



**DISCHARGE RATE AND FREQUENCY**

The average daily flow rates for the sources that discharge to Outfall 051 are provided in Table 6.

**Table 6  
Source Flow Rates/Frequencies to Outfall 051**

Operation/Source	Average Flow (Gallon/Day)	Treatment Code
RLWTF	19,700	1G, 1O, 1S, 1Q, 1R 1U, 2J, 1F, 2K, 2C, 5Q, 5U

**SAMPLING AND ANALYSIS FOR RE-APPLICATION**

The RLWTF has not discharged to Outfall 051 since November 2010. LANL requests to re-permit the outfall so that the RLWTF can maintain the capability to discharge to the outfall should the Mechanical Evaporator and/or Zero Liquid Discharge (ZLD) Solar Evaporation Tanks become unavailable due to maintenance, malfunction, and/or there is an increase in treatment capacity caused by changes in LANL scope/mission.

A grab sample for the Form 2C Constituents will be collected for Outfall 051 when/if the RLWTF discharges effluent through the outfall. See the attached Discharge Monitoring Report Outfall Summary for the analytical data collected prior to November 2010.

**ANALYTICAL RESULTS PROVIDED**

- NPDES Discharge Monitoring Reports (DMRs) from August 2007 – December 2011.
- Material Safety Data Sheets for treatment chemicals.

**ADDITIONAL INFORMATION**

- Latitude – 35°51'54"
- Longitude – 106°17'54"

Department of Energy/ Los Alamos National Security's Preliminary Response  
To The Communities for Clean Water's Public Comments Dated June 5, 2017

This document contains the U.S. Department of Energy and Los Alamos National Security, LLC ("Applicants") preliminary responses to the Communities for Clean Water ("CCW") public comment letter dated June 5, 2017 on Draft DP-1132.<sup>1</sup> The numbered paragraphs presented below in italics are verbatim restatements of CCW's comments, and following each is the Applicants' preliminary responses. The Applicants reserve the right to further address these comments throughout this public hearing process, including in direct and rebuttal testimony, through cross-examination of witnesses, in the context of any motions or objections, and in post-hearing submissions.

- 1. CCW has contended since its initial comments that the RLWTF, as, in LANL's words, "a zero liquid discharge" facility, is not properly regulated under the New Mexico Water Quality Act and implementing regulations. See Attachment 15, CCW Letter NMED re DP-1132 (January 13, 2017); see also Attachments 1, 2, and 14a, Comments and Requests for Hearing Letter to NMED re DP-1132 (December 6, 2013); Comments and Requests for Hearing to NMED re DP-1132 (December 12, 2013); Cover letter, exhibit list, and petition to rescind NPDES permit for the RLWTF (June 17, 2016). CCW requests a hearing on this issue. CCW notes that it may not be necessary to hold a hearing if the Environment Department specifically stipulates in writing on the record that: (a) the RLWTF has not made any discharges since at least late 2011; (b) the RLWTF is a "zero liquid discharge" facility and no liquid discharges are anticipated from this facility; (c) the new RLWTF Low-Level Radioactive Waste Water ("RLW") Treatment System facility adjacent to the current RLWTF will likewise be a "zero liquid discharge facility"; and (d) once operating, no liquid discharges are anticipated to take place from the new RLWTF RLW facility.*

CCW's position is legally and factually unfounded. CCW argues that the RLWTF is "not properly regulated under the New Mexico Water Quality Act," citing letters suggesting that the RLWTF does not "discharge" and should be regulated under RCRA. As an initial matter, any argument that the RLWTF is a facility that should be regulated under RCRA is completely outside the scope of this discharge permit proceeding and has no bearing on the Laboratory's compliance with the WQCC's regulations and the Water Quality Act.

Moreover, the position that the RLWTF does not or will not "discharge" is incorrect. Section V.C of Draft DP-1132, Authorization to Discharge, allows wastewater to be discharged to three different systems: the MES, the SET and Outfall 051. The MES is a natural gas-fired mechanical evaporator. The SET—a two-cell, synthetically lined tank constructed in 2012—is sometimes referred to as a Zero Liquid Discharge ("ZLD") solar evaporation tank. Outfall 051 is an outfall from a pipe system directly to Effluent Canyon.

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<sup>1</sup> CCW also filed comments dated January 13, 2017 regarding a draft DP-1132 dated November 15, 2016. Although this draft is not the subject of this proceeding, the comments are legal in nature and are referenced in CCW's June 5, 2017 comments.

CCW's position is premised on mistaken or outdated facts. Neither NMED under the express terms of Draft DP1132, nor the Applicants, contemplate that discharges will not occur from Outfall 051. To the contrary, they contemplate that discharges would be authorized "through an outfall (identified as Outfall 051) also regulated by [NPDES Permit No. NM0028355] issued by [EPA]." See Section V.C. of Draft DP-1132. Per LANL's NPDES Permit renewal application, Outfall 051 is NPDES-permitted to allow the RLWTF to "maintain capacity to discharge should the [SET] and/or [MES] become unavailable due to maintenance, malfunction, and/or there is an increase in treatment capacity caused by changes to LANL scope/mission." See LANS/DOE Exhibit 4, Form 2C, pp. 5, 7, 2012 NPDES Permit Re-Application, Outfall 051, RWLTF, LA-UR-12-00359 (Feb. 2012). The intention that LANL be allowed to discharge is underscored by Condition VI.C.8 in Draft DP-1132, which would require water tightness testing within 180 days of the effective date of the permit for the conveyance to Outfall 051. This is an action the Applicants will perform, because they have an intention to convey treated effluent from the RLWTF through Outfall 051 to Effluent Canyon as needed to meet operational and maintenance requirements. See Affidavit of Robert C. Mason, attached to Applicants' April 2, 2018 Response to CCW's Motion to Dismiss DP-1132 Proceeding.

Even apart from CCW's factually erroneous conflation of the "Zero Liquid Discharge" SET facility with the MES and Outfall 051, CCW unreasonably disregards how Draft DP-1132 and NMED's ground water program regulations use the term "discharge." "Discharge" is defined in Section II.G of Draft DP-1132 to include the "intentional *or unintentional* release of an effluent or leachate which has the *potential* to move directly or indirectly into ground water." (Emphases added). Accordingly, even if the intended discharges authorized by Draft DP-1132 "through Outfall 051" to Effluent Canyon were disregarded, and only the discharges to the MES and SET evaporator systems were to be considered, CCW's position is still flawed, because it is the "potential" for a discharge to get to ground water that matters, regardless of intent.

This regulatory approach is acknowledged as being correct both by the express terms of the Water Quality Act ("WQA") and case law interpreting that Act. The WQA fundamentally defines a "source" to mean "a building, structure, facility or installation from which there is *or may be*, a discharge of water contaminants directly *or indirectly* into water." 1978 NMSA, §74-6-2(L) (emphases added). In turn, the WQA defines a "water contaminant" to mean "any substance that could alter if discharged *or spilled* the physical, chemical, biological or radiological qualities of water." 1978 NMSA, §74-6-2(B) (emphasis added). These central building blocks of the WQA are worded in a way that clearly reflects a legislative intent not to construe the concept of regulated discharges under the Act as narrowly as CCW proposes.

The notion that NMED's regulatory permitting authority under the groundwater protection program only arises if and when there is an *actual* release, as CCW appears to argue, is fundamentally contrary to the central objective of the WQA to *prevent*—and not just *abate* after the fact—groundwater degradation. See *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 555, 603 P.2d 285, 284 (1979). If the WQCC intended only to permit facilities once those potential sources *actually* release water contaminants, then its groundwater permitting program would be rendered superfluous, and the separate abatement program adopted by the WQCC and administered by NMED would be all that is needed.