



Communities For Clean Water

June 25, 2015

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Submitted via email to rosborough.evelyn@epa.gov

RE: Public Comments about the draft Los Alamos National Laboratory (LANL) Individual Industrial Storm Water Permit - NM0030759

Dear Ms. Rosborough:

Communities for Clean Water (CCW) is a network of organizations whose mission is to ensure that community waters impacted by Los Alamos National Laboratory (LANL) are kept safe for drinking, agriculture, sacred ceremonies, and a sustainable future. Our growing network includes Concerned Citizens for Nuclear Safety (CCNS), Amigos Bravos, Honor Our Pueblo Existence (HOPE), the New Mexico Acequia Association, Partnership for Earth Spirituality, and Tewa Women United. CCW brings together the vast expertise and commitment of widely respected and well-tested advocacy groups from culturally diverse backgrounds. Collectively we represent the only community-based coalition in Northern New Mexico that has been monitoring and advocating for better public policy to address the toxic threats from LANL. CCW organizations and individuals were parties to the successful 2007 Clean Water Act (CWA) storm water citizens' lawsuit and 2008 permit appeal process. CCW member organizations and individuals participated in the lawsuit and extensive permit appeal negotiations that ultimately led to the current Individual Storm Water Permit (2010 IP), which was issued on November 1, 2010. CCW provides the following comments about the draft individual National Pollution Discharge Elimination System (NPDES) permit number NM0030759 as proposed by the Environmental Protection Agency (EPA) on March 19, 2015 (Draft IP).

Over past four years CCW and our technical consultants with Biohabitats Inc. have developed an effective working relationship with the storm water team of the Department of Energy (DOE) and LANL (the Permittees). We have had three to four productive technical meetings each year to discuss permit implementation. In addition, CCW actively participates in developing the agenda and presents our concerns during the permit-mandated biannual public meetings. This process and our developing relationship have resulted in collaborative problem solving and a positive focus on utilizing successful Low Impact Development and Green Infrastructure (LID/GI) techniques for the Arid Southwest in permit implementation.

During the past 10 months, CCW members and our technical experts actively participated in additional technical discussions with the Permittees and the New Mexico Environment Department (NMED) that specifically focused on addressing issues related to the renewal of the above-referenced permit. Through these meetings and discussions the three parties – CCW, NMED and the Permittees – came to some consensus on the framework and specific language for the new IP. Many of these concepts and details have been incorporated into EPA’s draft permit. CCW appreciates EPA’s receptiveness to this collaborative process. While the parties were able to come consensus on some issues, there are several areas where we continue to have differences. In addition, there are instances where EPA’s draft permit does not fully capture the consensus concepts and language. The following comments and recommendations are focused on areas where the permit needs to be strengthened in order to adequately protect water quality.

1. MAINTENANCE OF CONTROL MEASURES

CCW is interested in ensuring that both preventative and reactive maintenance procedures to ensure the continuous, long-term, sustainable operation, function and effectiveness of control measures be rigorously undertaken by the Permittees. This applies to both sites listed on the permit as well as those that have been removed or deleted from the permit. Sites that have been removed from the permit by demonstrating acceptable water quality performance, through Alternative Compliance pathways, Deletion of Sites provisions, or other channels still require ongoing maintenance to maintain effectiveness. Part A.1.(b).(i) says that the maintenance requirements under the permit do not apply to controls for sites that have been removed from the permit. CCW believes that ongoing maintenance is required for all controls constructed and permitted under the IP, and is concerned that ongoing maintenance that is required to ensure the effectiveness of controls is maintained in the long-run. CCW therefore recommends adding a provision to ensure that this occurs for sites that have been removed and are no longer under IP coverage.

Recommended Changes to the Draft Permit:

- Clarify or include language that indicates that controls at sites that have been removed from the permit (and that may be contributing to water quality performance) still require ongoing maintenance.
- Reference standard operating procedures or other document that outlines how controls are to be maintained.

2. DEADLINES FOR CORRECTIVE ACTION AND SITES IN THE MIDDLE OF CORRECTIVE ACTION

The 2010 IP is unique. It was written and structured both to allow and to require Permittees to take specific actions, leading to clean-up and elimination of the discharges coming from historic disposal sites, Areas of Concern (AOCs) and Solid Waste Management Units (SWMUs) at LANL. Action that has been taken under the 2010 Permit and the progress made must be thoroughly reviewed and accounted for in the new IP. This includes taking the actions and deadlines under the 2010 IP into account when drafting the new IP to ensure that the decades of water pollution caused by practices at LANL is remediated as quickly as possible. Unfortunately the Draft IP appears to ignore many of the actions and deadlines of the 2010 IP and effectively resets the compliance clock by allowing the Permittees years of additional time to achieve compliance. Such an approach is inappropriate and does not present the most efficient avenue for

addressing the water quality problems presented by contaminated storm water discharges from the hundreds of sites covered under this permit. Such an approach does not protect water quality as required in the existing permit.

2.1 Corrective Action Deadlines Are Too Long – Draft Permit Part 1.D.5

Issued in the context of the extensive settlement discussions, the 2010 IP set deadlines by which the Permittees were required, first, to install baseline control measures. 2010 IP Part 1.B. Second, if those baseline measures did not ensure that storm water from sites met applicable maximum target action level (MTALs) or average target action level (ATALs), then the Permittees were required to take corrective action. 2010 IP Part 1.E. The Permittees were required to install baseline control measures within six months of the effective date of the permit, or by March 30, 2011. The Permittees were required to certify corrective action for high priority sites for which they did not seek alternative compliance within three years of the effective date of the permit, or by October 31, 2013. For moderate priority sites for which the Permittees did not seek alternative compliance, they were required to certify corrective action within five years of the effective date of the permit, or by October 31, 2015. 2010 IP Part I(E)(4). If samples have not been collected from sites by these compliance deadline dates the Permittees have 12 months for high priority sites and 6 months for moderate priority sites to achieve compliance after the collection of the first sample above target action levels. 2010 IP Part I(E)(1)(d) and 2010 IP Part I(E)(5)(e).

The draft permit eliminates these deadlines. It gives the Permittees 3 years at all sites to achieve completion of corrective action, which represents an additional 2 years for high priority sites and an additional 2.5 years for moderate priority sites. Draft IP Part 1(D)(5). It is important to note that the 2010 IP also gives the Permittees' the ability to request more time if seasonal construction restraints made the 6-12 month timeframe infeasible.

The public was assured when the 2010 IP was issued that some of these sites would be cleaned up by October 31, 2013 and that all sites would be cleaned up by October 31, 2015. Now the draft permit moves the goal posts further away in time and allows a longer compliance time for water quality standards to be met. EPA must address this matter head-on. The permit should not be renewed to give Permittees another permit term to complete actions that should be completed by October 31, 2015.

Further, the language in "Schedules for Corrective Action", Draft IP Part 1(D)(5), omits the term "completion of corrective action" nor does it refer to Part I(D)(3) of the permit, the section of the draft permit where completion of corrective action is outlined. CCW urges EPA to include reference to Part I(D)(3) in the "Schedules for Corrective Action" section. In the alternative, EPA should identify that the deadline included in "Schedules for Corrective Action" is a deadline for completion of corrective action.

Recommended Changes to the Draft Permit:

- CCW requests that EPA maintain the compliance deadline of 12 months from the collection of the first sample that is above TALs. This is the required compliance schedule in the 2010 IP for moderate priority sites. CCW believes that this is an

appropriate amount of time to allow compliance and it gives an additional 6 months from what is currently allowed for high priority sites in the 2010 IP.

- Three years to obtain compliance, as allowed in the current Draft IP is unreasonably long considering the extensive knowledge of these sites and the compliance deadlines that were committed to in the previous permit. Language in Part I(D)(5) in the draft permit should be simplified by identifying a 12 month deadline from the collection of a TAL exceedance to achieve completion of corrective action. If a 12 month deadline is adopted, the intermediate deadlines currently included in the draft permit are unnecessary.
- In addition, Part I(D)(5) should include language that defines that the deadlines outlined in the section are deadlines for completion of corrective action as defined in Part I(D)(3).

2.2 Clarity On Compliance Deadlines For Sites Currently In The Middle Of Corrective Action Is Needed.

It is unclear how sites that are currently in the middle of corrective action, such as sites where TAL exceedances have been detected prior to the finalization of the Draft IP but corrective action has not been completed, will be treated. These sites appear to be left in limbo. CCW asks EPA to consider the following and provide clarifying language in the permit: Will the old compliance deadlines apply for these sites (6-12 month deadlines)? Will the 3-year clock in the Draft Permit start when the permit is issued? Or will the 3-year clock be considered to have started retroactively when the TAL exceedance was detected?

Recommended Changes to the Draft Permit

- The final permit should clarify that sites in corrective action at the time the new permit is issued are operating under the 6-12 month compliance deadlines that were triggered under the 2010 Permit when the TAL exceedances were detected.
- Regardless of what the schedule is, clarity on compliance deadlines should be stated for these sites.

3. SITE CONTRIBUTING EVALUATION – DRAFT IP PART 1.D.1

3.1 The Site Contributing Evaluation Should Not Be Mandatory.

The Draft IP requires the Permittees go through a site evaluation test for all sites prior to initiating corrective action. This requirement will have the result of delaying corrective action for many sites. There are many sites for which the Permittees know that a site is clearly a source of pollutants and therefore they should have the flexibility to skip the site contributing evaluation and move straight to corrective action. The presumption should be that all sites are contributing unless the Permittees can demonstrate that they are not. The fact that the sites are included in the permit is a clear indicator that there has already been a determination by EPA and the Permittees that these sites are indeed “sites” and therefore are discharging pollutants. The default should be that the sites are contributing and once a TAL exceedance is detected, action should be taken immediately to address the discharge, unless a Site Specific Determination (SSD) is conducted and approved by EPA.

Recommended Changes to the Draft Permit

- Language in the introductory paragraph to Part 1.D.1 should be changed to allow the Permittees to skip the site contributing evaluation and move directly to corrective action. Specifically the “will” should be changed to a “may”.

3.2 The SSD And Associated Correspondence Needs To Be Posted On The IP Website.

The Draft IP requires that the Permittees submit the SSD to EPA and send a copy to NMED, but does not require that this document be posted on the Individual Permit Public Website.

<http://www.lanl.gov/community-environment/environmental-stewardship/protection/compliance/individual-permit-stormwater/index.php> Draft IP Part 1.D.1(a) and Draft IP Part 1.H.8(a). Whether or not a site is contributing pollutants to receiving waters is an important EPA determination. Both the submittal to EPA and EPA’s response should be required to be posted on the IP Public Website.

Recommended Changes to the Draft Permit:

- A requirement that all SSD submittals and correspondence associated with the SSD submittals should be added to Part 1.D.1(a) and Part 1.H.8(a).

3.3 SSD Methods (i) And (iii) Should Be Consolidated

Two of the three SSD methods outlined in the Draft IP appear to be describing the same method and should be consolidated into one method. Specifically the methods described in Part 1.D.1(a)(i) and Part 1.D.1(a)(iii) should be combined into one paragraph. These two methods both outline the same process of comparing run-on and runoff data.

Recommended Changes to the Draft Permit:

- Parts 1.D.1(a)(i) and 1.D.1(a)(iii) should be combined into one part.

3.4 The Equation Included In The SSD Is Faulty And Not Protective Of Water Quality.

The equation included in Part 1.D.1(a)(iii) does not provide the knowledge needed to make an accurate determination. It is confusing and does not adequately take into account how run-on may be diluting the discharges from the site and impacting the runoff value. Regardless of potential dilution, this equation allows for sites that are clearly contributing pollutants to be determined as not being a source of pollutants.

For example, if the Permittees had a situation where the TAL was 100 ug/L, the runoff was 200 ug/L, and the run-on was 101 ug/L, using the equation $[(\text{Run-off}) - (\text{run-on}/\text{precipitation}) \leq \text{TAL}]$ that is included in Part 1.D.1(a)(iii) of the Draft IP would result in the Permittees being able to claim that site is not contributing pollutants. This is clearly not the case even if the Permittees ignore the fact that the runon may be diluting the runoff considerably; the site is still potentially contributing 99ug/L of pollution. This site is clearly “causing or contributing” to a violation of water quality standards and is a source of pollutants and should not be given a free pass. We are aware of the imperfect nature of this equation in terms of it not representing a true mass balance, which strengthens concern with proper application of this equation when using only concentrations (such as TALs).

What precedent is there for this criterion, and what is the basis for the equation? Where has it been used before? The use of this equation weakens the permit and provides unintended loopholes. For example, if both runoff and runoff sample concentrations are orders of magnitude higher than the TAL, but relatively close or the same in concentration, the equation result indicates that the Site Monitoring Area (SMA) is not a source, but rather that there is widespread pollution/contamination. Additionally, if they are both high and $> \text{TAL}$, but cancel each other out, then the pollution problem is not being addressed. We cannot accept the result of the equation as a condition of compliance, especially in the absence of a MS4 permit with conditions that require run-on areas with high pollutant concentrations to be retrofitted for improved water quality.

In the alternative, if EPA insists on using this equation it should be qualified that it only applies in situations where both Geomeans are not greater than 1.5 times the TAL. For scenarios where values are greater than 1.5 times the TAL then we suggest that the Permittees be required to develop either a small watershed implementation plan (SWIP) or a Site Monitoring Area Action Plan (SMAAP) that documents treatment a certain percentage of the untreated source areas (which could be pervious or impervious, but urban areas would target impervious areas) within the permit time frame.

If a broad stroke equation such as the one presented in the Draft IP is to be used, it makes more sense, and is more protective of water quality to use the following equation: $(\text{Run-off} \leq \text{Run-on})$ as a replacement for the current equation found in Part 1.D.1(a)(iii). However, CCW would only approve using such an equation if there was a broader mechanism, such as an MS4 Permit, in place to address watershed wide contamination. EPA and the Permittees would have to assure the public that high run-on values are being addressed through other mechanisms.

Recommended Changes to the Draft Permit:

- The equation found in the Draft IP at Part 1.D.1(a)(iii) should be removed.
- Alternatively the equation could remain in the permit if it were qualified so that it doesn't apply if the runoff or runoff values were more than 1.5 times the TAL.
- If a watershed scale mechanism, such as an MS4 permit, was in place to address the chronic high run-on values experienced at many sites then an equation such as: $\text{Runoff} \leq \text{Runon}$ may be appropriate.

3.5 The Schedules For Corrective Action Outlined In the Draft IP At Part 1.D.5. Should Apply To Sites For Which A SSD Has Been Submitted And No Action Has Been Taken By EPA.

It is CCW's interpretation of the Draft IP that sites for which a SSD has been submitted by the Permittees to EPA, but no action has yet been taken by EPA to approve or disapprove the SSD, are still subject to the compliance deadlines outlined in Part 1.D.5. If this is not EPA's interpretation of the permit, then CCW recommends either including a deadline for EPA to act on the SSD or changing the permit to require that the Part 1.D.5. deadlines apply.

Recommended Changes to the Draft Permit:

- If it is not EPA’s interpretation that Part 1.D.5. compliance deadlines apply to sites for which the Permittee has submitted an SSD to EPA but on which EPA has not acted, then language should added to the permit applying these deadlines to these sites.
- Alternatively, EPA needs to add language that commits EPA to responding to SSD applications by a set date.

4. EVALUATION OF CORRECTIVE ACTION MEASURES

4.1 Requirement To Mimic Pre-Development Hydrology Should Be Incorporated Into The Total Elimination Of Exposure Corrective Action Option.

The Draft IP outlines a process by which Permittees can choose to cap or use an engineered cover to totally eliminate exposure of site-related pollutants to storm water. Draft IP Part 1.D.2(b)(i). If this option is utilized the Permittees will be increasing the impervious surface in the associated SMA drainage area. In order to protect water quality, requirements to mitigate impacts from increased runoff from these impervious surfaces should be included in the draft permit.

Recommended Changes to the Draft Permit

- A requirement to mimic pre-development hydrology should be incorporated into Part 1.D.2(b)(i).

4.2 Changes To The Retention of a 3-Year, 24-Hour Storm Corrective Action Option Are Needed - Part I.2.c.

CCW supports including a retention compliance option in the permit renewal as long as this option includes several conditions. First, total retention means total retention. CCW opposes calling a retention of 3 year, 24-hr storm event “total retention”. CCW opposes setting precedent for total retention that is not actually total retention of all discharges. CCW requests that if EPA includes a retention compliance option in the next iteration of the permit that this retention option be labeled differently. The “3-year, 24-hr retention” label as proposed in the draft is sufficient. Second, CCW requests that this compliance option include requirements for inspection and maintenance of the retention structure(s) to ensure that the design operational capacity is maintained. Third, all sediment that is removed during any associated maintenance activities must be required to be sampled, analyzed and disposed appropriately. Similar to the alternative compliance process, a public notice must be required for such plans, along with an opportunity to provide public review and comment. The public notice, the submittal and EPA’s response must be timely posted to the Permittees’ IP website. Fourth, CCW requests that maintenance, sediment removal, sediment depths, monitoring data and detection of overflow events be reported annually in the SDPPP or annual reports.

Fifth, CCW also recommends that a detailed summary that links rain gages to sites and summarizes the period of record and 3-yr return frequency rainfall depths be provided and updated annually within the SDPPP or similar document. Rainfall distributions vary across the site; therefore, sites should be spatially correlated to the most appropriate rainfall gage data. Sixth, based on site-specific contamination risk, it is reasonable that certain sites be shifted towards the higher retention targets, regardless of location. Seventh, additional provisions should be developed in association with a retention criteria, such as performance monitoring of flow to

verify that no discharges occur for storms at or below design storm, providing design standards/guidance for treatment practice design that considers things like drain time (e.g., 48 hrs), pretreatment, treatment, conveyance, etc. Finally, we recommend that there be third party review of retention designs to ensure ecological function and aesthetics are optimized. All 8 conditions must be met for CCW to accept the draft retention compliance option.

Recommended Changes to the Draft Permit

- Ensure Total Retention is not used interchangeably with “3-year, 24-hr retention”.
- Strengthen requirement to maintain operational retention volume within Part I.A.b Maintenance of Control Measures to account for sediment accumulation within control structures.
- Include provision requiring sampling and proper disposal for sediments removed from control structures. This should include public notice and an opportunity for public comment.
- Require annual reporting of maintenance activities, sediment removal/depth measurements, monitoring data, detection of flow, and photographs be reported annually.
- Include definition of the “3-year, 24-hr retention” storm event depths based upon location on the site to increase ease of review of proposed design approaches.
- Include caveat that for certain high-risk sites EPA may request a higher retention volume.
- Include flow monitoring for detection of flow (visual reporting or installed samplers); since water quality sampling is not required, this allows verification that controls are or are not retaining water based upon the recorded storm event classification. Encourage development of design standards.
- Include a third-party review of retention designs.

4.3. Soil Removal Option Within Total Elimination Of Exposure Part 1.D.2.(B)(i)(C) Should Be Strengthen Or Clarified, And Stormwater Confirmation Sampling Should Be Added.

Part (c.) of this section allows for removal and replacement of three (3) feet or more of soil as a Total Elimination of Exposure approach for achieving corrective action. EPA would be responsible for evaluating new soil data associated with this replacement activity to determine that no significant amount of materials remain on the site. No confirmation stormwater samples are currently required under the draft permit.

CCW has concerns that this approach is too broadly defined and could inadvertently leave contaminated soils on the site due to the difficult nature of completely defining the locations of contaminated soils that could contribute to stormwater TAL exceedances. For example, what is the extent, radius or geographical boundary that is used to define the extent of soil replacement? This approach does not address pollutants that may still appear in stormwater runoff samples from contaminants that have migrated to the edges or outside of or beyond the solid waste management unit (SWMU) boundary. CCW would be more supportive of this option if confirmation stormwater sampling (2 samples) still occurred.

Recommended Changes to the Draft Permit

- Include requirement for stormwater confirmation sampling.

- Better define area of soil removal and requirements for soil testing within the SWMU, Site and/or SMA to ensure that all contaminated soil was removed and replaced.

5. ALTERNATIVE COMPLIANCE – DRAFT IP PART 1.D.4

The drastic weakening of alternative compliance provisions and requirements is extremely troubling. For example, the Alternative Compliance option under the Draft IP appears to provide an easy avenue for Permittees to avoid compliance deadlines, and in fact, to avoid any action at all. Unlike the 2010 Permit, it appears that no response is required by EPA and that a non response by EPA to alternative compliance requests appears to be a *de facto* approval of the request. Further, there are no requirements that Permittees outline future action to reduce pollutants in their alternative compliance request. We anticipate that if EPA does not strengthen the language that Permittees would flood EPA with alternative compliance requests under the new permit, which would place a tremendous burden not only on EPA, but also on the public.

5.1 The Alternative Compliance Option Must Include Requirements To Perform Additional Actions To Reduce Discharges.

Unlike the 2010 IP in which all the parties negotiated in good faith, the Draft IP does not require the Permittees to take additional steps to address contaminated discharges. This is all the more troubling since the Draft IP includes, in a separate section, an option for the Permittees to demonstrate that the site is not a source of pollutants. The claim that a site is not the source of pollutants detected in the monitoring has been the basis of many of the Permittee’s alternative compliance requests under the 2010 Permit. Presumably with a separate, less process heavy option to demonstrate that sites are not the source of the pollutants under the SSD process, sites for which the Permittees submit alternative compliance requests under the new permit are very likely to be real sources in need of actions to reduce discharges of pollutants.

The Draft IP requires that the Permittees list actions they have already taken to reduce pollutants but does not require that the Permittees list additional measures that could further reduce pollutants. Draft IP Part 1.D.4(b)(ii). Omitting further action requirements to reduce discharges at these sites does not protect water quality.

It is unclear to CCW if an individually tailored workplan is currently required or not. On the one hand, an individually tailored workplan is not listed as a requirement in the list of items to be included in an alternative compliance request. Yet, on the other hand, Part 1.D.4(b) of the Draft IP concludes with “The Permittees response to comments may include a revision to the alternative compliance request and/or the proposed individually tailored workplan.” CCW strongly urges EPA to require an individually tailored workplan and schedule to address/reduce contaminated discharges as part of any alternative compliance request.

Recommended Changes to the Draft Permit

- To adequately protect water quality, the alternative compliance section of the permit must clearly include requirements that the Permittees take further action to reduce discharges of pollutants. One mechanism to ensure that further action is taken would be to require that the Permittees submit an individual site-tailored workplan and schedule for completing further actions to reduce discharges as part of the alternative compliance request. This could be done by requiring a new Part 1.D.4(b)(iii) as

follows: “A proposed individually tailored workplan and schedule that details the additional on-the-ground actions or watershed protection approaches that could be taken to reduce pollutant levels measured at SMAs. Alternatively, though less preferable, the “have” in Part 1.D.4(b)(ii) could be changed to “will”.

- Part 1.D.4(d) should be changed to outline a process for EPA to approve or deny proposed individually tailored workplans.

5.2 Deadlines For Alternative Compliance Requests And Responses To These Requests Must Be Set.

The alternative compliance section of the 2010 IP sets forth a schedule for the Permittees to request that a site be placed into alternative compliance. Specifically, Permittees must submit an alternative compliance request to EPA on or at least 6 months before the compliance deadlines. 2010 IP Part I.E.3(b). In the Draft IP, however, there is no such deadline and therefore the Permittees could submit an alternative compliance request one day short of the 36-month deadline and still be in compliance for those sites. Part 1.D.4(c) of the Draft IP allows that once the Permittees have filed a written request with EPA, they “shall not be out of compliance with the applicable deadlines for achieving completion of corrective action.” EPA has not acted quickly on previous alternative compliance requests and in fact it was only by persistent requests of CCW that responses were forthcoming. Our experience shows that the lag time between requests for alternative compliance and responses from EPA have oftentimes been a year plus. This leaves sites that are large contributors of pollution to receiving waters sitting without any corrective action or other forward progress to address discharges. To ensure that these sites are not left in limbo, CCW makes the following recommendations:

Recommended Changes to the Draft Permit

- The requirement that Permittees submit alternative compliance requests to EPA 6-months prior to applicable compliance deadlines (e.g., 36-month compliance deadline found in Part 1.D.5.) should be restored.
- CCW requests that the permit impose a schedule for EPA responses to alternative compliance requests. Specifically, CCW proposes three months, or 90 days, for EPA to respond to an alternative compliance request. As such, there will be sufficient time after EPA’s response to ensure that the Permittees may still meet the deadlines set in the permit, or if alternative compliance is granted, an alternative compliance schedule may be established as soon as possible.

5.3 Monitoring Requirements Must Be Included For Alternative Compliance Sites.

To determine if actions taken under individually tailored workplans at alternative compliance sites are effective, monitoring must be required. Monitoring includes after storm event inspections, sampling and analysis and reporting in SDPPP. Monitoring will not only help determine if actions already taken are effective, but it will also help direct future actions.

Recommended Changes to the Draft Permit:

- Include requirements in Part 1.D.4. that all individually tailored work plans outline monitoring plans, with a description of what is required, to determine the effectiveness of on-the-ground actions.

5.4 New Permit Does Not Address Deadlines For Existing Alternative Compliance Requests Such As Those For 71 SMAs Submitted In May 2015.

What is the fate of these alternative compliance requests under the new permit submitted by the Permittees in May, 2015? The draft permit is not clear on the fate, schedule, timing, or EPA response required for Alternative Compliance requests that were submitted in the time period just prior to the issuance of the new permit. CCW is concerned that these are addressed by EPA.

Recommended Changes to the Draft Permit

- Recommend having site tailored action work plans put into place for these SMAs.

6. DELETION OF SITES

6.1 Part 1.H.2(c) Is Unclear

This section of the Draft IP is unclear. It is not clear what types of sites are covered under this section. CCW asks EPA to answer the following questions: Does this Part apply to all sites where 2 confirmation samples were collected and no TALs were exceeded? How is the public to know if the control measures that were installed are the reason that no TAL standards are exceeded? At the very least, permit coverage should be continued so inspection and maintenance of these sites will continue. Even “permanent control measures” such as capping would require continued monitoring, inspection and maintenance. Parts (b) and (d) of this same section should also include provisions for maintaining control structures that may be contributing to water quality improvements.

Recommended Changes to the Draft Permit

- Update grammar of Part 1.H.2(c) to be more clear
- Add language to parts (b), (c), and (d) that are similar to part (e) of the same section that states “The Permittees are required to certify that all on-site control measures will be properly maintained.”

6.2 Appendix A: Site Monitoring Area And Site Information – Proposed Deletion Of 14 Sites Should Be Reconsidered.

There is substantial reasoning to keep each of the fourteen sites listed in Appendix A of the draft permit. Part I.H.2. states that sites may be removed for various potential reasons. CCW has reviewed the proposed deletions and has prepared a series of comments on a site by site basis.

The following is a breakdown of comments related to the specific sites that are proposed to be removed as they relate to the requirements for removal from the permit under Section H – Deletion of Site, which require that at least one of the following conditions is met: a) no evidence of industrial activities, b) site-related pollutants have never been, or will never be exposed to stormwater, c) sites have no significant materials remaining that are exposed to stormwater after installation of permanent control measures, d) the Permittees have certified corrective action complete under Part I.D.2(b)(ii) by removing soil that had contained a release of Site-related pollutants exposed to stormwater and demonstrating that no significant materials from previous industrial activity remain at the Site, or e) The EPA has approved an SSD that demonstrates that no applicable TAL exceedences are reasonably expected to be Site-related

CCW's comments on a site-by-site basis:

R-SMA-2.05, 00-011 (c) – No UXO or OEW were found on this site during various surveys, but that does not necessarily mean that there are none there. Until there is evidence from confirmation sampling, this site should not be removed from the permit since evidence of industrial activity exists at the site, and no confirmation samples have been collected.

R-SMA-2.3, 00-011 (e) – Tank ammunition was found and detonated on site. No TAL exceedences were recorded during baseline sampling. However, that does not preclude the chance that the contaminants simply had not migrated to the collection point as of the date of sampling. Thus, this site should not be removed from the permit since evidence of industrial activity exists at the site and no soil removal COC has been completed.

ACID-SMA-2, 45-001 – Sampling found TAL exceedences for aluminum, gross-alpha activities and PCBs. Regardless of whether the activities on site were deemed “industrial” or not by the Permittee, TAL exceedences were still recorded and thus the site should continue to be monitored and not removed from the permit.

ACID-SMA-2, 45-002 – Sampling found TAL exceedences for aluminum, gross-alpha activities and PCBs. Regardless of whether the activities on site were deemed “industrial” or not by the Permittee, TAL exceedences were still recorded and thus the site should continue to be monitored and not removed from the permit.

LA-SMA-4.2, 01-001 (c) – Through 2014, no collection sampling has taken place.. Industrial activity has been confirmed to have taken place at this site. Therefore, this site should not be removed from the permit until collection sampling has been performed.

LA-SMA-4.2, 01-006- (d) – Industrial activity has been confirmed at this site and the removal of the main portion of the drain line from Building D-3 cannot be confirmed. Because known industrial activities are known to have taken place at the site, no collection samples have been taken, and there is no confirmation that a portion of the contaminated drain line was removed, this site should not be removed from the permit.

CDB-SMA-1, C-46-001 – This site experienced a mercury spill, though the memo circulated after the spill did not document its exact location. Collection samples have found TAL exceedences for aluminum, copper, gross-alpha activity, and PCBs following the installation of baseline control measures, and TAL exceedences for gross-alpha activity and PCBs following the installation of enhanced control measures. Due to the fact that industrial activities have occurred on this site and TAL exceedences have been found even after enhanced control measures were installed and no removal of contaminated soil or of contaminants has been documented, this site should not be removed from the permit.

CDB-SMA-4, 54-017 – This site contains numerous disposal pits and hosted industrial activities. TAL exceedences have been recorded within the SMA, despite RFI samples for site 54-017 not being analyzed. Even though these disposal pits have been covered with a minimum of 3 feet of soil and asphalt, because TAL exceedences have been recorded, this site should not be removed from the permit.

CDB-SMA-4, 54-018 – This site contains numerous disposal pits, some of which are still considered regulated units until RCRA closure is certified and approved by NMED. TAL exceedences for PCBs were detected, and no shallow RFI samples were analyzed for gross-alpha radioactivity. Because some of the disposal pits beneath this site are legally still “open” until NMED certifies them as closed, TAL exceedences for PCBs were detected, and no shallow soil samples were analyzed for gross-alpha radioactivity, this site should not be removed from the permit.

M-SMA-4, 48-007 (a) – Cooling tower blowdown was discharged onto this site where it was held in an unlined impoundment. No reference to soil removal has been made and TAL exceedences have been found. For these reasons, this site should not be removed from the permit.

M-SMA-4, 48-007 (d) – Noncontact cooling water was discharged onto this site where it was held in an unlined impoundment. No reference to soil removal has been made and TAL exceedences have been found. For these reasons, this site should not be removed from the permit.

M-SMA-12.5, 05-005 (b) – The discharge pipe associated with this site may have been capped, however the contaminants from what was discharged could still be within the site boundary. Since no contaminated soil has been removed and no collection samples have been analyzed, this site should remain on the permit.

PRATT-SMA-1.05, 35-016 (m) – No consent order for a COC without controls has been approved by NMED, though a request was submitted in August 2011 and no testing for gross-alpha radioactivity was performed. For these reasons and the fact that sampling for Pratt – SMA – 1.05, within which area this site is located, have had TAL exceedences, this site should not be removed from the permit.

T-SMA-5, 35-016 (a) – There has not been sufficient stormwater flow through calendar year 2014 for samples to be collected for this site. Though the discharge piping was removed, the trench where the pipe lay now serves as an active stormwater collection channel. Since pollutants from the cooling tower drain lines could have been deposited in the surrounding soil during removal, no soil removal has occurred, and no stormwater samples have been collected, this site should not be removed from the permit.

However, of the fourteen sites, the following two appear to pose the least risk:

R-SMA-2.05, 00-011 (c) – Due to the number of surveys conducted and the limited evidence that industrial activities occurred on this site, it is possible that this site never served as a firing range and therefore would not likely discharge contamination associated with that industrial activity.

PRATT-SMA-1.05, 35-016 (m) – The discharge line associated with this site never served as a discharge line for industrial activities as it was designed for. Instead, it has only served as a drainage line for stormwater collected on a parking area upgradient and off site. Therefore, the threat of contamination from industrial activities originating at this site is limited.

Recommended Changes to the Draft Permit

- Maintain all 14 sites on the permit, with the only acceptable exceptions being R-SMA-2.05, 00-011 and PRATT-SMA-1.05, 35-016(m).

7. PUBLIC INVOLEMENT

7.1 Hardness Data Should Be Required To Be Reported In All Reporting of Monitoring Results.

To determine if monitoring results are exceeding the TAL or not it is essential that the public have access to all hardness data. The Permittees should be required to report hardness data when preparing all sampling reports and documenting monitoring results in annual compliance reports and in the SDPPP.

Recommended Changes to the Draft Permit

- Include requirements to report hardness data in all sampling reports.

Thank you for your careful review of our comments. Please contact us with any questions or concerns.

Sincerely,

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