

NPDES PERMIT NO. NM0030872

RESPONSE TO COMMENTS

RECEIVED ON THE SUBJECT DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT IN ACCORDANCE WITH REGULATIONS LISTED AT 40 CFR §124.17

APPLICANT: City of Las Cruces
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ISSUING OFFICE: U.S. Environmental Protection Agency
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PERMIT ACTION: Final permit decision and response to comments received on the draft reissued NPDES permit publicly noticed on March 30, 2024.

DATE PREPARED: May 15, 2024

Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of July 1st, 2023.

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	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
cfu	Colony forming unit
COD	Chemical oxygen demand
COE	United States Corp of Engineers
CWA	Clean Water Act
DMR	Discharge monitoring report
ELG	Effluent limitation guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FCB	Fecal coliform bacteria
F&WS	United States Fish and Wildlife Service
mg/l	Milligrams per liter
ug/l	Micrograms per liter
MGD	Million gallons per day
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
NPDES	National Pollutant Discharge Elimination System
MQL	Minimum quantification level
O&G	Oil and grease
POTW	Publicly owned treatment works
RP	Reasonable potential
SSM	Sufficiently Sensitive Method
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
USFWS	United States Fish & Wildlife Service
USGS	United States Geological Service
WLA	Wasteload allocation
WET	Whole effluent toxicity
WQCC	New Mexico Water Quality Control Commission
WQMP	Water Quality Management Plan

CHANGES FROM DRAFT PERMIT

There are changes from the draft NPDES permit publicly noticed on March 30, 2024:

- Limits for PCBs have been removed.

CONDITION RECEIVED ON THE DRAFT PERMIT

None.

COMMENTS RECEIVED ON THE DRAFT PERMIT

Letter from Shelly Lemon, New Mexico Environment Department (NMED) to Troy Hill, EPA dated May 14, 2024

Letter from Steven Perez, City of Las Cruces (permittee) to Evelyn Rosborough, EPA dated April 26, 2024

RESPONSE TO COMMENTS

Comment 1 (NMED): NMED requests that EPA include in the administrative record regarding 20.6.4.15 NMAC Use Attainability Analysis for the receiving stream. Refer to NMED letter for detail.

Response 1: Comment is noted for admirative record. No change is made regarding to this comment in the final permit.

Comment 2 (NMED): NMED requests that EPA update the list of Minimum Quantification Levels (MQLs) used for NPDES permit applications and compliance reports in Part II Other Conditions - Appendix A. The updates include:

- the MQL in Appendix A for PCBs is 0.00064 µg/L and
- a footnote that clarifies that the reported value should be the total sum of all minimum levels of quantitation (MLs) of all congeners in EPA Method 1668 (1668C).

Response 2: EPA implements the SSM requirement to protect NMWQS. This SSM requirement supersedes the MQLs for total PCBs. It's because the MQL for PCB (0.2 µg/L) is not sufficiently sensitive compared to the most stringent criterion for PCBs in NMWQS (0.00064 µg/L). EPA currently has no plan to update the MQLs, including one for total PCBs.

Reporting of results for total PCBs must be in consistent with procedures of EPA Method 1668C or as revised. Refer to the method procedure for detail. EPA believes reporting "the total sum of all minimum levels of quantitation (MLs) of all congeners" may not be appropriate. For permitting purpose, please refer to Response 7 for an example.

There is no change made in the final permit.

Comment 3 (NMED): NMED requests a copy of the updated reasonable potential analysis if EPA reevaluates the analysis due to different reported data for total PCBs.

Response 3: The RP analysis has been reevaluated and attached using results from laboratory reports.

Comment 4 (NMED): NMED requests that EPA update the administrative record regarding the intermittent frequency of facility discharge. In the fact sheet Part II. Applicant Location and Activity, NMED requests EPA identify “the facility may discharge intermittently (once or twice monthly between November and February) when reuse water is not needed.”

Response 4: Comment is noted for admirable record. This information will be updated in the next permit renewal review. No change is made regarding to this comment in the final permit.

Comment 5 (permittee): Have any updates occurred to the process detailed in 20.6.4.15 NMAC Subsection C. in order to classify a waterbody as ephemeral? Or is this AU to remain under 20.6.4.98 NMAC Intermittent Waters. Conclusively, is the receiving body still considered a Water of the U.S.?

Response 5: Jurisdictional determination if the receiving water is a Water of the U.S. (WOTUS) is beyond this permitting process. By submitting the renewal application, the permittee has requested to continue the potential discharge to the receiving water. The permittee should consult with its own counsel to determine if the permit is required for possible discharge. Should the permittee plans terminating the permit, please notify EPA immediately.

Regarding the state waterbody referenced as ephemeral/intermittent, please refer to NMED Comment 1 in its letter to EPA.

Comment 6 (permittee): Per Part II. A. Minimum Quantification Level (MQL) and Appendix A of Part II, can EPA and/or NMED-SWQB revise the MQL of 0.2 ug/L for PCBs?

Response 6: Please refer to Response 2.

Comment 7 (permittee): As the data for PCBs used in the fact sheet have been revised/incorrect, the permittee request to have total PCBs RP-reevaluated using data points of 280 pg/L and 260 pg/L.

Response 7: Data points, 594 pg/L and 220 pg/L, stated in the fact sheet were shown in submitted Form 2A and additional later-submittal. EPA has found one submitted lab report (dated 1/8/2024; sample collected: 11/20/2023). After a conference call with the permittee and NMED representatives on May 1, 2024, the permittee submitted another lab report (dated 12/20/2023; sample collected: 9/19/2023). Summaries of the lab-reported values and evaluation of total PCBs are shown below and in the attached RP spreadsheet:

Lab Report	PCB-1, pg/L	PCB-3, pg/L	Total PCBs, pg/L
12/20/23 Dated	ND (RL = 100 pg/L). 50 pg/L is counted by EPA due to detection below.	180	230 (EPA includes 50 pg/L for the analysis purpose; consistent to the NMIP.)
1/8/24 Dated	139	121	260

Averaged value	Instream concentration	WQS criterion	RP excursion
0.000245 µg/L (of 0.000230 and 0.000260)	0.0005215 µg/L	0.00064 µg/L	No, due to instream conc. is less than the criterion.

Based on the submitted lab report data, EPA removes the proposed limitation/condition in the final permit.

Comment 8 (permittee): Per Permit Fact Sheet Part II. Applicant Location and Activity, the permittee requests revising the fourth sentence which reads, “The facility intermittently discharges (once or twice monthly between November and February) when reuse water is not needed; to read as “The facility may discharge intermittently (once or twice monthly between November and February) when reuse water is not needed”. Use of the word “may”- indicates the uncertainty in this fact, since for example, this discharge has not taken place in several years and is not anticipated to occur unless conditions warrant.

Response 8: Comment is noted for administrative record. This information will be updated in the next permit renewal review. No change is made regarding to this comment in the final permit.

Comment 9 (permittee): Per Appendix C of Part II, Contributing Industries and Pretreatment Requirements, the permittee does not have record of any notification from EPA or record of the 2015 modification submission. In the present Draft there is no reference to the Pretreatment Program being modified in 2015 or any reference to the modification package status. Can EPA please provide an explanation as to why this modification package was not referenced in the present Draft? What happened to the modification package as it pertains to EPA recordkeeping?

Response 9: The permit issued on February 27, 2019, and had language referencing a Pretreatment modification submittal. The EPA and the City of Las Cruces were unable to locate any documents related to the submittal, so we believe that an error was made by referencing a submittal in the previous permit. If, and when the City of Las Cruces decides to modify their approved program, they should send the package to EPA for approval. There is no change in the final permit.