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GOVERNOR

Permit
State of New Mexico

ENVIRONMENT DEPARTMENT

JUDITH M. ESPINOSA
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Permit Process

June 12, 1992

Mr. Kenton Kirkpatrick
Deputy Director, Water Management Branch
USEPA-Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

RE: Los Alamos National Laboratory (LANL) NPDES Permit

Dear Ken:

I am requesting your help in resolving a problem which is rapidly becoming a test of wills between our two agencies. The Albuquerque Journal on 11 June carried a story on the draft LANL NPDES permit which I have included for your review. While I am all too aware that the news media often misinterprets technical or complex issues, comments attributed to Mr. Fred Humke are a concern to this Department. Mr. Humke, in his comments to the news media and in the EPA Fact Sheet dated May 1, 1992, had made determinations of attainable uses which directly conflict with the State's water quality standards; standards which Region 6 has recently approved. Moreover, the Fact Sheet editorializes to the effect that LANL will have to make provisions for additional funding due to the "increased stringency for WQS results." The same comment could be applied to many dischargers due to permit modifications implemented as a result of language adopted by the US Congress in Section 303(c)(2)(B) of the Clean Water Act. Yet I have never seen such language in any other draft permit. The Fact Sheet intentionally or unintentionally casts the State in the role of the cause of this new fiscal impact.

In the referenced newspaper article, Mr. Humke is quoted as saying that the State has expanded its requirements "from [protection of] no uses to all uses." I have included for your review a copy of EPA's August 10, 1988 fact sheet for the existing permit in which it states that the "known" uses include both coldwater and warmwater fisheries. In fact, every NPDES permit that EPA has issued for this facility has always stated that fisheries have been a designated and attainable use. It is my understanding that Mr. Humke was the author of the last several NPDES permits issued to LANL and should therefore know that his statement is not correct.



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The language incorporated into the 1992 Fact Sheet, in which EPA states that New Mexico must protect its water resources via "conditional certification", is a readily apparent attempt to make the State 'look like the bad guy.' EPA continues to base its limited protection stratagem on a misinterpretation of a statement Kathy Sisneros made in Dallas even after she has repudiated that interpretation in several calls to EPA. We have provided comments on these concerns when we denied the original draft on 9 August 1991 and again on 22 April 1992 when we completed our review of the preliminary draft permit. Many of the comments we made, not once but twice, were ignored. While no decision has been made on the current draft, the lack of adequate response by EPA to our comments may well result in another denial.

I sincerely hope that we can get through the rest of this certification process without additional conflict. New Mexico is well aware of its responsibilities in the certification process. Please be advised that the State cannot and will not allow EPA to administratively waive requirements of the New Mexico water quality standards.

Sincerely,



Jim Piatt, Chief
Surface Water Quality Bureau

xc: Kathy Sisneros, Director, Water and Waste Management Division, NMED
Office of General Counsel, NMED

Los Alamos, EPA Join Forces Against State Regulators

By Tamar Stieber

JOURNAL STAFF WRITER

Los Alamos National Laboratory and one of its regulators, the U.S. Environmental Protection Agency, are joining forces — at least philosophically — against the state Environment Department.

The state is demanding that the nuclear weapons laboratory adhere to what the two federal groups consider overly stringent regulations for discharging pollutants into the canyons of Los Alamos.

"We're getting double-teamed on this," Jim Piatt, chief of the Environment Department's Surface Water Quality Bureau, said Wednesday. "I'm not comfortable with this at all, quite frankly."

At stake is the laboratory's pending National Pollutant Discharge Elimination System permit, which is issued by the EPA — but only after certification from the state Environment Department.

The state agency says it is simply trying to protect

HOW TO COMMENT

Interested parties have until July 16 to request a public hearing from, or send comments to, the U.S. Environmental Protection Agency about Los Alamos National Laboratory's pending National Pollutant Discharge Elimination System permit.

The EPA will hold a public hearing if it finds a "significant degree of public interest," according to procedures in the Federal Register. The agency

tributaries that might feed lab pollutants into the Rio Grande.

Lab spokesman John Gustafson stressed that most of the laboratory's "outfalls" — 89 of 138 — discharge non-toxic water.

"We're not talking major industrial pollution in the canyons," he said.

What the laboratory and the EPA find particularly troubling is the state's requirement that the lab apply

will notify each person who sends a written comment or requests a hearing of its final decision on the permit.

All comments or requests should be sent in writing to: Ellen Caldwell, Permits Branch (6W-PS), U.S. Environment Protection Agency, 1445 Ross Ave., Dallas, Texas 75202-2733. For further information, call (214) 655-7190.

the same water quality standards to discharges in dry arroyos or ephemeral (short-lived or seasonal) streams as for fisheries.

"As far as I've been able to determine, virtually none of this ever leaves the main acreage of Los Alamos (National Laboratory property)," said permit writer Fred Humke of the EPA's Dallas office.

But Piatt said his department has no data indicating the streams in question are in fact ephemeral. Even

the "tiger team" the laboratory's parent agency, the U.S. Department of Energy, sent out last year to inspect the lab's health, safety and environmental practices, referred to LANL documents showing that some of those streams reach the Rio Grande, he said.

Piatt said the EPA always has listed those streams as governed by the same water-quality standards as fisheries.

Gustafson said the lab "disagrees" that the streams and dry arroyos in which the lab's 138 discharge points are located could be considered fisheries.

"They look at what the Rio Grande is used for and apply those same standards way, way uphill," Gustafson said. "It's a lack of agreement over how to characterize the canyons."

Piatt said the pending permit is the third the EPA has issued to the lab that classifies the streams as fisheries. He also said the state doesn't have the

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resources to do a study that could change those classifications.

"Consequently," he said, "we have no other alternative but to call them tributaries of the Rio Grande and to protect them."

Humke, however, said the state has expanded its requirements "from no uses to all uses."

"The state is insisting that, while none of their standards applied in ephemeral reaches before, now they're saying everything applies," he said. "We can't see it."

Piatt said he prefers to err on the side of caution — both for legal reasons and "because of the kinds of work and research done up there" in Los Alamos.

"Pollutants discharged from LANL are not discharged anywhere else in the state," he said in an earlier interview. "Consequently, we have to do a much better job and a much more thorough review."

He added, "When you are dealing with a permit that is as complex as the one from Los Alamos National

Laboratory, there are items out there that are overlooked — items that we feel are necessary for the permit to be protective of the streams."

Because of the large number of outfalls and the variety of pollutants — including radioactive material, heavy metals, human sewage and organic compounds such as solvents — at the Los Alamos laboratory, Piatt called the LANL permit "fascinating."

"It has literally been described as the second most complicated permit in the country," he said, putting at No. 1 the Oak Ridge National Laboratory in Tennessee, part of the DOE's nuclear weapons complex.

Piatt said that while radioactive discharges would most likely "touch the public nerve," he thought heavy metals should be of equal concern.

"They (the public) are not as familiar with those concerns as my staff and may not be aware of their significance," he said.

Piatt said there are probably more discharge points at the laboratory that have not been charted.

"The point, in all honesty, is that every time we or they walk in a canyon, we'll find additional discharges," he said. "It's going to take two staff people sitting down for 30 days to get on top of this."

Humke said the state can put any conditions it wants into the permit but it will have to defend them to the state Water Quality Control Commission.

"And I'm sure the University of California will seriously challenge them," he said.

The University of California operates Los Alamos nuclear weapons laboratory under a contract with the lab's parent agency, the U.S. Department of Energy.

Piatt pointed out that it was the Water Quality Control Commission, of which he is one of nine members, that approved the state's water standards in question. As to a challenge from the University of California, he replied, "It's a real possibility."

The Environment Department is already embroiled in a legal dispute with the University of California and the DOE over an environmental permit regulating treatment of hazardous waste at the laboratory.

The state has placed restrictions on hazardous

waste the lab wants to burn in an incinerator that also burns radioactive waste. The Environment Department is concerned that the hazardous waste burning could trigger a release of radioactivity. But the university and the energy department insist the state has no authority over radioactive air emissions.

The EPA originally gave the state Environment Department 30 days to review a draft pollutant discharge permit it issued to LANL on May 14 but has granted a 30-day extension — though July 16 — for the state and the nuclear weapons laboratory to hash out the terms.

The state last year rejected the first draft permit — primarily, Piatt said, because the laboratory included in its 3-inch thick application an "add-delete clause" allowing it to add discharge sites without public notice or state certification.

Once approved, the pending permit will last two years instead of the usual five because of lab activities that may result in more and different types of discharges.

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