Permit

SWS blue

Department of Energy
Albuquerque Operations
Los Alamos Area Office
Los Alamos, New Mexico 87544

NOV 1 0 1988

cc → Boyd Hamilton Hazardous Waste 12/8/88

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Robert E. Layton, Jr.
Regional Administrator
U.S. Environmental Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas 75202

Dear Mr. Layton:

RE: NPDES PERMIT NM0028355-PROPOSED MODIFICATION

This letter is written in response to the proposed modification of National Pollutant Discharge Elimination System (NPDES) permit NM0028355, advertised on October 15, 1988 pursuant to Advertising Order Number 9 T-3014-NNLX. By this letter we request a public hearing and public notice of any final permit decision issued by the Environmental Protection Agency (EPA).

We are concerned with the recent attempts by EPA to list the University of California (UC) in lieu of the Department of Energy (DOE) as permittee in NPDES permit NM0028355. The enclosed comments describe the efforts undertaken by DOE and UC to communicate with EPA regarding the permittee issue. We would hope that your personal involvement in this matter would expedite the process to the eventual satisfaction of all parties concerned.

Sincerely,

Roy A. Hearn for

Allen J. Tiedman
Associate Director
for Support
Los Alamos National Laboratory
for University of California

Sincerely,

H E Valencia

Harold E. Valencia
Area Manager
Department of Energy
Los Alamos Area Office

14989

AJT:HEV:CN:jm

Enclosure: a/s

Cy: Ellen Caldwell, USEPA (6W-PS), Dallas, Tx.
James Highland, USEPA, Dallas, Tx.
Kathleen Sisneros, NMEID, Santa Fe, NM.
CRM-4 (2), LANL, MS A150
John Themelis, Director, EHD, AL

Comments of the Department of Energy and the University of California Regarding USEPA Draft Permit NM 0028355 at the Los Alamos National Laboratory

SUMMARY OF COMMENTS

EPA is proposing in its draft permit to change the permittee at the Los Alamos National Laboratory from the Department of Energy (DOE) to the University of California (UC). This is the only modification to the permit which EPA is proposing at this time.

The parties to these comments continue to believe that some of the procedural and factual bases on which EPA is taking this action are incorrect. In an attempt to resolve this matter in a satisfactory and expeditious manner, the Department of Energy and the University of California propose that the permit be modified to recognize DOE and UC as co-operators of the facility at Los Alamos National Laboratory.

BACKGROUND

A brief review of the events leading to this proposed draft permit to clarify the issues follows.

On April 4, 1988, EPA Region VI sent a letter to DOE Area Manager Harold Valencia stating that, "Upon review of information now available to us, it appears that the referenced NPDES permits are incorrectly issued to the Department of Energy." The letter further stated that the permits should apparently be issued to the University of California pursuant to 40 CFR Part 122.21(b).

Mr. Valencia responded by letter dated May 23, 1988, in which he stated that he did not agree that the permits had been incorrectly issued to DOE originally but agreed that, based upon changed policies, it seemed appropriate to make UC a co-operator on the permits. At that time, there was no written agreement in place between DOE and UC regarding a transfer of the permit.

Following Mr. Valencia's letter of May 23 requesting joint listing of DOE and UC as permittees, EPA sent a letter on May 27 to Mr. Allen Tiedman of the University of California indicating that the permittee listed on NPDES Permit NM0028355 had been changed to UC.

On July 26, DOE responded to EPA's letter by setting forth why EPA's unilateral transfer of the permit violated EPA's regulations. These arguments will not be set out again here in detail since, according to the Fact Sheet, all of the correspondence mentioned above is part of the public record.

EPA'S FACT SHEET

The Fact Sheet states that the permit has been incorrectly issued to the DOE based upon applications incorrectly submitted by DOE.

The parties to these comments disagree with that conclusion. DOE has been and continues to be an integral part of the operation and management of Los Alamos National Laboratory, in conjunction with its management contractor, the University of California.

Pursuant to the prime contract between DOE and UC, DOE retains ultimate budget control over the operations at Los Alamos and is responsible for formulating the objectives of the overall scientific and technical programs at the Laboratory. UC must conduct its actions in accordance with the final work plan and budget. DOE retains oversight of NPDES facilities, receives and is familiar with DMRs and corrective action responses, and concurs in regulatory decisions. Under these circumstances, DOE is much more than a mere owner, and is in fact a co-operator of the facility.

EPA's Fact Sheet states that it attempted to resolve this matter by issuing a minor modification pursuant to 40 CFR 122.63 on May 27, 1988. However, Paragraph (d) of that section clearly requires written agreement and consent between the current and new permittees. To our knowledge, no such agreement was ever sought by EPA, nor was such an agreement offered by DOE and UC.

According to the Fact Sheet, this proposed draft permit issuance to UC is in accordance with 40 CFR 122.62(a)(2), 122.62(b), and 124.5.

40 CFR 122.62(a)(2) states that one cause for modification is receipt of new information which was not available at the time of permit issuance and that new information would have justified the application of different permit conditions at the time of issuance. Clearly, EPA has been aware since the inception of the permit that UC is the management contractor at Los Alamos. For example, correspondence regarding the NPDES permit dated July 23, 1976, (Attachment 1) specified that the Laboratory was a "Government Owned-Contractor Operated" facility. All NPDES permit re-applications have referenced previous correspondence and documents including the Federal Facilities Compliance Agreement (Attachment 2) currently in effect which also sets forth the DOE/UC relationship. Through more than a decade of correspondence, agreements, and personal on-site interactions between EPA and Los Alamos staff, the relationship between DOE and UC has been evident and can not be considered to be new information. Additionally, there is nothing to indicate that any of the information would have in any way affected or justified the application of different permit conditions.

The parties do not believe that 40 CFR 122.62(b) is applicable under the facts of this case as the causes for modification set forth in that section are not present in this matter. No cause for termination exists pursuant to 40 CFR 122.64. No notice was given to the Director of a permit transfer under 40 CFR 122.62(b)(2), nor did an automatic transfer occur.

EPA also relies on 40 CFR 124.5 in making its proposed modification. However, that section states that modifications may only be made for the reasons set forth in 40 CFR 122.62 and 64; and as indicated in the preceding paragraph, those sections do not appear applicable in this case.

Finally, the Fact Sheet cites recent revisions to the Federal Facility Compliance Strategy as grounds for the modifications. The parties were unable to obtain a copy of this revised strategy as it is apparently still under review and has not been finalized. Consequently, we do not believe it can be fairly relied upon in this proceeding.

PROPOSAL FOR RESOLUTION

DOE has issued a memorandum which sets forth its recommendation with regard to signatories on the NPDES permits at Laboratory facilities (Attachment 3). DOE states that its representative should sign for DOE as owner and co-operator of the facility with its management contractor. As the management contractor at Los Alamos, UC is constrained by this DOE policy and is obligated to follow the DOE's directives pursuant to the party's prime contract.

In recognition of DOE's responsibility as both an owner and co-operator, the parties believe that this matter could be amicably and swiftly resolved by, and would consent to, a modification to the permit whereby DOE and UC are deemed to be co-operators of the facility. This meets EPA's apparent policy with regard to interpretation of 40 CFR 122.21(b) and also reflects the reality of the operational circumstances at the Los Alamos National Laboratory.

Based on the foregoing, the parties hereby request that the permit be modified so that DOE and UC are co-operators of the facility. If EPA is unable to comply with this request, then the parties do hereby request a public hearing pursuant to 40 CFR 124.11. We further request that EPA provide public notice of its final permit decision. The issues to be raised in the hearing will be all those matters raised in the comments above and any other related factual or legal matters.

Harold Valencia, Manager
Los Alamos Area Office
U.S. Department of Energy

11-10-88
Date

Allen J. Tiedman
Associate Director
for Support
Los Alamos National Laboratory
For the University of California

11/10/88
Date

ATTACHMENT 1

AUG 1 :

John [illegible] White, Regional Administrator
U. S. Environmental Protection Agency, Region VI
1600 [illegible]
Dallas, Texas 75201

Dear Mr. White:

Subject: NPDES PERMIT NO. NM0028223
(YOUR LETTER, 7/23/76)

We have reviewed the copy of the permit which the EPA proposes to issue and find it unacceptable.

The Los Alamos Scientific Laboratory is a U. S. Energy Research and Development Administration owned facility, and is operated by the University of California; i.e., it is a GO - CO (Government Owned - Contractor Operated) facility. Two years ago when we applied for NPDES permits, the permits at that time contained references to the State of New Mexico and other conditions which made them unacceptable because of this being a Federal facility. Ultimately, in the latter part of 1974, you granted permits that were acceptable because certain references to the State of New Mexico were deleted and other conditions were changed.

In order that the subject permit be agreeable and compatible with the permits issued earlier, the following changes will have to be made in the text of the permit:

a. Change the introductory sentence of 4 on page 2 to read:

> "The permittee shall allow the Regional Administrator and/or his authorized representatives, upon the presentation of credentials:"

b. Delete the last phrase of 5 on page 2 which reads:

OFFICE ➤	TECH. PROG	AAM/OPERS.	COUNSEL	AREA MGR.		
SURNAME ➤	Grismon:dsm	Valencia	[illegible]	Pfaziel		
DATE ➤	8-12-76	8/13	[illegible]	8/13		

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AUG 13 1976

"nor does it obviate the necessity obtaining State or local assent required by law for the permitted discharge".

c. Delete "the State water pollution control agency and" from the last phrase of 12 on page 3.

d. Delete 15 on page 4.

e. Change 0.024 mgd to read 0.030 mgd in last sentence of second paragraph of 1.a on page 5.

f. In the table of Effluent Concentrations of 1.a on page 5, change the 30's to 60's and the 45's to 100's. In the table of Effluent Loading for BOD only, change the 1.4 to 6.8 and the 3.0 to 15.0.

g. Change the last part of the first sentence of 1.c. on page 6 to read "nor greater than 9.8 at any time".

h. Delete "the State water pollution control agency or" from the last sentence of b(4) on page 7.

i. Delete "New Mexico EIA" from c(1)(a) on page 8.

j. Delete "State water pollution control agency or" from c(4) on page 9.

k. Delete "the State water quality agencies and" from 3.a on page 9.

l. Delete "the State water quality control agency or", and "who physically issues the permit" from 15 on page 2 of the DEFINITIONS.

Please make the above changes in the subject permit so that it may be acceptable.

Thank you for your cooperation.

DISPATCHED

AUG 13 1976

Sincerely,

Kenneth R. Braziel
Area Manager

LTP:WC

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION VI

U.S. DEPARTMENT OF ENERGY LOS ALAMOS AREA OFFICE LOS ALAMOS, NEW MEXICO	§ § §	
and	§ §	FEDERAL FACILITY COMPLIANCE AGREEMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION VI	§ §	

The Environmental Protection Agency, Region VI (hereinafter Region VI), and the Department of Energy, Los Alamos Area Office, Los Alamos, New Mexico (hereinafter DOE) are the parties to this agreement which is entered into pursuant to Executive Order 12088, October 13, 1978 [43 FR 47707]. The Office of Management and Budget and the Department of Justice will take cognizance of this agreement pursuant to their respective duties to assure compliance with the environmental laws under Executive Order 12088 and the particular statutes herein addressed.

I. SCOPE

A. DOE owns the facility known as Los Alamos National Laboratory. The laboratory is operated by the University of California under contract with DOE.

B. This agreement is entered into by the parties to assure compliance by DOE with the Clean Water Act (CWA) [33 U.S.C. 1251, et seq.] and implementing regulations, including the National Pollutant Discharge Elimination System (NPDES) Permit No. NM0028355 issued to DOE.

C. This agreement is not and shall not be construed as a permit under the CWA nor shall it relieve DOE of any legal obligations under the CWA which are in addition to or different from matters covered in this agreement.

II. AUTHORITIES

The duties of DOE to operate the wastewater treatment facilities in compliance with the CWA are prescribed in Section 313 of the Clean Water Act [33 U.S.C. 1323]. Executive Order 12088 was promulgated to insure Federal compliance with applicable pollution control standards. This agreement contains a "plan," as described in Section 1-601 of Executive Order 12088, to achieve and maintain compliance with applicable water pollution control standards for the DOE facilities.

III. STATEMENT OF FACTS

The following facilities are owned by DOE, operated by the University of California, under the direct control of DOE:

Sanitary and Industrial Wastewater Treatment Plants, NPDES Permit No. NM0028355, currently produce effluents that cannot continually meet the current NPDES permit requirements. The schedules set forth in Attachment 1 contemplate achievement of compliance with this permit upon completion of construction projects with targeted construction start dates as shown in schedules. The projects consist of new construction and rehabilitation of existing facilities.

IV. COMPLIANCE SCHEDULE

The compliance schedules set forth in Attachment 1 are intended to achieve compliance as expeditiously as practicable, pursuant to Section 1-601 of Executive Order 12088. The attachment is incorporated into and made a part of this agreement. The schedules were determined after consultation between DOE, the Laboratory, and Region VI. The schedules contain interim requirements reflecting design drawing submittal dates, bidding, contract

award, construction completion, and start-up dates. DOE will make a good-faith effort to comply with the schedules and, wherever reasonably possible, will expedite the schedules.

V. FUNDING

DOE shall request all funds and/or authorizations through the appropriate channel necessary to achieve the compliance schedule. Steps to be taken in seeking funding shall be consistent with Sections 1-4 and 1-5 of Executive Order 12088 as implemented by the Office of Management and Budget Circular A-106 (as amended). The schedules are subject to obtaining the requisite funds and/or authorizations for the particular programs and Laboratory divisions involved.

VI. REPORTING REQUIREMENTS

A. The DOE shall submit quarterly progress reports by the last day of each calendar quarter and upon the final compliance date as set forth in the schedule. The progress reports will be submitted to Region VI and the New Mexico Environmental Improvement Division. The progress reports shall indicate compliance or noncompliance with the schedule. In the event of noncompliance, the report shall include the cause of noncompliance and any remedial actions taken. If delay is anticipated in meeting any schedule date, DOE shall immediately notify Region VI, in writing, of the anticipated delay, describing in detail the anticipated length of delay, the precise cause of the delay, the measures taken by DOE to prevent or minimize the delay and the timetable by which the measures shall be implemented. The DOE will take reasonable action to minimize any delay.

However, if DOE believes delay is unavoidable, the EPA Region VI Water Management Division Director and the Area Manager shall undertake to negotiate, in good faith, a revised compliance schedule. If they fail to agree upon a revised Schedule, the EPA Water Management Division Director shall determine what shedule shall apply. If the DOE disagrees with this determination, the conflict resolution procedure described herein shall control.

B. In the event there is an amendment of the CWA, or changes to the regulations promulgated under those statutes, the discharge limits and compliance schedules may be renegotiated to reflect these changes. Such renegotiation shall be governed by Executive Order 12088. During the pendency of any renegotiation, the attached compliance schedule, to the extent they do not conflict with statutory or regulatory changes, shall remain in effect unless specifically waived by Region VI.

C. On the date for final compliance, as shown in the schedules, compliance with applicable permit requirements must be demonstrated by testing and positive reporting of the achievement of compliance, rather than by the mere completion of construction of pollution abatement facilities.

D. Upon the demonstration of compliance by DOE, there will be a continuing obligation to comply with applicable permit requirements under the CWA. These requirements are embodied in the facility's National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act.

VII. CONFLICT RESOLUTION

In the event of any conflict involving violations of this agreement, Region VI and DOE will attempt to resolve the differences. If the differences cannot be resolved by the two parties, the procedures in Sections 1-602, 1-603, and 1-604 of Executive order 12088 shall apply.

VIII. SANCTIONS

A. In the event of violations of the terms of this agreement by DOE, enforcement procedures established by the Clean Water Act are available as enforcement mechanisms.

B. Provided the attached Compliance Schedules and Interim Limits are met, this agreement is considered to be in lieu of any other EPA enforcement action with regard to the facilities named in the attached schedule and the deficiencies indicated in Section III.

This agreement in no way modifies Section 504 of the Clean Water Act.

Date: July 18, 1986

Signed: _____
Harold E. Valencia
Area Manager
Los Alamos Area Office
Department of Energy

Date: July 14, 1986

Signed: _____
Myron O. Knudson
Director, Water Management Division
Environmental Protection Agency, Region 6

United States Government

memorandum

Department of Ene

→ FILE: 6,

DATE: APR 27 1988

ATTACHMENT 3

REPLY TO ATTN OF: EH-232

SUBJECT: Los Alamos National Laboratory NPDES Permit

TO: John G. Themelis
Director
Environment and Health Division
Albuquerque Operations Office

This memorandum is to confirm discussions with Mr. Ronald Petersen of your staff concerning the issuance of the National Pollutant Discharge Elimination System (NPDES) Permit for Los Alamos National Laboratory. Our office and the Office of General Counsel both support your decision to have the NPDES Permit co-signed by Department of Energy (DOE) and University of California. We recommend that an appropriate DOE representative sign the NPDES Permit as the owner and sign jointly with the Management and Operating (M&O) contractor as the operator. DOE has some operational responsibilities, especially in budgetary decisions, for assuring compliance of LANL with the NPDES Permit.

As you may know, an Action Memorandum for decision by the Under Secretary is currently being coordinated regarding RCRA permit application signatures. A separate policy for signatures on other environmental permits will be developed and issued in the near future.

Please call me or Gary Lavagnino if you have any questions regarding this memorandum.

Kitty Taimi

Kathleen I. Taimi
Director
Environmentl Compliance Division

cc: Martha Crosland, GC-11
Doug Smith, DP-3

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