



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202-2733

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QUALITY BUREAU

→ Kirklan  
Kathleen Sisneros  
Jim Piatt

October 11, 1990

REPLY TO: 6W-ET

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (P 176 161 378)

Mr. Jim Piatt  
Acting Chief, Surface Water Bureau  
New Mexico Environmental Improvement Division  
P.O. Box 968  
Santa Fe, New Mexico 87504-0968

Re: Notice of Proposed Administrative Penalty Assessment  
Docket No. VI-90-1642  
NPDES Permit No. NM0028355

Dear Mr. Piatt:

Enclosed is a copy of the administrative complaint which the Administrator of the United States Environmental Protection Agency (EPA) proposes to issue to University of California/Los Alamos National Laboratory pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g). The Administrator proposes to issue the complaint to begin the process to administratively assess a Class I civil penalty of \$25,000 against University California/Los Alamos National Laboratory for violations of the Clean Water Act. Because the violations have occurred in the State of New Mexico, EPA is offering you an opportunity to confer with us regarding the proposed penalty assessment.

You may request a conference with Mr. Everett H. Spencer within two weeks of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed penalty assessment.

A copy of EPA procedures governing the assessment of Class I administrative penalties under the Clean Water Act is enclosed for your reference. If you



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wish to request a conference or if you have any comments or questions regarding the letter, please call Mr. Everett H. Spencer at telephone (214) 655-6475.

Sincerely yours,



Myron O. Knudson, P.E.  
Director  
Water Management Division (6W)

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

IN THE MATTER OF	§	DOCKET NO. VI-90-1642
	§	
UNIVERSITY OF CALIFORNIA	§	
LOS ALAMOS NATIONAL LABORATORY	§	
LOS ALAMOS, NEW MEXICO 87545	§	Proposal to Assess Class I
	§	Administrative Penalty Under CWA §
NPDES PERMIT NO. NM0028355	§	309(g)

ADMINISTRATIVE COMPLAINT,  
FINDINGS OF VIOLATION,  
NOTICE OF PROPOSED ASSESSMENT OF  
A CIVIL PENALTY, AND NOTICE OF OPPORTUNITY  
TO REQUEST A HEARING THEREON

I. Statutory Authority

The following Findings are made and Notices given under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (hereinafter the "Act"), 33 U.S.C. § 1319(g). The Administrator has delegated these authorities to the Regional Administrator of EPA Region 6 who re delegated these authorities to the Director of the Water Management Division of EPA Region 6, who hereby issues this Complaint and Notice.

II. Findings of Violation

1. The University of California as the operator of the Department of Energy owned Los Alamos National Scientific Laboratory, (hereinafter the "Respondent"), within the meaning of Section 502(5) of the Act, 33 U.S.C. §

1362(5), owns or operates a facility located at the Los Alamos National Laboratory, Los Alamos, New Mexico, 875457 which discharges pollutants to the water course in Sandia Canyon from the TA3 Power Plant, (Bldg. 22), a navigable water of the United States within the meaning of Section 502 of the Act, 33 U.S.C. § 1362. Respondent is, therefore, subject to the provisions of the Act, 33 U.S.C. § 1251 et seq.

2. The Respondent has violated Section 301(a) of the Act, 33 U.S.C. §, 1311(a), by violating condition Part I.A. of NPDES Permit No. NM0028355, which condition implements Section 402 of the Act, 33 U.S.C. § 1342 and which permit has been issued to the Respondent pursuant to Section 402 of the Act, 33 U.S.C § 1342, by discharging low pH water from Outfall 01A in violation of the permit as follows:

<u>Date</u>	<u>Parameter</u>	<u>Violation</u>	<u>Permit Limit</u>	<u>Quantity</u>
May 20, 1990	pH, min.	1.4 s.u.	6.0 s.u. min.	18,000 gal.
	pH, min.	3.9 s.u.	6.0 s.u. min.	2,000 gal.
May 21, 1990	pH, min.	2.2 s.u.	6.0 s.u. min.	15,000 gal.

3. EPA has consulted with the State of New Mexico regarding this proposed action by mailing a copy of this document to the appropriate State official and offering an opportunity for the State to consult with the EPA on this proposed penalty assessment.

III. Notice of Proposed Order Assessing A Civil Penalty

Based on the foregoing Findings of Violation and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA Region 6 hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent assessing a penalty of \$20,000, which constitutes less than \$10,000 per violation cited above.

The proposed penalty amount was determined by the EPA after taking into account the nature, circumstances, extent and gravity of the violation or violations, the Respondent's prior compliance history, degree of culpability for the cited violations, any economic benefit and savings accruing to Respondent by virtue of the violations, and the Respondent's ability to pay the proposed penalty. All factors are identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). The Final Order Assessing Administrative Penalties may be issued thirty (30) days after Respondent's receipt of this Notice unless the Respondent, within that time, requests a hearing on this Notice pursuant to the following section.

IV. Notice of Opportunity to Request a Hearing

1. Respondent may, pursuant to Section 309(g), of the Act, 33 U.S.C. § 1319(g), request within thirty (30) days of receipt of this Notice, a hearing on the civil penalty assessment proposed herein. At the hearing the

Respondent may contest any material fact contained in the Findings of Violation at Section II above and the appropriateness of the proposed penalty described in Section III above. The procedures for the hearing, if one is requested, are set out in "Guidance on Class I Clean Water Act Administrative Penalty Procedures", a copy of which is attached hereto for your convenience.

2. Respondent must send any request for a hearing to:

Regional Hearing Clerk (6C-G)  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

3. Be aware that should you request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should you not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties and only members of the public who commented on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. Such a petition will only be granted and the hearing held if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

4. Neither assessment nor payment of the administrative civil penalty pursuant to this section of the Act shall affect your continuing obligation to comply with the Act, with every term and condition of your NPDES permit, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), ordering cessation of the violations alleged herein.

Date: October 11, 1990

  
Myron O. Knudson, P.E.  
Director  
Water Management Division (6W)  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733