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Rec'd

11-18-15

6WQ-PO

13 November 2015

Ron Curry, Administrator
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Suite 1200
Dallas, TX 75202

RE: NPDES Permit NM0028355 covering Outfall #051, Radioactive Liquid Waste Treatment Facility ("RLWTF"), Los Alamos National Laboratory ("LANL"), Los Alamos, NM

Dear Administrator Curry:

The undersigned attorneys represent two New Mexico citizens organizations: Communities for Clean Water and Concerned Citizens for Nuclear Safety.

Can we avoid potentially unnecessary litigation? To that end, by this letter we are asking you to look at a National Pollutant Discharge Elimination System ("NPDES") Permit that appears to us to be unnecessary. The above referenced permit was issued in 2014 following an inspection report, filed with your offices, in which the inspector noted that there has been no discharge from Outfall 051 since 2010. The RLWTF was recently redesigned and rebuilt specifically as a zero-discharge facility. Significantly, the RLWTF now has two methods of eliminating discharges in place. The first, in regular use, is a boiler system that evaporates the liquid portion of the waste. Sludge is removed and processed under the existing Resource Conservation and Recovery Act ("RCRA") permit for LANL. The second method is a passive solar evaporative system that is in a "ready to go" status awaiting a permit. However, the permit under which it would be made functional, rather than a RCRA permit, is a ground water discharge permit (DP-1132), administered under state law by the New Mexico Environment Department ("NMED") Ground Water Quality Bureau. This, we believe, is the intersection of at least two problems with the issuance of the above referenced NPDES permit.

First, the NPDES permit, by being issued, provides RLWTF with a Waste Water Treatment Unit ("WWTU") regulatory exemption from RCRA. The RCRA provisions that would otherwise be applicable to the facility, at the same time as providing more stringent oversight of the facility, would also require public processes as well as issuance of public documents and notices, closure and post-closure plans for the facility for public vetting at the time a permit is out for public comment, and a host of other regulatory requirements that are not paralleled by the applicable State ground water regulations or NPDES requirements. We submit that, since the new RLWTF was specifically designed and built as a zero-discharge facility, it does not require an NPDES permit and is not eligible for the WWTU exemption.

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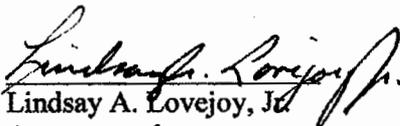


Second, from a statutory perspective, current federal case law (*National Pork Producers Council v. U.S. EPA*, 635 F.3d 738 (5th Cir. 2011); *Waterkeeper Alliance, Inc. v. American Farm Bureau Federation*, 399 F.3d 486 (2d Cir. 2005)) states that, if a facility has no discharge, as defined under the Clean Water Act, the U.S. Environmental Protection Agency has no jurisdiction to issue an NPDES permit.

For these reasons, we believe that we could sue to terminate the current NPDES permit for Outfall 051, thus requiring NMED to regulate the RLWTF under RCRA. Before bringing suit, we felt that we should bring this matter to your attention and request that you obtain an expedited opinion from your NPDES division and the Region 6 legal staff, stating the justification, if any, for issuance of the referenced permit for Outfall 051 under the circumstances described (i.e., no discharge since 2010, no need to discharge). Our hope is that you and your staff will find a way to eliminate this problem without the necessity of our litigating the issue.

Thank you for your consideration, attention and prompt reply.

Sincerely,


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