

NPDES PERMIT NO. NM0029581

FACT SHEET

FOR THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES

APPLICANT

Peabody Natural Resources Company
Lee Ranch Coal Mine
P.O. Box 757
Grants, NM 87020

ISSUING OFFICE

U.S. Environmental Protection Agency
Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

PREPARED BY

Tung Nguyen
Environmental Engineer
NPDES Permitting Section (6WD-PE)
Water Division
VOICE: 214-665-7153
EMAIL: nguyen.tung@epa.gov

DATE PREPARED

February 1, 2023

PERMIT ACTION

Proposed re-issuance of the current permit issued on April 5, 2018, with an effective date of June 1, 2018, and an expiration date of May 31, 2023.

RECEIVING WATER – BASIN

Mulatto Canyon, San Miguel Canyon, Arroyo Tinaja, San Isidro Arroyo, Doctor Arroyo – Rio Grande River Basin

DOCUMENT ABBREVIATIONS

In the document that follows, various abbreviations are used. They are as follows:

4Q3	Lowest four-day average flow rate expected to occur once every three-years
BAT	Best available technology economically achievable
BCT	Best conventional pollutant control technology
BPT	Best practicable control technology currently available
BMP	Best management plan
BOD ₅	Biochemical oxygen demand (five-day unless noted otherwise)
BPJ	Best professional judgment
CBOD	Carbonaceous biochemical oxygen demand (five-day unless noted otherwise)
CD	Critical dilution
CFR	Code of Federal Regulations
cfs	Cubic feet per second
COD	Chemical oxygen demand
COE	United States Corp of Engineers
CWA	Clean Water Act
DMR	Discharge monitoring report
DO	Dissolved oxygen
ELG	Effluent limitation guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FWS	United States Fish and Wildlife Service
mg/l	Milligrams per liter
ug/l	Micrograms per liter
lbs	Pounds
MDL	Method detection limit
MG	Million gallons
MGD	Million gallons per day
ML	Minimum level
MQL	Minimum quantification level
NMAC	New Mexico Administrative Code
NMED	New Mexico Environment Department
NMIP	New Mexico NPDES Permit Implementation Procedures
NMWQS	New Mexico State Standards for Interstate and Intrastate Surface Waters
NOEC	No observable effect concentration
NPDES	National Pollutant Discharge Elimination System
O&G	Oil and grease
POTW	Publicly owned treatment works
RP	Reasonable potential
SS	Settleable solids
SSM	Sufficiently Sensitive Method
SIC	Standard industrial classification
s.u.	Standard units (for parameter pH)
SWQB	Surface Water Quality Bureau
TDS	Total dissolved solids
TMDL	Total maximum daily load
TRC	Total residual chlorine
TSS	Total suspended solids
UAA	Use attainability analysis
USGS	United States Geological Service
WLA	Waste Load allocation
WET	Whole effluent toxicity
WQCC	New Mexico Water Quality Control Commission
WWTP	Wastewater treatment plant

I. CHANGES FROM THE PREVIOUS PERMIT

The changes from the current permit issued on April 5, 2018, with an effective date of June 1, 2018, and an expiration date of May 31, 2023, include:

- Limits for TSS and BOD, O&G, percent removal, E. coli bacteria and TRC have been established to new internal Outfall EVAP-2.
- Monitoring frequency for TSS and SS has been increased to daily.
- WET testing frequency for 24-hour acute test has been reduced to once per permit term to outfalls discharging to ephemeral streams.

II. APPLICANT LOCATION and ACTIVITY

As described in the application, the facility is located at 35 miles north of Milan, City of Grants, in McKinley County, NM.

Under the SIC code 1221, the applicant conducts surface coal and lignite mining activities. Receiving waters are listed below. The outfalls/sediment ponds designed for at least a 10-year, 24-hour precipitation event. Water in the facility that originates from private wells is transferred via pipeline for use at the preparation plant and shops, for dust suppression, truck wash, and storage for drinking and sanitary uses. Sanitary wastewater from the office/change house/shop is treated at a package plant before draining to lined impoundment EVAP-2 (located within the drainage area of Outfall 044) for disposal via evaporation. EVAP-2 includes a raised embankment perimeter that prevents stormwater runoff from entering it. This impoundment was designed/constructed with the intent of providing suitable storage capacity to prevent discharge based on the approved sanitary input volumes permitted under our NMED Groundwater Discharge Permit (DP-777). The impoundment has an emergency outlet that could theoretically discharge under a very extreme event. EVAP-2 first drains to a secondary in-series impoundment, EVAP-1, before draining to basin P34-94-01 associated with Outfall 044. The treated sanitary wastewater was not previously authorized to overflow/discharge to any permitted outfalls. This renewal permit authorizes possible discharge of the sanitary wastewater via Outfall 044 subsequently; discharge/overflow of sanitary wastewater to other permitted outfalls is not authorized. Generated sewage sludge is subject to requirements in Part IV of the permit. Permitted outfall locations and receiving stream information are listed below. A map of the facility is attached.

OUTFALL NUMBER	RECEIVING WATER	LATITUDE	LONGITUDE
002	Mulatto Canyon*	35°29'29.6"	107°40'20.6"
003	Mulatto Canyon*	35°29'14.5"	107°40'22.9"
004	Mulatto Canyon*	35°29'17.7"	107°40'25.2"
006	Mulatto Canyon*	35°29'21.7"	107°39'58.8"
027	San Miguel Canyon	35°25'20.2"	107°34'59.1"
028	San Miguel Canyon	35°25'28.8"	107°35'0.4"
042	San Miguel Canyon	35°24'48.2"	107°34'55.2"
044	Mulatto Canyon*	35°29'14.3"	107°40'16.8"
049	Arroyo Tinaja*	35°31'39.3"	107°35'41.8"
050	Arroyo Tinaja*	35°31'41.8"	107°35'36.6"
061	San Isidro Arroyo*	35°31'21.1"	107°34'46.4"

062	San Isidro Arroyo*	35°31'15.9"	107°34'49.3"
067	San Isidro Arroyo*	35°31'12.6"	107°34'39.1"
080	Doctor Arroyo*	35°32'8.2"	107°33'6.6"
085	San Isidro Arroyo*	35°30'36.2"	107°36'3.7"
087	San Isidro Arroyo*	35°30'41.2"	107°36'5.1"
090	Arroyo Tinaja*	35°31'38.1"	107°35'53.9"
091	Arroyo Tinaja*	35°31'42.6"	107°36'15.6"
092	Arroyo Tinaja*	35°31'45.9"	107°35'50.8"
093	Arroyo Tinaja*	35°32'7.1"	107°35'42.7"
094	San Isidro Arroyo*	35°30'42.5"	107°35'49.5"
095	Doctor Arroyo*	35°31'37.9"	107°33'7.5"
096	San Isidro Arroyo*	35°30'28.2"	107°35'35.1"
097**	Doctor Arroyo*	35°30'21"	107°33'42.4"
098**	Doctor Arroyo*	35°31'42"	107°32'47.9"
099**	Doctor Arroyo*	35°32'3.8"	107°32'40.7"
101**	Mulatto Canyon*	35°29'41.3"	107°40'10.3"
102**	Mulatto Canyon*	35°30'38.0"	107°39'48.4"
103**	Mulatto Canyon*	35°30'9.0"	107°39'14.7"

Note:

* Receiving stream is an ephemeral (or partially ephemeral) surface water of the state.

** Outfall is unconstructed

III. EFFLUENT CHARACTERISTICS

Since the previous permit term, there has been no discharge from the permitted outfalls. There is no discharge data for this permit renewal. The permittee has submitted analytical results of samples collected at sediment ponds associated with Outfall 002 (preparation plant area), Outfalls 080 and 092 (active mining area). These samples data, collected in January 2015, are more than 4.5 years prior to submission and may not be representative since there has not been a discharge. Therefore, they are not reviewed according to the requirement for historical data used in the application. The submitted data are available upon request. Once discharge occurs the permittee is required to have analytical tests for pollutants described below and in Part I.A of the draft permit. Reports of the test results must be submitted in accordance with Part I.C and the permit maybe modified per 40 CFR Part 122.44(d).

IV. REGULATORY AUTHORITY/PERMIT ACTION

In November 1972, Congress passed the Federal Water Pollution Control Act establishing the NPDES permit program to control water pollution. These amendments established technology-based or end-of-pipe control mechanisms and an interim goal to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water”; more commonly known as the “swimmable, fishable” goal. Further amendments in 1977 of the CWA gave EPA the authority to implement pollution control programs such as setting wastewater standards for industry and established the basic structure for regulating pollutants discharges into the waters of the United States. In addition, it made it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit was obtained under its provisions. Regulations governing the NPDES permit program are generally found at 40 CFR §122 (program requirements & permit

conditions), §124 (procedures for decision making), §125 (technology-based standards) and §136 (analytical procedures). Other parts of 40 CFR provide guidance for specific activities and may be used in this document as required.

It is proposed that the permit be reissued for a 5-year term following regulations promulgated at 40 CFR §122.46(a).

V. DRAFT PERMIT RATIONALE AND CONDITIONS

A. OVERVIEW of TECHNOLOGY-BASED VERSUS WATER QUALITY STANDARDS-BASED EFFLUENT LIMITATIONS AND CONDITIONS

Regulations contained in 40 CFR §122.44 NPDES permit limits are developed that meet the more stringent of either technology-based effluent limitation guidelines, numerical and/or narrative water quality standard-based effluent limits, or the previous permit.

For sewage wastewater, technology-based effluent limitations are established in the proposed draft permit for TSS and BOD, O&G, pH and percent removal for each. Water quality-based effluent limitations are established in the proposed draft permit for *E. coli* bacteria and TRC.

For sediment ponds, technology-based effluent limitations are established in the proposed draft permit for total iron, pH, alternative SS and TSS. Water quality-based effluent limitations are established in the proposed draft permit for monitoring of applicable WQ-based pollutants.

B. TECHNOLOGY-BASED EFFLUENT LIMITATIONS/CONDITIONS

1. General Comments

Regulations promulgated at 40 CFR §122.44 (a) require technology-based effluent limitations to be placed in NPDES permits based on ELGs where applicable, on BPJ in the absence of guidelines, or on a combination of the two. In the absence of promulgated guidelines for the discharge, permit conditions may be established using BPJ procedures. EPA establishes limitations based on the following technology-based controls: BPT, BCT, and BAT. These levels of treatment are:

BPT - The first level of technology-based standards generally based on the average of the best existing performance facilities within an industrial category or subcategory.

BCT - Technology-based standard for the discharge from existing industrial point sources of conventional pollutants, including BOD, TSS, *E. coli* bacteria, pH, and O&G.

BAT - The most appropriate means available on a national basis for controlling the direct discharge of toxic and non-conventional pollutants to navigable waters. BAT effluent limits represent the best existing performance of treatment technologies that are economically achievable within an industrial point source category or subcategory.

2. Effluent Limitation Guidelines

Since there is possible discharge of treated sanitary wastewater via Outfall 044, the package plant is subject to technology requirements established at 40 CFR Part 133, Secondary Treatment Regulation. Pollutants established in this Chapter are BOD₅, TSS and pH. BOD₅ is limited at 30 mg/l for the 30-day average and 45 mg/l for the 7-day average and 85% percent (minimum) removal pursuant to 40 CFR §133.102(a). TSS is limited at 30 mg/l for the 30-day average and 45 mg/l for the 7-day average and 85% percent (minimum) removal [40 CFR §133.102(b)]. pH limit is between 6-9 s.u. [40 CFR §133.102(c)]. O&G is limited at 10 mg/l for the 30-day average and 15 mg/l for the 7-day average using BPJ (wastewater from truck wash and sanitary uses) for a similar facility. Mass limitation is not appropriate due to unforeseen discharge. The draft permit establishes new limits for percent removal for both BOD₅, TSS, pH and O&G. Since these are technology-based there is no compliance schedule provided to meet these limits. Compliance is required on the permit effective date. Compliance of % removal is at the package plant, where samples are most representative of the influent and effluent. EPA establishes an internal outfall ("EVAP-2"), located at the lined impoundment EVAP-2, to implement these limits. Samples are collected when discharge occurs from this lined impoundment.

A summary of the technology-based limits for the treated sanitary wastewater is shown (alternate limitations due to any discharges caused by precipitation, mentioned below, do not apply):

Effluent Characteristic	Discharge Limitation			
	lbs/day, unless noted		mg/l, unless noted	
Parameter	30-day Avg	7-day Max	30-day Avg	7-day Max
BOD ₅	NA	NA	30	45
BOD ₅ , % removal			≥ 85	
TSS	NA	NA	30	45
TSS, % removal			≥ 85	
O&G	NA	NA	10	15
pH	NA	NA	6.0 to 9.0 s.u.	

% removal is calculated using the following equation:

$$\text{Percent removal} = \frac{\text{average monthly influent concentration } \left(\frac{\text{mg}}{\text{L}}\right) - \text{average monthly effluent concentration } \left(\frac{\text{mg}}{\text{L}}\right)}{\text{average monthly influent concentration } \left(\frac{\text{mg}}{\text{L}}\right)} \times 100$$

Information in the previous fact sheet indicated pH was greater than 6 s.u. and total iron was less than 10 mg/L at the mine drainage. The potential discharges at the mining facility are subject to regulations for alkaline mine drainage per 40 CFR 434 as follows:

- Coal Preparation Plants and Coal Preparation Plant Associated Areas, 40 CFR 434.22(b)

Effluent Characteristic	Monthly Average (mg/l)	Daily Maximum (mg/l)
TSS	35	70
Iron, total	3.5	7.0
pH (s.u.)	6.0 – 9.0	

- Alkaline Mine Drainage, 40 CFR 434.42

Effluent Characteristic	Monthly Average (mg/l)	Daily Maximum (mg/l)
TSS	35	70
Iron, total	3.5	7.0
pH (s.u.)	6.0 – 9.0	

- Alternate Limitations for Precipitation Events, 40 CFR 434.63 (not applicable to limitations for the sanitary wastewater above and WET testing)

Alternative limitations apply to Alkaline Mine Drainage and Coal Preparation & Associated Areas outfalls. If a discharge is caused by precipitation within any 24-hour period compared to 10-year, 24-hour precipitation event (or snowmelt of equivalent volume), limitations are shown below. The permittee has the burden of proof that the discharge or increase in discharge was caused by the precipitation event.

Effluent Characteristic	Alternative Limits (precipitation is <u>less than or equal</u> to 10-year, 24-hour precipitation event)	Alternative Limits (precipitation is <u>greater than</u> to 10-year, 24-hour precipitation event)
SS*	0.5 mg/L	NA
pH	6.0 – 9.0 s.u.	6.0 – 9.0 s.u.

*Procedure and MDL, 0.4 mg/L, are specified under 40 CFR 434.64.

- Western Alkaline Coal Mining Operation, 40 CFR Subpart H

The mining facility meets the definition of Western Coal Mining Operation (WCMO) pursuant to 40 CFR 434.80(f), west of the 100th meridian west longitude and average annual precipitation of 26 inches or less. Information from the submitted application states average annual precipitation of 10.5 inches or less (1985-2021). Regulation at 40 CFR 434.81 is applicable to alkaline mine drainage and/or drainage at WCMO from possible brushing and grubbing areas, reclamation areas, topsoil stockpiling areas and regarded areas where the discharge, before any treatment, meets all the following requirements: pH is 6.0 or greater, dissolved iron concentration is less than 10 mg/L, and net alkalinity is greater than zero.

The permittee must implement and update (as necessary) Sediment Control Plan (SCP) to EPA, including all requirements according to 40 CFR 434.82. Previous permit condition is retained in the draft permit.

3. Monitoring Frequency for Limited Parameters

Parameter	Frequency*	Sample Type
Flow	Daily	Estimate
pH	Daily	Instantaneous Grab
BOD ₅ , TSS	Daily (frequency for TSS is increased from weekly due to consistency with other parameters)	Grab
% Removal	Monthly	Calculation
O&G	Daily	Grab
Iron, total	Daily	Grab
SS	Daily (frequency for TSS is increased from weekly due to consistency with other parameters)	Grab

*When discharge occurs at any outfall, including internal Outfall EVAP-2.

Regulations require permits to establish monitoring requirements to yield data representative of the monitored activity, 40 CFR §122.48(b), and to assure compliance with permit limitations, 40 CFR §122.44(i)(1). Monitoring frequencies established in the previous permit are retained in this renewal one.

4. Per- and Poly-Fluoroalkyl Substances (PFAS)

EPA memorandum, dated April 28, 2022, details how the EPA addresses PFAS discharges in EPA-issued NPDES permits. This coal mining category is not listed in the memorandum; no monitoring requirement for PFAS is required.

C. WATER QUALITY BASED LIMITATIONS

1. General Comments

Water quality based requirements are necessary where effluent limits more stringent than technology-based limits are necessary to maintain or achieve federal or state water quality limits. Under Section 301(b)(1)(C) of the CWA, discharges are subject to effluent limitations based on Federal or State/Tribe WQS. Effluent limitations and/or conditions established in the draft permit are in compliance with applicable State/Tribe WQS and applicable State/Tribe water quality management plans to assure that surface WQS of the receiving waters are protected and maintained or attained.

2. Implementation

The NPDES permits contain technology-based effluent limitations reflecting the best controls available. Where these technology-based permit limits do not protect water quality or the designated uses, additional water quality-based effluent limitations and/or conditions are included in the NPDES permits. State/Tribe narrative and numerical water quality standards are used in conjunction with EPA criterion and other available toxicity information to determine the adequacy of technology-based permit limits and the need for additional water quality-based controls.

3. State Water Quality Standards

The general and specific stream standards are provided in NMWQS (20.6.4 NMAC approved in July 2020). Receiving waters are sections of Mulatto Canyon, Arroyo Tinaja, Doctor Arroyo and San Isidro Arroyo identified as ephemeral streams subject to 20.6.4.97 NMAC; unnamed tributaries of Doctor Arroyo subject to 20.6.4.98 NMAC if intermittent or 20.6.4.99 NMAC, if perennial; and San Miguel Canyon subject to 20.6.4.98 NMAC, then to Arroyo Chico, thence to Rio Puerco, thence to Rio Grande (segment 20.6.4.105 of the Rio Grande Basin). The designated uses of the receiving waters 20.6.4.97 NMAC are livestock watering, wildlife habitat, limited aquatic life and secondary contact. The designated uses of the receiving waters 20.6.4.98 NMAC are livestock watering, wildlife habitat, marginal warmwater aquatic life and primary contact. The designated uses of the receiving waters 20.6.4.99 NMAC are warmwater aquatic life, livestock watering, wildlife habitat and primary contact. Any receiving water subject to multiple designated uses (e.g., Doctor Arroyo and its unnamed tributaries), the most stringent criterion must be implemented to protect the WQS. Applicable criteria must be met at end of pipe (outfalls) due to the 4Q3 (critical low flow) is zero (no dilution is available).

4. Permit Action - Water Quality-Based Limits

Regulations promulgated at 40 CFR §122.44(d) require limits in addition to, or more stringent than effluent limitation guidelines (technology based). State WQS that are more stringent than effluent limitation guidelines are as follows:

a. Bacteria

It's applicable to Outfall 044 only, where possible treated sanitary wastewater discharge via this outfall. The receiving water is Mulatto Canyon, 20.6.4.97 NMAC. For secondary contact, criteria for E. coli bacteria are at 548 cfu/100 ml monthly geometric mean and 2507 cfu/100 ml daily maximum pursuant to 20.6.4.900.E NMAC; analytical methods with results in CFU or MPN can be used.

b. Toxics

The CWA in Section 301 (b) requires that effluent limitations for point sources include any limitations necessary to meet water quality standards. Federal regulations found at 40 CFR §122.44 (d) state that if a discharge poses the reasonable potential to cause an in-stream excursion above a water quality criterion, the permit must contain an effluent limit for that pollutant.

The application states there is no discharge since the previous permit term. Due to no discharge data (data must be less than 4.5 years old required in the application) EPA determines there is inadequate information to determine reasonable potential to cause or contribute an exceedance of the state WQS. Thus, there is no additional limits proposed to outfalls. Should discharge(s) occur, the permittee must monitor all applicable pollutants to protect the designated uses pursuant to 20.6.4.900 NMAC. EPA denies the permittee's request to reduce analysis of pollutants in Form 2C, where all parameters were required in the previous permit. because many of these pollutants are subject to the applicable NMWQS. In addition to pollutants in Form 2C, the permittee must also conduct analysis of parameters listed in Part I.A.7 of permit; these parameters are subject to the NMWQS but are not listed in Form 2C. One representative sample for all associated outfalls in the substantial areas may be taken when discharges occur. Sampling frequency is once permit term.

All pollutant must be tested to ensure compliance with the NMWQS using test methods under 40 CFR 136.3. The test results may be used for the next permit renewal application or permit modification in according with 40 CFR Part 122.62(s)(2).

c. TRC & DO (Applicable to internal Outfall EVAP-2 only)

For wildlife habitat, criterion is 11 ug/L for TRC pursuant to 20.6.4.900.G & J NMAC. The TRC limit is applicable when discharge occurs and chlorine is used in the sanitary wastewater treatment process. DO limitation is not applicable.

d. pH

For warmwater or marginal warmwater aquatic life, criterion for pH is 6.6 – 9.0 s.u. 20.6.4.900.H(5) or (6) NMAC. This water-based limitation is more protective than the technology-based limitation above (6.0 – 9.0 s.u.); therefore, pH of 6.6 – 9.0 s.u. is established in the permit. This limitation is applicable to 20.6.4.98 or 20.6.4.99 NMAC intermittent or perennial streams, Doctor Arroyo and San Miguel Canyon.

5. Monitoring Frequency for Limited Parameters

Regulations require permits to establish monitoring requirements to yield data representative of the monitored activity, 40 CFR §122.48(b), and to assure compliance with permit limitations, 40 CFR §122.44(i)(1). Monitoring is required when discharge occurs at any outfalls, including internal Outfall EVAP-2.

Parameter	Frequency	Sample Type
pH	Daily	Instantaneous Grab
TRC	Daily (when chlorine is used)	Instantaneous Grab
E. coli Bacteria	Daily	Grab

6. Removing or Adding Outfall

Removing any outfalls is allowed under 40 CFR 122.63(e)(2) with a minor permit modification. For this mining facility, adding an outfall maybe considered as a minor modification with following conditions:

- Outfall (sediment pond) location will be consistent with, and fall within, the mining area boundary as defined in the applicant's State Mining Plan;
- Outfall location is limited to discharging to the same receiving body of water;
- Additional outfall will not degrade the State WQS/designated uses of receiving water (subject to NMED approval for Antidegradation);
- Potential discharge from an outfall will be subject to applicable monitoring requirements and effluent limitations listed in the permit; and
- Request to add an outfall, including relevant information, will be sent to EPA and NMED as soon as possible and prior to construction of outfall/sediment pond.

D. WHOLE EFFLUENT TOXICITY

Procedures for implementing WET terms and conditions in NPDES permits are contained in the NMIP. Table 11 (page 42) of the NMIP outlines the type of WET testing for different types of discharges. The receiving waters are ephemeral and/or intermittent streams with the critical dilution of 100%. WET limits will not be established in the proposed permit because there was no discharge in the previous permit term. Based on the nature of the discharges, a minor industrial facility and the receiving waters the NMIP directs the WET testing to be 48-hr acute tests using *Daphnia pulex* once per permit term (reduced from the previous permit to be consistent with the current implementation of WET testing) for each outfall discharging to ephemeral streams (Mulatto Canyon, Arroyo Tinaja and San Isidro Arroyo). For any outfalls discharging to intermittent/perennial streams or its tributaries (Doctor Arroyo and San Miguel Canyon), the WET testing is 7-day chronic test using *Ceriodaphnia dubia* and *Pimephales promelas* at once per permit term.

The proposed permit requires five (5) dilutions in addition to the control (0% effluent) to be used in the toxicity tests based on a 0.75 dilution series. These additional effluent concentrations must be 32%, 42%, 56%, 75% and 100%. The low-flow effluent concentration (critical low-flow dilution) is defined as 100% effluent.

VI. TMDL REQUIREMENTS

The receiving water segments, Mulatto Canyon, Arroyo Tinaja, San Isidro Arroyo, Doctor Arroyo and San Miguel Canyon, are not listed in the 303(d) list. Therefore, no additional requirement is established in the draft permit. The permit has a standard reopener clause that would allow the permit to be changed if at a later date additional requirements on new or revised TMDLs are completed.

VII. ANTIDEGRADATION

The NMAC, Section 20.6.4.8 "Antidegradation Policy and Implementation Plan" sets forth the requirements to protect designated uses through implementation of the State water quality standards. The limitations and monitoring requirements set forth in the draft permit are developed from the Tribe/State water quality standards and are protective of those designated uses. Furthermore, the policy sets forth the intent to protect the existing quality of those waters, whose quality exceeds their

designated use. The permit requirements and the limits are protective of the receiving water, which is protective of the designated uses of that water, NMAC Section 20.6.4.8.A.2.

VIII. ANTIBACKSLIDING

The proposed permit is consistent with the requirements to meet Antibacksliding provisions of the Clean Water Act, Section 402(o) and 40 CFR 122.44(l)(2)(i)(B), which state in part that interim or final effluent limitations must be as stringent as those in the previous permit, unless information is available which was not available at the time of permit issuance. Monitoring frequency for WET testing on 24-hrs. acute test is reduced to be consistent with the current implementation of WET testing.

IX. ENDANGERED SPECIES CONSIDERATIONS

According to the list updated in January 2023 for McKinley County, NM obtained from <https://ipac.ecosphere.fws.gov/>, there are probably five endangered (E) and threatened (T) species: Mexican wolf (mammal, E), Mexican spotted owl (bird, T), Southwestern willow flycatcher (bird, E), Yellow-billed Cuckoo (bird, T) and Zuni fleabane (plant, T). There are no critical habitats for these species at the defined location, including the facility and immediate receiving waters. Mexican spotted owl, Southwestern willow flycatcher, Yellow-billed Cuckoo and Zuni fleabane were listed in the previous permit with determination of “no effect”. The Mexican wolf has been added since the previous permit issuance. According to Mexican Wolf Recovery Plan (Second Revision, September 2022), the threats to the Mexican wolf are illegal shooting, genetic issues and small population size. EPA has found no evidence the potential discharges would negatively impact on the species; no discharges has occurred since the previous permit term.

In accordance with requirements under section 7(a)(2) of the Endangered Species Act, EPA has reviewed this permit for its effect on listed threatened and endangered species and designated critical habitat. The scope of the Federal Action is limited to the effects of authorizing the discharge and does not include the permittee’s decision to cease discharging. After review, EPA has determined that the reissuance of this permit will have “no effect” on listed threatened and endangered species nor will adversely modify designated critical habitat. EPA makes this determination based on the following:

1. EPA has received no additional information since the previous permit issuance which would lead to revision of its determinations.
2. The draft permit is consistent with the States WQS and does not increase pollutant loadings.
3. EPA determines that Items 1 & 2 result in no change to the environmental baseline established by the previous permit, therefore, EPA concludes that reissuance of this permit will have “no effect” on listed species and designated critical habitat.

X. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

The reissuance of the permit should have no impact on historical and/or archeological sites since no new construction activities are planned in the reissuance.

XI. PERMIT REOPENER

The permit may be reopened and modified during the life of the permit if NMWQS are promulgated or revised. In addition, if the State develops a TMDL, this permit may be reopened to establish effluent limitations for the parameter(s) to be consistent with that TMDL. Modification of the permit is subject to the provisions of 40 CFR §124.5.

XII. VARIANCE REQUESTS

None

XIII. CERTIFICATION

The permit is in the process of certification by the State Agency following regulations promulgated at 40 CFR 124.53. A draft permit and draft public notice will be sent to the District Engineer of COE, to the Regional Director of FWS and to the National Marine Fisheries Service prior to the publication of that notice.

XIV. FINAL DETERMINATION

The public notice describes the procedures for the formulation of final determinations.

XV. ADMINISTRATIVE RECORD

The following information was used to develop the draft permit:

A. APPLICATION(s)

EPA Application Forms 1, 2C and 2F dated November 30, 2022

B. 40 CFR CITATIONS

Sections 122, 124, 125, 133, 136, 434

C. STATE OF NEW MEXICO REFERENCES

New Mexico State Standards for Interstate and Intrastate Surface Water, 20.6.4 NMAC, effective January 19, 2023

State of New Mexico CWA 303(d)/305(b) Integrated Report, 2022-2024

D. MISCELLANEOUS

Procedures for Implementing National Pollutant Discharge Elimination System Permits in New Mexico – NMIP, March 15, 2012

Permittee email dated January 5, 2023