

Public Notice – Los Alamos National Lab. NPDES Permit No. NM0028355

On March 30, 2022, the United States Environmental Protection Agency (EPA), Region 6 (the Region), issued a National Pollutant Discharge Elimination System (NPDES) permit to the U.S. Department of Energy, National Nuclear Security Administration and Triad National Security L.L.C pursuant to the Clean Water Act (CWA). Concerned Citizens for Nuclear Safety, Honor Our Pueblo Existence, and Veterans for Peace (“Petitioners”) filed a petition for review with the Environmental Appeals Board (EAB) challenging the NPDES permit. The 2022 Permit authorizes certain discharges from the Los Alamos National Laboratory, including discharges of treated wastewater from the Radioactive Liquid Waste Treatment Facility through what is referred to as Outfall 051.

On December 28, 2022, the EAB remanded the Permit to the Region to provide the public with an opportunity to comment on the Outfall 051 2021 discharge data, to consider any comments received, and to revise its Response to Comments document and take further action, as appropriate, in reissuing its permit decision. EPA is providing this opportunity for public comment in accordance with the EAB’s order.

In EPA’s September 1, 2022, “Response to Order Requesting Clarification[.]” EPA noted that, “EPA considers DMRs submitted after the close of the public comment period for the draft 2022 Permit as confirmatory and were accordingly included in the administrative record as part of the supporting file under 40 C.F.R. § 124.18(b)(6). The confirmatory nature of the DMRs is reflected by the authorization of Outfall 051 and other outfalls in both the draft and final versions of the 2022 Permit.” EPA believes this DMR data to be confirmatory because it evidences additional actual discharges.

To address any concerns regarding consideration of 2021-2022 discharge monitoring reports for 13S, 05A055, 03A160, 03A027 & 03A113, which are the subject of NPDES Appeal No. 22-01, EPA is providing an opportunity for public comment on this data as well.

Section 124.19 of title 40 of the Code of Federal Regulations governs Board review of NPDES permitting decisions. In any appeal from a permitting decision issued under part 124, the petitioner bears the burden of demonstrating that review is warranted. *See* 40 C.F.R. § 124.19(a)(4). “[A] petition for review must identify the contested permit condition or other specific challenge to the permit decision and clearly set forth, with legal and factual support, petitioner’s contentions for why the permit decision should be reviewed.” *Id.* § 124.19(a)(4)(i).

EPA procedures for “issuing, modifying, revoking and reissuing, or terminating all * * * NPDES ‘permits’” are set forth in 40 C.F.R. part 124. 40 C.F.R. § 124.1(a). Those regulations include requirements and procedures for public participation in the permitting process. The regulations require, among other things, that the public have notice of, and an opportunity to comment on, a draft permit decision, *id.* § 124.10(a)(1)(ii), (b)(1), that the permitting authority briefly describe and respond to all significant comments raised during the public comment period in a response to comments document that is issued at the time the final permit decision is issued, *id.* § 124.17(a), (a)(2), and that the final permit decision be based on the administrative record for the final permit as defined in 40 C.F.R. § 124.18, *id.* § 124.18(a). As the Board has emphasized

on several occasions, the response to comments document “provides the Agency’s final rationale for its decision.”

In accordance with the regulations cited above, EPA is reopening the public comment period related to EPA’s reissuance of NPDES Permit NO. **NM0028355**, for an additional 30-days.

Consistent with the EAB remand, the scope of the re-opened comment period is limited to the following:

1. Discharge data from Outfalls 051, from years **2021-2022**.
2. In addition, the EPA is including new data for Outfalls that were part of the NPDES appeal: 13S, 05A055, 03A160, 03A027 & 03A113 from years **2021 – 2022**.

The EPA is soliciting comments and supporting data as to the above issues ONLY. The DMRs documents published in the February 25, 2023 Public Notice had an issue with duplication of dates reported. EPA has corrected the duplication issues and is re-publishing all DMRs again and extending the comment period for 11-days until **April 7, 2023**. The Public Notice and associated documents are posted electronically at:

<https://www.epa.gov/publicnotices/notices-search/location/new%20mexico>.

All data submitted by the applicant is available as part of the administrative record. Further information regarding the administrative record may be requested from the EPA contact or viewed at the below address between 8 a.m. and 4:30 p.m., Monday through Friday. It is recommended that you write or call to the contact above for an appointment, so the record (s) will be available at your convenience.

Note: The New Mexico Environment Department is not reopening the State’s comment period on CWA §401 Certification of the permit.

All comments should be submitted, preferable via email, to:

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