



Communities For Clean Water

August 13, 2013

Ms. Diane Smith
U.S. Environmental Protection Agency
Permit Processing Team (6WQ-NP)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
smith.diane@epa.gov

Re: Draft Permit for Los Alamos National Laboratory- NPDES Permit No.
NM0028355

Dear Ms. Smith:

Thank you for the opportunity to submit comments on the draft National Pollutant Discharge Elimination System (NPDES) permit for Los Alamos National Laboratory (LANL). Communities for Clean Water (CCW), begun in 2004, is a grassroots collaborative that formed to address water contamination from LANL. CCW is comprised of four core organizations – Amigos Bravos, Concerned Citizens for Nuclear Safety, Honor Our Pueblo Existence, and the New Mexico Acequia Association and is supported by a broad network of other community groups and individuals. CCW is committed to stop groundwater and surface water pollution migrating from LANL facilities into New Mexico's water resources. CCW believes that this NPDES discharge permit provides the public with a unique opportunity to work with the Environmental Protection Agency (EPA) and the State of New Mexico to develop the best possible protection for surface water on and downstream from the LANL facility. By preventing additional pollution from being released, and by requiring clean up of historic releases, the public's right to clean water will be protected. Advocating for a protective and comprehensive NPDES permit provides our organizations with an opportunity to serve New Mexico's citizens by protecting the state's future drinking water resources.

I. To ensure that New Mexico surface water quality standards and EPA's anti-backsliding provisions are met, EPA must require method 1668 for PCB monitoring and compliance purposes.

The draft permit allows for the use of a polychlorinated biphenyl (PCB) analytical method that has a 0.2 ug/L minimum quantification level for compliance purposes. The New Mexico water quality standard for PCBs that is protective of human health is 0.00064 ug/L. Using an analytical method with a detection level 312 times less sensitive

than the standard and corresponding effluent limit is meaningless and not protective of water quality standards.

The previous permit required the use of method 1668 for analyzing PCBs, which has a detection limit below all applicable water quality standards. By now requiring an analytical method with a detection limit well above applicable water quality standards in the draft permit, EPA is effectively setting effluent limits that are less stringent than those in the previous permit and thus allowing for a backsliding of permit conditions and water quality protections.

In the previous permit EPA required the use of method 1668 for monitoring and compliance purposes based on a precertification letter from the New Mexico Environment Department (NMED). A similar letter was sent to EPA during the current permit renewal process on December 20, 2012, in which NMED wrote that the “employment of Method 1668 is necessary and appropriate as a condition of this permit so as to assure the permit is protective of the State’s Water Quality Standards.” It remains unclear why method 1668 was not required in the draft permit based on the NMED’s December 20, 2012 precertification letter.

To ensure compliance with New Mexico water quality standards the PCB congener method (method 1668) should be required for reporting and compliance purposes.

II. The final permit must do more to protect the multiple impaired receiving waters.

Many of the streams on LANL property are listed as not meeting water quality standards for multiple parameters and are listed on the official New Mexico’s 303d impaired waters list.

Of particular note and concern are Mortandad Canyon and Canada del Buey where industrial point sources (such as those permitted in the draft permit) are identified in the New Mexico 305b/303d Report as probable sources of impairment. Mortandad Canyon is impaired for Aluminum, Copper, and Gross Alpha. Canada del Buey is impaired for Aluminum, Copper, Gross Alpha, and PCBs. Effluent limits should be required for these constituents at outfalls into these canyons (Outfalls 13S, 051, 03A022, and 03A181).

To ensure that water quality is protected, effluent limits for all impaired parameters should be required at all other outfalls covered by the draft permit. At the very least monitoring and reporting requirements for these parameters should be required in the permit.

III. Due to the drastically changed landscape due to large scale fires and drought, EPA must conduct updated Endangered Species Act (ESA) consultation with the US Fish and Wildlife Service (FWS).

The Fact Sheet states that in 2000 EPA conducted informal consultation with the FWS(Cons. #2-22-01-I-018). We believe that given the dramatic changes to the Rio Grande Watershed from both the Cerro Grande (May 2000) and the Las Conchas (June 2011) fires additional consultation is required by EPA with the FWS about the black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), and the Mexican spotted owl (*Strix occidentalis lucida*) found in Los Alamos County. . On December 7, 2000, the FWS found that the re-issuance of the NPDES permit would have “no effect” on the Mexican spotted owl and “may affect, not likely to adversely affect” the southwestern willow flycatcher. The FWS did not find that the black-footed ferret was present in the permit action area.

During the permit re-issuance process in 2007, EPA made a determination that the permit “would not alter the environmental baseline” and that the previous consultation baseline on listed threatened and endangered species “would not adversely modify designated critical habitat.” Since then the Rio Grande Watershed experienced the Las Conchas fire, at the time, the largest wildfire in New Mexico’s history.

The Fact Sheet states “EPA believes that the conclusion statements made by the FWS in 2000 and EPA’s determination made in 2007 are still true for this NPDES permit renewal action. When asked at the July 29, 2013 public meeting, EPA representatives indicated that no informal consultation with the FWS had been done following the Las Conchas fire.

The Fact Sheet misrepresents the 2000 FWS consultation baseline for the southwestern willow flycatcher as “no effect,” rather than “may affect, not likely to adversely affect.” CCW urges EPA to conduct informal consultation with the FWS about updating the consultation baseline for the three species listed above.

IV. The final permit must do more to protect intermittent streams at LANL by applying the chronic life criteria to intermittent streams when calculating effluent limits.

The process that assigned the limited aquatic life use which only applies acute aquatic life standards and not chronic aquatic life standards was flawed as is outlined in Amigos Bravos’ Statement of Basis for the 2009 Triennial Review of water quality standards (*see* pages 17-21 of attachment A). This process resulted in the intermittent streams on LANL property being given weaker protections than any other intermittent waterbody in New Mexico despite the fact that there is a United States Geologic Survey (USGS) report that specifically called for chronic aquatic life protections for these intermittent streams. While “aquatic life” with the associated acute and chronic aquatic life criteria may not be a *designated* use for intermittent waters at LANL, there is evidence (*see* pages 17-21 of attachment A), that “aquatic life” NOT “limited aquatic life” is an *existing* use in intermittent waters at LANL. The draft NPDES permit, by not applying chronic criteria to intermittent waters at LANL, is not protective of existing uses. It is time to correct this matter in the final permit.

VI. Please address the following concerns and questions in the final Fact Sheet:

For Outfall 05A055, please include additional language in the Fact Sheet, as explained at the public meeting, about why permit limits for TNT at LANL are based on those for the Pantex plant.

For Outfall 13S, please include additional language in the Fact Sheet, as explained at the public meeting, about how the SERF treatment process removes PCBs and silica.

V.7. Sewage Sludge Management. We learned at the public meeting that the Permittees plan to utilize state regulations for using sewage sludge as compost, possibly for reclamation sites (in order to provide nitrogen to the soils). The Permittees are working with NMED and the Solid Waste Bureau and the Ground Water Quality Bureau for registration and permitting. Please include language in the Fact Sheet, similar to that provided for the Section 401 certification process, that explains the public comment process for each and how a member of the public may sign-up for the Facility Mailing List for each bureau.

VI. CWA 303(d) Impaired Water. Please include language in the Fact Sheet that NMED reviews the data for the Integrated Report and that the final report is submitted to EPA every two years. The next report is due to EPA in April 2014.

IX. Historical and Archeological Preservation Considerations. Please correct “mining” to “nuclear weapons research and development facility.”

Thank you for your careful consideration of our comments.

Sincerely,

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