



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY AIR DEFENSE ARTILLERY CENTER AND FORT BLISS
1733 PLEASANTON ROAD
FORT BLISS, TEXAS 79916-6816

REPLY TO
ATTENTION OF

February 26, 1997

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ENTERED

Office of the Staff Judge Advocate

Ms. Susan M. McMichael
Assistant General Counsel
New Mexico Environment Department
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502

Dear Ms. McMichael:

This letter responds to NMED's directive that Fort Bliss file groundwater discharge plans for the four sewage treatment ponds in New Mexico. Under the circumstances in this particular case, the Army is unable to follow the directive on the basis of Clean Water Act jurisdiction, because Congress has not clearly and unequivocally waived sovereign immunity.

As we have discussed, however, each of the Fort Bliss ponds are listed as solid waste management units subject to RCRA corrective action. Fort Bliss recognizes its obligation under RCRA to correct conditions at the ponds, and filing the discharge plans may be a reasonable step in that direction. As we agreed, Fort Bliss will file the plans with the understanding that any directives issued as a result of the discharge plans, such as groundwater sampling, will be issued by NMED under RCRA corrective action authority, and will be tailored to the actual corrective action required at each pond.

To meet both our needs, please confirm that the ponds will be handled under RCRA and that NMED acknowledges that Fort Bliss has not waived whatever sovereign immunity may exist with respect to the ponds. Once we have received this assurance, I will advise Fort Bliss to file the discharge plans.

As I have also mentioned, one of the sewage treatment ponds, Meyer Pond, clearly does not generate 2,000 gallons of liquid waste per day and is therefore exempt from the discharge plan requirement under section 3105B of the New Mexico water quality regulations. Because of the small amount of sewage involved, there would not be a need to file a discharge plan for Meyer Pond under RCRA corrective action.

Please let me know if you have any questions regarding resolving this issue in this manner.
I can be reached at (915)568-2821.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wm. A. Wilcox, Jr.", written in black ink.

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