



DEPARTMENT OF THE ARMY

HEADQUARTERS, U.S. ARMY AIR DEFENSE ARTILLERY CENTER AND FORT BLISS  
FORT BLISS, TEXAS 79916-0058



REPLY TO  
ATTENTION OF

September 26, 1995

ENTERED

Office of the Staff Judge Advocate

RECEIVED

SEP 29 1995

GROUND WATER BURF

Marcy Leavitt, Chief  
Ground Water Protection &  
Remediation Bureau  
New Mexico Environment Department  
1190 St. Francis Drive, P.O. Box 26110  
Santa Fe, New Mexico 87502

Dear Ms. Leavitt:

This letter responds to your letter dated September 6, 1995, Re: Discharge Plan Required & Notice of Non-Compliance, in which you asserted New Mexico's position that Fort Bliss must obtain approved discharge plans for four sewage ponds located in New Mexico.

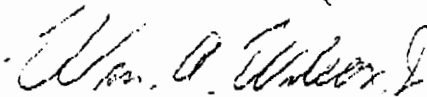
The Federal Facilities provision of the Clean Water Act, 33 U.S.C. § 1323(a), waives sovereign immunity for state and local regulation within the scope of the Act. The Clean Water Act itself applies only when there is a discharge or potential discharge to navigable waters. "Navigable waters" are defined in § 1362(7) as "waters of the United States, including the territorial seas." Ground waters are not considered to be "waters of the United States." In the case of the four sewage ponds, we do not believe there is any likelihood of a discharge to navigable waters, even under the broadest interpretation of the term. Moreover, there is no evidence to support the premise that the sewage ponds are even hydrologically linked to any surface or ground water. Therefore, New Mexico has no authority to require Fort Bliss to prepare a discharge plan application.

Although Fort Bliss is not required to take any action under the Clean Water Act, it is very concerned with any health effects that may result from the discharges. Fort Bliss, therefore will be conducting an investigation to determine the nature and extent of any contamination that may be created in these sewage ponds. We hope to work closely with your office in this endeavor.

Fort Bliss regrets that in the past communication regarding these ponds has not always been prompt. Employee turnover has contributed to Fort Bliss's failure to keep you consistently updated on this program.

if you have any questions regarding the site investigations, you may contact Mr. Domingo Fuentes at (915) 568-7979. I may be reached at (915) 568-2821.

Sincerely,



William A. Wilcox, Jr.  
Environmental Law Specialist  
Civil and Admin Law Division