

Los Alamos National Laboratory
NPDES Permit No. NM0028355
Comments on Discussion Draft for NPDES Permit Certification

Thank you for the opportunity to comment on the proposal for rules that address certification of federal permits pursuant to Section 401 of the federal Clean Water Act [33 U.S.C. 1341]. The Los Alamos National Security, LCC (LANS) and National Nuclear Security Administration (NNSA) provide the following comments for your consideration:

- The draft regulations contain language that is somewhat vague and overly broad. For example, in 20.6.2.2001, Section G (4) states that a certification or denial shall include a statement of any conditions that the department deems to be “necessary or desirable.” Permit conditions must be limited to those conditions that are necessary to comply with the provisions of the CWA or the State Water Quality Act and associated regulations. State certification should not be based on meeting unanticipated, “desirable” conditions that are not regulatory requirements. The exact intent of this statement is unclear.
- Similarly, 20.6.2.2001 Section G (2) requires that the written certification or denial include a statement that “the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations.” It is not clear what additional information the Department will consider relevant to water quality considerations. The regulations should state that the specific information considered by the Department would be provided in the certification or denial document. This allows the public and the applicant to verify and understand the analysis that was conducted.
- In 20.6.2.2001 Section F, a comment period of “at least 30 days” is specified. LANS/NNSA recommend that the comment period be limited to 30 days and that no extensions be granted. Without this limitation, the process will be unnecessarily delayed by repeated requests for extension.
- In 20.6.2.2001 Section G, it itemizes what must be included in the written certification, but does not adequately address denials. An item should be added requiring a statement that in the case of a denial, the Department will specify the basis for that denial.
- In 20.6.2.2001 Section H, it states that cross-examination of persons presenting oral statements will not be allowed, which is inconsistent with other regulations and denies interested parties the opportunity to challenge the validity of the testimony that will be under consideration by the Secretary. This challenge is essential to ensure that the decision makers have adequate information on which to base their determination.
- Overall, the sequence of events laid out in the regulations is not optimum. As defined, the public and the applicant have no opportunity to comment on

conditions that are added by the Department. Their only option is to appeal the final certification, which could result in the need for a permit modification if the appeal is successful. This adds an unnecessary complexity to the process that could significantly delay the final permit.

- The procedures for certifying federal water quality permits allow submittal of written comments from the public regarding permit certification or denial during the comment period. The procedures also document that the Department shall consider all comments. However, the procedures do not document if the public comments will be incorporated into the certification. LANS/NNSA recommend that NMED respond in writing to all written comments received on the certification, similar to EPA's response to comments received during the Public Comment period for the draft NPDES permit (i.e. Fact Sheet).