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LANL General: NPDES

MEMORANDUM

To: FILE
From: Rich Powell, Point Source Regulation Section
Subject: NPDES/RCRA at LANL
Date: October 28, 2002

A few days ago I made inquiry to Paul Kaspar in Region 6 regarding the NPDES status of discharges from contaminated soils at LANL. Paul referred this to Scott Wilson who is the Region 6 Water Permits Branch staff member who is most familiar with LANL issues. Scott has checked with the Region 6 RCRA staff as well as the storm water permitting staff (Brent Larsen) and responded by telephone to me October 25, 2002.

LANL responded to a recent NMED/HWB enforcement action by filing a legal brief which, among other things, asserted that HWB has no authority under RCRA for contamination in, or created as a result of point source discharges of pollutants "subject to" the federal Water Pollution Control Act (CWA). As I understand (and conveyed to EPA) HWB's action requires remediation of a large number of SWMUs (contaminated soils), many of which exist because of deposition in soils of pollutants that were discharged in storm and process water discharges (both NPDES permitted and unpermitted) from the lab since the 1940's. LANL claims that these discharges were/are subject to regulation under the CWA and are therefore exempt from RCRA requirements (the "subject to" exemption language comes from RCRA). For the discharges themselves, this is likely true.

Point source discharges of pollutants to "waters of the U.S." are subject to regulation under the CWA. Point source discharges subject to CWA regulation include discharges of process waters, and storm water from "industrial activities." Process water discharges at the lab have historically been numerous and varied, and have in many cases been (and are currently) covered under an "individual" NPDES process discharge permit. "Facilities engaging in industrial activities" are defined in 40 CFR Part 122.26 and all storm water discharges of pollutants to "waters of the U.S." from these activities are subject to NPDES permitting requirements. Storm water discharges from a large variety of facilities and activities are subject to these permitting requirements and include discharges from power plants, manufacturing facilities, facilities subject to Subtitle C of RCRA (including SWMUs), etc. However, contaminated soils and sediments, etc., whether created as a direct result of these activities, or created as a result of



discharges and deposition of pollutants originally in process and/or storm water discharges from these activities, are SWMUs presumably subject to RCRA regulation. According to Scott, EPA RCRA staff believe that the soils contaminated due to these CWA discharges are indeed SWMUs and subject to RCRA regulation. In addition, since they are classified as SWMUs, all storm water discharges from the SWMUs are subject to NPDES permitting, preferably via the NPDES Multi-Sector General Storm Water Permit (MSGP).

It therefore appears that USEPA/RCRA and NPDES staff, and NMED/HWB and SWQB staff are all on the same page on this issue. This interpretation agrees with the one consistently followed by SWQB (and EPA) staff, and related repeatedly to DOE/LANL staff, regarding NPDES permitting requirements for SWMUs and other industrial point source discharges.