014 Permit and that the 2014 Permit "would not be considered administratively continued when it expires at midnight on March 31, 2019." *Id.*

In response to the Complainant's direction to submit a discharge permit/renewal modification in the Letter, on April 19, 2019, Respondent sought clarification regarding whether the Complainant was denying the September 10, 2018 renewal application or requesting additional information necessary to process the application. Atch. 5. Respondent raised procedural due process concerns and its legal effect. Respondent specifically did not understand the Complainant's direction to submit a discharge permit/renewal modification application for the 2014 Permit when Respondent had already submitted a renewal application that Complainant had found to be administratively complete. *See id.* On June 12, 2019, the Complainant clarified that information regarding PFCs was necessary to process the currently pending application that Respondent submitted on September 10, 2018. *See* Atch. 6.

On January 9, 2020, the Complainant served the Compliance Order. The Compliance Order alleged, in relevant part, the following:

The Bureau issued a renewal of Discharge Permit Number 873 ("DP-873") to Respondent on March 31, 2014, which subsequently expired on March 31, 2019;

PFCs have been detected in monitoring wells at and downgradient of Cannon Air Force Base in concentrations that violate the standard of 20.6.3.3103.A(2) NMAC. See paragraph 12 of this Order. PFCs have also been detected in monitoring wells associated with Respondent's Discharge Permit, indicating the likely presence of PFCs in the discharge;

The presence of PFCs in the discharge constitutes a significant change in discharge quality pursuant to 20.6.2.3106.C NMAC, requiring a Discharge Permit modification as defined in 20.6.2.7.D(4) NMAC, in addition to the renewal;

Since April 1, 2019, Respondent has been continually discharging effluent, which likely contains PFCs without a valid discharge permit.

Atch. 3 ¶¶ 10, 14, 19, 28. The Compliance Order also alleged the following violation of the Rules:

Violation 1: Respondent has continuously violated 20.6.2.3104 NMAC since April 1, 2019, by discharging effluent from Respondent's wastewater treatment facilities so that it could move directly or indirectly into groundwater without a discharge permit issued by NMED.

Violation 2: Respondent has violated 20.6.2.3106.C NMAC since amendments to 20.6.2 NMAC went into effect on December 21, 2018 by not submitting a complete permit renewal and modification application to address the "significant change in the quality of the discharge" (20.6.2.7.D(2) NMAC) associated with PFCs.

Id. ¶¶ 29, 30. The Compliance Order requested that Respondent submit "a complete Discharge Permit renewal and modification application" and assessed "a civil penalty in the amount of \$1,699,872.60 for the violations" *Id.* ¶¶ 31, 36.

On January 13, 2020, Respondent submitted the information regarding PFCs as directed in the Letter (Atch 4) and clarified in the Complainant's April 19, 2019 letter (Atch 6) in support of the September 10, 2018 renewal application for the 2014 Permit. *See* Atch. 7.

STANDARD FOR ADDITIONAL DISCOVERY

Discovery as of right for a compliance order hearing is limited to requests for admission and requests for the production of documents. 20.1.3.19.H NMAC. Interrogatories may be permitted by the hearing officer, however, upon finding: “(1) such discovery will not unreasonably delay the proceeding; (2) the information to be obtained is not otherwise reasonably available . . . and (3) there is a substantial reason to believe that the information sought will be admissible at the hearing or will be likely to lead to the discovery of admissible evidence.” 20.1.3.19.I(2) NMAC. A request for additional discovery must set forth: (1) the circumstances and necessity warranting the taking of the discovery, (2) the nature of the information expected to be discovered, and (3) the proposed time and place where the discovery will be taken. 20.1.3.19.I(1) NMAC. “Upon determining that a motion for additional discovery should be granted, the hearing officer shall issue an order for the taking of such discovery together with any conditions and terms of the additional discovery.” 20.1.3.19.I(3) NMAC.

ARGUMENT

The New Mexico Environment Department may issue a compliance order when “a person is violating a requirement, regulation or water quality standard adopted pursuant to the Water Quality Act.” NMSA 1978 § 74-6-10.A. A compliance order issued under the New Mexico Water Quality Act must “state with reasonable specificity the nature of the offense.” *Id.* § 74-6-10.C. In order to allow adequate preparation for a compliance order hearing parties are provided discovery rights. 20.1.3.19.D - .I NMAC.

The attached interrogatories are necessary here because the Complainant has not provided sufficient factual information and has not identified with clarity the legal basis for the violations alleged in the Compliance Order for Respondent to prepare a defense. Further, there

is substantial reason to believe that the interrogatories will produce evidence admissible at the hearing or will be likely to lead to the discovery of admissible evidence. The interrogatories seek information directly related to allegations in the Compliance Order and the Letter, and discovery as of right will not elicit all necessary information. For the reasons below, Respondent requests an order that the Complainant respond in writing to the attached interrogatories by June 25, 2020.

A. The Interrogatories Will Likely Lead to Admissible Evidence and Information Needed by Respondent For Its Defense to Violation 1.

Violation 1 of the Compliance order alleges that Respondent has been unlawfully discharging wastewater from Cannon’s wastewater treatment facilities without a required permit since April 1, 2019. The Complainant alleges that the 2014 Permit expired on March 31, 2019 because the Air Force was “out of compliance” with the 2014 Permit on that date. The Complainant has not provided Respondent a sufficient factual and legal basis for Respondent to prepare a defense.

The Rules provide:

If the holder of a discharge permit submits an application for discharge permit renewal at least 120 days before the discharge permit expires, and the discharger is not in violation of the discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved.

20.6.2.3106.G NMAC. The 2014 Permit thus did not expire on March 31, 2019 unless Respondent was violating the 2014 Permit on that date. *Id.* Therefore, the Complainant must show that Respondent was out of compliance with the 2014 Permit on March 31, 2019 to prove Violation 1. *Id.*

The Compliance Order does not identify how Respondent was out of compliance with the 2014 Permit. *See* Atch. 3 ¶¶ 1-28. The Compliance Order instead references the Letter and

notes that “the Bureau found Respondent out of compliance with its effective Discharge Permit at [that] time” but provides no further detail. *Id.* ¶ 21. Without further factual and legal information, Respondent does not know what facts and legal arguments the Complainant will present to prove that Respondent was “out of compliance” with the 2014 Permit. The Compliance Order’s reference to the Letter is not sufficient. Respondent does not know whether the Complainant intends to limit allegations of permit noncompliance to the information contained in the Letter. Respondent reasonably believes the Complainant is limited to the claims in the Letter. But, the Letter doesn’t prove the underlying alleged non-compliance. In order to prepare a defense, Respondent needs all information that the Complainant intends to use to support Violation 1 1.

Even if the Complainant intends to limit its factual and legal basis of permit noncompliance to the allegations in the Letter, Respondent cannot prepare a defense without further discovery. The Letter alleges that Respondent was out of compliance with Conditions 2 and 41 of the 2014 Permit. Atch. 4.

The Complainant seems to have abandoned the allegation in the Letter that Respondent was out of compliance with Condition 41. Condition 41 requires Respondent to provide a “corrective action” plan based on certain requirements under the regulatory requirements at 20.6.2.3107.A and 20.6.2.3109.E NMAC. Atch. 8. The Complainant’s clarification of the Letter, however, stated:

The intent of this permit renewal/modification application is not to address cleanup of contaminated soils or ground water. NMED may seek action by [Cannon] in the future and through a different regulatory authority.

Atch. 6 at 2. The Compliance Order does not allege any noncompliance with any regulatory corrective action requirements or permit noncompliance based on regulatory corrective action

requirements. In any event, the corrective action requirements referenced Condition 41 are triggered only if Respondent's discharge was *the cause of* certain violations of the Rules or exceedance of standards under 20.6.2.3103 NMAC. 20.6.2.3109.E NMAC ("If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicates that this part is being or may be violated or that the standards of 20.6.2.3103 NMAC are being or will be exceeded in ground water . . . *due to the discharge*") (emphasis added). Respondent cannot prepare a defense without the legal and factual basis supporting the allegation that Condition 41 of the 2014 Permit was violated.

Moreover, Condition 2 of the 2014 Permit is a general requirement that "the permittee shall operate in a manner such that standards and requirements of Sections 20.6.2.3101 and 20.6.2.3103 NMAC are not violated." Atch. 8 at X. Neither the Letter, nor the Compliance Order provide sufficient detail on how Respondent was out of compliance with this broad requirement. Respondent cannot prepare an adequate defense without the legal and factual basis supporting the allegation that Condition 2 of the 2014 Permit was violated. As such, the requested interrogatories seek information that will likely lead to the discovery of admissible evidence for the hearing.

B. The Interrogatories Will Likely Lead to Admissible Evidence and Information Needed by Respondent For Its Defense to Violation 2.

Violation 2 of the Compliance Order alleges that Respondent "violated 20.6.2.3106.C NMAC . . . by not submitting a complete permit renewal and modification to address the 'significant change in the quality of the discharge' [] associated with PFCs." Atch. 3 ¶ 30. The Complainant has not identified a legal basis for requiring Respondent to submit a renewal and modification application for the 2014 Permit when Respondent had already submitted an administratively complete application. The Rules provide the Complainant the authority to

request additional technical information necessary to process a permit renewal application. 20.6.2.3109.A. (“The department may request from the discharger, either before or after the issuance of any public notice, additional information necessary for the evaluation of the application.”). Respondent is not aware of any authority for the Complainant to require Respondent to submit a second renewal application. Respondent requires information regarding the legal authority supporting Violation 2 in order to prepare a defense.

Respondent also requires information regarding the Complainant’s allegation that there was a “significant change in the quality of discharge” from Cannon. The allegations in the Compliance Order note that groundwater sampling detected PFCs, but do not provide any facts regarding a change in the quality of the discharge from the water treatment plant at Cannon. Instead, the Complainant’s allegations suggest that any required renewal application was based on a change in the law adding PFCs as toxic pollutants rather than an actual change in the quality of Respondent’s discharge effluent. *See* Atch. 3 ¶ 8, 19. Respondent cannot prepare a defense without further information regarding the legal and factual support for the Complainant’s claim that there was a “significant change in the quality of discharge.”

As such, the requested interrogatories seek information that will likely to lead to the discovery of admissible evidence for the hearing.

C. Requests for Admission and Production of Documents Are Insufficient

Respondent cannot obtain the information sought in the attached interrogatories through requests for admission and the production of documents. The factual information that the Complainant believes supports their claims and the specific legal basis in support can only be fully developed through written responses to interrogatories or live witness inquiry. Taking one example: the factual predicate for Respondent’s alleged noncompliance with the 2014 Permit as

of March 31, 2019 could be far ranging. Limiting the scope of potential violations to the specific set of facts and applicable law requires some knowledge of the basis the Complainant intends to present in the hearing. Requests for admissions are clearly inadequate to this task and productions of documents alone will not prepare Respondent to answer specific factual allegations. Instead, responses to the attached interrogatories are necessary. Moreover, considering that the factual predicates for the Complainant's unexplained claims are far ranging, relying on subpoenas as contemplated under the Rules (20.1.3.19.G NMAC) for testimony and evidence at the hearing is insufficient because it will not afford Respondent the ability to adequately prepare. This need is heightened considering the amount of the civil money penalty sought in this case - \$1.7 Million.

D. Requested Interrogatories Will Not Unreasonably Delay the Hearing

Responding to the attached interrogatories will not unreasonably delay the administrative hearing. All of the attached interrogatories are directed at facts and legal claims advanced in the Compliance Order or the Letter. The Complainant should be able to provide written responses to these matters that the Complainant has already considered by June 25, 2020. Allowing the attached interrogatories would not delay the hearing. Indeed, it is likely that fully answered interrogatories may provide for a more streamlined, focused and shorter hearing.

CONCLUSION

There is a substantial likelihood that written responses to the requested interrogatories will lead to admissible evidence. The written responses to the attached interrogatories are also necessary for Respondent to prepare a defense in response to the violations alleged in the Compliance Order. The Complainant did not provide sufficient factual detail or identify a sufficient legal basis supporting the allegations. Discovery authorized as of right under 20.1.3.19

NMAC, requests for admission and the production of documents, for a compliance order hearing are insufficient for Respondent to identify the factual and legal basis supporting the Complainants allegations against Respondent. The interrogatories will not unreasonably delay the hearing. Respondent thus respectfully requests that you approve the attached order granting Respondent's request for discovery in the form of the attached interrogatories.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'M E Coon', is centered below the text 'Respectfully submitted,'.

Major Mark E. Coon, Regional Counsel
Air Force Legal Operations Agency
1492 First Street, Ste 213
Dobbins Air Reserve Base, Georgia 30069
Phone: 678-655-9535

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing United States Air Force's Motion for Additional Discovery was sent via email on May 14, 2020 to:

Cody Barnes, Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, New Mexico 87502

Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102



Signature: _____
Major Mark Coon

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**Water Protection Division of the
New Mexico Environment Department,
Complainant,**

v.

No. WQCC 20-08 (CO)

**Cannon Air Force Base,
Respondent.**

**ORDER GRANTING RESPONDENT'S
MOTION FOR ADDITIONAL DISCOVERY**

On May 14, 2020, the Respondent in this matter requested by written motion additional discovery in form of the interrogatories attached to the motion. Having considered Respondent's motion and the Complainant's response, for the reasons articulated in the accompanying memorandum opinion, Respondent's motion is hereby GRANTED.

IT IS THEREFORE ORDERED that the Complainant shall provide written responses to Respondent under the instructions provided in the interrogatories by June 25, 2020.

Hearing Officer

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

Water Protection Division of the)
New Mexico Environment Department,)
Complainant,)
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Cannon Air Force Base,)
Respondent.)
_____)

v.

No. WQCC 20-08 (CO)

RESPONDENT’S FIRST SET OF INTERROGATORIES TO THE COMPLAINANT

Pursuant to 20.1.3.19.I NMAC, Respondent, Cannon Air Force Base, propounds the following First Set of Interrogatories upon the Complainant, the Water Protection Division of the New Mexico Environment Department. Respondent requests that the Complainant respond to these Interrogatories as instructed by the Hearing Officer authorizing these Interrogatories under 20.1.3.19.I NMAC.

DEFINITIONS

All words in these Requests shall be read to have both their ordinary meaning and, where applicable, their meanings as defined in the New Mexico Water Quality Act, NMSA 1978 §§ 74-6-1 to -17 (1967, as amended through 2019), or Ground and Surface Water Protection Regulations, 20.6.2 NMAC (01/04/1968 as amended through 12/21/2018). The following definitions apply to the use of the following words or terms as used herein, whether or not capitalized.

1. “2014 Permit” means New Mexico Ground Water Discharge Permit Number 873, dated March 31, 2014.

2. “Compliance Order” means the Administrative Order Requiring Compliance and Assessing a Civil Penalty issued by Complainant to Respondent signed January 9, 2020.

3. “Document” and “documents” means documents as provided in 20.1.3.19(F)(1) NMAC.

4. “Include” and “including” shall mean “include without limitation” and “including without limitation,” respectively.

5. “Letter” means the March 29, 2019 correspondence between Complainant and Colonel Stewart Hammonds signed by Ms. Michelle Hunter.

6. “Person” and “Persons” mean “person” as defined in 20.6.2.7.P(2) NMAC.

7. “Permit Application” means Respondent’s September 10, 2018 application to renew the 2014 Permit, as determined by the Complainant to be administratively complete on September 26, 2018.

8. “PFCs” means perfluorinated-chemicals as defined under 20.6.2.7.T(2)(s) NMAC.

9. “Relating to,” “Referring to,” “Regarding,” “Concerning,” or “With respect to” refers to, without limitation, the following concepts: discussing, describing, reflecting, concerning, relating to, referring to, regarding, concerning, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.

10. “WQA” means the New Mexico Water Quality Act, NMSA 1978 §§ 74-6-1 to -17 (1967, as amended through 2019).

11. “You” and “Your,” unless otherwise indicated, mean the Complainant, as well as

any director, employee or former employee, independent contractor, agent, attorney or other Person acting or purporting to act on behalf of the Complainant.

GENERAL INSTRUCTIONS

1. Scope of Requests. These Interrogatories are directed to the Complainant and apply to all information and items within the knowledge, possession, custody, or control of the Complainant and any other agents, representatives and employees acting on behalf of the Complainant.

2. Supplemental Responses. These Interrogatories are continuing; supplemental productions must be provided pursuant to and in accordance with 20.1.3.19.D(3) NMAC.

3. Incomplete Response. If any Interrogatory cannot be answered fully, You shall provide as full an answer as possible and include:

- a. the reason for providing an incomplete answer.
- b. the responsive information currently available;
- c. the responsive information currently unavailable; and
- d. when You anticipate receiving the information currently unavailable.

4. Estimates. Interrogatories calling for numerical or chronological information shall be deemed, to the extent that precise figures or dates are not known, to call for estimates. In each instance that an estimate is given, it should be identified as such together with the source of information underlying the estimate.

5. Identification of an Organization. Whenever in these Interrogatories there is a request to identify a corporation, partnership, business trust or other association or business entity (including, but not limited to, a sole proprietorship), set forth the full name of the organization, the address and phone number of the organization's principal place of business, and its legal form (e.g., corporation (including state of incorporation), partnership, etc.), a brief

description of its business, and indicate whether or not it is still in existence and, if it is no longer in existence, explain how its existence was terminated and indicate the date on which it ceased to exist.

6. Identification of a Document. Whenever in these Interrogatories there is a request to identify a Document, set forth, for each Document, its date, type (e.g., letter, memorandum, chart, etc.), present location or custodian, Bates number(s), and title or description of the responsive information contained therein. If such Document is no longer in Your possession, custody, or Control, state what disposition was made of it. If You do not know, or cannot recall, whether particular responsive Documents exist, or if such Documents are missing, state the efforts that You or others made to ascertain their existence.

7. For each of the Interrogatories below, identify (i) each Person who provided You information upon which You based Your answer, (ii) the number of each interrogatory for which that Person provided You information upon which you based Your answer, and (iii) for any interrogatory that involved more than one Person providing You information upon which You based Your answer, each specific part(s) of the interrogatory that each Person was relied upon for Your answer.

8. To the extent that You withhold or redact any Documents or other information responsive to these Interrogatories provide a log in accordance with the requirements of in accordance with the requirements of § 20.1.3.19.F(2) NMAC. If You believe that any information requested by any of the following Interrogatories is privileged, please identify such information, state the privilege asserted, and state the facts giving rise to such privilege.

9. Document Production in Lieu of Written Response. Whenever a full and complete answer to any Interrogatory or part of an Interrogatory is contained in one or more

Documents, the Document(s), if properly identified as answering a specific numbered Interrogatory or part of an Interrogatory, may be supplied in place of a written answer, provided that the specific sections or pages from the Document(s) that are responsive to the Interrogatory are identified.

10. Relation to Particular Document Requests. For each Document produced, indicate the Interrogatory to which it responds.

11. Vague or Burdensome. It is anticipated that You may object to a particular discovery request as vague or burdensome. Respondent cannot always determine in advance which requests might truly be burdensome to You. It is anticipated that You will respond to all discovery requests to the best of Your abilities and in good faith, preserving any bona fide objections if necessary. It is further anticipated that You will attempt to obtain clarification or delimiting of Respondent's discovery requests from the undersigned (who stands ready and willing to do so) if the facts of the particular situation so require.

INTERROGATORIES

Interrogatory No. 1: Provide all of the facts supporting the allegation in the Letter that Respondent was "out of compliance" with Condition 2 of the 2014 Permit.

Interrogatory No. 2: Identify the legal basis supporting the allegation in the Letter that Respondent was "out of compliance with" Condition 2 of the 2014 Permit.

Interrogatory No. 3: Provide all of the facts supporting the allegation in the Letter that Respondent was "out of compliance" with Condition 41 of the 2014 Permit.

Interrogatory No. 4: Identify the legal basis supporting the allegation in the Letter that Respondent was "out of compliance with" Condition 41 of the 2014 Permit.

Interrogatory No. 5: Provide all of the facts supporting the allegation in the Letter that

Respondent was out of compliance with the 2014 Permit on March 29, 2019.

Interrogatory No. 6: Identify the legal basis supporting the allegation in the Letter that Respondent was out of compliance with the 2014 Permit on March 29, 2019.

Interrogatory No. 7: Provide all of the facts supporting the allegation in paragraph 10 of the Compliance Order that the 2014 Permit expired on March 31, 2019.

Interrogatory No. 8: Identify the legal basis supporting the allegation in paragraph 10 of the Compliance Order that the 2014 Permit expired on March 31, 2019.

Interrogatory No. 9: Identify all of the facts that support the allegation in Paragraph 15 of the Compliance Order that effluent discharge from the “Treatment Plant” contains “water contaminants such as nitrate, chloride, total Kjeldahl nitrogen, dissolved solids, PFCs, and dissolved metals.”

Interrogatory No. 10: Identify all of the facts supporting the allegation in paragraph 15 of the Compliance Order that the “water contaminants” identified in Interrogatory 9 may exceed the standards of 20.6.2.3103 NMAC.

Interrogatory No. 11: Provide all of the facts supporting the allegation in paragraph 19 of the Compliance Order that “the presence of PFCs in the discharge constitutes a significant change in the discharge quality.”

Interrogatory No. 12: Identify all effluent discharges from the “Treatment Plant” known to You to contain PFCs and the basis for such knowledge.

Interrogatory No. 13: Identify the legal basis supporting the allegation in paragraph 19 of the Compliance Order that “the presence of PFCs in the discharge constitutes a significant change in the discharge quality.”

Interrogatory No. 14: Provide all of the facts supporting the allegation in paragraph 28

of the Compliance Order that “[s]ince April 1, 2019, Respondent has been continually discharging effluent . . . without a valid discharge permit.”

Interrogatory No. 15: Identify the legal basis supporting the allegation in paragraph 28 of the Compliance Order that “[s]ince April 1, 2019, Respondent has been continually discharging effluent . . . without a valid discharge permit.”

Interrogatory No. 16: Provide all of the facts considered to determine the amount of the civil penalty assessed in paragraph 34 of the Compliance Order.

Interrogatory No. 17: Identify the legal basis supporting the amount of the civil penalty assessed in paragraph 34 of the Compliance Order.

Interrogatory No. 18: Identify the legal authority under which You ordered Respondent in the Letter to submit “a permit renewal/modification as soon as practicable but no later than April 28, 2019.”

Respectfully submitted,



Major Mark E. Coon, Regional Counsel
United States Air Force Legal Operations Agency
1492 First Street, Ste 213
Dobbins Air Reserve Base, Georgia 30069
Phone: 678-655-9535

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing United States Air Force's First Set of Interrogatories to the Complainant was sent on May 14, 2020 to:

Cody Barnes, Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, New Mexico 87502

Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102



Signature: _____
Major Mark Coon

STATE OF NEW MEXICO

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION

_____)
Water Protection Division of the)
New Mexico Environment Department,)
Complainant,)
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v.)
)
Cannon Air Force Base,)
)
Respondent.)
_____)

No.: GWQB ___-___ (CO)

ADMINISTRATIVE COMPLIANCE ORDER
REQUIRING COMPLIANCE AND ASSESSING A CIVIL PENALTY

Pursuant to the New Mexico Water Quality Act ("WQA"), NMSA 1978 Sections 74-6-1 to -17, and the Ground and Surface Water Protection regulations ("Regulations"), 20.6.2 NMAC, the Director of the Water Protection Division of the New Mexico Environment Department ("NMED") issues this Administrative Compliance Order ("Order") on behalf of NMED's Ground Water Quality Bureau ("Bureau" or "Complainant") to Cannon Air Force Base ("Respondent"). The purpose of this Order is to compel compliance and assess civil penalties for the Respondent's violations of the WQA and WQCC Regulations.

I. FINDINGS OF FACT

1. Pursuant to the NMSA 1978, Section 9-7A-4 (1991), NMED is an executive agency within the government of the State of New Mexico. Pursuant to NMSA 1978, Section 74-6-2(K)(1) (2003), NMED is a constituent agency of the New Mexico Water Quality Control Commission.

2. The Complainant is an organizational unit of NMED within its Water Protection Division. The Complainant was created pursuant to the authority granted to the Secretary of NMED under NMSA 1978, Section 9-7A-6(B)(3) (1991).

3. The WQA directs the New Mexico Water Quality Control Commission ("WQCC") to adopt water quality standards for ground waters of the state including narrative standards as appropriate as well as regulations to prevent water pollution in the state and govern the disposal of septage and sludge. NMSA 1978, § 74-6-4(D) and (E) (2019).

4. The purpose of the permitting regulations, 20.6.2.3101 to .3114 NMAC, is to protect all ground water of the state of New Mexico that has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply. 20.6.2.3101.A NMAC.

5. Pursuant to NMSA 1978, Section 74-6-10(A)(1) (1993), whenever, on the basis of any information, a constituent agency determines that a person violated or is violating a requirement, regulation, or water quality standard adopted pursuant to the WQA or a condition of a permit issued pursuant to that act, the constituent agency may issue a compliance order requiring compliance immediately or within a specified time period or issue a compliance order assessing a civil penalty.

6. Pursuant to NMSA 1978, Section 9-7A-6(B), the Secretary of NMED has every power expressly enumerated in the laws, whether granted to the secretary, the department, or any division of the department.

7. Pursuant to NMSA 1978, Section 9-7A-6(B)(2), the Secretary of NMED may delegate authority to subordinates as necessary and appropriate. Pursuant to a delegation of authority

from the Secretary of NMED, the Director of the Water Protection Division of NMED has the authority to issue Administrative Compliance Orders on behalf of the Complainant.

8. The WQCC adopted amendments to 20.6.2 NMAC, including the addition of three perfluorinated chemicals ("PFCs") -- perfluorohexane sulfonic acid ("PFHxS"), perfluorooctane sulfonate ("PFOS"), and perfluorooctanoic acid ("PFOA") -- to the toxic pollutants defined at 20.6.2.7.T(2) NMAC. These amendments became effective on December 21, 2018.

9. Respondent is a "person" as defined in Section 74-6-2(I) of the WQA and 20.6.2.7(P) NMAC.

10. The Bureau issued a renewal of Discharge Permit Number 873 ("DP-873") to Respondent on March 31, 2014, which subsequently expired on March 31, 2019. Respondent received its original discharge permit on December 8, 1994.

11. The discharge sites are located at Cannon Air Force Base, approximately seven miles west of Clovis, New Mexico within Sections 18, 19, 20 and 24, Township 02N, Range 35E and in Sections 12, 13, 24, 25, and 30, Township 02N, Range 34E, Curry County. The physical address is 100 Air Commando Way, Cannon Air Force Base, New Mexico, 88103.

12. On August 14, 2018, the USAF officially notified the NMED that PFCs had been detected in the groundwater at CAFB.

13. Respondent submitted a permit renewal application on September 10, 2018 proposing to discharge up 1,500,000 gallons per day ("gpd") of domestic and industrial wastewater from facilities at Cannon Air Force Base to a mechanical wastewater treatment plant and to fourteen septic tank leachfield systems. Under the permit issued March 31, 2014, treated wastewater may be stored in a four-acre synthetically lined impoundment, a partially lined golf

course impoundment, and a playa, and reclaimed wastewater from the golf course impoundment may be used to irrigate approximately 117 acres of turf.

14. PFCs have been detected in monitoring wells at and downgradient of Cannon Air Force Base in concentrations that violate the standard of 20.6.3.3103.A(2) NMAC. See paragraph 12 of this Order. PFCs have also been detected in monitoring wells associated with Respondent's Discharge Permit, indicating the likely presence of PFCs in the discharge.

15. Because of the nature of the discharge and the contamination disclosed by the USAF (see paragraph 12), the discharge contains water contaminants such as nitrate, chloride, total Kjeldahl nitrogen, dissolved solids, PFCs, and dissolved metals that may exceed the standards of 20.6.2.3103 NMAC.

16. The Bureau determined the application was administratively complete, pursuant to 20.6.23108(A) NMAC on September 26, 2018, and sent a letter to Respondent on October 24, 2018 with instructions to complete the public notice.

17. In order for the Bureau to prepare a draft discharge permit, an applicant must provide enough technical information for the Bureau to prepare a draft discharge permit. 20.6.2.3108.H NMAC.

18. Because Respondent's permit renewal application does not address the inclusion of PFCs, the application cannot be deemed technically complete pursuant to 20.6.2.3108.H NMAC, and the Bureau cannot prepare a draft discharge permit.

19. The presence of PFCs in the discharge constitutes a significant change in discharge quality pursuant to 20.6.2.3106.C NMAC, requiring a Discharge Permit modification as defined in 20.6.2.7.D(4) NMAC, in addition to the renewal.

20. On February 13, 2019, NMED Cabinet Secretary James Kenney verbally informed John Henderson, Assistant Secretary of the Air Force for Installations, Environment and Energy, that the September 10, 2018, permit application omitted information about PFCs that the USAF knew to be in the groundwater at Cannon Air Force Base.

21. On March 29, 2019, the Bureau notified Respondent in writing that the Bureau had not received a Discharge Permit renewal and modification application as necessitated by the likely presence of PFCs in the discharge, and that the Bureau found Respondent out of compliance with its effective Discharge Permit at the time. Therefore, pursuant to 20.6.2.3106.G NMAC, the effective DP-873 would not be considered administratively continued when it expired at midnight on March 31, 2019, and Respondent would be discharging without a permit pursuant to 20.6.2.3104 NMAC after that time.

22. In the same letter, the Bureau gave Respondent until April 28, 2019, to submit a permit renewal and modification application that includes information about the presence of the contaminants and a proposed treatment or other remedy.

23. On April 23, 2019, the Bureau received a Request for Clarification from Respondent that assumed that the Bureau was requesting mitigation of PFC contamination through the discharge permit and asking the Bureau to clarify if it was denying the permit renewal application or requesting additional information.

24. On June 12, 2019, the Bureau sent Respondent a response clarifying the Bureau's March 29, 2019 directive and extending the deadline for Respondent to submit a permit renewal and modification application to July 15, 2019.

25. On July 16, 2019, the Bureau received a Request for Extension from Respondent for

30 days to allow Respondent to review the Bureau's requested modifications to the permit application, take samples, and analyze the samples.

26. On July 22, 2019, the Bureau sent Respondent an Extension Approval and extended the deadline for Respondent to submit a permit renewal and modification application to August 8, 2019.

27. To date, Respondent has not submitted a complete permit renewal and modification application that addresses changes to the quality of its discharge because of the likely presence of PFCs.

28. Since April 1, 2019, Respondent has been continually discharging effluent, which likely contains PFCs, without a valid discharge permit.

II. VIOLATION

29. **Violation 1:** Respondent has continuously violated 20.6.2.3104 NMAC since April 1, 2019, by discharging effluent from Respondent's wastewater treatment facilities so that it could move directly or indirectly into groundwater without a discharge permit issued by NMED.

30. **Violation 2:** Respondent has violated 20.6.2.3106.C NMAC since amendments to 20.6.2 NMAC went into effect on December 21, 2018 by not submitting a complete permit renewal and modification application to address the "significant change in the quality of the discharge" (20.6.2.7.D(2) NMAC) associated with PFCs.

III. COMPLIANCE ORDER

31. Based upon the foregoing findings and conclusions, Respondent is hereby ordered to complete the following corrective actions in order to comply with the WQA and the WQCC Regulations:

Respondent shall submit a complete Discharge Permit renewal and modification application in accordance with 20.6.2.3106 NMAC and including data and provisions adequately addressing PFCs in its discharge no later than January 31, 2020. The application must be accompanied by the filing fee identified in 20.6.2.3114 NMAC.

32. The application and other associated documents or information to be submitted to the Bureau under the terms of this Order shall be sent to:

Michelle Hunter
New Mexico Environment Department
Ground Water Quality Bureau
P.O. Box 5469 – 1190 St. Francis Dr.
Santa Fe, New Mexico 87502 – 5469

33. Failure to comply with the requirements set forth in Paragraph 32 above may subject Respondent to the assessment of an additional civil penalty. Section 74-6-10(F) of the WQA authorizes the assessment of an additional civil penalty of not more than \$25,000 for each day of continued noncompliance if Respondent fails to submit an application as required by this Order. If Respondent fails to timely comply with the application requirements, NMED may seek to assess an additional civil penalty of not more than \$25,000 for each day of noncompliance.

IV. CIVIL PENALTY

34. Section 74-6-10(C)(1) (1993) of the WQA authorizes assessment of a civil penalty of up to \$15,000 per day for noncompliance with the provisions of Section 74-6-5 of the WQA, including a regulation adopted or a permit issued pursuant to that section.

35. Section 74-6-10(C)(2) (1993) of the WQA authorizes a civil penalty of up to \$10,000 per day for each violation of a provision of the WQA other than those based in Section 74-6-5.

36. NMED hereby assesses a civil penalty in the amount of \$1,699,872.60 for the violations set forth in Paragraphs 29-30 above. The penalty is based upon the penalty calculation narratives attached to this Order. *See Attachment 1.*

37. Payment of the civil penalty is due no later than 30 calendar days after this Order becomes final. Payment shall be made by certified or cashier's check payable to the State of New Mexico and mailed (certified) or hand delivered to the Bureau at the following address:

Michelle Hunter, Bureau Chief
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Dr., Suite N-2250
Santa Fe, New Mexico 87505

Written notification of the payment shall also be provided to the following address:

Christopher N. Atencio, Assistant General Counsel
Office of General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Facsimile: (505) 383-2064

V. NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

38. Pursuant to Section 74-6-10(G) of the WQA, Respondent has the right to answer this Order and to request a public hearing.

39. If Respondent: (a) contests any material or legal matter upon which the Order is based; (b) contends that the amount of the penalties proposed in the Order is inappropriate; (c) contends that Respondent is entitled to prevail as a matter of law; or (d) otherwise contests the appropriateness of the Order, Respondent may mail or deliver a written Request for Hearing and Answer to the Order to the WQCC, at the following address:

Cody Barnes, Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, New Mexico 87502
Telephone: (505) 827-2425

40. Respondent must file the Request for Hearing and Answer to the Order within 30 days after Respondent's receipt of the Order.

41. Respondent must attach a copy of this Order to its Request for Hearing and Answer to the Order.

42. A copy of the Answer and Request for Hearing must also be served on counsel for NMED at the following address:

Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102-3400

43. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

44. WQCC's Adjudicatory Procedures, 20.1.3 NMAC, shall govern the hearing if

Respondent requests a hearing.

VI. FINALITY OF ORDER

45. This Order shall become final unless Respondent files a Request for Hearing and Answer to the Order with the WQCC within 30 days of receipt of this Order.

46. The failure to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of the right to a hearing under Section 74-6-10(G) of WQA concerning this Order.

47. Unless Respondent requests a hearing and files an Answer, the penalty proposed in this Order shall become due and payable without further proceedings within 30 days after receipt of this Order.

VII. SETTLEMENT

48. Whether or not Respondent requests a hearing and files an Answer, Respondent may confer with NMED concerning settlement. NMED encourages settlement consistent with the provisions and objectives of the WQA and applicable WQCC Regulations. To explore the possibility of settlement in this matter, Respondent may contact the attorney assigned to this case at the following address:

Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Telephone: (505) 222-9554

49. Settlement discussions do not extend the 30-day deadline for filing of Respondent's Request for Hearing and Answer to the Order or alter the deadlines for compliance with this Order. Settlement discussions may be pursued as an alternative to and simultaneously

with the hearing proceedings.

50. Respondent may appear at the settlement conference alone or represented by legal counsel.

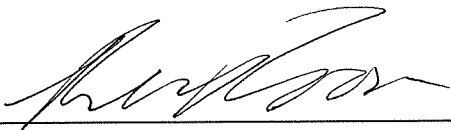
51. Any settlement reached by the parties shall be finalized by written settlement agreement and a stipulated final order. A settlement agreement and stipulated final order must resolve all issues raised in the Order, must be final and binding all parties to the Order, and may not be appealed.

VIII. COMPLIANCE WITH OTHER LAWS AND WAIVER

52. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

IX. TERMINATION

53. This Order shall terminate when Respondent certifies that all requirements of this Order have been met, and NMED has approved such certification, or when the Secretary approves a stipulated final order.



Rebecca Roose, Director
Water Protection Division
New Mexico Environment Department

Jan. 9, 2020

Date

CERTIFICATE OF SERVICE

I hereby certify that on January 09, 2020, a true and accurate copy of the Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty was served as indicated on Respondent at the following address:

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Col. Stewart A. Hammons, Commander
27th Special Operations Wing
Cannon Air Force Base
506 N Air Commando Way
Cannon AFB, New Mexico 88103-5214



Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department



MICHELLE LUJAN GRISHAM
Governor

HOWIE C. MORALES
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Ground Water Quality Bureau
1190 South St. Francis Drive (87505)
P.O. Box 5469, Santa Fe, New Mexico 87502-5469
Phone (505) 827-2900 Fax (505) 827-2965
www.env.nm.gov



JAMES C. KENNEY
Cabinet Secretary

JENNIFER J. PRUETT
Deputy Secretary

March 29, 2019

Col. Stewart A. Hammons, Commander
27th Special Operations Wing
Cannon Air Force Base
506 N Air Commando Way
Cannon AFB, NM 88103-5214

RE: Discharge Permit Renewal Application Incomplete; Amended Application Required for Discharge Permit Renewal/Modification, DP-873, Cannon Air Force Base

Dear Col. Hammons:

On August 14, 2018, the U.S. Air Force officially notified the New Mexico Environment Department (NMED) that perfluorinated chemicals (PFCs) had been detected in groundwater at Cannon Air Force Base (CAFB). On December 21, 2018, amendments to the New Mexico Ground and Surface Water Regulations took effect, including the inclusion of PFCs as toxic pollutants at 20.6.2.7.T(2)(s) NMAC.

On September 10, 2018, NMED received a groundwater discharge permit renewal application for CAFB. NMED reviewed the application in accordance with the New Mexico Ground and Surface Water Protection Regulations (20.6.2 NMAC). On February 13, 2019, John Henderson, Assistant Secretary of the Air Force Installations, Environment and Energy committed to the James Kenney, Cabinet Secretary, NMED, that CAFB would appropriately address applicable requirements associated with their disclosure of groundwater discharges of PFCs that caused contamination in groundwater. CAFB has not addressed applicable requirements in its DP-873 renewal application at this time. Therefore, the application remains incomplete.

Monitoring data indicate the presence of PFCs in the North Playa Lake, monitoring wells near the North Playa Lake, and soil near the Golf Course Impoundment. The submitted application fails to mention PFCs or to identify associated treatment to ensure no inappropriate discharges of PFCs. The presence of PFCs constitutes a significant change in discharge quality, pursuant to Subsection C of 20.6.2.3106 NMAC, requiring the permit renewal application to be resubmitted as a renewal/modification. Your

Stewart A. Hammons, DP-873

March 29, 2019

Page 2

renewal/modification application must provide information about the presence of the contaminants and propose an associated treatment or other remedy.

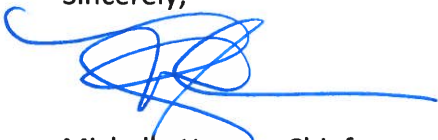
Additionally, NMED finds CAFB out of compliance with its effective Discharge Permit, dated March 31, 2014. CAFB is out of compliance with Conditions 2 and 41 of the Discharge Permit since PFCs, listed as toxic pollutants, were detected in samples collected from a monitoring well associated with the Discharge Permit. Since toxic pollutants were detected in groundwater samples, Condition 41 requires the permittee to enact the permit contingency plan (CP). The CP requires, in part, that within 60 days that the permittee will propose measures to ensure the presence of a toxic pollutant will be mitigated. To date NMED has not received a mitigation proposal.

Since CAFB failed to complete a revised application for a renewal/modification and because CAFB is out of compliance with its effective DP-873, the discharge permit will not be considered administratively continued when it expires at midnight on March 31, 2019.

Discharging without permit is a violation of 20.2.6.3104 NMAC and is subject to civil penalties. Civil penalties may be assessed for up to \$15,000 per day for each violation of the WQA § 74-6-5, any regulation promulgated pursuant to that section or any permit issued pursuant to that section. Civil penalties may also be assessed for up to \$10,000 per day for each violation of any other provision of the WQA, or any regulation, standard, or order adopted pursuant to such other provision.

Please submit the requested discharge permit renewal/modification as soon as practicable but no later than **April 28, 2019**. If you have any questions please contact Steve Pullen, Pollution Prevention Section Program Manager, at (505) 827-2965.

Sincerely,



Michelle Hunter, Chief
Ground Water Quality Bureau

MH:SP

cc: John Kieling, NMED-HWB
Chris Atencio, NMED-OGC
Steve Pullen, NMED-PPS
Chris Segura, AFCEC
John Olivarez, Cannon Air Force Base, john.olivarez@us.af.mil



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE LEGAL OPERATIONS AGENCY

April 19, 2019

Michelle Hunter, Chief
New Mexico Environmental Department
Ground Water Quality Bureau
1190 South St. Francis Drive
Santa Fe, NM 87505

Jodi M. Velasco, Major, USAF
Regional Counsel, Eastern Region
1492 First Street, Bldg. 922
Dobbins ARB, GA 30069

RE: Request for Clarification - Discharge Permit Renewal Application Incomplete; Amended Application Required for Discharge Permit/Modification, DP-873, Cannon Air Force Base

Dear Ms. Hunter,

The Air Force is in receipt of your letter dated March 29, 2019 addressed to Col Stewart Hammons, Commander, concerning the renewal of state groundwater discharge permit DP-873 as referenced above. Your office notified the Air Force in a letter received April 1, 2019 that NMED has let the existing permit expire as of March 31, 2019 without otherwise taking any affirmative administrative action, and, after previously notifying the Air Force in October of 2018 that the permit renewal was administratively complete September 26, 2018 (*See attached*). This raises issues of proper and timely notice, regardless of the change to the state's toxic pollutants list at 20.6.2.7.T (2)(s) NMAC.

Out of comity with the State, the Air Force has complied with the terms of the state groundwater discharge permit. However, we object to NMED's assertion that cleanup and assessment of historical perfluorinated chemicals (PFCs) is subject to mitigation under the permit rather than under the Federal CERCLA process. Cleanup under CERCLA initially identified PFCs related to previous fire training activities during the Site Inspection. For this reason, the Air Force does not intend to modify the renewal application to include a contingency plan. Your letter dated March 29, 2019 is unclear as to what action NMED is taking with regard to the permit renewal application, especially considering that we were previously notified that the application was administratively complete. We ask that you please clarify your position so that the Air Force may preserve any administrative appeal rights that it is entitled to under the New Mexico Ground and Surface Water Regulations. Specifically, is NMED denying the permit renewal pursuant to 20.6.2.3109 NMAC entitling the Air Force to an appeal under 20.6.2.3112 NMAC? Alternatively, is NMED simply requesting additional information pursuant to 20.6.2.3109(A) exclusive of the contingency plan mitigation request?

The Air Force is committed to protecting the environment, and it takes its environmental responsibilities seriously. We appreciate the opportunity to discuss clarification of NMED's position regarding Cannon Air Force Base's permit renewal.

Page 1 of 2

Please address your response and any future correspondence regarding this matter to my attention at the address provided above. Additionally, you can reach me at by phone at 678-655-9534 or by email at jodi.velasco@us.af.mil.

Very respectfully,



JODI M. VELASCO, Maj, USAF
Regional Counsel

Attachment:

New Mexico Environment Department Administrative Completeness Letter, dated October 24, 2018
(without attachments)



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Ground Water Quality Bureau
1190 South St. Francis Drive (87505)
P.O. Box 5469, Santa Fe, New Mexico 87502-5469
Phone (505) 827-2900 Fax (505) 827-2965
www.env.nm.gov



BUTCH TONGATE
Cabinet Secretary

BRUCE YURDIN
Acting Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

October 24, 2018

Colonel Stewart A. Hammons
Commander, 27th Special Operations Wing
Cannon Air Force Base
506 N Air Commando Way
Cannon AFB, NM 88103

RE: Administrative Completeness Determination and Applicant's Public Notice Requirements, DP-873 Cannon Air Force Base

Dear Colonel Hammons,

The New Mexico Environment Department (NMED) received a Groundwater Discharge Permit Application for the above referenced facility on September 10, 2018. Pursuant to Section 20.6.2.3108 NMAC of the New Mexico Ground and Surface Water Protection Regulations (20.6.2 NMAC), NMED determined on September 26, 2018, that your application is administratively complete.

Within 30 days of the date when the US Postal Service first makes notice to you of its possession of this letter, you must provide public notice. Instructions and materials needed to complete the public notice are enclosed.

Cannon Air Force Base, **DP-873**

October 24, 2018

Page 2

After NMED receives the completed proof of public notice, a technical reviewer will contact you if additional information is needed to process your application. If you have a deadline of concern in the interim or any questions, please call the Ground Water Quality Bureau at (505) 827-2900.

Sincerely,



For **Michelle Hunter**, Chief
Ground Water Quality Bureau

enc: Instructions for Completing Public Notice Requirements
Affidavit
Public Notice Flyer
Text for Newspaper Display Ad

cc: Crystal Chavez, Water Quality Program Manager, CAFB crystal.chavez@us.af.mil
April Griffith, Baer Engineering & Environmental Consultants, agriffith@baereng.com



**NEW MEXICO
ENVIRONMENT DEPARTMENT**



Ground Water Quality Bureau

1190 St. Francis Drive / PO Box 5469
Santa Fe, NM 87502-5469
Phone (505) 827-2900 Fax (505) 827-2965
www.env.nm.gov

Michelle Lujan Grisham
Governor

Howie C. Morales
Lieutenant Governor

James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

June 12, 2019

Jodi M. Velasco, Major, USAF
Regional Counsel, Eastern Region
1492 First Street, Bldg. 922
Dobbins ARB, GA 30069

RE: Response to Request for Clarification; Discharge Permit Renewal Application Incomplete; Amended Application Required for Discharge Permit/Modification, DP-873, Cannon Air Force Base

Dear Major Velasco,

This letter responds to the Air Force's April 19, 2019, request for clarification of a March 29, 2019, letter sent by the New Mexico Environment Department (NMED) to the Air Force concerning the renewal and modification of Cannon Air Force Base's (CAFB or Base) Groundwater Discharge Permit (DP-873 or Discharge Permit).

NMED holds that a principal objective of the Discharge Permit is to discontinue the distribution of all potential groundwater contaminants, including perfluorinated chemicals (PFCs), through the Base's wastewater treatment facility (WWTF) to the various discharge locations. CAFB's August 2018 Final Site Inspection Report titled *Site Inspection of Aqueous Film Forming Foam (AFFF) Release Areas* (Report) documents that PFCs were found in the North Playa Lake, monitoring wells near the North Playa Lake, the soils at the Golf Course, and all locations receiving or impacted by WWTF permitted discharges. The Report states at Section 3.6, "[c]urrently, all treated effluent from the WWTP [aka the WWTF] is released primarily to North Playa Lake with a portion also released to the golf course for irrigation. Since there is no proposed or accepted wastewater treatment process for PFAS [aka PFCs], any wastewater collected at the WWTP containing PFAS would be passed on to North Playa Lake."

To clarify NMED's March 2019 letter, NMED's current focus regarding the groundwater discharge permit application is the appropriate treatment and discharge of wastewater to the environment. NMED requests that CAFB revise its application to describe the following:

- CAFB's current use of PFC containing materials;

Major Jodi M. Velasco

June 12, 2019

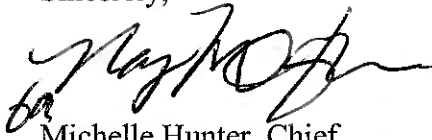
Page 2 of 2

- how the PFC containing materials will arrive at the WWTF and the origin of those materials, e.g., sanitary sewer from Hanger XXX;
- the concentration of PFCs in the above referenced materials and the volume of the materials typically in WWTF influent;
- the concentration of PFCs in the CAFB water supply and typically in WWTF influent;
- how the CAFB will eliminate the PFCs discharged from the WWTF (note that NMED believes there are acceptable wastewater treatment process for PFCs);
- how CAFB will demonstrate that PFCs are no longer in the WWTF effluent; and
- all other non-WWTF locations potentially receiving a discharge with PFC containing liquids.

The intent of this permit renewal/modification application is not to address cleanup of contaminated soils or groundwater. NMED may seek action by CAFB in the future and through a different regulatory authority.

Please submit the requested discharge permit renewal/modification application information to the Ground Water Quality Bureau (GWQB) as soon as practicable, but no later than **July 15, 2019**. If you have any questions, please contact Steve Pullen, Pollution Prevention Section Program Manager, at (505) 827-2965.

Sincerely,



Michelle Hunter, Chief
Ground Water Quality Bureau

MH:SP

cc: Chris Atencio, NMED-OGC
John Kieling, NMED-HWB
Steve Pullen, NMED-GWQB
Rebecca Roose, NMED-WPD



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE LEGAL OPERATIONS AGENCY

October 11, 2019

Ms. Michelle Hunter, Bureau Chief
Ground Water Quality Bureau (GWQB)
New Mexico Environment Department (NMED)
1190 St. Francis Drive
P.O. Box 5469
Santa Fe NM 87502-5469

Jodi M. Velasco, Major, USAF
Regional Counsel, Eastern Region
1492 First Street, Bldg. 922
Dobbins ARB, GA 30069

Dear Ms. Hunter

I am writing to update you on our sampling for PFAS constituents at the Waste Water Treatment Facility (WWTF) at Cannon AFB, as discussed in our August 8, 2019 letter to you. As discussed in that letter, samples were obtained at the influent and effluent locations of the WWTF on August 29, 2019. The samples were analyzed utilizing EPA Method 537.1. The sampling results are currently undergoing data verification and data validation for quality assurance purposes. We anticipate receipt of the validated data set within the next several weeks. When we receive these results, we will consult with you to determine the appropriate path forward.

We appreciate your patience and the opportunity to work with NMED through this process. If you have any questions or concerns, please do not hesitate to contact me at the address above, by phone at 678-655-9534, or by email at jodi.velasco@us.af.mil.

Sincerely


JODI M. VELASCO, Maj, USAF
Regional Counsel



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Ground Water Quality Bureau

Harold Runnels Building
1190 St. Francis Drive
P.O. Box 5469, Santa Fe, New Mexico 87502-5469
Phone (505) 827-2855 Fax (505) 827-2965
www.nmenv.state.nm.us



RYAN FLYNN
Secretary

BUTCH TONGATE
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 31, 2014

Colonel Tony D. Bauernfeind, Commander, 27th Special Operations Wing
Cannon Air Force Base
100 S Air Commando Way, Suite 100
Cannon AFB, NM 88103-5214

RE: Discharge Permit Renewal and Modification, DP-873, Cannon Air Force Base

Dear Col. Bauernfeind:

The New Mexico Environment Department (NMED) issues the enclosed Discharge Permit Renewal and Modification, DP-873, to Cannon Air Force Base (permittee) pursuant to the New Mexico Water Quality Act (WQA), NMSA 1978 §§74-6-1 through 74-6-17, and the New Mexico Water Quality Control Commission (WQCC) Regulations, 20.6.2 NMAC.

The Discharge Permit contains terms and conditions that shall be complied with by the permittee and are enforceable by NMED pursuant to Section 20.6.2.3104 NMAC, WQA, NMSA 1978 §74-6-5 and §74-6-10. Please be aware that this Discharge Permit may contain conditions that require the permittee to implement operational, monitoring or closure actions by a specified deadline. Such conditions are listed at the beginning of the operational, monitoring and closure plans of this Discharge Permit.

Issuance of this Discharge Permit does not relieve the permittee of the responsibility to comply with the WQA, WQCC Regulations, and any other applicable federal, state and/or local laws and regulations, such as zoning requirements and nuisance ordinances.

Pursuant to Paragraph (4) of Subsection H of 20.6.2.3109 NMAC, the term of the Discharge Permit shall be five years from the effective date. The term of this Discharge Permit will end on March 31, 2019.

Col. Tony D. Bauernfeind, DP-873

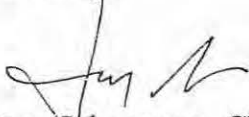
March 31, 2014

Page 2

NMED requests that the permittee submit an application for renewal (or renewal and modification) at least 180 days prior to the date the Discharge Permit term ends.

If you have any questions, please contact Naomi Davidson at (505) 827-2936. Thank you for your cooperation during this Discharge Permit review.

Sincerely,



Jerry Schoeppner, Chief
Ground Water Quality Bureau

JS:ND

- Encs: Discharge Permit Renewal and Modification, DP-873
Ground Water Discharge Permit Monitoring Well Construction and Abandonment
Conditions, Revision 1.1, March 2011
Land Application Data Sheet (LADS; also available at the following website:
<http://www.nmenv.state.nm.us/gwb/forms/NewMexicoEnvironmentDepartment-GroundWaterQualityBureau-Forms.htm>)
Fertilizer Log
- cc: Bill Chavez, District Manager, NMED District I (permit – electronic copy)
NMED Clovis Field Office (permit)
John Romero, Office of the State Engineer (permit – electronic copy)
John Rebman, Cannon Air Force Base, 506 N Air Commando Way, Cannon AFB, NM
88103 (permit/enclosures)

GROUND WATER DISCHARGE PERMIT RENEWAL AND MODIFICATION
Cannon Air Force Base, DP-873

I. INTRODUCTION

The New Mexico Environment Department (NMED) issues this Discharge Permit Renewal and Modification (Discharge Permit), DP-873, to Cannon Air Force Base (permittee) pursuant to the New Mexico Water Quality Act (WQA), NMSA 1978 §§74-6-1 through 74-6-17, and the New Mexico Water Quality Control Commission (WQCC) Regulations, 20.6.2 NMAC.

NMED's purpose in issuing this Discharge Permit, and in imposing the requirements and conditions specified herein, is to control the discharge of water contaminants from the Cannon Air Force Base Wastewater Treatment Plant and septic tank/leachfield systems (facility) into ground and surface water, so as to protect ground and surface water for present and potential future use as domestic and agricultural water supply and other uses and protect public health. In issuing this Discharge Permit, NMED has determined that the requirements of Subsection C of 20.6.2.3109 NMAC have been or will be met. Pursuant to Section 20.6.2.3104 NMAC, it is the responsibility of the permittee to comply with the terms and conditions of this Discharge Permit; failure may result in an enforcement action(s) by NMED (20.6.2.1220 NMAC).

The activities which produce the discharge, the location of the discharge, and the quantity, quality and flow characteristics of the discharge are briefly described as follows:

Up to 1,500,000 gallons per day (gpd) of domestic wastewater is received and treated using a mechanical wastewater treatment plant (WWTP). Wastewater may be stored in a four-acre synthetically lined impoundment adjacent to the WWTP prior to treatment. Treated wastewater (reclaimed wastewater) is stored in a second four-acre synthetically lined impoundment adjacent to the WWTP, a partially synthetically-lined golf course impoundment, and a playa lake. From the golf course impoundment, reclaimed wastewater and stormwater is land applied by sprinkler irrigation to 108 acres of golf course turf, 7.5 acres of golf driving range turf, 1.5 acres of softball fields, and a 0.17 acre dog park. Reclaimed wastewater is also used at the facility on a temporary basis for dust control and construction purposes. Discharge of treated wastewater to the playa lake (Outfall 001) and the golf course impoundment (Outfall 002) is also regulated under EPA NPDES Permit NM0030236.

Up to 7,500 gpd of domestic wastewater is also discharged from separate buildings at Cannon Air Force Base to sixteen existing septic tank leachfield systems (ST/LF systems) and to ST/LF systems and holding tank systems to be designed and constructed in the future. A combined total discharge in excess of 7,500 gpd to the ST/LF and holding tank systems is not authorized.

The modification consists of an increase in the maximum daily discharge volume to the WWTP from 1,300,000 gpd to 1,500,000 gpd, an increase in the maximum daily discharge volume to the ST/LF systems from 5,000 gpd to 7,500 gpd, and an increase in the number of ST/LF systems from eight to sixteen.

The discharge contains water contaminants which may be elevated above the standards of Section 20.6.2.3103 NMAC and/or the presence of toxic pollutants as defined in Subsection WW of 20.6.2.7 NMAC.

All discharge locations are within the boundaries of Cannon Air Force Base on the south side of Highway 60/84. The facility is located approximately seven miles west of Clovis along Highway 60/84 in Sections 18, 19, 20, and 24, T02N, R35E, and in Sections 12, 13, 24, 25, and 30, T02N, R34E, Curry County. Ground water most likely to be affected is at a depth of approximately 297 feet and has a total dissolved solids concentration of approximately 535 milligrams per liter.

The original Discharge Permit was issued on December 8, 1994, and subsequently renewed and/or modified on December 22, 2000, and January 30, 2009. The application (i.e., discharge plan) consists of the materials submitted by the permittee dated July 5, 2013, and materials contained in the administrative record prior to issuance of this Discharge Permit. The discharge shall be managed in accordance with all conditions and requirements of this Discharge Permit.

Pursuant to Section 20.6.2.3109 NMAC, NMED reserves the right to require a Discharge Permit Modification in the event NMED determines that the requirements of 20.6.2 NMAC are being or may be violated or the standards of Section 20.6.2.3103 NMAC are being or may be violated. This may include a determination that structural controls and/or management practices approved under this Discharge Permit are not protective of ground water quality, and that more stringent requirements to protect ground water quality may be required by NMED. The permittee may be required to implement abatement of water pollution and remediate ground water quality.

Issuance of this Discharge Permit does not relieve the permittee of the responsibility to comply with the WQA, WQCC Regulations, and any other applicable federal, state and/or local laws and regulations, such as zoning requirements and nuisance ordinances.

The following acronyms and abbreviations may be used in this Discharge Permit:

Abbreviation	Explanation	Abbreviation	Explanation
BOD ₅	biochemical oxygen demand (5-day)	NTU	nephelometric turbidity units
CFR	Code of Federal Regulations	Org	organisms
Cl	chloride	TDS	total dissolved solids
EPA	United States Environmental Protection Agency	TKN	total Kjeldahl nitrogen
gpd	gallons per day	total nitrogen	= TKN + NO ₃ -N
LADS	land application data sheet(s)	TRC	Total Residual Chlorine
mg/L	milligrams per liter	TSS	total suspended solids
mL	milliliters	UPC	Uniform Plumbing Code
NMAC	New Mexico Administrative Code	WQA	New Mexico Water Quality Act
NMED	New Mexico Environment	WQCC	Water Quality Control

Abbreviation	Explanation	Abbreviation	Explanation
	Department		Commission
NMSA	New Mexico Statutes Annotated	WWTF	Wastewater Treatment Facility
NO ₃ -N	nitrate-nitrogen		

II. FINDINGS

In issuing this Discharge Permit, NMED finds:

1. The permittee is discharging effluent or leachate from the facility so that such effluent or leachate may move directly or indirectly into ground water within the meaning of Section 20.6.2.3104 NMAC.
2. The permittee is discharging effluent or leachate from the facility so that such effluent or leachate may move into ground water of the State of New Mexico which has an existing concentration of 10,000 mg/L or less of TDS within the meaning of Subsection A of 20.6.2.3101 NMAC.
3. The discharge from the facility is not subject to any of the exemptions of Section 20.6.2.3105 NMAC.

III. AUTHORIZATION TO DISCHARGE

Pursuant to 20.6.2.3104 NMAC, it is the responsibility of the permittee to ensure that discharges authorized by this Discharge Permit are consistent with the terms and conditions herein.

The permittee is authorized to receive and treat up to 1,500,000 gpd of domestic wastewater using a mechanical WWTP. Wastewater may be stored in a four-acre synthetically lined impoundment adjacent to the WWTP prior to treatment. Treated wastewater (reclaimed wastewater) is stored in a second four-acre synthetically lined impoundment adjacent to the WWTP, a partially synthetically-lined golf course impoundment, and a playa lake. From the golf course impoundment, reclaimed wastewater and stormwater is land applied by sprinkler irrigation to 108 acres of golf course turf, 7.5 acres of golf driving range turf, and 1.5 acres of softball fields, and a 0.17 acre dog park. Reclaimed wastewater is authorized to be used at the facility on a temporary basis for dust control and construction purposes. Discharge of treated wastewater to the playa lake (Outfall 001) and the golf course impoundment (Outfall 002) is also regulated under EPA NPDES Permit NM0030236.

Up to 7,500 gpd of domestic wastewater is also discharged from separate buildings at Cannon Air Force Base to sixteen existing septic tank leachfield systems (ST/LF systems) and to ST/LF systems and holding tank systems to be designed and constructed in the future. A combined total discharge in excess of 7,500 gpd to the ST/LF and holding tank systems is not authorized.

[20.6.2.3104 NMAC, Subsection C of 20.6.2.3106 NMAC, Subsection C of 20.6.2.3109 NMAC]

IV. CONDITIONS

NMED issues this Discharge Permit for the discharge of water contaminants subject to the following conditions:

A. OPERATIONAL PLAN

#	Terms and Conditions
1.	<p>The permittee shall implement the following operational plan to ensure compliance with Title 20, Chapter 6, Parts 1 and 2 NMAC.</p> <p>[Subsection C of 20.6.2.3109 NMAC]</p>
2.	<p>The permittee shall operate in a manner such that standards and requirements of Sections 20.6.2.3101 and 20.6.2.3103 NMAC are not violated.</p> <p>[20.6.2.3101 NMAC, 20.6.2.3103 NMAC, Subsection C of 20.6.2.3109 NMAC]</p>

Operational Actions with Implementation Deadlines

#	Terms and Conditions
3.	<p>The permittee shall submit record drawings that bear the seal and signature of a licensed New Mexico professional engineer (pursuant to the New Mexico Engineering and Surveying Practice Act and the rules promulgated under that authority) for the constructed upgrades to the WWTP to NMED within 30 days of completion.</p> <p>[Subsections A and C of 20.6.2.1202 NMAC, Subsection C of 20.6.2.3109 NMAC, NMSA 1978, §§ 61-23-1 through 61-23-32]</p>
4.	<p>A minimum of 90 days prior to construction of any new ST/LF system, the permittee shall submit a construction proposal for the ST/LF system.</p> <p>For individual septic tank leachfield systems with a design flow less than or equal to 2,000 gpd, should the permittee propose to size and construct the new ST/LF system consistent with the current Liquid Waste Disposal and Treatment Regulations (20.7.3 NMAC), the construction proposal shall include the design flow of the system, supporting calculations, schematic diagrams, and details of construction, materials, and components to be used.</p> <p>For individual ST/LF systems with a design flow greater than 2,000 gpd (or for individual ST/LF systems with a design flow less than or equal to 2,000 gpd if the permittee chooses to have the system designed by a licensed New Mexico professional engineer), the permittee shall submit final construction plans and specifications for the proposed new ST/LF system. The construction plans and specifications shall bear the</p>

38.	Records of solids disposal, including a copy of all Discharge Monitoring Reports (i.e., DMRs) required to be submitted to the EPA pursuant to 40 CFR 503 for the previous calendar year, shall be submitted to NMED in the annual monitoring reports. [Subsection A of 20.6.2.3107 NMAC]
39.	The permittee shall sample wastewater on an annual basis for TKN. Four individual wastewater samples shall be collected from four final septic tanks each year, rotating among the sixteen septic tank/leachfield systems. Samples shall be properly prepared, preserved, transported and analyzed in accordance with the methods authorized in this Discharge Permit. Analytical results shall be submitted to NMED in the annual monitoring report. [Subsection A of 20.6.2.3107 NMAC, Subsection C and H of 20.6.2.3109 NMAC]
40.	The permittee shall submit all records of solids removal and disposal to NMED in the annual monitoring reports. [Subsection A of 20.6.2.3107 NMAC]

C. CONTINGENCY PLAN

#	Terms and Conditions
41.	<p>In the event that ground water monitoring indicates that a ground water quality standard identified in Section 20.6.2.3103 NMAC is exceeded; the total nitrogen concentration in ground water is greater than 10 mg/L; or a toxic pollutant (defined in Subsection WW of 20.6.2.7 NMAC) is present in a ground water sample and in any subsequent ground water sample collected from a monitoring well required by this Discharge Permit, the permittee shall enact the following contingency plan:</p> <p>Within 60 days of the subsequent sample analysis date, the permittee shall propose measures to ensure that the exceedance of the standard or the presence of a toxic pollutant will be mitigated by submitting a corrective action plan to NMED for approval. The corrective action plan shall include a description of the proposed actions to control the source and an associated completion schedule. The plan shall be enacted as approved by NMED.</p> <p>Once invoked (whether during the term of this Discharge Permit; or after the term of this Discharge Permit and prior to the completion of the Discharge Permit closure plan requirements), this condition shall apply until the permittee has fulfilled the requirements of this condition and ground water monitoring confirms for a minimum of two years of consecutive ground water sampling events that the standards of Section 20.6.2.3103 NMAC are not exceeded and toxic pollutants are not present in ground water.</p>

#	Terms and Conditions
	<p>The permittee may be required to abate water pollution pursuant to Sections 20.6.2.4000 through 20.6.2.4115 NMAC, should the corrective action plan not result in compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC within 180 days of confirmed ground water contamination.</p> <p>[Subsection A of 20.6.2.3107 NMAC, Subsection E of 20.6.2.3109 NMAC]</p>
42.	<p>In the event that analytical results of a quarterly treated wastewater sample indicate an exceedance of the total nitrogen limitation set in this Discharge Permit, the permittee shall collect and analyze a second sample within 30 days of the first sample analysis date. In the event the second sample results indicate that the limitation is continuing to be exceeded, the following contingency plan shall be enacted:</p> <ul style="list-style-type: none"> a) Within 15 days of the second sample analysis date indicating that the limitation is continuing to be exceeded, the permittee shall <ul style="list-style-type: none"> i) notify NMED that the contingency plan is being enacted; and ii) submit a copy of the first and second analytical results indicating an exceedance to NMED. b) The permittee shall increase the frequency of total nitrogen wastewater sampling and analysis of treated wastewater to once per month. c) The permittee shall examine the operation and maintenance log, required by the Record Keeping conditions of this Discharge Permit, for improper operational procedures. d) The permittee shall conduct a physical inspection of the treatment system to detect abnormalities. Any abnormalities discovered shall be corrected. A report detailing the corrections made shall be submitted to NMED within 30 days of correction. e) In the event that any analytical results from monthly wastewater sampling indicate an exceedance of the total nitrogen limitation, the permittee shall propose to modify operational procedures and/or upgrade the treatment process to achieve the total nitrogen limit by submitting a corrective action plan to NMED for approval. The plan shall include a schedule for completion of corrective actions and shall be submitted within 90 days of the second sample analysis date indicating that the limitation is continuing to be exceeded. The permittee shall initiate implementation of the plan following approval by NMED. <p>When analytical results from three consecutive months of wastewater sampling do not exceed the limitation, the permittee is authorized to return to a quarterly monitoring frequency.</p> <p>[Subsection A of 20.6.2.3107 NMAC, Subsection C of 20.6.2.3109 NMAC]</p>
43.	<p>In the event that the EPA NPDES permit coverage for Outfall 002 no longer includes effective and enforceable effluent limitations in a NPDES permit for the constituents of BOD₅, TSS, and e. coli bacteria or fecal coliform bacteria, the following shall apply:</p> <p>In the event that analytical results of a reclaimed domestic wastewater sample indicates</p>