

**Catholic Charities Gallup: Office of Life, Peace, Justice & Creation,
Nuclear Watch New Mexico, Partnership for Earth Spirituality,
Rocky Mountain Peace and Justice Center,
Tri-Valley CAREs (Communities Against a Radioactive Environment),
Taoseños for Peaceful and Sustainable Futures,
Tewa Women United, Tularosa Basin Downwinders Consortium,
Youth United for Climate Crisis Action (YUCCA)**

November 2, 2020

By email: rosborough.evelyn@epa.gov

Ms. Evelyn Rosborough
U. S. Environmental Protection Agency Region 6
NPDES/Wetland Review Section (6WD-PN)
1201 Elm Street, Suite 500
Dallas, TX 75270

Re: Public Comment about the draft Industrial Wastewater Discharge
Clean Water Act National Pollutant Discharge Elimination System
Permit for Los Alamos National Laboratory No. NM0028355

Dear Ms. Rosborough:

Please accept these comments from nine non-governmental organizations about the above-referenced draft National Pollutant Discharge Elimination System (NPDES) Industrial Wastewater Discharge Permit for Los Alamos National Laboratory (LANL). We urge the Environmental Protection Agency (EPA) to remove those facilities from the permit that handle, treat and store hazardous waste, but have no plan or intention to discharge.

We object to LANL asking the EPA to issue a Clean Water Act permit for industrial facilities that have no plan or intention to discharge wastewater to the environment. Clean Water Act permits may be granted only for “the discharge of any pollutant, or combination of pollutants.” 33 U.S.C. § 1342(a)(1).

We object to EPA issuing a permit for facilities that handle, treat and store hazardous waste, but have no plan or intention to discharge. Such Clean Water Act permitting confers an exemption from more stringent Resource Conservation and Recovery Act (RCRA) hazardous waste laws and regulations. 42 U.S.C. § 6901 *et seq.* The only reason

to issue a Clean Water Act permit is to illegitimately exempt LANL facilities from RCRA.

We object to EPA issuing a permit for those LANL facilities that have no plan or intention to discharge, as listed below:

- **Outfall 051 - Radioactive Liquid Waste Treatment Facility (RLWTF)**, located at Technical Area 50 (TA-50). “The facility has a mechanical evaporation system and Outfall 051 has not discharged since” November 2010. EPA Fact Sheet, p. 7.

Since 1998, LANL has worked to reconstruct the RLWTF to become a “zero liquid discharge” facility, which was completed in November 2010 with the installation and operation of a mechanical evaporation system.

LANL’s permit renewal application incorporates by reference the previous application, which says LANL does not intend to discharge via Outfall 051 except when both evaporation systems are inoperative, i.e., in highly unlikely circumstances.

- **Outfall 03A027 - Strategic Computing Complex (SCC) Cooling Tower**, located at TA-3. “Outfall 03A027 did not discharge from September 2016 and to at least May 2019, so older monitoring data was submitted.” *Id.*, p. 5.
- **Outfall 03A113 - Los Alamos Neutron Science Complex (LANSCE) facility**, located at TA-53. “The cooling towers identified as TA-53-293 are not currently in use but could return to service in the future.” *Id.*, p. 5 - 6.
- **Outfall 03A160 - National High Magnetic Field Laboratory cooling towers**, located at TA-35. Treated water is being “discharged” to the Sanitary Wastewater System (SWWS) Plant, located at TA-46. *Id.*, p. 6 and App. H, p. H-4.
- **Outfall 05A055 - High Explosive Wastewater Treatment Facility**, located at TA-16 in Cañon de Valle. “Since November of 2007, the HEWTF has used the electric evaporator and not discharged through the permitted outfall.” *Id.*, pp. 6 - 7, and H-125 of 135.

Further, some of these facilities also handle, treat and store not only hazardous waste, but radioactive transuranic (TRU) (plutonium-contaminated) wastes. Recently, the Defense Nuclear Facilities Safety Board (Board or DNFSB) issued a letter and technical report to the Department of Energy detailing their concerns about chemical reaction events involving TRU waste at LANL, specifically in the Plutonium Facility (PF-4), the

Transuranic Waste Facility (TWF), the Chemistry and Metallurgy Research Facility (CMR), and at Area G.¹

PF-4 and the CMR facility both deliver low-level radioactive liquid waste and TRU radioactive liquid waste to the RLWTF for handling, treatment and storage. TRU and hazardous waste, including sludge, destined for the Waste Isolation Pilot Plant (WIPP) are stored at Area G and the TWF. The Board's findings, as summarized in the cover letter, heighten our concern about the improper regulation of facilities that are hidden behind the veil of the Clean Water Act exemption. Because these facilities handle, treat and store such potential energetic chemicals, they must be properly regulated by RCRA.

Below are extracts from the Board's letter:

The Board found that safety bases for both National Nuclear Security Administration and Environmental Management facilities at Los Alamos National Laboratory do not consistently or appropriately consider a potential energetic chemical reaction involving transuranic waste.

- **Hazard analyses** lack systematic evaluations of the chemical compatibility of transuranic waste streams. These analyses are needed to fully identify potential chemical reaction hazards associated with waste constituents.
- **Accident analyses** are not bounding, assume inappropriate initial conditions, and do not defensibly establish the quantity of radioactive material that may be released due to an energetic chemical reaction. As such, additional credited safety controls may be necessary to protect workers and the public.
- Some facilities store transuranic waste without any engineered controls beyond the waste container. The radiological release events that occurred at the Waste Isolation Pilot Plant and Idaho National Laboratory have demonstrated the importance of incorporating **multiple layers of protection** to reduce the consequences of an accident.²

As documented by the Board, LANL has not done its homework to create safety bases, hazard analyses and accident analyses that take into account potential energetic chemicals – many of which are regulated by RCRA. LANL has not established multiple layers of protection to reduce the impacts of an accident to workers and the public.

¹ September 24, 2020 letter from Thomas A. Summers, Acting Chair of the Defense Nuclear Facilities Safety Board, to The Honorable Dan Brouillette, Secretary of Energy, with attached report: *Potential Energetic Chemical Reaction Events Involving Transuranic Waste at Los Alamos National Laboratory*, DNFSB/TECH-46, September 2020. <https://www.dnfsb.gov/documents/letters/potential-energetic-chemical-reaction-events-involving-transuranic-waste-los>

² *Id.*

“[We’re] sick and tired of being sick and tired”³ by the lack of proper regulation by federal and state regulatory agencies charged with those responsibilities for these increasingly dangerous facilities as documented by the DNFSB. It is time for EPA to remove the Radioactive Liquid Waste Treatment Facility (Outfall 051) from the Clean Water Act permit. The proper regulatory regime is RCRA as recognized by LANL over two decades ago.

In 1998, LANL expressed its concern that it could lose the Clean Water Act exemption, which would put it under the more stringent hazardous waste laws:

[T]he loss of the NPDES permit at the RLWTF will cause the loss of the RCRA exemption for the RLWTF. RCRA regulatory oversight will increase at the RLWTF. NPDES regulatory oversight will decrease.⁴

Also,

As regulatory requirements become more stringent and as the possibility of eliminating outfall 051 progresses, it will be important to have complete characterization of wastes discharged to the RLWTF. ... **If the outfall 051 NPDES permit is allowed to be deleted, operation of the RLWTF will fall under RCRA guidelines.** Management of waste at the source, including management of the waste generators’ [Waste Acceptance Criteria] WAC and management of facilities connections to the collection system, is a necessary part of this process. Specific monitoring regimes will be required by the RLWTF.⁵ [Emphasis added.]

Now is the time for EPA to delete the RLWTF (Outfall 051), and other facilities that have no plan or intention to discharge, from the permit.

We support the extensive public comments and exhibits submitted by Concerned Citizens for Nuclear Safety, Honor Our Pueblo Existence (H.O.P.E.), and the New Mexico Acequia Association (NMAA) calling for the deletion of the RLWTF from the permit.

³ Fannie Lou Hamer’s statement to the Credentials Committee of the Democratic National Convention in Atlantic City. August 22, 1964.

⁴ *Elimination of Liquid Discharge to the Environment from the TA-50 Radioactive Liquid Waste Treatment Facility*, LA-13452-MS, UC-902, June 1998, Table 6. Evaluation Matrix of Zero Liquid Discharge Alternative, p. 35. <https://www.osti.gov/biblio/661523-elimination-liquid-discharge-environment-from-ta-radioactive-liquid-waste-treatment-facility>

⁵ *Id.*, p. 37.

We reiterate our request for EPA to delete facilities that have no plan or intention to discharge.

Thank you for your careful consideration of our comments and for your written response to the issues we have raised herein. Please contact us with any questions and comments.

Sincerely,

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