

**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF PROPOSED DISCHARGE  
PERMIT DP-1132 FOR THE RADIOACTIVE  
LIQUID WASTE TREATMENT FACILITY AT  
LOS ALAMOS NATIONAL LABORATORY,  
LOS ALAMOS, NEW MEXICO**

**No. GWB 19-24(P)**

**TRIAD NATIONAL SECURITY, LLC AND  
THE UNITED STATES DEPARTMENT OF ENERGY'S  
RESPONSE TO MOTION TO DISMISS DP-1132 PROCEEDING**

**I. INTRODUCTION**

Triad National Security, LLC (“Triad”) and the United States Department of Energy (“DOE”) (together referred to as “Applicants”)<sup>1</sup> submit this Response to Motion to Dismiss DP-1132 Proceeding (“Motion”) filed by Concerned Citizens for Nuclear Safety of Santa Fe, Tewa Women United of Santa Cruz, Honor Our Pueblo Existence of Espanola, and the New Mexico Acequia Association (collectively “Movants”). This proceeding is on remand from the Water Quality Control Commission (“WQCC”), which vacated the prior issuance of DP-1132 by the New Mexico Environment Department (“NMED”) based upon an improper appearance of potential bias involving the prior hearing officer assigned to the matter. *See* WQCC Order to Vacate Agency Decision and Remand the Petition for Review of DP-1132 dated June 18, 2019. Movants assert four grounds upon which they challenge the jurisdiction of NMED to issue the proposed DP-1132. As explained herein, all four of Movants’ asserted grounds are without merit because Movants are wrong on both the facts and the law, and their arguments are misplaced.

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<sup>1</sup> Triad is the successor-in-interest to Los Alamos National Security, LLC, which is sometimes referred to as “LANS” in documents appearing in the Administrative Record herein. On November 1, 2018, Triad assumed management and operation of Los Alamos National Laboratory (“LANL”), and at that point Triad stepped into the shoes of LANS in relation to proposed DP-1132 and the proceedings involving DP-1132. Triad previously was substituted for LANS herein.

Movants' first assert that NMED may not issue DP-1132—a Water Quality Act (“WQA”) groundwater discharge permit—unless Applicants first meet a burden to establish that the RLWTF is not subject to regulation by the Environmental Improvement Board (“EIB”) pursuant to language in New Mexico’s Hazardous Waste Act (“HWA”) at NMSA 1978, § 74-6.12.B.<sup>2</sup> This is an unmistakable challenge to NMED’s WQA permitting jurisdiction masquerading as a procedural position for which no authority is cited, and for good reason. The WQA, not the HWA, establishes NMED’s groundwater discharge authority. Moreover, NMED, not Applicants, decide whether a discharge permit is required, and in this instance did so more than a decade ago in a determination that Movants have no right or basis to challenge today. *See* AR 05253-05258. Movants’ novel ploy to challenge NMED’s WQA-based authority is frivolous. It seeks to shift attention away from NMED’s non-discretionary groundwater permitting responsibility under the WQA and associated regulations, to a statute that in no way defines NMED’s groundwater program authority or responsibilities.

By advancing their procedural ploy, Movants seek to have this Hearing Officer determine whether Applicants qualify for the “wastewater treatment unit exemption” under the federal law that authorized New Mexico to manage hazardous wastes, namely the Resource Conservation and Recovery Act (“RCRA”). That issue, however, defines the applicability of RCRA and NMED’s permitting jurisdiction under New Mexico’s counterpart to RCRA, the HWA. As discussed in Section III.A., *infra*, Movants’ back door attempt to use this forum to adjudicate the wastewater treatment unit exemption is particularly unwarranted due to the fact that the same basic groups

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<sup>2</sup> The Part III “Argument” portion of Movants’ Motion includes headings for Movants’ second through fourth asserted grounds at III.B, III.C and III.D, respectively. Although Movants neglected to include a heading III.A, Movants’ first asserted ground, introduced briefly at the bottom of page 3 of the Motion, encompasses nearly all of pages 18 through 27 of the Motion, comprising numbered paragraphs 30 through 45.

comprising Movants previously raised the very same issue to the Hazardous Waste Bureau, which is the only forum where the issue is properly pending. That fact, however, is noticeably absent in their Motion.

Movants' second through fourth asserted grounds for dismissal argue that NMED lacks jurisdiction to proceed on DP-1132, but they, too, amount to grasping at straws. Movants' second ground advances the completely false narrative that there are no discharges NMED may regulate under the WQA and regulations adopted thereunder. *See* Section III.B, *infra*. Movants' third ground, which Movants' arguably waived by requesting both the original DP-1132 hearing and now this rehearing on remand, offers exceedingly narrow interpretations of the WQA and regulations thereunder that both are legally incorrect and contrary to decades of established administration of the ground water program by NMED. *See* Section III.C, *infra*. Movants' fourth ground, meanwhile, makes a convoluted assertion that issuing DP-1132 would be a "nullity" based upon the same false narrative—i.e., that there has not been and never will be a discharge—already mentioned in connection with Movants' second ground. *See* Section III.D, *infra*.

Finally, the flawed nature of Movants' arguments has already been exposed in a highly analogous and overlapping context. Specifically, the Environmental Protection Agency ("EPA") flatly rejected Movants' arguments that EPA had no jurisdiction to issue to LANS (Triad's predecessor) and DOE a National Pollution Discharge Elimination System ("NPDES") permit under Section 402 of the Clean Water Act ("CWA"). Moreover, the rejected arguments were based on the same purported reasons that there supposedly will be no discharges from Outfall 051 (an outfall to be covered by DP-1132), and that the same RLWTF, for the same basic reasons that are offered in Movants' Motion, supposedly does not qualify for the wastewater treatment unit

exemption from permitting under RCRA and, by extension, under the HWA. *See* Section III.E, *infra*.

For all of these reasons, Applicants request that Movants' Motion be denied. In addition, should the Hearing Officer enter a pre-hearing order denying the Motion, as Applicants submit would be prudent, Applicants respectfully request that the prehearing order correspondingly limit the scope of the re-hearing on DP-1132 to the actual groundwater discharge permit issues properly before this Hearing Officer. *See* Section III.F, *infra*. In the prior hearing on DP-1132, the former hearing officer denied a similar prehearing motion to dismiss prior to the hearing, only to have Movants essentially disregard the ruling throughout the evidentiary hearing and then reassert the same positions in an attempted second bite at the apple upon the conclusion of the evidentiary hearing.

## II. FACTS

### A. Disputation of the Facts Offered By Movants

The asserted "facts" offered by Movants are mostly irrelevant, are dated, or are legal arguments masquerading as facts. These are set forth in numbered paragraphs 1 through 29 in Movants' Motion, and each are addressed here.

1. Applicants do not dispute the facts set forth in paragraph 1, nor the implication that the liquids generated from Los Alamos National Laboratory ("LANL") facilities are treated at the RLWTF before they are stored, and before anything is disposed of from the RLWTF.
2. Applicants dispute that the facts offered in paragraph 2 are a consequence of the legal suppositions in paragraph 2, and state that the facts are dated and irrelevant.

3. Applicants dispute that the twenty-plus year old report referenced in paragraph 3 announced a commitment to eliminate discharges, and state that the reference in any event is both dated and irrelevant to this proceeding.
4. Applicants dispute Movants' characterization of the twenty-plus year-old presentation referenced in paragraph 4, and state that the reference in any event is dated and irrelevant to this proceeding.
5. Applicants do not dispute the approximately decade-old references in paragraph 5, but state that they are not an offering of relevant facts.
6. Applicants dispute the misleading offerings in paragraph 6, which speculate without any basis about the intentions of LANL, and on their face the offerings do not support Movants' assertion that "LANL rebuilt the RLWTF for 'zero-liquid-discharge' operation," since Movants in paragraph 6 acknowledge discharges may occur in emergencies through Outfall 051 and would eventually occur "preferentially" to evaporative units.
7. Applicants do not dispute the facts in paragraph 7, but state that they are irrelevant. Applicants dispute Movants' speculation about what LANL intended as supposedly gleaned from an NMED inspection report from 2012, but otherwise do not dispute the quoted language from the 2012 report, which is both dated and irrelevant.
8. Applicants dispute Movants' unfounded speculative inference that contaminated water discharges from Outfall 051 have not occurred since late 2010, and that "[n]o discharges are planned," and affirmatively state that there was a planned discharge of water from Outfall 051 in June 2019 that in fact occurred. Applicants dispute that there has been no regulated discharge since 2010 from Outfall 051. Applicants also object

to Movants' improper attempt to incorporate by reference certain facts that they assert supposedly are shown in quarterly reports in the Administrative Record, or that are "set forth in detail" in a request members of the public made in 2016 to terminate Applicants' NPDES permit applicable to Outfall 051 on similar grounds being asserted herein, which request was denied by EPA as discussed in Section III.E, *infra*.

9. Applicants essentially do not dispute the first two sentences of paragraph 9, but object to Movants' ambiguous use of the term "released," and instead affirmatively state that the treated effluent reported by LANL was "discharged" through Outfall 051. Applicants dispute the third sentence of paragraph 9, including Movants' assertion that LANL's monitoring report identified in the second sentence of paragraph 9 "states" that the June 18, 2019 discharge from Outfall 051 contained no contaminants, as well as Movants' apparently intended implication that LANL's monitoring report "states" that the discharge would fall within 20.6.2.3105 NMAC, which Appellants assume was intended to be a reference to the exemption appearing in 20.6.2.3105.A NMAC.
10. Applicants dispute the last sentence of paragraph 10, including that it is a conclusion which may be drawn from the rest of paragraph 10, which Appellants do not dispute. Applicants further object to the last sentence of paragraph 10 as amounting to no more than improper legal argument of Movants' counsel.
11. Applicants dispute the combination of speculative assertions and legal arguments appearing throughout paragraph 11, and also object to Movants' citation to testimonial materials produced in Applicants' Statement of Intent to Present Technical Testimony and at the prior hearing on DP-1132. Counsel for Movants previously argued to the WQCC, successfully, that the re-hearing of DP-1132 should commence at the notice of

re-hearing, and that the portion of the hearing record that included matters from the prior notice of hearing (sometimes referred to as the “PN2”) through the NMED Secretary’s decision and previous issuance of DP-1132, must be disregarded in connection with the re-hearing on remand. Movants’ attempted use of the very portion of the prior hearing record that Movants previously asserted should be altogether disregarded, amounts to playing fast and loose in this proceeding and disregards the law of this administrative case as set forth in prior dictates of the WQCC requested by counsel for Movants.

12. Apart from Movants’ apparent concession in paragraph 12 that discharges from the RLWTF are appropriately regulated under the WQA, which concession is directly at odds with their arguments in the Motion, Applicants dispute the speculative assertions and improperly placed legal arguments masquerading as facts that comprise paragraph 12.
13. Other than objecting to Movants’ use of the term “[n]evertheless” and the legal argument implicit therein, Applicants do not dispute the facts stated in paragraph 13.
14. Applicants object to and dispute Movants’ statements in paragraph 14 about what Applicants “assert” or LANL “stated” or “has argued” in relation to the HWA and regulations, and state that the facts asserted are irrelevant to this discharge permit proceeding as explained more fully in Section III.A, *infra*. Applicants do not dispute the language quoted in paragraph 14 from the dated and largely irrelevant materials referenced.
15. Applicants object to Movants’ apparent suggestion that this Hearing Officer should consider assertions previously argued by Movants’ counsel or his clients, as set forth

in paragraph 15, as facts. They are not. Moreover, inasmuch as the arguments relate to the HWA and RCRA, they are irrelevant in this discharge permit proceeding, as discussed in Section III.A, *infra*. Applicants object to Movants' reference—in a section of its Motion purporting to state facts—to self-serving “comments” in which it makes the argument that since Movants suppose an intent by LANL not to discharge, LANL “should be forced” to get a RCRA permit and “go to zero discharge within one year of issuance of the permit.” These are not facts; they are ill-considered comments of Movants' counsel and his clients, and they are irrelevant to this discharge proceeding.

16. Applicants object to Movants' further reference in paragraph 16 to its own counsel's legal arguments. These, too, are not facts, and the arguments themselves are premised on the same misunderstanding of facts and misstatements of law that cause Movants' Motion to be fatally flawed, as explained more fully herein.
17. Applicants dispute the first sentence of paragraph 17, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
18. Applicants dispute the first and second-to-last sentences of paragraph 18, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
19. Applicants dispute the first sentence of paragraph 19, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between

the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.

20. Applicants do not dispute the language quoted from dated and irrelevant material that may appear in the Administrative Record, but object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
21. Applicants dispute the assertions and legal arguments set forth in paragraph 21, and also object to Movants' citation to testimony, the absence of testimony, or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
22. Applicants dispute the assertions in paragraph 22, including the legal arguments woven into Movants' characterization of Mr. Pullen's prior testimony, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
23. Applicants dispute Movants' characterization of Mr. Pullen's prior testimony in paragraph 23, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.

24. Applicants dispute the assertions in paragraph 24, including the legal arguments woven into Movants' characterization of the prior testimony of Messrs. Beers and Pullen, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
25. Applicants dispute the assertions in paragraph 25, including the legal arguments woven into Movants' characterization of Mr. Beers' prior testimony, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
26. Applicants dispute the assertions in paragraph 26, including the legal arguments woven into Movants' characterization of Mr. Pullen's prior testimony and counsel's stated objection, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
27. Applicants dispute the assertions in paragraph 27, including the legal arguments woven into Movants' characterization of Mr. Pullen's prior testimony, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.

28. Applicants dispute the assertions in paragraph 28, including the legal arguments woven into Movants' characterization of Mr. Pullen's prior testimony and counsel's form of questioning, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
29. Applicants dispute the assertions in paragraph 29, including the legal arguments woven into Movants' characterization of Mr. Pullen's prior testimony, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.
30. To the extent that paragraphs 30 through 50 are intended to state facts, Appellants dispute them, and also object to Movants' citation to testimony or materials produced in the prior hearing on DP-1132 between the time of the notice of the prior hearing and the Secretary's decision and prior issuance of DP-1132, for the reasons stated above in reference to paragraph 11.

**B. Additional Pertinent Facts**

1. Applicants have intended to discharge treated effluent from Outfall 051, and have in fact discharged treated effluent from Outfall 051 as set forth in the Affidavit of Robert C. Mason, the Facility Operations Director for nuclear support facilities at LANL, and in LANL's Monitoring Report dated July 22, 2019. *See* Exhibit 1; see also Movants' paragraph 9 at Motion, page 8, referring to the July 22, 2019 Monitoring Report appearing at AR14636-14672.

2. Members of the public represented by Movants' counsel have filed comments that include arguments to the effect that RLWTF should be regulated under the HWA and RCRA in a proceeding pending before NMED's Hazardous Waste Bureau. *See* Exhibit 2.
3. The Request to Terminate NPDES Permit #NM0028355 to Outfall 051 for the [RLWTF] (June 17, 2016), which is referred to in paragraph 8 of Citizens' offered facts, was in fact denied by EPA, which rejected the same basic arguments advanced by Movants here, i.e., that EPA lacked jurisdiction to issue the permit under the CWA due to RLWTF supposedly being a zero discharge facility that is not eligible for the wastewater treatment unit exemption under RCRA. *See* Exhibit 3.
4. EPA's decision at Exhibit 3 was affirmed on appeal by an administrative appeal board that hears appeals from EPA decisions in Washington, D.C., based on procedural grounds. *See* Exhibit 4.

### III. ARGUMENT

#### A. Movants' First Argument that Applicants Have the Burden to Prove the RLWTF Is Not Regulated By EIB Under the HWA Is Wholly Without Merit

Movants spend ten or more full pages of their Motion attempting to convince the Hearing Officer and NMED of a procedural point for which they offer no authority, and which, if applied, would inappropriately commandeer this proceeding away from the plain and easily answered question of whether NMED's proposed discharge plan, DP-1132, may be issued to Applicants for their actual discharges, planned discharges, and potential discharges of treated effluent from the RLWTF at LANL. Specifically, Movants argue the novel position that Applicants have a procedural burden to establish in this groundwater discharge permit hearing that the RLWTF facility does not need a permit under a separate regulatory program administered by the Hazardous

Waste Bureau under the HWA. In addition, according to Movants, Applicants must establish that the RLWTF facility “is not an ‘activity or condition’ subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act.” Motion, pp. 3-4.

For this proposition, Movants merely cite to a provision of the HWA, NMSA 1978, § 74-6-12.B, and do so without acknowledging that the WQA and the WQCC’s implementing regulations are where the non-discretionary test resides to determine whether a discharge permit is appropriate. Movants also fail to acknowledge that NMED, more than a decade ago, already determined that a discharge permit is required for discharges of treated effluent from the RLWTF, and any challenge to that determination is plainly untimely when raised in this 2019 proceeding. See AR 00013-00015; 05253-05258.

Most importantly, however, the HWA is not the statute that determines New Mexico’s groundwater permitting authority or the test NMED had to apply in determining whether a discharge permit is required for discharges of treated effluent from water treated at the RLWTF. The WQA is. The WQA in 1978 NMSA, § 74-6-5(A) provides the basis for the groundwater permitting regime administered by NMED pursuant to regulations adopted by the WQCC. The WQA fundamentally defines a “source” to mean “a building, structure, facility or installation from which there is *or may be*, a discharge of water contaminants directly *or indirectly* into water.” 1978 NMSA, § 74-6-2(L) (emphases added). In turn, the Act defines a “water contaminant” to mean “any substance that could alter *if discharged or spilled* the physical, chemical, biological or radiological qualities of water.” 1978 NMSA, § 74-6-2(B) (emphasis added).<sup>3</sup> Following on these statutory principles, the regulatory test for whether a discharge permit is required in a given instance is governed by the following provision:

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<sup>3</sup> Under Section III.C, *infra*, Appellants separately dispel Movants’ exceedingly narrow and self-serving interpretation of the discharge permitting program administered by NMED.

[N]o person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary.

20.6.2.3104 NMAC. This is what sets NMED's permitting jurisdiction, not terms in the HWA.

Movants' procedural burden argument is falsely premised on an "either-or" proposition that the RLWTF, which Movants acknowledge is a "facility," amounts to a single "activity or condition" and may only implicate one regulatory regime—either the groundwater discharge permitting regime under the WQA or the hazardous waste permitting regime under the HWA. *See* Motion, p. 2. This imaginary "either-or" construct of how the RLWTF *facility*, as opposed to RLWTF *activities*, is to be treated under regulatory regimes is an essential component of the false narrative that Movants seek to advance, which is that LANL "demands"—*see* Motion, p. 1—a discharge permit pursuant to some nefarious goal of warding off regulation of the RLWTF under RCRA and the HWA. *See* Motion, p. 33 ("This proceeding is purely an attempt to confer upon the RLWTF an unlawful shield of immunity from hazardous waste regulation. NMED should not surrender to Applicants' demands for such undeserved privilege."). Movants' either-or construct is meritless. Even if that were not so, a hearing involving the Hazardous Waste Bureau, not this hearing involving NMED's Ground Water Quality Bureau, is where any immunity from hazardous waste regulation would have to be determined. Movant's back door argument simply makes no sense.

Movants provide no logical reason, much less persuasive legal authority, for the central proposition that this Hearing Officer should conclude, in the context of the discharge permit hearing Movants themselves requested, that this DP-1132 proceeding should not go forward, and that instead the Hearing Officer should direct the Hazardous Waste Bureau to permit the RLWTF under the HWA. The WQA-based regulations provide, at 20.6.2.3108 NMAC, a process for the

NMED Secretary to decide whether to hold a hearing on a proposed discharge plan, and once it so decides, the Secretary may appoint a hearing officer under 20.6.2.3110.A NMAC to carry out the function of performing a “fair and impartial proceeding” under 20.6.2.3110.E on the draft permit. Nowhere is it contemplated that a Hearing Officer may withdraw a discharge permitting proceeding and direct a separate NMED bureau to pursue a different permit proceeding under a different law. Movants’ HWA arguments in the Motion are simply directed to the wrong forum.

Moreover, without disclosing that it has done so, Movants in fact already made substantially the same hazardous waste permitting-related arguments to the Hazardous Waste Bureau in a separate proceeding before the very agency to which Movants would have this Hearing Officer yield. *See* Additional Fact No. 2 under Section II.B *supra*, and Exhibit 2 hereto, which is a comment letter objecting to LANL’s proposed permit modification request, at comment 4. This discharge permitting hearing is not the proper forum to consider or decide whether the RLWTF qualifies for the wastewater treatment unit exemption under RCRA. Movants’ end-game is to try and adjudicate a RCRA exemption in this groundwater discharge permit hearing, but this is not the proper forum, and the issue is pending in the proper forum. Movants’ attempts to distract this Hearing Officer from the task at hand, which is to conduct a fair, impartial and orderly proceeding on DP-1132 under the WQA and the groundwater permitting program, is unwarranted, and Movants’ unsupported suggestion that the Hearing Officer should withdraw DP-1132 based on hazardous waste program-related arguments are completely frivolous and should be rejected.

**B. Movants’ Second Argument that the RLWTF is a “Zero Discharge Facility” Should Be Rejected Because it is Premised on Demonstrably Incorrect Facts**

Movants’ second argument is fatally flawed because it is entirely premised on the plainly incorrect suppositions and assertions that RLWTF is and will be a “zero discharge” facility. Motion, pp. 27-31. Movants posit that, as a “zero discharge” facility, RLWTF may not be

regulated under the WQA and the discharge permitting program administered by NMED.<sup>4</sup> *See, e.g.* Motion, p. 31 (“Recitals about fantasy ‘discharges’ are merely a fabricated predicate for an unlawful WQA permit.”). This notion of the RLWTF being a zero discharge is simply not correct, as the actual facts demonstrate. *See* Additional Fact No. 1 under Section II.B, *supra* (discharges of treated effluent from in fact have occurred as recently as June of 2019, and in fact are planned and contemplated to occur hereafter).

The basis of Movants’ “zero discharge” notion centers in part on the lack of discharges from Outfall 051, and Movants inexplicably cling to this position while both ignoring the facts and acknowledging in their own Motion that LANL discharged treated effluent from the RLWTF through Outfall 051 as recently as this year, and that LANL plans to discharge through Outfall 051 when necessary in periods of maintenance of the other discharge points, the MES and SET, depending on treatment capacity fluctuations due to LANL missions, and in emergencies. *See* Motion, pp. 8 (acknowledging that “on June 18, 2019 the RLWTF released approximately 80,798 liters of ‘treated effluent’ through Outfall 051”), 9 (acknowledging Applicants’ purpose to “maintain capacity to discharge should the [SET] and/or [MES] become unavailable due to maintenance, malfunction, and/or there is an increase in treatment capacity caused by changes to LANL scope/mission”), 12 (acknowledging Applicants’ plan to discharge through Outfall 051 in the event the evaporation systems failed).<sup>5</sup>

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<sup>4</sup> Movants likewise argue in the Motion that any discharge permit issued to Applicants would be a “nullity” based on the Movants’ incorrect assertions about the lack of any discharges. This closely related, and highly technical, argument is addressed herein under Section III.D, *infra*.

<sup>5</sup> *See also* Mason Affid., par. 7, which establishes that Movants’ supposition that LANL plans no discharges is plainly wrong. Movants’ Motion must be denied even if the facts did not reveal that, in fact, a discharge of treated effluent occurred on June 18, 2019.

The express terms of DP-1132, in Section V.C, Authorization to Discharge, allows wastewater to be discharged to or through three different systems: the MES, the SET and Outfall 051. The MES is a natural gas-fired mechanical evaporator. The SET—a two-cell, synthetically lined tank constructed in 2012—is sometimes referred to as a Zero Liquid Discharge (“ZLD”) solar evaporation tank. Outfall 051 is an outfall from a pipe system directly to Effluent Canyon. Movants’ reliance on the fact that one of the three authorized discharge points has been called a ZLD, and its extrapolation from that and an assemblage of dated references in the record to assert that the RLWTF is a “zero discharge” facility, is plainly unwarranted.

**C. Movants’ Third Argument Should Be Rejected Because the It Grossly Understates NMED’s Groundwater Authority Over Potential Discharges**

Remarkably, Movants take the position that NMED has no authority to issue groundwater discharge permit for discharges to the MES and the SET or through Outfall 051 if there were no intention for there to be discharges that may reach groundwater. Motion, pp. 31-32. This interpretation, which itself makes an incorrect assumption about LANL’s discharge intentions, *see* Section III.B, *supra*, is to say the least surprising coming from environmental organizations such as comprise the group of Movants. It reflects that Movants’ end-game is to use the DP-1132 re-hearing they requested not to offer helpful public comments on specific technical aspects of DP-1132, but instead merely as a means to try and advance a policy position that is beyond the limited scope of the permit hearing they requested: namely, that permitting the RLWTF under the HWA is required.

The extraordinarily narrow interpretation of NMED’s permitting authority under the WQA and implementing regulations to the effect that there needs to be an intention to discharge is, moreover, legally unsupportable. As discussed under Section III.A, *supra*, the central building blocks of the WQA are worded in a way that clearly reflects a deliberate legislative choice not to

construe the concept of regulated discharges under the WQA as narrowly as Movants propose, and the prohibition on discharges without a discharge permit in 20.6.2.3104 NMAC broadly states the circumstances requiring discharge permitting.

Based on the express terms of the WQA and associated permitting regulated discussed in Section III.A, *supra*, NMED justifiably defines “discharge” in Section II.G of DP-1132 to include the “intentional *or unintentional* release of an effluent or leachate which has the *potential* to move directly or indirectly into ground water.” (Emphases added). Accordingly, even if the intended and actual discharges authorized by DP-1132 “through Outfall 051” to Effluent Canyon as discussed in Section III.A, *supra*, were disregarded, and only the discharges to the MES and SET evaporator systems were to be considered, Movants’ position is still flawed, because it is the “potential” for a discharge to get to groundwater that matters, regardless of intent.

The notion that NMED’s regulatory permitting authority under the groundwater protection program only arises if and when there is an *actual* release, as Movants argue, is fundamentally contrary to the central objective of the WQA to *prevent*—and not just *abate*—after-the-fact groundwater degradation. *See Bokum Resources Corp. v. New Mexico Water Quality Control Comm’n*, 1979-NMSC-090, ¶59, 93 N.M. 546, 555, 603 P.2d 285, 284. If the Legislature, and the WQCC that adopted regulations under the WQA, intended only to permit facilities once those potential sources *actually* release water contaminants, then New Mexico’s discharge permitting program to protect groundwater from becoming contaminated would be rendered ineffective, and the after-the-fact abatement program adopted by the WQCC would be all that is needed. This reading of the WQA and its regulations is not shared by NMED, which has provided examples of when NMED has issued discharge permits where the permittee has no intention of water being released into the environment.

NMED has understood the fundamental groundwater protection and prevention mandate of the WQCC for decades, and has pursued its groundwater protection program under the WQA accordingly. The GWQB's permitting files are replete with examples of groundwater discharge permits issued by NMED under the WQA where the coverage of the permit includes, in whole or part, facilities involving water that is conveyed or stored in man-made systems such as pipelines, tanks or lined ponds and other structures, facilities or installations. In very many of these examples, the company to which the permit has been issued may believe and/or intend that no groundwater will ever actually receive or otherwise be impacted by its facilities as a result of water and contaminant control practices. A conclusion by the GWQB that NMED has no authority to issue a discharge permit for the RLWTF would undermine a substantial portion of the GWQB's permitting program and place in doubt many long-standing permits issued or renewed to manufacturing, mining and other important potential sources for the preventative protection of New Mexico's groundwater resources. Such a conclusion would be troubling in a state with limited water resources. Movants' offered interpretations of the WQA are unsound and should be rejected.

**D. Movants' Fourth Argument that DP-1132 Would Be a "Nullity" Should Be Rejected For the Same Reasons Their Second Argument Should Be Rejected**

Movants make a highly technical argument that, even if NMED were to issue DP-1132 on re-hearing, the issuance of the permit would be a nullity because a provision of the WQA provides that "the term of the permit shall commence on the date the discharge begins." See Motion, p. 32, citing NMSA 1978, § 74-6-5(I) and similar regulations at 20.6.2.3109.H NMAC. The obvious fatal flaw in this argument is the same fatal flaw in the argument that the RLWTF is a "zero discharge facility," discussed above at Section III.B, *supra*. Movants' technical "nullity" theory is without merit and should be rejected.

**E. Denying Movants' Motion Is Similarly Justified By Reasons Used in Denying Challenges to EPA's Jurisdiction to Issue the NPDES Permit for Outfall 051**

In addition to not disclosing the pendency of their HWA positions before the Hazardous Waste Bureau, Movants likewise have not disclosed the outcome of analogous positions presented to the EPA, despite referring to and attempting to incorporate by reference into its Motion a Request to Terminate NPDES Permit #NM0028355 to Outfall 051 for the [RLWTF] (June 17, 2016). *See* Motion, at pp.7-8, ¶8. This request, which argued that EPA lacked authority under the CWA to include Outfall 051 within LANL's Section 402 NPDES permit because the RLWTF supposedly is a "zero discharge" facility, was soundly rejected by the EPA in a decision that has been affirmed on procedural grounds on appeal. *See* Additional Fact Nos. 3 and 4 under Section II.B, *supra*, and Exhibits 3 and 4 hereto. The EPA decision at Exhibit 3 provides closely analogous reasoning supporting the rejection of Movants' Motion in this proceeding.

**F. An Order Denying Movants' Motion Could Limit the Re-Hearing**

Applicants anticipate that Movants likely will attempt to use the DP-1132 re-hearing to try and delve into matters addressed in its Motion that are beyond the permissible scope of a discharge permit hearing, an approach to which Applicants hereby state a continuing objection. Accordingly, Applicants respectfully invoke the Hearing Officer's 20.6.2.3110 NMAC authority to avoid delay and to take all measures necessary for the maintenance of order and for the efficient, fair, and impartial adjudication of issues properly arising in the proceeding.

Specifically, Applicants request that any order denying Movants' Motion also establish that the re-hearing on DP-1132 is not a proper forum for Movants to attempt to interject their hazardous waste permitting positions through the testimony of their witnesses, the cross-examination of Applicants' witnesses, or in post-hearing submissions at or after the conclusion of the hearing. Without such limiting language in an order, Applicants expect that Movants will

interject confusion into the public hearing process that will cause undue complications, unnecessary arguments of counsel that will be repetitive of the briefing on Movants' Motion, and attendant distractions and delays. This is exactly what happened in the initial DP-1132 proceeding, as evidenced by Movants' citation to testimony and materials in support of their factual recitations, despite the fact that Movants' counsel took the position that that portion of the prior hearing record should be disregarded on remand.

**WHEREFORE**, Appellants respectfully request that Movants' Motion be denied, and that the resulting order of denial be crafted to include limitations to ensure the efficient, fair and impartial adjudication of only those issues properly arising in this discharge permitting proceeding.

Respectfully submitted,

/s/ Stuart R. Butzier

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2019, a copy of the foregoing “Statement of Intent to Present Technical Testimony” was filed with:

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Hearing Clerk  
New Mexico Environment Department  
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Santa Fe, NM 87502  
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*/s/ Stuart R. Butzier*  
\_\_\_\_\_  
Stuart R. Butzier

### AFFIDAVIT OF ROBERT CLIFFORD MASON

1. I, Robert Clifford Mason, am an employee of Los Alamos National Security, LLC at the Los Alamos National Laboratory (LANL). I have been employed at LANL since 2006.
2. I am currently employed as the Facility Operations Director (FOD) for nuclear and support facilities at LANL Technical Areas (TA) 03, 50, 55, and 63. I have served in this capacity for 12 years.
3. As a FOD, I am responsible for managing and overseeing operations at the TA-50 Radioactive Liquid Waste Treatment Facility (RLWTF). I am responsible for facility-related engineering, maintenance, and treatment operations, as well as RLWTF safety, environmental, and waste services.
4. I am familiar with Outfall 051 associated with RLWTF. The Laboratory has been operating the RLWTF under NPDES Permit #NM0028355 (NPDES Permit) since 1978. The permit is issued by the U.S. Environmental Protection Agency to the U.S. Department of Energy (DOE) and Los Alamos National Security, LLC (LANS) as co-permittees for the Los Alamos National Laboratory. The NPDES Permit authorizes the Laboratory to discharge from eleven (11) sanitary and/or industrial outfalls, including the discharge of treated radioactive liquid waste from the RLWTF through Outfall 051 into Effluent Canyon, a tributary to Mortandad Canyon. The NPDES Permit has been renewed multiple times and was last re-issued on August 12, 2014.
5. As stated in the 2012 NPDES Permit Re-Application Outfall Fact Sheet, permit coverage for Outfall 051 explicitly included *"re-permit the outfall so that the RLWTF can maintain the capability to discharge should the Mechanical Evaporator and/or Zero Liquid Discharge (ZLD) Solar Evaporation Tanks become unavailable due to maintenance, malfunction, and/or there is an increase in treatment capacity caused by changes in LANL scope/mission"* (See page 5 of the 2012 Permit Re-Application Outfall Fact Sheet, which is included as Attachment 1).
6. Outfall 051 is also regulated by New Mexico Environment Department (NMED) under the New Mexico Water Quality Act at NMSA 1978, §§76-6-1 *et. seq.*, and New Mexico Water Quality Regulations at 20.6.2.1 NMAC through issuance of a Ground Water Discharge Permit. In 2012, the Laboratory submitted a renewal application for a Ground-Water Discharge Permit (DP-1132). The application cited the same discharge paths as are discussed in the NPDES 2012 application: the Mechanical Evaporator System (MES), Solar Evaporator Tank System (SET) also referred to as the Zero Liquid Discharge Tanks, and Outfall 051. The DP-1132 requires the Laboratory to meet the requirements of Permit Condition VI.A.8, which include, among other items, contains water tightness testing of the conveyance pipelines from the RLWTF to the SET and Outfall 051.
7. RLWTF is a mission-critical LANL facility that treats low-level and transuranic liquid wastewater from processes at various generator facilities throughout the Laboratory. Outfall 051 is an integral component of RLWTF, and the Laboratory intends to discharge from this





2012 NPDES PERMIT RE-APPLICATION  
OUTFALL FACT SHEET

Outfall ID No.	Outfall Location	Outfall Category	Receiving Stream
051	TA-50-1	Radioactive Liquid Waste Treatment Facility (RLWTF)	Effluent Canyon, a Tributary to Mortandad Canyon

**SOURCE OF DISCHARGE**

Outfall 051 is located at TA-50 and discharges treated radioactive liquid wastewater effluent from the Radioactive Liquid Waste Treatment Facility (RLWTF) at TA-50-1 into Effluent Canyon, a tributary of Mortandad Canyon. Table 1 identifies the location of the RLWTF and provides a description of influent sources that it receives.

**Table 1**  
**Sources for Discharge to Outfall 051**

TA	Bldg	Description
50	1	Radioactive Liquid Waste Treatment Facility <ul style="list-style-type: none"> <li>- Process water from radiochemistry laboratories, duct washing systems, radiological areas, boilers, and process areas.</li> <li>- Cooling water from systems located in radiological areas.</li> <li>- Storm and surface water (including samples) collected from sumps, manholes, and vaults.</li> <li>- Environmental Restoration (ER) waste water generated by groundwater monitoring and sampling activities at performed at LANL.</li> </ul>

Figure 1 provides a process flow diagram for the RLWTF.

**WATER TREATMENT PROCESS**

The RLWTF treats low-level and transuranic (TRU) radioactive liquid wastewater delivered from processes at various generator facilities to TA-50 by underground collection system or by tanker truck. All wastewater discharged into the RLWTF must comply with the facility's Waste Acceptance Criteria and must have a completed/approved Waste Profile Form (Appendix N). The NPDES sample point for this outfall allows for the collection of a sample after the final treatment process. The RLWTF includes two different treatment processes as follows:

- **Low-Level RLW Treatment Process** - Low-level influent is received at the facility through the Radioactive Liquid Waste Collection System (see Appendix J, K) where it is routed through a pH adjustment chamber and collected in the influent tanks. RLW is fed from the influent tanks to the clarifiers where it is treated by chemical precipitation and flocculation (sodium hydroxide, magnesium hydroxide, ferric chloride, sulfate, or other chemicals) to remove silica and radionuclides. The clarified water is drawn off and filtered. The RLW may then be treated by ion exchange or is sent to a Reverse Osmosis (RO) unit. The RO permeate (treated water) is routed to effluent storage tanks prior to being discharged to the effluent evaporator, TA-52 solar evaporation tanks (anticipated to be operational within the next 5 years), or the NPDES outfall. Effluent may also be shipped by tanker truck to the TA-53 solar evaporation basins/tanks. If the effluent is discharged to Outfall 051 it is further treated with ion exchange to remove copper/zinc and may have magnesium/calcium salts added to adjust the hardness prior to discharge. Secondary waste treatment processes are also included for RO concentrate (Secondary RO) and sludge (vacuum filter/dewatering). These

processes result in recycle streams back to the influent tanks and to other process units, and concentrated and solid waste streams shipped as low-level radioactive waste.

- **TRU RLW Treatment Process** - TRU RLW is received at the facility through an underground, doubled walled pipe collection system from TA-55 (see Appendix J, K) and is collected at the TA-50-66 influent tanks. The TRU influent is routed from TA-50-66 to the treatment tank in Room 60 where it is treated by chemical precipitation (sodium hydroxide) to remove radionuclides. Solids from the tank are collected in a sludge tank, allowed to settle, and are then solidified with cement in a drum tumbler. The cement drums are shipped and disposed of as TRU waste. The treated water is routed to the low-level treatment plant for either additional treatment or for storage pending shipment off-site for LLW disposal.

The water treatment codes provided in Table 2 have been assigned to this outfall.

**Table 2**  
**Water Treatment Codes Assigned to the RLWTF and Outfall 051**

Treatment Code	Treatment Process	Description
1F	Evaporation	Waste Reduction Evaporator, Effluent Evaporator, and Solar Evaporation Tanks
1G	Flocculation	Clarifiers
1O	Mixing	Various
1S	Reverse Osmosis (Hyperfiltration)	RO Units
1U	Sedimentation (Settling)	Sludge
1Q	Multimedia Filtration	Pressure and Cartridge Filters used for Particulate Removal
1R	Rapid Sand Filtration	Gravity Media Filter for Particulate Removal
2C	Chemical Precipitation	Sodium hydroxide, magnesium hydroxide, magnesium sulfate, sodium aluminate, co-polymer, and ferric sulfate are used to promote precipitation of radionuclides and silica removal
2G	Coagulation	Clarifiers
2J	Ion Exchange	Perchlorate, copper, and zinc removal
2K	Neutralization	Influent and Room 60 Neutralization
5Q	Landfill	Drums of TRU and LLW Waste
5U	Vacuum Filtration	Vacuum filter for LLW sludge

### TREATMENT CHEMICALS AND POTENTIAL CONTAMINANTS

The water treatment processes identified in Table 2 utilize chemicals to control pH, promote precipitation, and flocculation. Table 3 identifies the treatment chemicals that are used at the RLWTF.

**Table 3**  
**Treatment Chemicals Used at the RLWTF**

Source	Reason for Use/Frequency	Hazardous Substances from Form 2C, Table 2C-4
Sodium Hydroxide 25%	pH Adjustment, Promote Precipitation/Flocculation, and Membrane Cleaning	Sodium Hydroxide
Ferric Sulfate	Promote Precipitation/Flocculation	Ferric Sulfate
Magnesium Hydroxide	Promote Precipitation/Flocculation	NA
Carbon Dioxide	Adjust pH	NA
Magnesium Sulfate	Precipitation/Flocculation	NA

**Table 3 (continued)  
 Treatment Chemicals Used at the RLWTF**

Source	Reason for Use/Frequency	Hazardous Substances from Form 2C, Table 2C-4
EDTA	Membrane Cleaning	EDTA
Sodium bisulfite	Membrane Cleaning	Sodium Bisulfite
Dishwashing Soap	Membrane Cleaning	NA
Ionac SR-6	Ion Exchange Resin	NA
Hydrochloric Acid	Reduce pH	Hydrochloric Acid
Solid Sodium Hydroxide	Precipitation/Flocculation	Sodium Hydroxide
SCU	Ion Exchange Media	NA
SCP	Ion Exchange Media	NA
Sodium Aluminate	Precipitation/Flocculation	NA
WEST W-126	Ionic Co-polymer used as a Flocculent	2-Propanoic Acid

Table 4 identifies the contaminants listed on the Waste Profile Forms for the influent waste streams received by the RLWTF for treatment.

**Table 4  
 Potential Contaminants Associated with the RLWTF Influent**

Waste Stream Type	Description	Hazardous Substances from Form 2C, Table 2C-4 Identified on WPFs <sup>1</sup>		Detected in Outfall 051 Discharge (Aug 07 – Jun 10)
Process	Discharged from laboratories, radiological areas and process areas.	acetic acid ammonia ammonium bifluoride ammonium carbonate ammonium chloride ammonium fluoride ammonium hydroxide benzene chloroform chromic acid cupric chloride cupric sulfate endrin EDTA ferric chloride ferric nitrate ferric sulfate ferrous ammonium sulfate ferrous chloride ferrous sulfate formaldehyde formic acid	heptachlor hydrochloric acid hydrofluoric acid lead nitrate nitric acid phenol phosphoric acid potassium dichromate potassium hydroxide potassium permanganate sodium dodecylbenzenesulfonate sodium fluoride sodium hydroxide sodium hypochlorite sodium nitrite sodium phosphate (dibasic) sulfuric acid uranyl nitrate zinc chloride zinc nitrate zinc sulfate	Chloroform <sup>2</sup> Chromium <sup>3</sup> Copper <sup>4</sup> Lead <sup>5</sup>
ER	Discharged from groundwater drilling and remediation projects.	acrolein ammonia aniline benzoic acid Dieldrin endosulfan	endrin ethyl benzene Naphthalene Phenol Toluene xylene	Naphthalene <sup>6</sup> Phenol <sup>7</sup>

**Table 4 (continued)**  
**Potential Contaminants Associated with the RLWTF Influent**

Waste Stream Type	Description	Hazardous Substances from Form 2C, Table 2C-4 Identified on WPFs <sup>1</sup>		Detected in Outfall 051 Discharge (Aug 07 – Jun 10)
Storm Water	Discharged from sumps, manholes, and vaults. <sup>8,9</sup>	Ammonia chloroform	nitric acid trichloroethylene	Chloroform <sup>2</sup>

- NOTE: The wastewater influent received by the RLWTF is not RCRA listed hazardous waste.
- Chloroform was detected twelve (12) times at concentrations ranging from 0.000283 – 0.0546 mg/L.
- Chromium was detected one (1) time at a concentration of 0.001 mg/L.
- Copper was detected thirty five (35) times at concentrations ranging from 0.0102 – 0.24 mg/L.
- Lead was detected on (1) time at a concentration of 0.0076 mg/L.
- Naphthalene was detected two (2) times at concentrations of 0.000372 – 0.000933 mg/L.
- Phenol was detected on (1) time at a concentration of 0.0177 mg/L.
- Ammonia, chloroform, and trichloroethylene were detected in storm water collected from TRU/LLW storage dome sumps located at TA-54 and sent to the RLWTF for treatment. These detections are likely due to residual cleaning chemicals and/or the presence of asphalt.
- The nitric acid is used as a preservation chemical for storm water and surface water samples that are managed at TA-59. Unused sample material is poured down the RLW drain to the collection system.

**POTENTIAL POLLUTANTS**

The treatment chemicals and treated RLWTF effluent constitute the pollutant load that could potential discharge to Outfall 051. Table 5 identifies the Table 2C-4 constituents that will potentially be discharged to the outfall.

**Table 5**  
**Potential Pollutants Discharged to Outfall 051**

Description	Hazardous Substances Required to be Listed on the NPDES Permit Application Form 2C		
TA-50 RLWTF Treated Effluent Outfall 051	acetic acid	EDTA	potassium hydroxide
	acrolein	ferric chloride	potassium permanganate
	ammonia	ferric nitrate	sodium bisulfite
	ammonium bifluoride	ferric sulfate	sodium dodecylbenzenesulfonate
	ammonium carbonate	ferrous ammonium sulfate	sodium fluoride
	ammonium chloride	ferrous chloride	sodium hydroxide
	ammonium fluoride	ferrous sulfate	sodium hypochlorite
	ammonium hydroxide	formaldehyde	sodium nitrite
	aniline	formic acid	sodium phosphate (dibasic)
	benzene	heptachlor	sulfuric acid
	benzoic acid	hydrochloric acid	toluene
	chloroform	hydrofluoric acid	trichloroethylene
	chromic acid	lead nitrate	uranyl nitrate
	cupric chloride	naphthalene	xylene
	cupric sulfate	nitric acid	zinc chloride
	dieldrin	phenol	zinc nitrate
	endosulfan	phosphoric acid	zinc sulfate
	endrin	potassium bichromate	2-propanoic acid
	ethylbenzene		

## DISCHARGE RATE AND FREQUENCY

The average daily flow rates for the sources that discharge to Outfall 051 are provided in Table 6.

**Table 6**  
**Source Flow Rates/Frequencies to Outfall 051**

Operation/Source	Average Flow (Gallon/Day)	Treatment Code
RLWTF	19,700	1G, 1O, 1S, 1Q, 1R 1U, 2J, 1F, 2K, 2C, 5Q, 5U

## SAMPLING AND ANALYSIS FOR RE-APPLICATION

The RLWTF has not discharged to Outfall 051 since November 2010. LANL requests to re-permit the outfall so that the RLWTF can maintain the capability to discharge to the outfall should the Effluent Evaporator and/or ZLD Evaporation Tanks become unavailable due to maintenance, malfunction, and/or there is an increase in treatment capacity caused by changes in LANL scope/mission.

A composite sample for the Form 2C Constituents will be collected from Outfall 051 when/if the RWLTF discharges effluent to it. See the attached Discharge Monitoring Report Outfall Summary for the analytical data collected prior to November 2010.

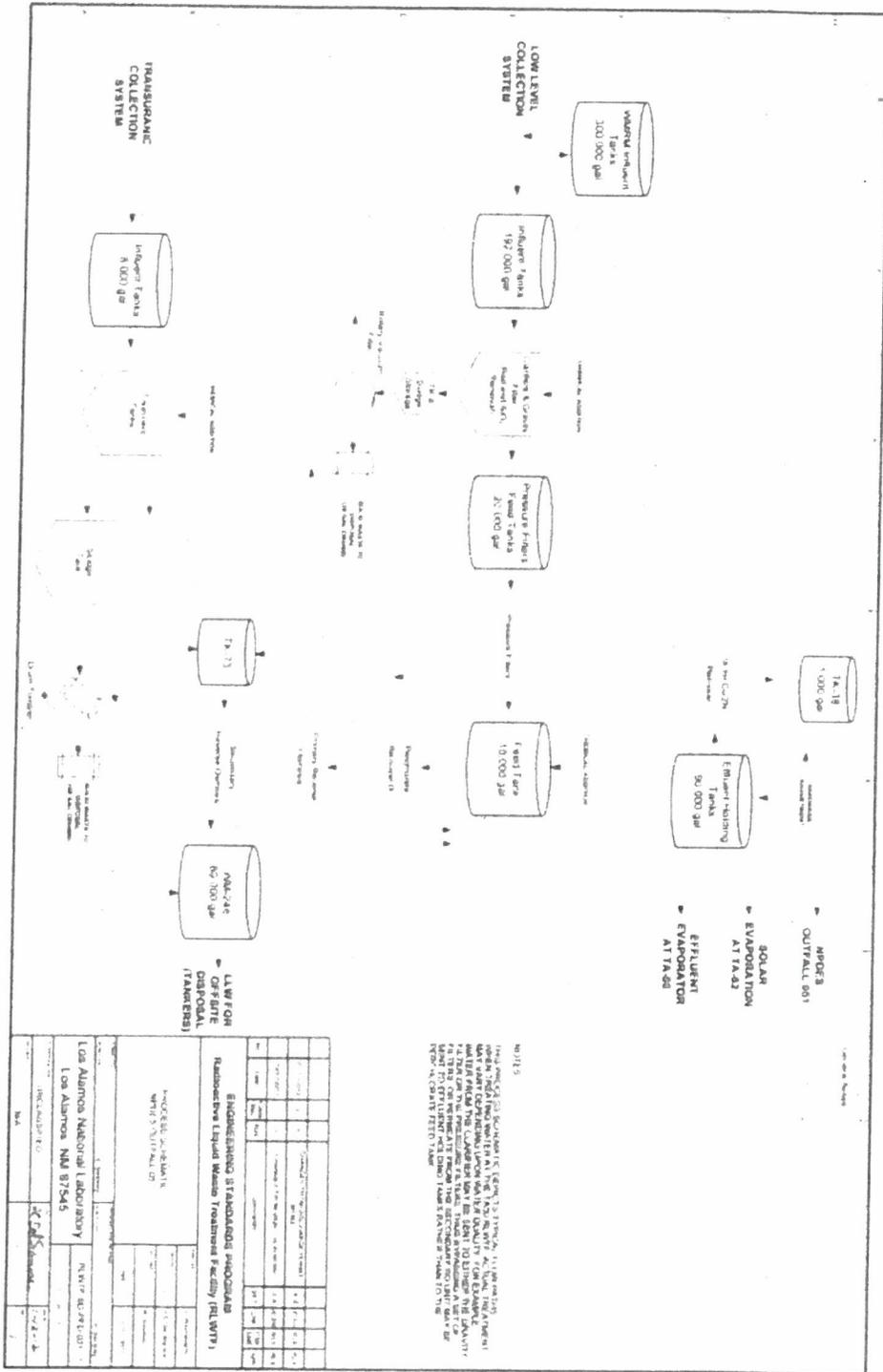
## ANALYTICAL RESULTS PROVIDED

- NPDES Discharge Monitoring Reports (DMRs) from August 2007 – July 2011.
- Material Safety Data Sheets for treatment chemicals.

## ADDITIONAL INFORMATION

- Latitude – 35°51'54"
- Longitude – 106°17'54"

Figure 1  
 Process Flow Diagram for the Radioactive Liquid Waste Treatment Facility



## Form 2C Section IV.B - Improvements

### ZERO LIQUID DISCHARGE PROJECT

The configuration of the RLWTF and Outfall 051 will be changing in the next 5 years due to the construction of two new Concrete Evaporation Tanks at Technical Area (TA) 52 under the Zero Liquid Discharge Project. These evaporation tanks will receive fully treated effluent from the RLWTF and will reduce the volume of treated effluent discharged to Outfall 051. The evaporation tanks will be connected to the RLWTF by a transfer pipe line that will be approximately 0.75 miles long. Figures 2 and 3 provide copies of the 90% review design drawings for the transfer line and evaporation tanks.





**Concerned Citizens for Nuclear Safety**

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September 22, 2017

By email to: [neelam.dhawan@state.nm.us](mailto:neelam.dhawan@state.nm.us)

Neelam Dhawan, LANL Program Manager  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505

Re: Public Comments and Hearing Request about the Class 3 Permit  
Modification Request - as required by the Settlement Agreement between  
the New Mexico Environment Department and the Permittees for  
Los Alamos National Laboratory

Dear Ms. Dhawan:

This letter responds to the notice dated July 23, 2017, seeking comment on a proposed class 3 major modification to the Hazardous Waste Act permit dated December 30, 2010, for Los Alamos National Laboratory.

Concerned Citizens for Nuclear Safety ("CCNS"), a Santa Fe-based non-governmental organization, submits the following comments to the New Mexico Environment Department ("NMED") about the Class 3 hazardous waste permit modification request for Los Alamos National Laboratory ("LANL"), submitted by the Permittees (Department of Energy ("DOE") and Los Alamos National Security, LLC ("LANS")), as required by the Settlement Agreement of U.S. District Court for the District of New Mexico (Case No. 10-01251) between NMED and the Permittees.

CCNS was formed in the spring of 1988 to address community concerns about the proposed transportation of LANL radioactive and hazardous waste on St. Francis Drive in Santa Fe to the yet-to-be-opened Waste Isolation Pilot Plant ("WIPP"). Our mission is *to protect all living beings and the environment from the effects of radioactive and other hazardous materials now and in the future.* CCNS



members reside near LANL and are at risk from the release or mismanagement of radioactive and hazardous waste at LANL. Releases of such waste would create a direct and immediate risk to members of CCNS.

Since its founding nearly 30 years ago, CCNS has actively participated in the hazardous waste permit ("HWP") process for LANL, beginning with a permit modification request ("PMR") to reopen the radioactive and hazardous waste incinerator. After years of grassroots organizing, outreach to the media, participating in the public hearing and litigation, the plans to reopen the incinerator were quashed.

CCNS is concerned about the current PMR. It is voluminous and complex. It is also the product of closed-door negotiations and agreements between NMED and the Permittees to settle an outstanding lawsuit. Our experience with such PMRs and other Resource Conservation and Recovery Act ("RCRA") documents, negotiated privately between the regulator and the regulated party, is that public review and comment result in minimal changes. Examples include the 2005 Compliance Order on Consent ("2005 Consent Order"), the 2016 Consent Order, and the 2012 non-binding Framework Agreement.

[https://www.env.nm.gov/HWB/documents/LANL\\_Framework\\_Agreement.pdf](https://www.env.nm.gov/HWB/documents/LANL_Framework_Agreement.pdf) These agreements are not as protective of human health and the environment as PMRs that are developed through a public process. For example, the Framework Agreement set the stage for the Permittees to ship non-compliant explosive waste to WIPP resulting in a three year shutdown and a possible \$1 billion cleanup.

Also, the negotiating parties here have vested interests in assuring that the Settlement Agreement provisions are implemented without changes. *See*, PMR Attachment A, Settlement Agreement, pp. 3, 5.<sup>1</sup> Public comments carry little weight against these vested interests negotiated behind closed doors.

Further, since they were negotiated, the proposed modifications have no evidentiary basis in the administrative record and/or the hearing record, as detailed below. CCNS respectfully requests a public hearing on issues that

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<sup>1</sup> ¶6 ("If the Environment Department issues a final modified Permit that is substantially identical to the proposed modified Permit, no Party shall challenge the modified Permit in any forum."); ¶14 ("In the event of a disagreement between the Parties concerning the performance of any aspect of this Settlement Agreement, the dissatisfied Party shall provide the other party with notice of the dispute and a request for negotiations.... If the parties are unable to resolve the dispute through negotiations, the disputed issues shall be referred to the federal magistrate for mediation."); and ¶15 ("If the Parties are unable to resolve their disagreement pursuant to Paragraph 14, their remedies shall be as follows: (a) If the dispute occurs during the time that this matter is stayed, the sole remedy shall be to ask the Court to lift the stay and establish a schedule for further proceedings with regard to any claims concerning any matter as to which a Party failed to act. All Parties reserve all defenses relating to this litigation if the stay is lifted.").

remain unresolved after public comments and NMED's issuance of a draft permit.

Pursuant to 74-6-5(G) NMSA and 20.6.2.3108(K) NMAC, CCNS requests a public hearing on these issues:

1. Proposed Additions of Section 1.4.2 "Integration with Consent Order," Section 1.4.2.1 "MDAs G, H, and L," and Section 1.4.2.2 "Public Participation."

CCNS opposes the proposed language in the PMR for three Sections in Part I.

a. CCNS objects to the proposal to depart from the RCRA definition for "regulated unit." The PMR apparently seeks to change the criteria for monitoring, cleanup, and closure of landfills. The HWA regulations are clear - regulated units "must comply with the requirements of §§ 264.91 through 264.100 in lieu of 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer." The language in the proposed additions does not reflect the RCRA requirements. The 2005 Consent Order and the 2010 HWP should have required the Permittees to meet "the requirements of §§ 264.91 through 100 for detecting, characterizing and responding to releases to the uppermost aquifer." Under the regulatory language, in planning cleanup and closure, we would know more about the spreading contamination below Technical Area 54, where MDAs G, H, and L are located. The improper use of "alternative requirements" cannot attain protection of our precious drinking water. Allowing the contamination to continue to spread and contaminate additional water is unconscionable.

b. Problems we encountered while researching the applicable documents in preparation of these comments. We urge NMED to correct these problems at their earliest convenience:

- i. On October 12, 2016, the DOE Environmental Management, Los Alamos Field Office (EM-LA), wrote to the NMED regarding "Withdrawal of Three Corrective Measures Evaluations and Suggested Priorities for New Mexico Environment Review of Documents," in order to withdraw the Corrective Measures Evaluations (CME) for MDAs G, H, and L. Now there are no due dates for these documents. See Enclosure 2 2005 Consent Order Work Deliverable Ties to 2016 Consent Order Appendix C Campaigns to the letter.

- ii. The MDA G Remedy Completion Report was due December 31, 2015 under the 2005 Consent Order. Now, under the 2016 Consent Order, there is no due date, only "n/a" in the column entitled "Extension Request; Denial Date (if applicable)". The MDA L Remedy Completion Report was due December 4, 2015; again there is no due date, only "n/a" in the due date column. It appears that MDA H has fallen off the list.
- iii. The proposed language addresses MDA G, H, and L, but MDA H is missing from the 2016 Consent Order. NMED must explain this omission of MDA H and the inconsistencies must be corrected.

2. Proposed Changes to Section 1.8 "Definitions."

- a. CCNS objects to the proposed definition of "Consent Order," which refers only to the incomplete and inadequate 2016 Compliance Order on Consent. CCNS has grave concerns about the current Consent Order.
- b. Many items found in the 2005 Compliance Order on Consent were omitted from the 2016 version.

For example, Table III-1 *Explosive Compounds (Including Propellants, Pyrotechnics, and Degradation Products)* was omitted from the 2016 "Consent Order." See pp. 37-38 of March 1, 2006 Consent Order (Revised October 29, 2012). The listing of 15 constituents required for sampling and analysis is missing from the 2016 Consent Order. As a result, DOE is no longer required to sample for explosive compounds. NMED must explain the omission and the inconsistencies must be corrected.

- c. CCNS objects to the proposed change to limit the definition of a "Regulated Unit." The HWP definition must reflect the full Resource Conservation and Recovery Act ("RCRA") definition found in 40 CFR § 264.90(a)(2). NMED does not have the authority to omit the full definition. The permit should read:

"A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a 'regulated unit') must comply with the requirements of §§ 264.91 through 264.100 in lieu of 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The

financial responsibility requirements of § 264.101 apply to regulated units.”

The plain language of the RCRA definition is clear. For regulated units, the requirements of 40 CFR §§ 265.91 through 264.100 are to be followed to detect, characterize, and respond to releases to the uppermost aquifer. Alternative requirements do not apply to regulated units.

- d. Further, we encountered another problem in searching for the current language in the HWP. We note that the May 2017 version of Section 1.8 omits the definition of “regulated unit.” Further, after a quick search for a definition of “regulated unit” in Parts I through 11, we found the definition has been omitted throughout. When was the definition of “regulated unit” removed from the permit?
- e. NMED must explain this omission of the definition of “regulated unit” from the May 2017 version of the HWP. The inconsistencies must be corrected as soon as possible.
- f. Further, in 2010 the Applicants/Permittees stipulated that “they agree to the terms of Part 1 of the Proposed Permit except Section ... 1.8 (definitions of “Hazardous Waste Management Unit” and “Permitted Unit”).” ¶154, Hearing Officer’s Report, p. 38. They did not object to the definition of “regulated unit.”

3. Section 1.9.1 “Duty to Comply.” CCNS supports the deletion of the second and third paragraphs to this section.

4. Removal of Section 4.6 “Radioactive Liquid Waste Treatment Facility.”

CCNS objects to the removal of Section 4.6. The Radioactive Liquid Waste Treatment Facility (“RLWTF”) is a hazardous waste management unit and must be regulated by RCRA.

The PMR states that section 4.6, the paragraph imposing nominal constraints upon the RLWTF, is proposed to be deleted, because the Permittees undertook to evaporate wastewater only in authorized locations (a promise that CCNS accepts) and, “in addition, RLWTF is fully regulated under multiple other authorities” (at 5), a statement that is utterly unfounded. The supposed authorities are:

- (a) a ground water discharge permit (DP-1132) under the New Mexico Water Quality Act, § 74-6-1 *et seq.* NMSA 1978 (“WQA”),
- (b) a National Pollutant Discharge Elimination System (“NPDES”) permit under the federal Clean Water Act, 33 U.S.C. § 1311 *et seq.* (“CWA”), and
- (c) the 2016 Compliance Order on Consent under the Hazardous Waste Act, § 74-4-1 *et seq.* NMSA 1978 (“HWA”).

These assertions are false and constitute a smokescreen, engineered to induce NMED to forego its statutory duty to regulate the RLWTF under the HWA, a statute that NMED is duty-bound to apply to the RLWTF pursuant to the HWA and EPA’s delegation of authority to enforce RCRA, 42 U.S.C. § 6901 *et seq.*

It is known that the RLWTF stores and treats hazardous wastes. Permittees have conceded that the RLWTF will “receive and treat or store an influent wastewater which is hazardous waste as defined in 40 C.F.R. § 261.3 . . .” They have expressly stated that, “The RLWTF satisfies each of these conditions[.]” The RLWTF [r]eceives and treats a small amount of hazardous wastewater[.]” LANS/DOE Comments on DP-1132, Dec. 12, 2013, Encl. 3 at 1. Since it receives, stores, and treats wastes which contain hazardous constituents, and so constitute “solid waste” and “hazardous waste” under RCRA, 42 U.S.C. § 6903(5), (27), the RLWTF must have a permit under RCRA or an authorized state program. 42 U.S.C. § 6925, 40 C.F.R. § 270.1(c). If the RLWTF had that permit, it would be subject, *inter alia*, to detailed protective RCRA requirements, calling for, *e.g.*, a public permitting process for approval of any new construction (40 C.F.R. § 270.10(f)), assurances of the engineering integrity of tank systems (40 C.F.R. §§ 264.190-200), and completeness of closure planning (40 C.F.R. §§ 264.110-120).

But the Permittees argue that RCRA regulation is unnecessary because of other regulatory systems. They do not say that other systems legally preclude the HWA, but even if they did, they would be wrong.

The fundamental fact is that there are no discharges of water or contaminants, either current or planned, from the RLWTF. Since the 1990s, LANL has planned to reconstruct the RLWTF, stating that its “ultimate goal” was to terminate any discharges through Outfall 051, through which wastewater was historically discharged. (Letter, Hanson and Rae to Bustamante, Sept. 3, 1998). That goal has been achieved. LANL proceeded with its reconstruction and completed the “new” RLWTF as a “zero-liquid-discharge” facility. (Letters, Erikson and Baca to Coleman, March 18, 1999; Rae to Coleman, Dec. 22, 1999; Rae to Coleman, June 13, 2000). Thus, liquid waste is either dewatered and drummed, or processed through evaporation, leaving a sludge that is removed for land disposal. LANL ended discharges from Outfall 051 in November 2010. (February 2012 Los Alamos National Laboratory, NPDES Permit No.

NM0028355, 2012 NPDES Permit Re-Application, concerning Outfall 051, and Form 2C). The RLWTF has made no discharges since then, and LANL does not plan or expect to make any discharges from the RLWTF.

Still, Permittees assert that the WQA renders HWA regulation unnecessary. NMED is currently considering the issuance of a discharge permit, DP-1132. But the Water Quality Act, and the proposed discharge permit, have no legal effect here.

First, it is clear that a state statute, such as the WQA, cannot limit the application of a federal law, such as RCRA. U.S. Const. Art. VI, Cl. 2 (Supremacy Clause).

Next, the WQA has no application here, because the RLWTF will not discharge any water or contaminants. Without a discharge, there is no basis for a discharge permit. 74-6-5(A), (I) NMSA 1978. Specifically, the law authorizes *only* "a permit for the discharge of any water contaminant." 74-6-5(A) NMSA 1978. Regulations define a "discharge plan" as a plan "for any discharge of effluent or leachate which may move directly or indirectly into ground water." 20.6.2.R NMAC. See also 20.6.2.3104 NMAC. A transfer of water from one tank to another tank within a contained facility, after which the water and its contaminants remain isolated from the environment, does not meet this definition.

Nor does the WQA authorize a permit for a "possible" discharge, based upon someone's concern that a facility might leak. NMED is not allowed to issue a discharge permit for a facility that does not discharge. The WQA specifically directs that a permit for a non-discharging facility is a futility. Section 74-6-5(I) NMSA 1978 states: "[T]he term of the permit shall commence on the date the discharge begins." *Id.* (emphasis supplied). See also 20.6.2.3109.H NMAC. Here, that will never happen, because Outfall 051 will have no discharge, and DP-1132 will never take effect. Moreover, the RLWTF is a *hazardous waste management facility*. Under 74-6-12(B) NMSA 1978, "[t]he Water Quality Act does not apply to any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act . . ."

Next, Permittees state that the federal Clean Water Act will regulate the RLWTF. However, an NPDES permit likewise provides no effective regulation. The existing CWA permit is now under review by the EPA Environmental Appeals Board. The fundamental issue is that the CWA only authorizes "a permit for the discharge of any pollutant." 33 U.S.C. § 1342(a). Thus, EPA may only issue a permit when there is an actual "discharge" of a pollutant. There is no discharge from the RLWTF, present or planned.

Recent decisions confirm that, absent an actual or intended discharge, EPA has no authority to issue a permit under the NPDES. *See: Waterkeeper Alliance, Inc. v. U.S. Environmental Protection Agency*, 399 F.3d 486 (2d Cir. 2005); *National Pork Producers Council v. U.S. Environmental Protection Agency*, 635 F.3d 738 (5th Cir. 2011). Other decisions support this conclusion: *National Wildlife Federation v. Gorsuch*, 693 F.2d 156, 165 (D.C. Cir. 1982); *National Wildlife Federation v. Consumers Power Co.*, 862 F.2d 580, 583 (6th Cir. 1988). Thus, the NPDES permit for Outfall 051 cannot be regarded as effective regulation of the RLWTF.

Last, the Permittees assert that the inclusion of various elements of the RLWTF as solid waste management units (“SWMUs”) and areas of concern (“AOCs”) in the 2016 Consent Order should be regarded as effective regulation. However, the 2016 Consent Order only regulates the cleanup of releases of hazardous waste – it does not constitute ongoing regulation of an operating facility. The “Consent Order sets forth a process for characterizing the nature and extent of Contaminant releases, characterizing the risks to human health and the environment resulting from these releases, and mitigating unacceptable risks. This process includes the planning and implementation of corrective actions and the reporting of results.” (2016 Consent Order at II.D.1) In contrast, RCRA, and in New Mexico the HWA, constitute systems for the regulation of operating hazardous waste management units – which is what the RLWTF is – and Permittees’ bogus claims that other regulatory systems achieve that result are wholly unfounded.

Further, the Hearing Officer’s Report in 2010 is clear – the RLWTF should be regulated by RCRA. We direct the Department’s attention to the attached Exhibit “A” to CCNS Comments about LANL Class 3 PMR, which provides excerpts from the October 7, 2010 Hearing Officer’s Report regarding Section 4.6. *See* Section 6, starting on p. 115 through 118, and 203 – 206). ¶¶555 – 558 Findings of Fact.<sup>2</sup> ¶¶ 193 – 198 Conclusions of Law.<sup>3</sup>

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<sup>2</sup> ¶ “555. EPA construes the wastewater treatment unit exemption at 40 C.F.R. §264.1(g)(6) to require that the wastewater treatment unit discharge treated wastewater exclusively through the Clean Water Act-regulated outfall, and that diversion to other points of discharge voids the exemption. NMED Ex. 3 at 38-39; *see* NMED Ex. 78; NMED Ex. 79; NMED Ex. 80.”

¶ “556. The Department agrees with the EPA interpretation of the wastewater treatment unit exemption at 40 C.F.R. § 264.1(g)(6) as set forth above. NMED Ex. 3 at 38; *see* Finding #465.”

¶ “557. On at least 5 occasions, the Applicants have diverted treated wastewater from the Treatment Facility into tanks (or impoundments) for evaporation at TA-53 rather than through the outfall into Mortandad Canyon. NMED Ex. 3 at 39; NMED Ex. 81; Grieggs Test. Tr. vol. 3, p. 584, lines 3-4.”

¶ “558. By letter dated January 17, 2008, the Department determined that because the Applicants had diverted treated wastewater from the Treatment Facility into the evaporation tanks, the Treatment Facility was no longer subject to the wastewater treatment unit

In 2010, the Department held that the RLWTF is subject to RCRA regulation. The only material change since then is that discharges through Outfall 051 have ceased entirely, eliminating the basis for any NPDES permit and, consequently, eliminating the foundation of the wastewater treatment unit exemption. Yet now NMED seems to have concluded that a facility that was subject to RCRA regulation in 2010 is somehow free to operate without any such regulation. Such a determination would appear to be a textbook case of arbitrary and capricious decision making.

5. Proposed changes to Part 9: "Closure;" Attachment G: "Closure Plans;" and Attachment J "Hazardous Waste Management Units."

CCNS objects to the proposed changes to these Parts. We are confused about the deletion of low-level radioactive waste in the Attachment G Closure Plans. While the Permittees may claim that they know the inventory, nevertheless, we know that the disposal records for the operating units are incomplete. Reference to low-level waste and its disposal must be retained in the HWP, as well as the Consent Order.

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exemption at 40 C.F.R. § 264.1 (g)(6). The letter directed the Applicants to submit a hazardous waste permit application for the Treatment Facility. NMED Ex. 220; see also Grieggs Test. Tr. vol. 2, p. 474, line 3 top, 476, line 13." [Emphasis added.]

<sup>3</sup> ¶ "193. EPA's interpretation of the wastewater treatment unit exemption in 40 C.F.R. § 264.1(g)(6) is entitled to considerable weight. *Chevron U.S.A., Inc. v. Natural Res. Def Council*, 467 U.S. 837, 844 (1984), reh 'g denied, 468 U.S. 1227 (1984)." [Emphasis added.]

¶ "194. The Department's interpretation of the wastewater treatment exemption in the hazardous waste regulations is entitled to "substantial weight." *Sierra Club v. NM Mining Comm'n*, 2001-NMCA-047, if 17, 130 N.M. 497, 501, 27 P.3d 984, 988; see Conclusion of Law #14."

¶ "195. The Department's interpretation of the wastewater treatment exemption in the hazardous waste regulations is a "legal question[]" that implicate[s] special agency expertise [and] the determination of fundamental policies within the scope of the agency's statutory function," and it is therefore entitled to "a heightened degree of deference" *Sierra Club v. NM Mining Comm'n*, 2003-NMSC-005, ¶ 25, 133 N.M. 97, 106, 61 P.3d 806, 815; see Conclusion of Law #15."

¶ "196. Based on the record, the Department in its discretion could reasonably conclude that the Treatment Facility is no longer subject to the wastewater treatment unit exemption. See Findings 467-479." [Emphasis added.]

¶ "197. If the Treatment Facility were used to treat listed waste, the treated effluent would remain hazardous waste. 40 C.F.R. § 261.3(c)(1) (2009), incorporated by 20.4.1.200 NMAC."

¶ "198. No party has met the burden of showing that any condition in Part 4 of the Proposed Permit is inadequate, improper, or invalid. See 20.1.4.400.A(1) NMAC."

CCNS objects to Section 9.1.1 about closure of MDAs G, H, and L. We understand that MDAs H and L are closed. A question arises as to why H and L are included in the HWP if they are not operating/active units.

Further, is Area G an operating/active unit? What is its status?

CCNS objects to the omission of listing the specific pits, shafts, or trenches for TA-54 "G," TA-54 "H," and TA-54 "L" in Attachment J, and Table J-1. Allowing "unspecified pits, trenches, or shafts" could allow "unspecified pits, trenches, or shafts" to disappear from the regulatory scheme - similar to the omission of MDA H from the 2016 Consent Order.

In conclusion, as stated above, this is a voluminous and complicated PMR. More than 60 days will be needed for the public to provide informed public comments to NMED on the next iteration of the PMR.

Thank you for your careful consideration of our comments. Please contact us with any questions or comments.

Sincerely,

Joni Arends, Executive Director  
Concerned Citizens for Nuclear Safety  
[jarends@nuclearactive.org](mailto:jarends@nuclearactive.org)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
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DALLAS TX 75202-2733

August 16, 2017

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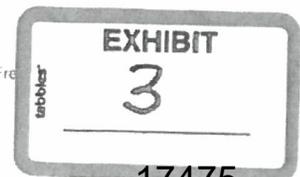
RE: Request to Terminate NPDES Permit #NM0028355 as to Outfall #051  
for Radioactive Liquid Waste Treatment Facility

Dear Mr. Lovejoy and Mr. Jantz:

This letter is in response to the above-referenced request to terminate permit coverage, which was filed pursuant to 40 C.F.R. § 124.5 with the Acting Regional Administrator of EPA Region 6 (Region 6) by Concerned Citizens for Nuclear Safety (CCNS) on March 9, 2017 ("Request to Terminate"). CCNS asks the Region to terminate permit coverage for Outfall 051 under NPDES Permit #NM0028355, issued in 2014 to Los Alamos National Security, LLC (LANS) and the Department of Energy (DOE) as co-permittees for the Los Alamos National Laboratory facility located at Los Alamos, NM (LANL). The permit authorizes LANL to discharge from eleven sanitary and/or industrial outfalls, including a discharge of treated radioactive liquid waste from the Radioactive Liquid Waste Treatment Facility (RLWTF) through Outfall 051 into Mortandad Canyon.

CCNS argues that because LANL's RLWTF facility was redesigned as a zero discharge facility in the early 2000's and has not discharged since 2010, Outfall 051 does not require NPDES permit coverage, and that in fact issuing such coverage is outside the jurisdiction of EPA pursuant to federal court rulings in *National Pork Producers Council v. EPA*, 635 F.3d 738 (5<sup>th</sup> Cir. 2011) ("*National Pork Producers*") and *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486 (2d Cir. 2005) ("*Waterkeeper*"). CCNS further argues that NPDES coverage for Outfall 051 is improper because it makes LANL's RSWTF eligible for a Waste Water Treatment Unit (WWTU) regulatory exemption under the Resource Conservation and Recovery Act (RCRA) despite no actual Clean Water Act (CWA) discharges.

Region 6 does not agree with CCNS's arguments and has determined not to unilaterally propose termination of LANL's NPDES permit coverage for Outfall 051. Under 40 C.F.R. § 124.5(b), if the Regional Administrator decides a request to terminate NPDES permit coverage filed by an interested party is not justified, the Regional Administrator must send the requester "a brief written response giving a reason for the decision." Accordingly, Region 6 provides the following response.



40 C.F.R. § 124.5(a) states that NPDES permits may only be terminated for the reasons specified in 40 C.F.R. § 122.64. That section provides the following causes for terminating a permit during its term:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW). 40 C.F.R. § 122.64(a)(1) - (4).

CCNS does not allege that LANL is in violation of its permit conditions with regard to Outfall 051 or that the permittees failed to disclose or misrepresented any relevant facts. In addition, there is no information to support a determination that the permitted discharge endangers human health or the environment and could only be regulated through termination of the permit.

Finally, EPA is not aware of a change in any condition (e.g., facility closure or termination of the discharge by connection to a POTW) that would warrant termination of permit coverage for Outfall 051 pursuant to § 122.64(a)(4). In their application for permit coverage, LANS and DOE described the "no discharge" nature of the RLWTF and specifically sought permit coverage for Outfall 051 to protect against liability in case of a future discharge. The permittees indicated that under certain circumstances, e.g. if one or both evaporative systems have to be taken off-line, a discharge could occur. Without permit authorization, such a discharge could subject the permittees to liability under the CWA for discharging without a permit.

40 C.F.R. § 122.21 places the burden on the owner/operator of a facility to obtain NPDES permit coverage prior to discharge. If the owner/operator does not seek coverage and a discharge occurs, the owner/operator is strictly liable under the CWA and subject to civil and/or criminal penalties. Consequently, EPA generally defers to an owner/operator's determination that a discharge could occur and that permit coverage is needed. It is not unusual for facilities that do not routinely discharge to seek and retain permit coverage to protect against liability in the event of an unanticipated discharge.

Region 6 does not read *National Pork Producers* or *Waterkeeper* to prohibit EPA from issuing an NPDES permit to a facility seeking coverage to protect against liability in the event of a discharge. Those cases dealt with EPA's authority to **require** operators of Concentrated Animal Feeding Operations (CAFOs) to obtain NPDES permit coverage when there had been no discharge. The Courts in those cases found that EPA could require discharging CAFOs to obtain NPDES permits, but that the agency could not mandate coverage in cases where there was no actual discharge. The burden was on the CAFO owner/operator to determine whether to seek permit coverage or to risk liability in case of a discharge. Neither *National Pork Producers* nor *Waterkeeper* address EPA's authority to issue a permit to a facility **requesting** coverage for a possible discharge. In such cases, as in the current situation, EPA

has authority under CWA § 402 (a) to issue a permit authorizing the discharge of pollutants should one occur. Otherwise, the CWA's requirement that facilities obtain NPDES permit coverage **prior to discharge** would be impossible for the agency to implement.

As to CCNS's argument that LANL's NPDES permit for discharges from Outfall 051 should be terminated because the NPDES permit coverage allows LANL to obtain a Waste Water Treatment Unit (WWTU) regulatory exemption under the Resource Conservation and Recovery Act (RCRA), Region 6 has determined this argument to be outside the scope of our decision. Whether or not issuance of NPDES permit coverage might trigger the RCRA WWTU regulatory exemption has no bearing on EPA's NPDES permitting decisions, which must be based on the requirements of the CWA and implementing regulations.

For the above reasons, Region 6 has determined CCNS's Request to Terminate LANL's NPDES permit coverage for Outfall 051 under NPDES Permit No. NM0028355 is not justified. Should you have any question regarding this matter, please contact Ms. Stacey Dwyer of my staff at (214) 665-6729, or Renea Ryland at (214) 665 -2130.

Sincerely,

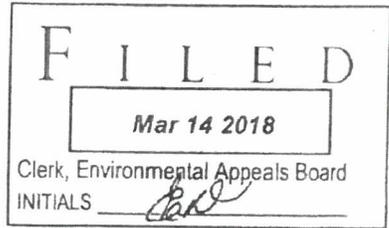


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(Slip Opinion)

NOTICE: This opinion is subject to formal revision before publication in the Environmental Administrative Decisions (E.A.D.). Readers are requested to notify the Environmental Appeals Board, U.S. Environmental Protection Agency, Washington, D.C. 20460, within sixty (60) days of the issuance of this opinion, of any typographical or other formal errors, in order that corrections may be made before publication.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In re: )  
)  
)

Los Alamos National Security, )  
LLC and the U.S. Department of )  
Energy )

) NPDES Appeal No. 17-05  
)  
)

Permit No. NM0028355 )  
)  
)

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[Decided March 14, 2018]

***FINAL DECISION***

***Before Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.***

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**IN RE LOS ALAMOS NATIONAL SECURITY, LLC AND THE  
U.S. DEPARTMENT OF ENERGY**

NPDES Appeal No. 17-05

***FINAL DECISION***

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Decided March 14, 2018

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Syllabus

Concerned Citizens for Nuclear Safety (“Concerned Citizens”) filed an Informal Appeal with the Environmental Appeals Board (“Board”) under 40 C.F.R. § 124.5(b) seeking review of the U.S. Environmental Protection Agency Region 6’s (“Region”) denial of Concerned Citizens’ request to terminate as to one outfall – referred to as Outfall 051 – a National Pollutant Discharge Elimination System (“NPDES”) permit issued for operations at the Los Alamos National Laboratory in New Mexico (“Los Alamos Laboratory”).

The Region issued the permit in 2014 (“2014 Permit”) authorizing Los Alamos National Security, LLC and the U.S. Department of Energy to continue discharges from eleven sanitary and/or industrial outfalls at the Los Alamos Laboratory, including the discharge of treated wastewater from the Radioactive Liquid Waste Treatment Facility through Outfall 051. In its Informal Appeal, Concerned Citizens alleges that the Region erred in denying its subsequent request to terminate the 2014 Permit as to Outfall 051 because the Los Alamos Laboratory has not discharged liquid waste from that Outfall since 2010. Concerned Citizens asserts that permit termination is appropriate under 40 C.F.R. § 122.64(a)(4), which provides that after an NPDES permit is issued, “[a] change in any condition” requiring a reduction or elimination of any discharge is cause for permit termination. In response, the Region argues that Concerned Citizens failed to establish a change in any condition justifying permit termination.

Held: The Region did not clearly err or abuse its discretion in denying Concerned Citizens’ request to terminate the 2014 Permit as to Outfall 051. When the Region issued the 2014 Permit, discharges from Outfall 051 had not occurred since 2010 and would only be necessary if certain equipment became unavailable due to maintenance, malfunction or capacity shortage. Under these circumstances, the record supports the Region’s determination that Concerned Citizens failed to establish a change in any condition after

the Region issued the 2014 Permit justifying permit termination pursuant to 40 C.F.R. § 122.64(a)(4). The Board therefore denies the Informal Appeal.

*Before Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.*

*Opinion of the Board by Judge Ward:*

I. STATEMENT OF THE CASE

Concerned Citizens for Nuclear Safety (“Concerned Citizens”) filed this Informal Appeal under 40 C.F.R. § 124.5(b) seeking review of the denial of its request to terminate as to one outfall – Outfall 051 – a National Pollutant Discharge Elimination System (“NPDES”) permit issued for operations at the Los Alamos National Laboratory (“Los Alamos Laboratory”). See Concerned Citizens for Nuclear Safety Submission Pursuant to 40 C.F.R. §§ 124.2 and 124.5(b) (“Informal Appeal”) (Sept. 14, 2017); Authorization to Discharge Under the National Pollutant Discharge Elimination System, NPDES Permit No. NM0028355 (Aug. 12, 2014) (“2014 Permit”) (Administrative Record (“A.R.”) II).<sup>1</sup> The U.S. Environmental Protection Agency Region 6 (“Region”) issued the permit in 2014 authorizing Los Alamos National Security, LLC and the U.S. Department of Energy (“Permittees”) to continue discharges from eleven sanitary and/or industrial outfalls at the Los Alamos Laboratory, including discharges of treated wastewater from the Radioactive Liquid Waste Treatment Facility (“Treatment Facility”) through

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<sup>1</sup> In responding to the Informal Appeal, the Region attached an index to the administrative record. See “Index to EPA Region 6 Administrative Record (A.R.)” (Oct. 18, 2017). The Region’s Index lists five documents, each identified with a Roman numeral (I-V). This decision will cite these documents using the Roman numeral assigned by the Region along with the title of the document. In addition, one of the documents in the administrative record provided by the Region, A.R. IV, is Concerned Citizens’ request to terminate with respect to Outfall 051 filed with the Regional Judicial Officer in June 2016 and then resubmitted to the Region 6 Acting Regional Administrator in March 2017 (discussed in section III.C. of this decision). See Letter from Lindsay A. Lovejoy, Jr., Jonathan Block, Eric D. Jantz, Douglas Meiklejohn, and Jaimie Park, Counsel for Concerned Citizens, to Samuel Coleman, P.E., Acting Administrator, U.S. EPA Region 6 (Mar. 9, 2017) (enclosing Request to Terminate NPDES Permit # NM0028355 as to Outfall 051 for the Radioactive Liquid Waste Treatment Facility) (June 17, 2016) (“Termination Request”). The Termination Request attaches multiple exhibits. This decision cites to these exhibits as “Ex. \_\_ to Termination Request.”

Outfall 051. *See* 2014 Permit Pt. I at 6. Concerned Citizens participated in the permitting process leading up to the issuance of the 2014 Permit.

In the current appeal, Concerned Citizens alleges that the Region erred in denying its subsequent request to terminate the 2014 Permit as to Outfall 051 because the Los Alamos Laboratory has not discharged liquid waste from that outfall since 2010. *See* Informal Appeal at 1. Concerned Citizens asserts that permit termination is appropriate under 40 C.F.R. § 122.64(a)(4), which provides that after a permit is issued, “[a] change in any condition” requiring a reduction or elimination of any discharge is cause for permit termination. *See id.* at 3-11. In response, the Region argues that Concerned Citizens failed to establish a change in any condition justifying permit termination. *See* EPA Response to Concerned Citizens for Nuclear Safety’s Informal Appeal of EPA’s Denial of Request to Terminate Permit Authorization (Oct. 18, 2017) (“Region’s Response”).

We conclude that the Region did not clearly err or abuse its discretion. The record supports the Region’s determination that Concerned Citizens failed to establish a change in a condition justifying permit termination after the Region issued the 2014 Permit. The Informal Appeal is therefore denied.

## II. REGULATORY HISTORY

EPA’s consolidated permitting regulations provide detailed procedures for EPA’s issuance or renewal of permits under NPDES and other permit programs. Those regulations require EPA to issue a draft permit, seek public comment, hold a public hearing where there is significant public interest in the draft permit, and respond to significant comments received when a final permit decision is issued. *See* 40 C.F.R. §§ 124.6-.12, .17. The regulations specify the procedures and grounds for an appeal of a permit decision at 40 C.F.R. § 124.19. After EPA issues an NPDES permit, however, 40 C.F.R. § 124.5 allows “any interested person” to request termination under that regulation only for the reasons listed in 40 C.F.R. § 122.64. In particular, section 124.5 states, in part:

(a) Permits \* \* \* may be modified, revoked and reissued, or terminated, either at the request of any interested person \* \* \* or upon the [Region’s<sup>2</sup>] initiative. However, permits may *only* be

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<sup>2</sup> The regulations use the term “Director” to describe the permitting authority. 40 C.F.R. § 124.2 (defining “Director”). The permitting authority here is EPA’s Regional Administrator for Region 6. The Board will therefore refer to the Region in places where

\*\*\* terminated for the reasons specified in \*\*\* [40 C.F.R.]  
§ 122.64 \*\*\*.

40 C.F.R. § 124.5 (emphasis added). And 40 C.F.R. § 122.64 in turn identifies four bases for “terminating a permit during its term:”

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee’s failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee’s misrepresentation of any relevant facts at any time;
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

40 C.F.R. § 122.64(a).

Concerned Citizens’ Informal Appeal relies on the fourth basis for termination at 40 C.F.R. § 122.64(a)(4) – where there has been “[a] change in any condition” since permit issuance.

### III. *FACTUAL HISTORY*

To best understand the issue raised by Concerned Citizens – that there has been “[a] change in any condition” after the Region issued the 2014 Permit – we

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the regulations use the term “Director.” *See id.* (“When there is no approved State \*\*\* program, and there is an EPA administered program, ‘Director’ means the Regional Administrator.”).

describe in detail below the Treatment Facility, the process leading to issuance of the 2014 Permit, and Concerned Citizens' subsequent termination request.

A. *The Los Alamos Laboratory*

The Los Alamos Laboratory is located on forty square miles in Los Alamos County in north-central New Mexico, approximately sixty miles north-northeast of Albuquerque. See Los Alamos National Laboratory NPDES Permit Re-Application, Permit No. NM0028355 at ¶ 3.0 (Feb. 2012) ("2012 Permit Re-Application") (A.R. I) and attached 2012 NPDES Re-Application Outfall Fact Sheet for Outfall 051 ("2012 Re-Application Fact Sheet – Outfall 051") (A.R. I.A.). The Los Alamos Laboratory provides for "stockpile stewardship" and engages in "extensive basic research in physics, chemistry, metallurgy, mathematics, computers, earth sciences, and electronics." 2012 Permit Re-Application at ¶ 3.1.

B. *The 2012 Permit Re-Application and the 2014 Permit*

In February 2012, the Los Alamos National Security, LLC and the U.S. Department of Energy submitted an application for renewal of the Los Alamos Laboratory's then-existing NPDES permit, issued in August 2007, to authorize continued discharges from eleven outfalls, including discharges from the Treatment Facility to the Facility's one Outfall, Outfall 051. See 2012 Permit Re-Application at ¶ 4.0 & Table 4.1. The Treatment Facility treats low-level and transuranic radioactive liquid waste from various locations at the Laboratory. 2012 Re-Application Fact Sheet – Outfall 051 at 1.

Prior to 2010, treated wastewater from the Treatment Facility was regularly discharged to Outfall 051. See 2012 Permit Re-Application at ¶ 2.0; 2012 Re-Application Fact Sheet – Outfall 051 at 1, 5. As the Permittees stated in their 2012 Re-Application, however, the Treatment Facility "ha[d] not discharged to Outfall 051 since November 2010" due to changes in facility operations prior to re-application, including the use of a mechanical evaporator. See 2012 Re-Application Fact Sheet – Outfall 051 at 5. The Permittees also identified the anticipated construction of two new solar evaporation tanks – referred to as "Zero Liquid Discharge" tanks – that would serve the same function as the mechanical evaporator of receiving treated effluent from the Treatment Facility. See *id.* at 5, 7. Permittees nevertheless requested re-permitting of Outfall 051, "so that the [Treatment Facility] can maintain the capability to discharge to the outfall *should* the Mechanical Evaporator and/or Zero Liquid Discharge \* \* \* tanks become unavailable due to maintenance, malfunction, and/or there is an increase in

treatment capacity caused by changes in [the Laboratory's] scope/mission." *Id.* at 5 (emphasis added). Permittees further noted that "[a] grab sample [of the effluent] will be collected from Outfall 051 *when/if* the [Treatment Facility] discharges effluent through the [O]utfall." *Id.* (emphasis added). *See also* Form 2C to the 2012 Permit Re-Application at 6-14 (same).

In June 2013, the Region issued a public notice of the draft permit seeking public comment. *See* NPDES Permit No. NM0028355 Response to Comments at 2 (Aug. 4, 2014) ("Response to Comments") (A.R. III). The Region's Fact Sheet accompanying the 2013 draft permit stated: "The effluent is evaporated through a mechanical evaporator and has no discharge since November 2010. [Los Alamos Laboratory] includes the outfall in the application *in case* the evaporator becomes unavailable due to maintenance, malfunction, and/or capacity shortage." NPDES Permit No. NM0028355, Fact Sheet for the Draft [NPDES] Permit to Discharge to Waters of the United States at 12 (June 26, 2013) (Ex. NN to Termination Request) (emphasis added).

In their August 2013 comments on the draft permit, the Permittees reiterated that "the \* \* \* [Treatment Facility has] not discharged [to Outfall 051] since November 2010 as a result of using the mechanical evaporator" and that it sought to re-permit the Outfall in the event that the mechanical evaporator or now constructed evaporation tanks (once permitted and in use) were not functioning: "Based on discharge records prior to November 2010, and with options of using the existing mechanical evaporator or new [Zero Liquid Discharge] evaporation tanks, [the Treatment Facility] would discharge to Outfall 051 only once or twice per week *if* evaporation is not an option." Letter from Alison M. Dorries, Division Leader, Environmental Protection Division, Los Alamos National Security, LLC, and Gene E. Turner, Environmental Permitting Manager, Los Alamos Field Office, Department of Energy, to Diane Smith, U.S. EPA Region 6 Permit Processing Team, Enclosure 1 at 3 (Aug. 13, 2013) (emphasis added) ("Los Alamos Laboratory Comments on 2013 Draft Permit") (Ex. OO to Termination Request).

Further, because Los Alamos Laboratory anticipated that future discharges to Outfall 051 – if they were to resume – were likely to be intermittent, its August 2013 comments requested modification of a provision in the draft permit's continuous flow monitoring requirements for Outfall 051: "[The Treatment Facility] has not discharged since November 2010. *If* discharges to the Outfall 051 resume, it is estimated that [Treatment Facility] would only discharge intermittently \* \* \*." *Id.* at 7 (emphasis added).

Although Concerned Citizens apparently filed comments on other parts of the draft permit, no commenter objected to the 2014 Permit's continued authorization of discharges through Outfall 051 during the comment period on the draft permit.<sup>3</sup> *See generally* Response to Comments.

The Region issued its 2014 permit determination on August 12, 2014. In the Region's August 2014 Response to Comments on the draft permit, the Region agreed that continuous monitoring was not necessary because the Treatment Facility had not discharged to Outfall 051 since November 2010 and would only discharge intermittently even "if discharges resume." Response to Comments at 17. Consequently, although the 2014 Permit includes discharge parameters for Outfall 051, the Permit requires only that a one-time grab sample be taken "*if* a discharge occurs at Outfall 051." 2014 Pt. I.E. at 26 (emphasis added).

The deadline for filing a petition for review of the Region's 2014 Permit renewal decision with the Board was in September 2014. 40 C.F.R. § 124.19(a).<sup>4</sup> Neither Concerned Citizens nor any other party filed a petition for review with the Board under 40 C.F.R. § 124.19 objecting to the inclusion of Outfall 051 in the 2014 Permit. However, Permittees filed a petition for review with the Board challenging the 2014 Permit's imposition of monitoring and sampling requirements for selenium at a different outfall (Outfall 03A048). At the request of the parties, the Board dismissed the petition after the Region removed the disputed permit

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<sup>3</sup> In its response to Concerned Citizens' Informal Appeal, the Region represents that Concerned Citizens joined another organization, Communities for Clean Water, in submitting comments on the 2013 draft permit and that the Region responded to those comments. *See* Region's Response at 14 (citing Response to Comments at 9-13). The Region states that these comments did not raise the issue of whether the permit should authorize discharges from Outfall 051. *Id.* In its Reply to the Region's Response, Concerned Citizens indicates that the Region correctly characterized Concerned Citizens' participation during the public comment period. *See* Concerned Citizens for Nuclear Safety Reply Submission Pursuant to 40 C.F.R. §§ 124.2 and 124.5(b) at 16 (Nov. 3, 2017).

<sup>4</sup> Under 40 C.F.R. § 124.19(a), any person filing comments on the draft permit or participating in a public hearing on the draft permit may file a petition for review with the Board within thirty days after the Region serves notice of issuance of a permit. 40 C.F.R. § 124.19(a)(2)-(3).

provision. *See In re Los Alamos Nat'l Lab.*, NPDES Appeal No. 14-02 (EAB Apr. 27, 2015) (Order Dismissing Petition for Review).

C. *Concerned Citizens' 2015 Letter Challenging Issuance of 2014 Permit and 2016 Termination Request*

A little over a year later, in November 2015, new attorneys representing Concerned Citizens sent a letter to the Region questioning the need for the 2014 Permit. *See* Letter from Stacey Dwyer, Associate Director, U.S. EPA Region 6, NPDES Permits and TMDL Branch, to Lindsay A. Lovejoy, Jr., Attorney at Law, 3600 Cerrillos Rd., Santa Fe, NM (Dec. 18, 2015) (“Region’s 2015 Response Letter”) (Ex. UU to Termination Request) (referencing Concerned Citizens’ Nov. 2015 letter). Concerned Citizens did not request termination of the 2014 Permit and instead asked for the Region’s justification for issuance of the Permit in the first instance. In particular, the letter stated that because the Treatment Facility has been designed to eliminate all discharges and there have been no discharges since 2010, there was no need for the Permit, and, pursuant to federal case law, the Region lacked jurisdiction under the Clean Water Act to have issued the 2014 Permit for Outfall 051. *Id.* at 1-2; *see also* Ex. 7 to Informal Appeal (attaching Concerned Citizens’ Nov. 2015 letter).

In response, the Region stated that it had re-examined its permit file and determined that it would not alter its permit determination. Region’s 2015 Response Letter. Although no discharges had occurred since 2010, the Region stated, in part, that: “[Los Alamos Laboratory] specifically sought permit coverage for Outfall 051 to protect against liability in case of a future discharge. In its application, [Los Alamos Laboratory] indicated that under certain circumstances, e.g., maintenance, malfunction, and/or capacity shortage, a discharge could occur and permit authorization would be needed.” *Id.* at 1. The Region also disagreed that it lacked jurisdiction to issue a permit for potential discharges where, as here, the permittee requested coverage “for a possible future discharge.” *Id.* at 2.

In June 2016, Concerned Citizens filed with the Regional Judicial Officer a request to terminate the 2014 Permit with respect to Outfall 051 pursuant to 40 C.F.R. §§ 124.5 and 122.64(a)(4).<sup>5</sup> *See* Termination Request (June 17, 2016) (A.R. IV). As noted above, section 124.5 allows any person to request termination

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<sup>5</sup> Concerned Citizens did not allege that 40 C.F.R. § 122.64(a)(1)-(3) served as a basis for termination.

of an NPDES permit during its term based on: "(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW)." 40 C.F.R. § 122.64(a). In particular, Concerned Citizens stated that, since at least 1998, Los Alamos Laboratory had engaged in an effort to eliminate liquid discharges from the Treatment Facility to Outfall 051. See Termination Request at 3-11 (citing *Elimination of Liquid Discharge to the Environment from the TA-50 Radioactive Liquid Waste Treatment Facility*, David Moss, et. al., Los Alamos National Laboratory, at vi (June 1998) (Ex. A to Termination Request) (recommending a "phased transition toward zero liquid discharge" through Outfall 051). Concerned Citizens further noted that as a result of these efforts, the Treatment Facility had not discharged any wastes through Outfall 051 since November 2010. *Id.* at 10-11.

Concerned Citizens also acknowledged that in the 2012 Permit Re-Application, Permittees had "expressly requested a permit [for Outfall 051] only for a possible discharge" and as a "fallback" for "use in possible contingencies." See *Id.* at 9; see also *id.* at 10 (stating that 2012 Permit Re-Application sought leave to provide effluent characteristics for Outfall 051 only "if discharges \* \* \* are initiated during the life of the new permit"), 11 (stating that the final permit refers to regulation of discharges from Outfall 051 "if discharges resume") (emphasis in original). Nevertheless, because no discharges had occurred since 2010, Concerned Citizens asserted that Los Alamos Laboratory had no need for or intention of discharging through Outfall 051. *Id.* at 11. Given the continued lack of any discharges from Outfall 051, Concerned Citizens asserted that termination was justified under 40 C.F.R. § 122.64(a)(4). See *id.* at 17 (asserting that the permit must be terminated "due to lack of discharge").

Concerned Citizens further argued that EPA lacked the authority under the Clean Water Act ("CWA") to issue a permit for potential discharges that could occur sometime in the future. *Id.* at 12-15. Finally, Concerned Citizens suggested that Los Alamos Laboratory sought to maintain Outfall 051 as a permitted discharge for the Treatment Facility because coverage under the 2014 Permit allows Los Alamos Laboratory to obtain a Waste Water Treatment Unit exemption under another federal law, the Resource Conservation and Recovery Act ("RCRA"), and loss of the exemption would require Los Alamos Laboratory to meet additional RCRA requirements. *Id.* at 3-6 (citing RCRA § 1004(27), 42 U.S.C. § 6903(27); 40 C.F.R. §§ 260.10, 264.1(g)(6)).

On March 2, 2017, the Regional Judicial Officer dismissed Concerned Citizens' termination request for lack of jurisdiction under 40 C.F.R. § 124.5, but stated that Concerned Citizens could proceed with the matter before the Regional Administrator. See *In re Concerned Citizens for Nuclear Safety (CCNS) Request to Terminate NPDES Permit #NM0028355 (Permit) for Los Alamos Nat'l Lab. Radioactive Liquid Waste Treatment Facility*, (RJO, Mar. 2, 2017) (referencing June 2016 Termination Request).<sup>6</sup> Thereafter, on March 9, 2017, Concerned Citizens resubmitted its termination request to the Regional Administrator. See Letter from Lindsay A. Lovejoy, Jr., Jonathan Block, Eric D. Jantz, Douglas Meiklejohn, and Jaimie Park, Counsel for Concerned Citizens, to Samuel Coleman, P.E., Acting Administrator, U.S. EPA Region 6 (Mar. 9, 2017) (A.R. IV) (enclosing Request to Terminate NPDES Permit # NM0028355 as to Outfall 051 for the Radioactive Liquid Waste Treatment Facility (June 17, 2016)).

D. *Region 6's Denial of Concerned Citizens' Termination Request*

In August 2017, the Region denied Concerned Citizens' request pursuant to 40 C.F.R. § 124.5(b).<sup>7</sup> The Region determined that Concerned Citizens' request to terminate the 2014 Permit as to Outfall 051 was not justified because Concerned Citizens failed to demonstrate that there had been "[a] change in any condition" after the 2014 Permit was issued justifying termination under 40 C.F.R. § 122.64(a)(4). See Letter from William K. Honker, Director, Water Division, U.S. EPA Region 6, to Lindsay A. Lovejoy, Jr., Attorney at Law, and Jonathan Block, Eric D. Jantz, Douglas Meiklejohn, and Jaimie Park, New Mexico Environmental Law Center, Counsel for Concerned Citizens (Aug. 16, 2017) ("Region 6 Letter") (A.R. V). The Region also rejected Concerned Citizens' assertion that EPA lacked

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<sup>6</sup> Although the Regional Judicial Officer's Order is not part of the administrative record identified by the Region, the Board takes official notice of it as a public document. See, e.g., *In re Donald Cutler*, 11 E.A.D. 622, 650-51 (EAB 2004) (explaining that information in the public domain is subject to official notice by the Board); *In re City of Denison*, 4 E.A.D. 414, 419 n.8 (EAB 1992) (taking official notice of administrative order not part of proceeding before Board).

<sup>7</sup> 40 C.F.R. § 124.5(b) states, in pertinent part, that "[i]f the [Region] decides that the [termination] request is not justified, he or she shall send the requester a brief written response giving a reason for the decision."

the authority under the CWA to issue the NPDES permit for potential discharges. *Id.* at 2. Finally, the Region concluded that “[w]hether or not issuance of NPDES permit coverage might trigger the RCRA [Waste Water Treatment Unit] regulatory exemption has no bearing on EPA’s NPDES permitting decisions, which must be based on the requirements of the CWA and implementing regulations.” *Id.* at 3.

E. *Informal Appeal to the Board*

On September 14, 2017, Concerned Citizens timely filed an Informal Appeal with the Board under 40 C.F.R. § 124.5(b) seeking review of the Region’s denial of Concerned Citizens’ termination request.<sup>8</sup> On September 21, 2017, the Board issued an Order for Additional Briefing requiring that the Region file a response to the Informal Appeal and requesting that the parties address certain issues in their replies. Thereafter, on September 25, 2017, the Board issued an order granting the parties’ request to extend deadlines for the Region’s and the Permittees’ responses as well as Concerned Citizens’ reply. The Permittees and the Region filed responses on October 16 and 18, 2017, respectively.<sup>9</sup> Concerned Citizens filed a reply on November 3, 2017, and requested oral argument.<sup>10</sup> On

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<sup>8</sup> Under 40 C.F.R. § 124.5(b), denials of requests for termination “may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts.”

<sup>9</sup> See Letter from Susan L. McMichael, Attorney, Office of Laboratory Counsel, Los Alamos National Laboratory, and Silas R. DeRoma, Field Office Counsel, U.S. Department of Energy, to Clerk of the Board, U.S. EPA Environmental Appeals Board, and enclosed Aff. of Michael Thomas Saladen, Environmental Manager at LANL (Oct. 12, 2017); EPA Response to Concerned Citizens for Nuclear Safety’s Informal Appeal of EPA’s Denial of Request to Terminate Permit Authorization (Oct. 18, 2017) (“Region’s Response”).

<sup>10</sup> Concerned Citizens for Nuclear Safety Reply Submission Pursuant to 40 C.F.R. §§ 124.2 and 124.5(b).

February 22, 2018, the Board heard oral argument in this case.<sup>11</sup> For the reasons stated below, the Board denies Concerned Citizens' Informal Appeal.<sup>12</sup>

### III. STANDARD OF REVIEW

Unlike the procedures governing Board review of permit determinations under 40 C.F.R. § 124.19, the regulations governing informal appeals from the denial of a request to terminate a permit under 40 C.F.R. § 124.5 do not specify the Board's standard of review. Upon consideration, the Board will adopt for informal appeals the same standard used for appeals of permit determinations under 40 C.F.R. § 124.19. Specifically, a party seeking review under 40 C.F.R. § 124.5 must demonstrate that the Region's determination was based on either a finding of fact or conclusion of law that was clearly erroneous or was an abuse of discretion. *See* 40 C.F.R. § 124.19(a)(4)(i)(A)-(B).<sup>13</sup> The issues that may arise in a proceeding under 40 C.F.R. § 124.5 are not necessarily different or less significant than the issues that arise in a proceeding under 40 C.F.R. § 124.19. Where, as here, the Board has decided to consider an informal appeal under 40 C.F.R. § 124.5, *see supra* note 12, the issues presented warrant Board consideration under the same standard of review as issues arising in proceedings under 40 C.F.R. § 124.19. Moreover, adopting this standard will serve administrative efficiency and will provide for consistency in addressing future appeals to the Board whether formal

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<sup>11</sup> Concerned Citizens, the Region, and Permittees (Los Alamos National Security, LLC and the U.S. Department of Energy) all participated in oral argument. *See* EAB Hearing Transcript ("Tr.") (Feb. 22, 2018).

<sup>12</sup> Under 40 C.F.R. § 124.5(b), the "appeal shall be considered denied if the Environmental Appeals Board takes no action on the letter within 60 days after receiving it." The Board's September 21 and 25 orders constituted sufficient "action" necessary to keep this matter alive beyond the sixtieth day, allowing the Board to now address this Informal Appeal on the merits. *See In re Waste Techs. Indus.*, 5 E.A.D. 646, 655 n.13 (EAB 1995) (order for supplemental briefing is sufficient action for purposes of the sixty-day period specified in 40 C.F.R. § 124.5(b)).

<sup>13</sup> This standard is in keeping with the Board's other review on the merits of an informal appeal under 40 C.F.R. § 124.5. *See, e.g., In re Waste Tech. Inds.*, 5 E.A.D. 646 (EAB 1995). Although the Board in *Waste Technologies* did not explicitly address the standard of review for informal appeals, the Board found that the permit issuer "committed no error" in its permit determination and adequately justified that determination. *Id.* at 662-63.

or informal. *Cf.* 40 C.F.R. § 124.19(n) (stating that the Board “may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal”).

#### IV. ANALYSIS

##### A. *The Region Did Not Clearly Err or Abuse its Discretion in Denying the Termination Request*

In this Informal Appeal, Concerned Citizens asserts that permit termination proceedings are appropriate for the reason specified in 40 C.F.R. § 122.64(a)(4) because “no discharges of water or pollutants are planned or expected for Outfall 051, and no such discharges have occurred since November 2010.” Informal Appeal at 3.

Under 40 C.F.R. § 122.64(a)(4), a cause for “terminating [an NPDES] permit during its term” includes: “[a] change in any condition that requires either a temporary or permanent reduction or elimination of any discharge \* \* \* controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).” 40 C.F.R. § 122.64(a)(4). As noted, the regulation states plainly that termination is an action that occurs “during [the permit’s] term.” *Id.* Therefore, “[a] change” for purposes of termination is one that occurs after permit issuance. *See also* 40 C.F.R. § 122.62(a)(1) (similarly requiring certain “changes” to have “occurred after permit issuance” to allow modification of a permit). And to read “[a] change” for purposes of termination some other way would effectively write the phrase “during its term” out of 40 C.F.R. § 122.64(a). The Informal Appeal, however, does not allege “[a] change in any condition” at Outfall 051 since issuance of the 2014 Permit. Indeed, in quoting the language of this provision, Concerned Citizens omits the reference to “[a] change in any condition.” *See* Informal Appeal at 3 (quoting only the portion of section 122.64(a)(4) referring to the “elimination of any discharge \* \* \* controlled by the permit.”). Thus, on its face, the Informal Appeal fails to demonstrate that the Region clearly erred or abused its discretion in denying the request to terminate.

The record supports the Region’s determination that there has not been “[a] change in any condition” at Outfall 051 since issuance of the 2014 Permit. Although not explicitly stated, Concerned Citizens appears to suggest that the passage of additional time since issuance of the 2014 Permit by itself constitutes a sufficient basis for termination. *See id.* at 5. However, when Permittees applied for renewal of their permit, they advised the Region that discharges from

Outfall 051 had not occurred “since November 2010” and would only be necessary “*should* the Mechanical Evaporator and/or Zero Liquid Discharge \* \* \* tanks become unavailable due to maintenance, malfunction, and/or there is an increase in treatment capacity caused by changes in [the Laboratory’s] scope/mission.” 2012 Re-Application Fact Sheet at 5 (emphasis added).<sup>14</sup> As the Region explained in the Fact Sheet accompanying the 2013 draft permit, “[Los Alamos Laboratory] includes [Outfall 051] in the application *in case* the evaporator becomes unavailable due to maintenance, malfunction, and/or capacity shortage.” NPDES Permit No. NM0028355, Fact Sheet for the Draft [NPDES] Permit to Discharge to Waters of the United States at 12 (June 26, 2013) (Ex. NN to Termination Request) (emphasis added). And when the Region issued the 2014 Permit, it reiterated that discharges from Outfall 051 had not occurred “since November 2010,” imposing certain monitoring requirements only “if discharges resume.” Response to Comments at 17; *see also* 2014 Permit Part I.E. at 26 (requiring that Permittees take a one-time grab sample of effluent from Outfall 051 “*if* a discharge occurs”) (emphasis added). Thus, the passage of additional time without a discharge from Outfall 051 since issuance of the 2014 Permit was expected, was made known during the permit proceeding, and does not amount to a change in any condition justifying termination. Under these circumstances, the Informal Appeal fails to demonstrate the Region clearly erred or abused its discretion in denying the termination request.

In its Reply, Concerned Citizens makes conclusory claims that there have in fact been “massive and obvious” changes to the Treatment Facility and its operation that, according to Concerned Citizens, justify termination of the 2014 Permit for Outfall 051 under 40 C.F.R. § 122.64(a)(4). Concerned Citizens for Nuclear Safety Reply Submission Pursuant to 40 C.F.R. §§ 124.2 and 124.5(b) (“Concerned Citizens Reply”) (Nov. 3, 2017) at 7. However, these alleged changes – the use of a mechanical evaporator and the anticipated use of the Zero Liquid Discharge tanks designed to reduce or eliminate discharges from the Treatment

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<sup>14</sup> *See also* 2012 Re-Application Fact Sheet, Form 2C at 6-14 (same). Form 2C of the 2012 Re-Application Fact Sheet states further that an effluent sample “will be collected from Outfall 051 *when/if* the [Treatment Facility] discharges effluent to Mortandad Canyon.” *Id.* (emphasis added). Further, in their comments on the 2013 draft permit, Permittees stated that “[*iff*] discharges to the Outfall 051 resume, it is estimated that [Treatment Facility] would only discharge intermittently.” Los Alamos Laboratory Comments on 2013 Draft Permit at 7 (emphasis added).

Facility – were identified in the 2012 Permit Re-Application and the Region’s Fact Sheet for the 2013 draft permit prior to the 2014 Permit’s issuance. Thus, they do not reflect “[a] change in any condition” since issuance of the 2014 Permit warranting termination pursuant to 40 C.F.R. § 122.64(a)(4).<sup>15</sup>

And maintaining the integrity and finality of the permitting process for permittees and other stakeholders requires Concerned Citizens to show that there has been “[a] change in any condition” since issuance of the 2014 Permit. When EPA is deciding whether to issue or renew a permit, the public is given a full opportunity to participate in and challenge any aspect of the permit. EPA’s permitting regulations direct EPA to issue a draft permit, to seek public comment for no less than thirty days, to hold a public hearing where there is a significant degree of public interest in a draft permit, and to issue a response to significant comments received at the time the final permit is issued. 40 C.F.R. § 124.6 - .12, .17. The public in turn is required to raise “all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the comment period.” *Id.* § 124.13. And under section 124.19, a party may seek to challenge any condition of a final permit so long as it files a petition for review with the Board within thirty days of issuance. *See id.* § 124.19(a)(3), (4).

Once the permit is issued, however, the regulations at 40 C.F.R. § 122.64(a) and § 124.5 specify that EPA may only terminate a permit during its term for one of four listed reasons. Initially, EPA’s permitting regulations applicable to state NPDES programs allowed the Agency to terminate a permit for cause, “including, but not limited to,” “[a] change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.” *State Program Elements Necessary for Participation in the NPDES*, 37 Fed. Reg. 28,390, 28,397 (Dec. 22, 1972). EPA included identical language in promulgating regulations applicable to federal NPDES programs in 1973. *See National Pollution Discharge Elimination System*, 38 Fed. Reg. 13,528, 13,533 (May 22, 1973). In 1979,

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<sup>15</sup> During oral argument, Concerned Citizens objected to any finding that its termination request was untimely because the issues raised in that request were not raised during the proceedings leading to issuance of the 2014 Permit. Tr. at 61-62. The Board’s decision, however, is not based on any finding that the termination request was untimely, but rather the Region’s finding that the request fails to demonstrate a basis for termination because there has been no “change of any condition” since permit issuance under 40 C.F.R. § 122.64(a)(4).

however, EPA revised the regulations to remove the phrase “including, but not limited to” so as to allow for termination “only in certain limited circumstances.” See *National Pollution Discharge Elimination System; Revision of Regulations*, 44 Fed. Reg. 32,854, 32,868, 32,912 (June 7, 1979). In addition, the Agency agreed with commenters that the causes for permit modification should be listed separately from the “more ‘severe’ measure” of termination. *Id.* In 1980, when EPA issued consolidated regulations governing its permitting programs, it expressed the expectation that the bases for termination in 40 C.F.R. § 122.64(a) would not be read broadly. See *Consolidated Permit Regulations*, 45 Fed. Reg. 33,290, 33,316 (May 19, 1980). Further, although the proposed rule included “other good cause” as a ground for termination, EPA chose not to include this as a basis for termination in the 1980 consolidated regulations because it was too “vague and open ended.” *Id.* at 33,317. The limited scope of 40 C.F.R. § 122.64(a) has remained unchanged for almost forty years now.

And the more abbreviated process EPA must follow before denying a request to terminate (as opposed to the process for issuing or renewing a permit) further supports the point that a request to terminate was not intended to be a basis to reopen the original permit decision. EPA does not need to issue a public notice or provide an opportunity for comment before denying a request to terminate. Instead, EPA need only “send the requester a brief written response giving a reason for the decision” not to terminate. 40 C.F.R. § 124.5(b); see also *id.* § 124.10(a)(2).

Notably, although much of the Informal Appeal focuses on Concerned Citizens’ assertion that the Region erred in issuing the 2014 Permit in the first instance,<sup>16</sup> it does not seek, nor could it seek, to challenge the 2014 Permit now. And it fails to demonstrate that the Region erred or abused its discretion in denying the request to terminate the 2014 Permit under 40 C.F.R. § 122.64(a)(4). Instead, Concerned Citizens may raise the issues it raises here, or any other issue it chooses, in any future permit renewal process for the Los Alamos Laboratory when the 2014 Permit expires in September 2019, and file a petition for review with the Board

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<sup>16</sup> See, e.g., Informal Appeal at 2 (contesting the Region’s “issuance of an NPDES permit” for possible discharges from Outfall 051), 2-3 (stating that the Region’s position that it may “issue an NPDES permit” for possible discharges is “in error”), 5 (discussing EPA’s limited authority under the CWA to “issue NPDES permits” for potential discharges), and 7-8 (challenging the Region’s position that it can “issue an NPDES permit” at the request of the owner or operator) (emphasis added).

from any future permit at that time under 40 C.F.R. § 124.19. *See also* Tr. at 40-41.<sup>17</sup>

B. *Concerned Citizens' Contention That Permittees Never Disclosed that Discharges to Outfall 051 Might Not Occur is Untimely and Not Supported by the Record Here*

In its Reply, Concerned Citizens argues further that it could not have contested the 2014 Permit at the time the Permit was issued, implying that Los Alamos Laboratory never disclosed the possibility that discharges to Outfall 051 might not occur. *See* Concerned Citizens Reply at 8. Specifically, Concerned Citizens now asserts that during the 2014 Permitting process, Los Alamos Laboratory expressed an intent to make use of Outfall 051. *Id.* (claiming that during the permitting process Los Alamos Laboratory represented that “discharges through Outfall 051 would be required”). From there, Concerned Citizens argues that it relied on Los Alamos Laboratory’s representations that it intended to discharge from Outfall 051 and thus could not have raised an earlier challenge to the 2014 Permit. *See id.* at 8-12.

However, Concerned Citizens did not make this argument before filing its Reply or otherwise claim that termination was appropriate under 40 C.F.R. § 122.64(a)(2) because of a “failure \* \* \* to disclose” or “misrepresentation of any relevant facts” during the 2014 permitting process. And because this argument is raised for the first time in Concerned Citizens’ Reply, it is beyond the scope of the Informal Appeal and is therefore untimely. *Cf. In re Russell City Energy Ctr. LLC*, 15 E.A.D. 1, 53 (EAB 2010) (declining to consider new issues raised for the first time in a reply brief); *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 126 n.9

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<sup>17</sup> Because the Region did not clearly err or abuse its discretion in finding that there has been no “change in any condition,” the Board does not address the Region’s further argument that any such change must be of a condition “that requires \*\*\* elimination of any discharge \*\*\* (for example, plant closure or termination of discharge by connection to a POTW).” 40 C.F.R. § 122.64(a)(4); *see* Region’s Response at 6-7.

(EAB 1999) (new issues raised in reply briefs are equivalent to late-filed appeals and are thus untimely).

Even had Concerned Citizens timely raised this argument, however, the argument is contradicted by the record here. Although Permittees acknowledged during the application process that the use of the mechanical evaporator had resulted in no discharges from Outfall 051 since 2010, Permittees nevertheless sought a permit for continued discharges under certain circumstances. As discussed above, the permitting record for the 2014 Permit made clear that discharges from Outfall 051 would only be necessary if the mechanical evaporator or Zero Liquid Discharge tanks become unavailable due to malfunction, maintenance, or capacity shortage. Indeed, the permitting record refers to Outfall 051 requirements in multiple places as applying only “if” discharges resume. Thus, contrary to Concerned Citizens’ assertion, the record alerted the public to the fact that discharges might not occur at all.

This argument is also at odds with Concerned Citizens’ own prior statements. As early as November 2015, Concerned Citizens raised concerns about the 2014 Permit demonstrating its understanding that Permittees had sought and the Region had issued the 2014 Permit covering Outfall 051, even though it was known that there had been no discharges since 2010. *See* Region’s 2015 Response Letter (Ex. UU to Termination Request) (referencing Concerned Citizens’ Nov. 2015 letter). Further, in its termination request, Concerned Citizens acknowledged that the Permittees had stated that there had been no discharges to Outfall 051 since 2010 and had expressly requested a permit for Outfall 051 “only for a possible discharge,” and as a “fallback” for use in possible contingencies. *See* Termination Request at 9; *see also id.* at 10 (stating that 2012 Permit Re-Application sought leave to provide effluent characteristics for Outfall 051 only “*if discharges \* \* \* are initiated during the life of the new permit*”), 11 (stating that the final permit refers to regulation of discharges from Outfall 051 “*if discharges resume*”) (emphasis in original). In short, there is no merit in Concerned Citizens’ argument that the Permittees never disclosed the possibility that discharges from Outfall 051 might not occur at all, as Concerned Citizens’ own submissions demonstrate.<sup>18</sup>

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<sup>18</sup> In a post-argument brief, Concerned Citizens now contends that it could not have known during the comment period on the draft permit that the Zero Liquid Discharge tanks had been constructed, and on that basis, claims termination is appropriate. *See* Concerned Citizens for Nuclear Safety Post-Argument Submission Pursuant to 40 C.F.R. §§ 124.2 and

*V. CONCLUSION*

For the reasons stated above, the Board concludes that Concerned Citizens has not established that the Region clearly erred or abused its discretion in denying Concerned Citizens' request to terminate the 2014 Permit for Outfall 051. Concerned Citizens' Informal Appeal is therefore denied.<sup>19</sup>

So ordered.

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124.5(b) at 7 (Feb. 27, 2018). The Board did not grant the parties leave to file post-argument briefs but instead only directed the filing of publicly-available information regarding the status of the State permitting process for the Zero Liquid Discharge tanks, Tr. at 67-68, and this argument raised for the first time in a post-argument brief is untimely. In any event, regardless of when the Zero Liquid Discharge tanks were constructed, the permitting record – and specifically the 2012 Permit Re-Application and the Region's Fact Sheet for the 2013 draft permit – alerted the public that with either the mechanical evaporator or the Zero Liquid Discharge tanks, discharges might not occur at all.

<sup>19</sup> Because we conclude that the Region did not clearly err or abuse its discretion in denying the termination request, we do not need to address Concerned Citizens' argument that EPA lacked authority under the CWA to issue a permit for potential discharges.

**CERTIFICATE OF SERVICE**

I certify that copies of the forgoing *Final Decision* in the matter of Los Alamos National Security, LLC and the Department of Energy, NPDES Appeal No. 17-05, were sent to the following persons in the manner indicated:

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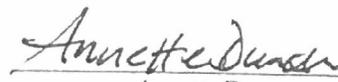
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Office of General Counsel (MC-2355A)

Dated:           MAR 14 2018          

  
\_\_\_\_\_  
Annette Duncan  
Administrative Specialist



**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF PROPOSED DISCHARGE  
PERMIT DP-1132 FOR THE RADIOACTIVE  
LIQUID WASTE TREATMENT FACILITY AT  
LOS ALAMOS NATIONAL LABORATORY,  
LOS ALAMOS, NEW MEXICO**

**No. GWB 19-24 (P)**

**NEW MEXICO ENVIRONMENT DEPARTMENT'S  
NOTICE OF FILING OF AMENDED ADMINISTRATIVE RECORD**

Pursuant to the Environment Department's Permit Procedures, 20.1.4.200.A(2) NMAC, the New Mexico Environment Department ("Department") notifies the parties that the Amended Administrative Record, with five additional documents beginning at Bates No. 14826, has been filed with the hearing clerk. The Amended Administrative Record Index is included with this notice. Electronic copies of the Amended Administrative Record will be made available as soon as possible via posting on the Department's website.

Respectfully submitted,

**NEW MEXICO ENVIRONMENT DEPARTMENT  
OFFICE OF GENERAL COUNSEL**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed with the Hearing Clerk and was served on the following via electronic mail on October 29, 2019:

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**ADMINISTRATIVE RECORD INDEX**  
**LOS ALAMOS NATIONAL LABORATORY**  
**RADIOACTIVE LIQUID WASTE TREATMENT FACILITY**  
**DP-1132 October 29, 2019 Rev.**

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
11/01/1994	00002-00012	Dennis McQuillan, NMED	Michael Dale, NMED GWPRB AIP/LANL	Fax	Response to NMED Letter of November 1, 1994 Re: Technical Area (TA)-50 Radioactive Liquid Waste Treatment Plant
04/03/1996	00013-00015	Marcy Leavitt, NMED	Tom Baca, LANL	Letter	Re: Discharge Plan Required for TA-50, Liquid Radioactive Waste Treatment Facility
04/18/1996	00016-00018	David Moss, LANL	Tori George, LANL	Memorandum	Re: Posting of Mortendad Canyon
04/1996	00019-00074	N/A	N/A	Abstract/Report	Ecotoxicological Screen of Potential Release Site 50-006(D) of Operable Unit 1147 of Mortandad Canyon and Relationship to the Radioactive Liquid Waste Treatment Facilities Project
N/A	00075-00098	NMED	LANL	Letter attachment	Request for Additional

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Information on Technical Area 50 Potential Release Sites 50- 006(a, c) 50-007, and 50-008
05/20/1996	00099-00106	N/A	N/A	Agenda, sign-up sheet, and Meeting Notes	May 20, 1996, Field Trip by NMED to the TA-50 Radioactive Liquid Waste Treatment Facility: Agenda, sign-up sheet, and Meeting Notes
07/13/1996	00107-00109	LANL	NMED	Acknowledgment of Receipt	Copy of Check No. 743204 \$50.00
08/05/1996	00110-00111	Thomas E. Baca, LANL	Marcy Leavitt, NMED	Letter	Re: a request for a short deadline extension for submittal of the ground water discharge plan.
08/16/1996	00112-00532	LANL	NMED	Application	Ground Water Discharge Plan Application for the TA-50 Radioactive Liquid Waste Treatment Facility
08/16/1996	00533-00535	G. Thomas Todd, DOE, LANL	Dale Doremus, NMED	Letter	Re: Ground Water Discharge Plan Application, TA-50 RLWTP
08/26/1996	00536-00537	Dale M. Doremus, NMED	James Bearzi, NMED	Memorandum	Re: New Discharge Plan for DP-1132 LAN/TA-50

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					RLWTF
10/02/1996	00538-00539	Courte Voorhees, NMED	Phyllis Bustamante, NMED	Memorandum	Re: DP1132 LANL/TA-50
11/12/1996	00540-00542	Phyllis Bustamante, NMED	file	Field Trip Report	Evaluation of Proposed Discharge Plan. Inspection of Facilities
11/15/1996	00543-00544	LANL	NMED	Affidavit of Publication	Public Notice of proposed discharge plans for DP-1132, LANL, RLWTF TA-50 in the Los Alamos Monitor paper
11/17/1996	00545-00546	N/A	N/A	Affidavit of Publication	Public Notice DP-1132, LANL, RLWTF TA- 50 in the Albuquerque Journal
11/19/1996	00547-00554	Dale Doremus, NMED	Tom Todd, DOE, LANL	Letter	Public Notice forwarded
11/18/1996	00547-00554	Dale Doremus, NMED	Lawry Mann, LANL	Letter	Public Notice forwarded
11/19/1996	00547-00554	Dale Doremus, NMED	Board of County Commissioners, Los Alamos County	Letter	Public Notice forwarded
12/17/1996	00555-00556	Douglas Meiklejohn, NMELC	NMED	Letter	Re: Proposed ground water discharge plan 1132 requesting NMED to conduct a public hearing on the proposed plan

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
12/13/1996	00557-00561	Phyllis Bustamante, NMED	Doug Meiklejohn, NMELC	Fax	Requests for hearing for DP-1132 from Susan Diane; Kathy Sanchez, Pi'ee Quiyo Inc.; and Joey Natseway, Tewa Women United
12/06/1996	00562-00568	N/A	N/A	Workplan	Hydrogeologic Workplan LANL Draft Revision 1
12/19/1996	00569-00572	Phyllis Bustamante, NMED	Jay Cogman, CCWNS	Fax	Appendix C/What You, as a Requestor of Records, Should Know
01/1997 – 12/1997	00573-00574	Unknown	Unknown	Data Table	TA-50 WM-1 Radionuclide Summary Jan. 1997 through Dec. 1997
01/30/1997	00575-00577	Dale Doremus, NMED	Susan Diane	Letter	Re: DP 1132 for LANL RLWTF public hearing
01/30/1997	00578-00580	Dale Doremus, NMED	Joey Natseway Tewa Women United	Letter	Re: DP 1132 for LANL RLWTF public hearing
01/30/1997	00581-00583	Dale Doremus, NMED	Kathy Sanchez, Pi'ee Quiyo Inc.	Letter	Re: DP 1132 for LANL RLWTF public hearing
01/30/1997	00584-00611	N/A	N/A	List	Potential Release Sites
02/11/1997	00612-00615	Jorg Jansen, LANL/ER; and Theodore J.	Benito Garcia, NMED-HRMB	Letter	Re: Response to Request for Additional

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
		Taylor, DOE/LAAO			Information for RFI Report on TA-50 (PRSs 50-006(a,c), 50-007, and 50-008)
04/20/1997	00616-00623	Steve Yanicak, LANL	Mat Johansen, DOE	Draft Letter	Re: Review of LANL's Ground Water Discharge Plan Application for the TA-50 RLWTF (08/16/1996)
04/21/1997	00624-00632	Phyllis Bustamante, NMED	Tom Todd, LANL	Letter	Re: Request for Additional Information, LANL RLWTF (TA-50), DP-1132
06/04/1997	00633-00636	N/A	N/A	RLWTF Survey Results	RLWTF Survey Results – Accelerator-Produced Isotopes
07/21/1997	00637-00639	Robert Dinwiddie, NMED	Tom Todd, LANL and Sigfried Hecker, LANL	Letter	Re: Change in Status of the Technical Area (TA) 53 Surface Impoundments LANL NM0890010515
04/24/1997	00640-00643	Tom Todd, LANL	Dale Doremus, NMED	Letter	Re: Revisions to LANL Ground Water Discharge Plan Application for RLWTF at TA-50 – Phase I Upgrades
06/13/1997	00644-00741	Jorg Jansen, LANL/ER; and	Benito Garcia, NMED-HRMB	Letter	Re: Response to the Request for

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
		Theodore J. Taylor, DOE/LAAO			Supplemental Information to the NOD Response for RFI Report for PRSs 50-004(a, c) and 50-011(a) in TA-50 (Former OU 1147)
06/23/1997	00742-00763	Tom Todd, LANL	Dale Doremus, NMED	Letter	LANL's response to 4/21/1997 request for clarification and/or additional information on the RLWTF TA-50 Application, DP-1132
07/03/1997	00764-00772	Steven Rae, LANL	Sam Coleman, US EPA	Letter	Notice of Changed Conditions at NPDES Outfall 051- change of waste streams
N/A	00773-0777	N/A	N/A	Permit excerpts	Permit No. NM.0028355 Outfall 051
08/01/1997	00778-00779	Dale Doremus, NMED	Douglas Meiklejohn, NM ELC	Letter	Response to request for public hearing for DP- 1132 for LANL RLWTF
08/01/1997	00780-00782	Michael Dale, DOE OB, NMED	Phyllis Bustamante, NMED	Internal Memo	Suggestions or recommendations concerning LANL's response to GWPR's review for the TA-50

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					discharge plan
09/1997	00783-00785	N/A	N/A	Maps/Figures from Mortandad Canyon Workplan, Sept. 1997	Figure 3.3.1-2, Preliminary Isopach map of the alluvium in lower Mortandad Canyon and Figure 3.7.2.4 recent elevations of alluvial groundwater in lower Mortandad Canyon
09/29/1997	00786-00787	Douglas Meiklejohn, NMELC	Marcy Leavitt, NMED	Letter	IPRA request re: DP-1132 LANL RLWTF
09/30/1997	00788-00790	Phyllis Bustamante, NMED	N/A	Field Trip Report	Evaluation of Proposed DP-1132, Inspection of facilities or construction Phase 1 & 2 upgrades to system
10/16/1997	00791-00792	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	LANL's work plan for Mortandad Canyon – LA-UR-97-3291 work plan not included
12/11/1997	00793-00797	N/A	N/A	Figures 3 - 6	Figures 3 – 6, Mortandad Alluvial Nitrate Concentrations: 1962-1996
12/22/1997	00798-	Herman Le-	Dale Doremus,	Letter	LANL's response to

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
	00802	Doux, DOE	NMED		comment number 6.b.1 of NMED's request for additional information, LANL RLWTF TA-50, DP-1132
12/30/1997	00803-00806	Tom Todd, LANL	Dale Doremus, NMED	Letter	Re: Revisions to LANL RLWTF at TA 50 for Phase I and Phase II
03/28/1997	00807-00809	N/A	N/A	Report	LANL Waste Profile System WPF #22921
03/24/1998	00810-00838	Alex Puglisi, LANL	Janice Archuleta, NMED	Letter	Transmittal of TA-50 Sampling and Analysis Plan
04/01/1998	00839-00840	P. Bustamante, NMED	Doug Meiklejohn, NMELC	Telephone conversation	TA-50 DP Application
04/09/1998	00841-00843	Phyllis Bustamante, NMED	Bob Beers, LANL	Letter	Follow Up-Meeting April 1, 1998, LANL RLWTF, DP-1132
04/27/1998	00844-00845	Douglas Meiklejohn, NMELC	Phyllis Bustamante, NMED	Letter	Proposed ground water discharge plan 1132 Pueblo of San Ildefonso wishes to withdraw request for public hearing on proposed DP 1132
05/29/1998	00846-00848	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Re: Status of Phase I and II Upgrades, LANL Ground

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Water Discharge Plan Application for the RLWTF at TA 50
05/12/1998	00849-00850	N/A	N/A	Map	Large Color Plot Map Proposed Regional Wells
05/12/1998	00851	N/A	N/A	Map	Large Color Plot Map Proposed Alluvial and Intermediate Wells
06/01/1998	00852-00858	Steven Rae, LANL	Phyllis Bustamante, NMED	Letter	Request for Additional Information, Ground Water Discharge Plan Application for the RLWTF, DP-1132
07/10/1998	00859-00861	Distribution	Dennis Erickson, Tom Baca, LANL	Memorandum	Radioactive Liquid Waste Zero Discharge Project
08/06/1998	00862-00863	Phyllis Bustamante, NMED	Bob Beers, LANL	Certified Letter	Effluent Quality and Ground Water Monitoring Data, LANL, RLWTF, DP-1132
08/06/1998	00864-00865	Phyllis Bustamante, NMED	Bob Beers, LANL	Telephone Conversation	Asking for more information on the biological treatment.
06/1998	00866-00933	N/A	N/A	Report, LA-13452-MS	Elimination of Liquid Discharge to the Environment from the TA-50

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Radioactive Liquid Waste Treatment Facility
08/10/1998	00934-00935	Phyllis Bustamante, NMED	Bob Beers, LANL	Telephone Conversation	Sending a letter on compliance for the discharge.
08/25/1998	00936-00938	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Request for additional information, Ground Water Discharge Plan Application for the RLWTF, DP-1132-effluent & ground water well data for 1997 and 1998
01/1997-06/1998	00939-00943	N/A	N/A	Monitoring Data	Att. C to 8/25/98 LANL letter - NPDES Monitoring Data for Outfall 051
01-1997-12/1997	00944-00951	N/A	N/A	Analysis Results	Att. D to 8/25/98 LANL letter - RLWTF Influent Monitoring: Semivolatile Organic Compounds and Volatile Organic Compounds
09/03/1998	00953-00956	Steven Rae, LANL	Phyllis Bustamante, NMED	Letter	Summary of July 31, 1998 Meeting at LANL and Status Report on RLWTF Upgrades

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
09/17/1998	00957-00959	Dale Doremus, NMED	David Gurule, LANL	Certified Letter	Letter of Non-Compliance, LANL, RLWTF, DP-1132
10/08/1998	00960-00964	Steven Rae, LANL	Dale Doremus, NMED	Letter	Response to Letter of Non-Compliance, LANL, RLWTF, DP-1132
1997	00965-01081	N/A	N/A	Annual Report	EM/RLW Environmental Management Radioactive Liquid Waste Group Annual RLWTF Report
1997	01082-01228	N/A	N/A	Annual Report	EM/RLW Environmental Management Radioactive Liquid Waste Group Annual RLWTF Report
11/20/1998	01229-01237	Thomas Baca, LANL	Dale Doremus, NMED	Letter	Re: a short-term proposed operational plan
12/23/1998	01238-01240	Thomas Baca, LANL	Dale Doremus, NMED	Letter	Follow up to 11/20/98 letter re mechanical evaporation as the preferred process for the long-term treatment of (RO) reject stream

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
02/26/1999	01241-01244	Dale Doremus, NMED	Susan Diane	Certified Letter	Response to questions submitted with request for public hearing in DP-1132 for LANL RLWTF
02/26/1999	01245-01248	Dale Doremus, NMED	Joey Natesway, Tewa Women United	Certified Letter	Response to questions submitted with request for public hearing in DP-1132 for LANL RLWTF
02/19/1999	01249-01256	Phyllis Bustamante, NMED	David Gurule, DOE	Certified Letter	Re: Additional information or clarification needed on Discharge Plan Application LANL RLWTF TA-50 DP-1132
02/26/1999	01257-01260	Dale Doremus, NMED	Kathy Sanchez, Pi'ee Quiyo Inc.	Certified Letter	Response to questions submitted with request for public hearing in DP-1132 for LANL RLWTF
03/12/1999	01261-01273	Dennis Erickson, LANL	Phyllis Bustamante, NMED	Letter	Response to NMED GWQB Request for Additional Information, Ground Water Discharge Plan Application for the TA-50 RLWTF, DP-1132 without

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Att. 1.0 – 11.0
03/16/1999	01274-01275	Phyllis Bustamante, NMED	Kathy Sanchez, Pi'ee Quiyo Inc.	Telephone Conversation	TA-50 DP-1132
03/18/1999	01276-01277	Phyllis Bustamante, NMED	Bob Beers, LANL	Telephone Conversation	Status of Phase I and Phase II
03/19/1999	01278-01280	Dale M Doremus, NMED	David Gurule, DOE	Certified Letter	Re: extension of time in which LANL may discharge without an approved discharge permit for an additional 20 days
03/22/1999	01281-01282	Phyllis Bustamante, NMED	Suzanne Westerly, CCNS	Telephone Conversation	Public Hearing
03/29/1999	01283-01285	N/A - Meeting with Joey Natseway, Tewa Women United; Gilbert Sanchez,	N/A Tribal Env'l Watch Alliance, Kathy Sanchez, Teresa Juarez, and Ron Rundstrom	Agenda	To provide concerned citizens with adequate information to determine if concerns on the discharge from the RLWTF are Water Quality Control Commission issues and determine if a public hearing is needed
03/23/1999	01286-01292	Dennis Erickson, LANL Thomas	Phyllis Bustamante, NMED	Letter	Installation of Mechanical

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
		Baca, LANL			Evaporator, Ground Water Discharge Plan Application for the TA- 50 RLWTF, DP-1132
04/09/1999	01293-01295	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	NMED Sampling and Analysis of Effluent from the Laboratory's RLWTF at TA-50
04/13/1999	01296-01302	N/A	N/A	Sign-up sheet, Agenda	NMED Site Visit at RLWTF
04/14/1999	01303-01307	Bob Beers, LANL	Phyllis Bustamante, NMED	Fax	Letter forwarding a detailed project schedule for installation and start-up of the proposed mechanical evaporator for the LANL RLWTF at TA-50
04/14/1999	01308-01309	Bob Beers, LANL	Phyllis Bustamante, NMED	Email	RLWTF Effluent Tank Discharge
04/13/1999	01310-01314	DOH, Scientific Laboratory Division	Phyllis Bustamante, NMED	Analytical Results	Analytical results of sample of effluent collected on 04/13/99
04/13/1999	01315-01317	DOH, Scientific Laboratory Division	NMED	Analytical Results	Analytical results
04/13/1999	01318-01322	DOH, Scientific Laboratory Division	Phyllis Bustamante, NMED	Analytical Results	Analytical results of sample of effluent collected on

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					04/13/99
05/06/1999	01323-01327	Bob Beers, NMED	Phyllis Bustamante, NMED	Letter	RLWTF, Ground Water Discharge Plan DP- 1132 Quarterly Report, January 1-March 31, 1999
05/12/1999	01328-01338	Steve Yanicak, NMED	Jay Coghlan, CCNS	Letter with Att. 1 through 6	Status of Current and planned Upgrades at the TA-50 RLWTF and the Ground Water Discharge Plan DP-1132 Application
07/21/1999	01339-01344	Marcy Leavitt, NMED	Kathy Sanchez, Pi'ee Quiyo Inc.,	Letter	Public Hearing, LANL RLWTF, DP-1132 – no cover sheet begins
06/30/1999	01345-01348	Marcy Leavitt, NMED	David Gurule, DOE	Letter	Public Hearing, LANL, RLWTF, DP-1132
07/21/1999	01349-01350	Marcy Leavitt, NMED	Susan Diane	Letter	Public Hearing, LANL, RLWTF, DP-1132
07/21/1999	01351-01352	Marcy Leavitt, NMED	Douglas Meiklejohn, NMELC	Letter	Public Hearing, LANL, RLWTF, DP-1132
07/21/1999	01353-01354	Marcy Leavitt, NMED	Kathy Sanchez, Pi'ee Quiyo Inc.	Letter	Public Hearing, LANL, RLWTF, DP-1132
07/21/1999	01355-01356	Marcy Leavitt, NMED	Joey Natseway, Tewa Women	Letter	Public Hearing, LANL, RLWTF,

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			United		DP-1132
07/23/1999	01357-01368	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	RLWTF, Ground Water Discharge Plan DP- 1132, Quarterly Report, April 1 – June 30, 1999 – no cover sheet begins
08/06/1999	01369-01370	Douglas Meiklejohn, NMELC	Marcy Leavitt, NMED	Letter	Law Center no longer representing San Ildefonso Pueblo
10/04/1999	01371-01373	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Re: a process modification at the TA-50 RLWTF- replacement of TUF tubes
10/29/1999	01374-01379	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	LANL's Ground Water Discharge Plan DP- 132 report for the RLWTF at TA-50 from July 1 – September 30, 1999
12/22/1999	01380-01384	Steve Yanicak, NMED	Steve Rae, LANL	Letter	Radioactive Effluent Quality at NPDES Outfall 051, TA-50, Building 1, October, 1999; (ESH-18/WQ&H:99-0467)

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01/25/2000	01385-01391	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	RLWTF, Ground Water Discharge Plan DP- 1132, Quarterly Report, Fourth Quarter, 1999
02/18/2000	01392-01397	Bob Beers, LANL	Barbara Hoditschek, NMED	Letter	Monthly Status Report, RLWTF at TA-50 for January 2000
03/20/2000	01398-01400	Bob Beers, LANL	Barbara Hoditschek, NMED	Letter	Monthly Status Report for February 2000, RLWTF at TA-50
03/12/1999	01401-01430	N/A	N/A	Attachment 7.0	Effluent Canyon Surface Water Monitoring – Summary Table of Results – Assaigai Analytical Laboratories, Inc. Report
01/31/2000	01431-01433	Maura Hanning, NMED	David Gurule, DOE	Certified Letter	Status Update on the Discharge Permit Application for the LANL, RLWTF, DP-1132
02/18/2000	01434-01438	Steven Rae, LANL	Maura Hanning, NMED	Letter	Status Update on the Ground Water Discharge Permit Application, LANL, RLWTF, DP-1132
04/26/2000	01439-01445	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Ground Water Discharge Plan DP-

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					1132, Quarterly Report, First Quarter, 2000
07/31/2000	01446-01450	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Ground Water Discharge Plan DP-1132, Quarterly Report, Second Quarter, 2000
10/27/2000	01451-01455	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Ground Water Discharge Plan DP-1132, Quarterly Report, Third Quarter, 2000
08/18/2000	01456-01457	Bob Beers, LANL	Phyllis Bustamante	Letter	Ground Water Discharge Plan DP-1132, RLWTF at TA-50, additional information
12/01/2000	01458-01459	Phyllis Bustamante, NMED	Jody Arends, CCNS	Telephone Conversation	LANL – TA-50 – Public Hearing
12/08/2000	01460-01462	Bob Beers, LANL	Joni Arends, CCNS	Letter	LANL, Ground Water Discharge Plan Application for the TA-50 RLWTF
08/15/2001	01463-01502	N/A	N/A	Report	RLWTF Annual Report for 2000, AR-RLW- 2000 Vol. 1,R
01/30/2001	01503-01508	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Ground Water Discharge Plan DP-1132, Quarterly Report, Fourth

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					Quarter, 2000
02/08/2001	01509-01510	Joni Arends, CCNS	Marcy Leavitt, NMED	Letter	IPRA Request Groundwater Discharge Plan for the LANL RLWTF TA-50 DP-1132
03/20/2001	01511-01513	Steven Rae, LANL	Joni Arends, CCNS	Letter w/no Attachments	Request for information, Ground Water Discharge Plan Application for the RLWTF at TA-50
Post-May 2001	01514-01533	N/A	N/A	Study	Radioactive Liquid Wastewater Treatment Facility Influent Minimization Study
04/24/2001	01534-01538	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter LA-UR—01-5353	Ground Water Discharge Plan DP-1132, Quarterly Report, First Quarter, 2001
06/21/2001	01539-01541	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	June 11, 2001 Tour of Mortandad Canyon and the RLWTF at TA-50 – w/no Attachments
07/23/2001	01542-01548	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Request for Change in Procedure, Total Dissolved Determination
07/25/2001	01549-01553	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Ground Water Discharge Plan DP-

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					1132, Quarterly Report, Second Quarter, 2001
09/17/2001	01554-01560	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Withdrawal of Request for Change in Procedure, Total Dissolved Determination
10/29/2001	01561-01565	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Ground Water Discharge Plan DP-1132, Quarterly Report, Third Quarter, 2001
11/2001	01566-01582	N/A	N/A	Diagrams/PowerPoint	The Radioactive Liquid Waste Treatment Facility at LANL Technical Area-50 Building 01
11/13/2001	01583-01586	N/A	N/A	Agenda	NMED-GWQB Tour
11/26/2001	01587-01590	David McInroy, LANL	John Young, NMED	Letter ER2001-0915	Notification of Geotechnical and Waste Characterization Sampling at TA-50
12/07/2001	01591-01596	N/A	N/A	Report – Att. 7.0	Derived Concentration Guideline Monthly Report for the TA-50 RLWTF-Sept. 2001
08/15/2001	01597-01702	N/A	N/A	Report	RLWTF Annual Report for 2000,

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					AR-RLW- 2000 Vol. 2,R.
CY 2001	01703- 01706	N/A	N/A	Sample Results – Att. 2.0	LANL TA-50 RLWTF Weekly Composite Effluent Sample Results N03/N02-N, NH-3, TKN, F, TDS
01/10/2002	01707- 01709	N/A	N/A	Field Trip Report	TA-55 Plutonium Processing Plant, DP-1132
01/16/2002	01710- 01712	Curt Frischkorn, NMED	Bob Beers, LANL	Certified Letter	Request for Additional Information, DP- 1132, LANL, RLWTF TA-50
01/25/2002	01713- 01717	Bob Beers, LANL	Phyllis Bustamante, NMED	Letter	Ground Water Discharge Plan DP- 1132, Quarterly Report, Fourth Quarter, 2001
01/31/2002	01718- 01720	Steven Rae, LANL	Samuel Coleman, US EPA, Region 6	Letter	Notice of Planned Change at NPDES Outfall 051, NPDES Permit No. NM0028355– Perchlorate Removal
02/04/2002	01721- 01724	Bob Beers, LANL	Phyllis Bustamante	Letter	LANL, RLWTF, Ground Water Discharge Plan DP- 1132, Minor Modification – Perchlorate

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					Treatment Upgrade
02/12/2002	01725-01726	Curt Frischkorn, NMED	Bob Beers, LANL	Email	Direct all correspondence related to DP-1132 to Curt Frischkorn and delete Phyllis Bustamante from mailing list.
02/22/2002	01727-01742	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	Response to Request for Additional Information RLWTF at TA-50
03/18/2002	01743-01749	N/A	N/A	Meeting Notes	LANL-RLWTF Meeting with Joni Arends, CCNS; Brian Shields and Linda Fair, Amigos Bravos; Coila Ash, NM Toxics Coalition
04/2002	01750-01874	N/A	N/A	Report	RLWTF Annual Report for 2001 – Volume 1
04/24/2002	01875-01880	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	Ground Water Discharge Plan DP-1132, Quarterly Report, First Quarter 2002
07/25/2002	01881-01885	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	Ground Water Discharge Plan DP-1132, Quarterly Report, Second

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					Quarter 2002
11/2002	01886-01966	N/A	N/A	Report LA-UR-02-7108	Pilot Scale Membrane Filtration Testing at the LANL RLWTF
11/27/2002	01967-01971	Steven Rae, LANL	Samual Coleman, US EPA Region 6	Letter	Notice of Planned Changes at TA-50 RLWTF, NPDES Permit No. NM0028355– Influent Tank Farm (300,000 gal.) and RO Pilot Units
12/10/2002	01972-01975	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	RLWTF, Ground Water Discharge Plan DP- 1132, Minor Modification – Influent Tank Farm (300,000 gal.) and RO Pilot Units
01/29/2003	01976-01989	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP- 1132 Quarterly Report, Fourth Quarter 2002
04/02/2003	01990-02007	N/A	N/A	Report	Field Trip Report LANL RLWTF TA-50 Facility Inspection (GWB), preparation for issuance of DP- 1132

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04/30/2003	02008-02012	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP-1132 Quarterly Report, First Quarter 2003
06/09/2003	02013-02135	Bob Beers, LANL	Curt Frischkorn, NMED	Letter and Report LA-UR-03-2728	Forwarding RLWTF Annual Report for 2002
06/24/2003	02136-02139	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP-1132, Minor Modification– Cross-country pipeline from TA-21-257 to TA-50
08/01/2003	02140-02146	Maura Hanning, NMED	Ralph Erickson, US DOE	Letter	Notice of Public Hearing
07/30/2003	02147-02152	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP-1132 Quarterly Report, Second Quarter 2003
08/11/2003	02153-02158	Maura Hanning, NMED	Kathy Sanchez, Pi'ee Quiyo Inc.; Susan Diane; Douglas Meiklejohn, NM ELC; Joey Natseway, Tewa Women United; Joni Arends, CCNS	Letter	Notice of Public Hearing

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08/04/2003	02159-02161	N/A	N/A	Affidavit	Affidavit of Publication Notice DP-1132, LANL, RLWTF
09/03/2003	02162-02163	Joni Arends, CCNS	Maura Hanning, NMED	Letter	Request for a public hearing on LANL RLWTF DP-1132
09/03/2003	02164-02166	Joni Arends, CCNS	Maura Hanning, NMED	Email	DP-1132 – RLWTF proposed permit. Request for public hearing on draft discharge permit
09/06/2003	02167-02168	Kathleen Sanchez, Tewa Women United	Maura Hanning, NMED	Letter	LANL, RLWTF DP-1132. Request for public hearing on draft discharge permit.
08/11/2003	02169-02171	Maura Hanning, NMED	Susan Diane	Letter	Public Notice pertaining to proposed ground water discharge permit for LANL, RLWTF
09/04/2003	02172-02198	David McInroy, LANL; David Gregory, DOE	John Young, NMED	Letter	Status of Mortandad Canyon Sediment Investigations
09/17/2003	02299-02201	Bob Beers, LANL	Curt Frischkorn, NMED	Letter enclosing <i>Ground Water Wells in the Mortandad Canyon Area</i> (LA-UR-03-4596, July 2003	Request for additional information, TA-50 RLWTF, Ground Water Discharge Plan DP- 1132

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10/20-22/2003	02202-02219	N/A	N./A	Report/Powerpoint	NM Environmental Health Conference re Radioactive Liquid Waste Treatment Facility at LANL
10/31/2003	02220-02221	NMED	LANL	Invoice	Assessments Ground Water PRD200330002, 341 Discharge Fee \$3,450.00
10/29/2003	02222-02227	Bob Beers, LANL	Curt Frischkorn, NMED	Letter and Report	TA-50 RLWTF, Ground Water Discharge Plan, Quarterly Report, Third Quarter 2003
11/10/2003	02228-02320	Bob Beers, LANL	NMED; CCNS; Tewa Women United	Presentation and Meeting Sign-in List	TA-50 RLWTF Ground Water Discharge Plan History
12/23/2003	02321-02327	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	Response to request for additional information for TA-50 RLWTF, Ground Water Discharge Plan DP-1132 re unanswered questions at 11/10/03 presentation
03/04/2004	02328-02329	Curt Frischkorn, NMED	Steven Rae, LANL	Letter	Request for Additional Information, DP-1132, LANL –

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					exceedances & detections in wells
04/05/2004	02330-02340	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	Response to request for additional information for TA-50 RLWTF, Ground Water Discharge Plan DP-1132 – well data
04/20/2004	02341-02467	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	RLWTF Annual Report For 2003
04/28/2004	02468-02474	Bob Beers, LANL	Curt Frischkorn, NMED	Letter	TA-50 RLWTF, Ground Waste Discharge Plan DP-1132 Quarterly Report, First Quarter 2004
05/13/2004	02475-02479	Steven Rae, LANL	Ed Wilmot, NNSA; Joseph Vozella, NNSA	Letter	Radioactive Effluent Quality at NPDES Outfall 051, TA-50, February 2004 and March 2004
07/13/2004	02480-02503	N/A	N/A	Assessment Powerpoint	Assessment of potential contaminant pathways through saturated zone in the vicinity of Mortandad Canyon
07/13/2004	02504-02517	N/A	N/A	Presentation Powerpoint	Historical Contaminant Impact on Groundwater at

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					LANL
07/28/2004	02518-02523	Beverly Ramsey, LANL	Curt Frischkorn, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP-1132 Quarterly Report, Second Quarter 2004
07/13/2004	02524-02533	LANL	N/A	Presentation	Distribution of Nitrate plus Nitrate, Perchlorate, RDX, and Tritium within Perched Zones and the Regional Aquifer at LANL
08/18/2004	02534-02536	Christina Kelso, NMED	Bob Beers, LANL	Email	Re: letter requesting the closure plan for TA- 50
08/18/2004	02537-02539	George Schuman, NMED	Steven Rae, LANL	Letter	Request for Additional Information, DP-1132 for NMED to complete its technical evaluation of the application: a closure plan
08/27/2004	02540-02542	Robert Beers, LANL	Christina Kelso, NMED	Email	Draft Closure Plan RLWTF DP-1132
08/30/2004	02543-02544	Christina Kelso, NMED	Bob Beers, LANL	Email	Draft Closure Plan RLWTF DP-1132
08/30/2004	02545-02548	Beverly Ramsey, LANL	George Schuman, NMED	Letter	Request for Additional Information, DP-1132, RLWTF

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					Closure Plan
11/03/2004	02549-02551	Christopher Vick, NMED	Bob Beers, LANL	Letter	Request for Additional Information, DP-1132 for NMED to complete its technical evaluation of the application: a closure plan
11/19/2004	02552-02570	N/A	N/A	CD	Photographs NMED Tour of RLWTF LA-UR-04-8540 LANL 12/04
01/25/2005	02571-02576	Bob Beers	Christopher F. Vick	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP-1132 Quarterly Report, Fourth Quarter 2004
03/01/2005	02577-02851	N/A	N/A	CO	Compliance Order on Consent In the Matter of the United States Department of Energy and the Regents of the University of California Los Alamos National Laboratory
04/05/2005	02852-02855	Bob Beers, LANL	Christopher F. Vick	Letter	TA-50 RLWTF, Ground Water

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					Discharge Plan DP-1132, Minor Modification– well MCA-5 installed to replace MCO-3
04/11/2005	02856-02878	William Olson, NMED	Edwin Wilmott, NNSA; Regents of the University of California	Certified Letter	Notice that Ground Water Discharge Permit DP-1132, LANL has been proposed for approval.
04/15/2005	02879-02880	NMED GWQB	LANL	Invoice	Invoice, DP-1132 Ground Water Discharge Fee
04/27/2005	02881-02902	William Olson, NMED	Edwin Wilmott, NNSA; Regents of the University of California	Letter	Re-issuance of Public Notice Draft Discharge Permit, DP-1132, LANL RLWTF
04/29/2005	02903-02908	Bob Beers, LANL	Christopher Vick, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP-1132 Quarterly Report, First Quarter 2005
06/06/2005	02909-02910	Douglas Meiklejohn, NM ELC	William Olson, NMED	Letter	Draft Discharge Permit DP-1132 – requesting a 30-day extension to file comments and request public hearing.
06/10/2005	02911-02919	William Olson, NMED	Edwin Wilmott, NNSA; Regents of	Letter	Draft Discharge Permit DP-1132 –

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			the University of California		re-issuing public notice
06/30/2005	02920-02925	Diana Sandoval, NMED	Joni Arends, CCNS; Kathleen Sanchez, Tewa Women United; Peggy Prince, Peace Action New Mexico; George Rice, CCNS; Brian Shields, Amigos Bravos	Letter	Discharge Permit Application Proposed for Approval, DP-1132 – notifying interested parties of 30 days after publication to receive written comments, and to request a public hearing
06/30/2005	02930-02935	Diana Sandoval, NMED	Brian Shields, Amigos Bravos; George Rice, CCNS; Peggy Prince, Peace Action New Mexico; Kathleen Sanchez, Tewa Women United; Joni Arends, CCNS	Letter	Discharge Permit Application Proposed for Approval, DP-1132 – notifying interested parties of 30 days after publication to receive written comments, and to request a public hearing
06/29/2005	02936-03053	Bob Beers, LANL	Christopher Vick, NMED	Letter	TA-50 RLWTF, Annual Report for 2004 - Ground Water Discharge Plan DP-1132
07/26/2005	03054-03059	Bob Beers, LANL	Christopher Vick, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP-

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					1132 Quarterly Report, Second Quarter 2005
08/04/2005	03060-03064	Steven Rae, LANL	William Olson, NMED	Letter	Review Comments, Draft Discharge Permit DP-1132, TA-50 RLWTF
08/04/2005	03065-03075	Douglas Meiklejohn, NMELC	William Olson, NMED	Letter	Application for renewal of discharge permit DP-1132 – request public hearing and submitting comments
08/04/2005	03076-03093	Joni Arends, CCNS	William Olson, NMED	Letter with Att. 3 by George Rice	Draft Ground Water Discharge Permit, DP- 1132 – submitting comments and requesting public hearing
02/02/2005	03094-03097	George Schuman, NMED	Edwin Wilmott, NNSA; Robert Kuckuck, University of California	Letter	Request for Additional Information, DP-1132
01/12/2006	03098-03232	N/A	N/A	Letters, Reports, Work Plans, Logs, and Data	TA-50-RLWTF Ground Water Discharge Plan (DP-1132) Response to NMED Information Request of 12/2/05
01/12/2006	03233-03248	Bob Beers, LANL	George Shuman, NMED	Letter	Response to NMED RFI, TA-50

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					RLWTF Ground Water Discharge Plan, DP-1132
N/A	03249-03392	N/A	N/A	CD	Environmental Stewardship Division, Solid Waste Regulatory Compliance (ENV-SWRC) Sampling and Analysis Plan
03/08/2010	03393-03395	Bob Beers, LANL	William Olson, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan (DP-1132), Upgrade Project 60% Design for new RLWTF
04/25/2006	03396-03402	Bob Beers	Christopher Vick, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan (DP-1132) Quarterly Report, First Quarter 2006
06/19/2006	03403-03406	Richard Watkins, LANS, LLC	Ron Curry, NMED; Richard Greene, EPA	Letter	Delegation of Authorized Representative for the Solid Waste Disposal Act, the New Mexico Solid Waste Act, the Resource Conservation and Recovery Act, the New Mexico

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					Hazardous Waste Act, and the Toxic Substances Control Act
07/27/2006	03407-03413	Bob Beers, LANL	Christopher Vick, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Second Quarter 2006 TA-50 RLWTF (DP-1132)
N/A	03414-03546	N/A	N/A	Report	Radioactive Liquid Waste Treatment Facility Annual Report for 2005
09/28/2006	03547-03549	N/A	N/A	Memorandum of Meeting	LANL proposal to design evaporative basins for the discharge of TA-50 treated effluent
01/23/2007	03550-03555	Bob Beers, LANL	Christopher Vick, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Fourth Quarter 2006 TA-50 RLWTF (DP-1132)
04/23/2007	03556-03561	Bob Beers, LANL	Robert George, NMED	Letter	Ground Water Discharge Plan Quarterly Report, First Quarter 2007 TA-50 RLWTF (DP-1132)
06/11/2007	03562-03645	Bob Beers, LANL	Robert George, NMED	Letter	TA-50 RLWTF Annual Report for 2006

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07/23/2007	03646-03652	Bob Beers, LANL	Robert George, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Second Quarter 2007 TA-50 RLWTF (DP-1132)
09/28/17	03653-03658	Anthony Grieggs, LANL	William Olson, NMED	Letter Draft	Draft of Notice of Intent to Discharge
10/23/2006	03659-03664	Bob Beers, LANL	Christopher Vick, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Third Quarter 2006 TA-50 RLWTF (DP-1132)
10/30/2007	03665-03671	Bob Beers, LANL	Robert George, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Third Quarter 2007 TA-50 RLWTF (DP-1132)
10/26/2007	03672-03682	James Bearzi, NMED	Donald Winchell, Jr., DOE; Richard Watkins, LANS, LLC	Letter	Information Request Regarding the Exemption Status of the Technical Area 50 RLWTF, EPA ID #NM0890010515
10/04/07	03683-03685	N/A	N/A	Telephone Conference	Update on status of permits for RLWTF and SWSH (DP-857)
10/26/2007	03686-03687	Bob Beers, LANL	Robert George, NMED; Jennifer Montoya, NMED	Email	DP-1132 Application Amendment for

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					new RLWTF at TA-50
10/18/2005	03688-03694	Bob Beers, LANL	Christopher Vick, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP-1132 Quarterly Report, Third Quarter 2005
11/06/2007	03695-03702	James Bearzi, NMED	Lindsay Lovejoy	Email	LANL RLWTF exemptions
11/01/2007	03703-03813	Anthony Grieggs, LANL	William Olson, NMED; James Bearzi, NMED	Letter	Notice of Intent to Discharge, Evaporation Tanks, TA-50, RLWTF
11/20/2007	03814-03822	N/A	N/A	Inspection Report	LANL, DP-1132, Facility Inspection (GWHB)
11/28/2007	03823-03827	Richard Watkins, ESH&Q LANS; Gene Turner, LANL	James Bearzi, NMED	Letter	Response to Information Request regarding the Exemption status of the Technical Area 50 RLWTF, LANL, EPA ID # NM0890010515
01/25/2008	03829-03833	Bob Beers, LANL	William Olson, NMED	Letter	TA-50 RLWTF, Ground Water Discharge Plan DP-1132 Quarterly Report, Fourth Quarter 2007
03/05/2008	03834-03839	George Schuman, NMED	Jennifer Fullam, NMED; Gerald	Email	Old LANL letters from HWB

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
			Knutson, NMED		
04/30/2008	03840-03845	Bob Beers, LANL	William Olson, NMED	Letter	Ground Water Discharge Plan Quarterly Report, First Quarter 2008, TA-50 RLWTF DP-1132
06/02/2008	03846-03850	N/A	N/A	Inspection Report	LANL, DP-1132 Facility Inspection
06/11/2008	03851-03853	Jennifer Fullam, NMED	Anthony Grieggs, ENV-RCRA	Letter	Request for Additional Information, DP-1132, RLWTF
07/01/2008	03854-03855	Jennifer Fullam, NMED	George Schuman, NMED	Email	Call from Bob Beers re: TA-50 and perchlorate concentrations
07/01/2008	03856-03906	Bob Beers, LANL	Robert George, NMED	Letter	TA-50 RLWTF Annual Report for 2007
07/30/2008	03907-03912	Bob Beers, LANL	William Olson, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Second Quarter 2008, TA-50 RLWTF DP-1132
09/19/2008	03913 - 03914	Bill Olson, NMED	Robert George, NMED; Jennifer Fullam	Email	Listening Session Press Release and flier
10/30/2008	03915-03922	Bob Beers, LANL	William Olson, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Third Quarter 2008,

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					TA-50 RLWTF DP-1132
01/30/2009	03923- 03929	Bob Beers, LANL	William Olson, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Fourth Quarter 2008, TA-50 RLWTF DP-1132
02/11/2009	03930-03932	Robert George, NMED; Jennifer Fullam, NMED		Memorandum of Meeting or Phone Conversation	
04/30/2009	03933- 03939	Bob Beers, LANL	William Olson, NMED	Letter	Ground Water Discharge Plan Quarterly Report, First Quarter 2009, TA-50 RLWTF DP-1132
07/30/2009	03940- 03946	Bob Beers, LANL	William Olson, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Second Quarter 2009, TA-50 RLWTF DP-1132
07/09/2009	03947- 03949	Marissa Bardino, NMED	Jennifer Fullam, NMED	Email	Radioactive Waste Plant at LANL Has Spill – Albuquerque Journal article
08/24/2009	03950- 03952	Jennifer Fullam, NMED	Bob Beers	Email	Map Request
10/28/2009	03953- 03959	Bob Beers, LANL	William Olson, NMED	Letter	Ground Water Discharge Plan

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					Quarterly Report, Third Quarter 2009, TA-50 RLWTF DP-1132
01/28/2010	03960-03967	Bob Beers, LANL	William Olson, NMED	Letter	Ground Water Discharge Plan Quarterly Report, Fourth Quarter 2009, TA-50 RLWTF DP-1132
04/28/2010	03968-03974	Bob Beers, LANL	William Olson, NMED	Letter	Ground Water Discharge Plan Quarterly Report, First Quarter 2010, TA-50 RLWTF DP-1132
03/08/2010	03975-04006	Bob Beers, LANL	William Olson, NMED	Letter	TA-50 RLWTF Ground Water Discharge Plan DP-1132 Upgrade Project 60% Design for new RLWTF
07/28/2010	04007-04013	Bob Beers, LANL	William Olson, NMED	Letter	Groundwater Discharge Plan Quarterly Report, Second Quarter 2010, TA-50 RLWTF DP- 1132
08/20/2010	04014	Jake Meadows, LANL	Jennifer Fullam & Richard Powell - NMED	Email	LANL Safety Shower Test Discharge
08/25/2010	04015-04019	Anthony Grieggs, LANL	William Olson, NMED	Letter	TA-50 RLWTF, Discharge Plan DP-1132 Minor

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Modification to reduce copper and zinc in discharge
09/20/2010	04020-04022	Norma Perez, NMED AQB	Patricia Gallagher LANL	Certified Letter	Notice of No Permit Required authorizes LANL to operate the facility as stated in the application – LANL RLWTF, TA-50
09/27/2010	04023-04029	Anthony Grieggs, LANL	William Olson, NMED	Letter	TA-50 RLWTF Discharge Plan DP-1132, Minor Modification to reduce copper and zinc in discharge
10/28/2010	04030-04036	Bob Beers, LANL	William Olson, NMED	Letter	Groundwater Discharge Plan Quarterly Report, Third Quarter 2010, TA-0050 RLWTF DP- 1132
11/09/2010	04037-04038	Gerald Knutson, NMED	Jennifer Fullam, NMED	Email	LANL interested party list for TA-50 DP-1132
12/15/2010	04039-04043	Bob Beers, LANL	William Olson, NMED	Letter	TA-50 RLWTF Discharge Plan DP-1132, Minor Modification– add hardness
01/31/2011	04044-04048	Bob Beers, LANL	William Olson, NMED	Letter	Groundwater Discharge Plan Quarterly Report, Fourth Quarter 2010,

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					TA-50 RLWTF
2010	04049-04549	N/A	N/A	CDs	LANL Environmental Report 2010 Includes Supplemental Data
03/22/2011	04550-04563	Bob Beers, LANL	William Olson, NMED	Letter	TA-50 RLWTF, Discharge Plan DP-1132, Minor Modification to install pressure media filtration and cartridge filtration capability
03/28/2011	04564-04567	Bob Beers, LANL	Robert George, NMED	Letter	NMED LANL Meeting Agenda, 3/30/2011 – LANL revised
03/30/2011	04568-04577	George Schuman, NMED; Robert George, NMED; Jennifer Fullam, NMED; Gerald Knutson, NMED	Bob Beers, LANL; Pete Worland, LANL; Make Saladen, LANL	Telephone Conversation	TA-50 RLWTF LANL met with NMED to discuss treatment process changes occurring at the RLWTF
04/19/2011	04578-04583	Bob Beers, LANL	William Olson, NMED	Letter	Groundwater Discharge Plan DP-1132 Quarterly Report, First Quarter 2011, TA-50 Radioactive Liquid Waste Treatment Facility
07/13/2011	04585-	N/A	N/A	4 CDs	RLWTF Zero

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	05208				Liquid Discharge Subproject LANL 60% Design Submittal Specifications, Calculations, Test and Inspection Plan, Master Document List and Field Change Notice Criteria Document
07/25/2011	05209-05214	Bob Beers, LANL	William Olson, NMED	Letter	Groundwater Discharge Plan DP-1132 Quarterly Report, Second quarter 2011 TA-50 RLWTF
08/11/2011	05215-05223	Anthony Grieggs, LANL; Gene Turner, LANL	Jerry Schoeppner, NMED	Letter	Sixty Percent Design, Evaporation Tanks, TA- 50 RLWTF
08/30/2011	05224-05225	Bob Beers, LANL	Jennifer Fullam, NMED	Email	NMED-GWQB Inspection of the TA-50 RLWTF
09/08/2011	05226-05228	N/A	N/A	Field Trip Report	RLWTF at TA-50, Unauthorized Diesel Spill Site at TA-53
09/12/2011	05229-05233	Bob Beers, LANL	Jennifer Fullam, NMED	Email	NMED-GWQB Inspection of the TA-50 RLWTF NNMED inspection participant list 9/8/11

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10/19/2011	05234-05236	Anthony Grieggs, LANL; Gene Turner, LANL	Jerry Schoeppner, NMED	Letter	Addendum to the Notice of Intent to Discharge for the RLWTF's Evaporation Tanks
11/08/2011	05243-05252	Jim Davis, NMED	Jennifer Fullam, NMED	Email	Review of documents
11/18/2011	05253-05258	James Davis, NMED	Anthony Grieggs, LANL	Letter	Response to Notice of Intent to Discharge and Discharge Permit Required for Zero Liquid Discharge Tanks, AI 856: PRD20070004 and Updated Application Submittal Required for the RLWTF, DP-1132
12/01/2011	05259-05260	Jennifer Fullam, NMED	Bob Beers, LANL	Telephone Conversation	DP Application Required Letter
12/08/2011	05261-05269	Bob Beers, LANL	Jennifer Fullam, NMED	Email	Request for Extension to Submit Updated Discharge Permit Application RLWTF DP- 1132
12/07/2011	05270-05277	Anthony Grieggs, LANL	James Davis, NMED	Letter	Request for an Extension to Submit and Updated Discharge Permit Application for the RLWTF

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					DP-1132
12/15/2011	05278-05281	Jerry Schoeppner, NMED; Clint Marshall, NMED; Robert George, NMED; Kim Kirby, NMED; Jennifer Fullam, NMED; Gerald Knutson, NMED	Bob Beers, LANL; Danny Katzman, LANL; Gene Turner, LANL	Telephone Conference	Ground Water Monitoring Program at LANL, they discussed the current monitoring program and hydrogeological conditions which exist at the facility
12/22/2011	05282-05283	Bob Beers, LANL	Jennifer Fullam, NMED	Email	NMED Inspection Report
12/30/2011	05284-05292	James Davis, NMED	Anthony Grieggs, LANL	Certified Letter	Denial of Time Extension to Submit Application, DP-1132, RLWTF
01/03/2012	05293-05294	Jennifer Fullam, NMED	Bob Beers, LANL	Telephone Conversation	Meeting/Request for Extension
01/18/2012	05299-05302	Bob Beers, LANL	Jennifer Fullam, NMED	Letter	Request for Short Time Extension to Submit Application DP-1132, RLWTF
01/24/2012	05303-05308	Allison Dorries, LANS; Gene Turner, NNSA	Jerry Schoeppner, NMED	Letter	Groundwater Discharge Plan DP-1132 Quarterly Report, Fourth quarter 2011 TA-50 RLWTF
01/27/2012	05309-05321	James Davis, NMED	Anthony Grieggs, LANL	Letter	Approval of Time Extension to Submit Application DP-1132, RLWTF

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02/02/2012	05322-05324	Bob Beers, LANL	Jennifer Fullam, NMED	Email	Request for a meeting with GWQB and HWB re: R-28 DP Application
02/06/2012	05326	LANL	NMED	Check	No. 251606 for \$100.00, DP-1132
02/10/2012	05327-05330	Jennifer Fullam, NMED	Jerry Schoeppner, NMED	Email	LANL 2011 GWQB Status Report
02/13/2012	05331-05332	Bob Beers, LANL	Robert, George, NMED	Email	ZLD Evaporation Tank Liners
02/14/2012	05333-05335	Bob Beers, LANL	Robert George, NMED	Email	ZLD Evaporation Tank Liners
02/14/2012	05336-08003	Allison Dorries, LANS; Gene Turner, NNSA	Jerry Schoeppner, NMED	Application	Groundwater Discharge Permit DP-1132 Application for the TA-50 RLWTF and the TA-52 Zero Liquid Discharge Solar Evaporation Tanks
unknown	08005-08095	N/A	N/A	CD	RLWTF Upgrade Project Zero; ZLD Subproject PID 100761
02/28/2012	08096-08097	Bob Beers, LANL	Jennifer Fullam, NMED	Email	Discharge Permit DP-1132 Application – Revised Latitude/Longitude
02/28/2012	08098-08099	Jennifer Fullam, NMED	Bob Beers, LANL	Telephone Conversation	Location of Evaporators

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02/29/2012	08100-08101	Gerald Knutson, NMED	Jerry Schoeppner, NMED; Marshall, Clint, NMED; Robert George, NMED Jennifer, Fullam, NMED	Email	NMED Inspection of LANL's Sanitary Effluent Reclamation Facility and the TA-52 ZLD Solar Evaporation Tanks on March 20, 2012
03/02/2012	08102-08107	Jerry Schoeppner, NMED	Kevin Smith, NNSA; Alison Dorries, LANS	Letter	Administrative Completeness Determination and Applicant's Public Notice Requirements, DP-1132, LANL
03/12/2012	08108-08113	N/A	N/A	Public Notice 1	Ground Water Discharge Permit applications have been submitted to the NMED for review
03/16/2012	08114-08115	Jennifer Fullam, NMED	Bart Vanden Plas, Santa Ana Pueblo	Telephone Conversation	Interested Party
03/19/2012	08116-08117	Jennifer Fullam, NMED	Michael Chacon, San Ildefonso Pueblo	Telephone Conversation	Interested Party
03/20/2012	08118-08119	Jennifer Fullam, NMED	Rachel Conn, Amigos Bravos	Telephone Conversation	Interested Party
03/20/2012	08120-08124	N/A	N/A	Inspection Report	LANL – RLWTF Routine inspection pre- permit discussion
03/26/2012	08125-08126	Jennifer Fullam, NMED	Rachel Conn, Amigos Bravos	Telephone Conversation	Interested Party

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03/27/2012	08129-08131	Bob Beers, LANL	Jennifer Fullam, NMED	Email	NMED Inspection DP-1132 and DP-857 participant list
03/27/2012	08132-08133	Bob Beers, LANL	Jennifer Fullam, NMED	Email	Request for NMED – GWQB Inspection Report
04/02/2012	08134-08151	Alison Dorries, LANL; Gene Turner, LANL	Jerry Schoeppner, NMED	Letter	Supplemental Information for Discharge Permit Application DP-1132
N/A	08175	Jennifer Fullam, NMED	Sylvia Hower	Telephone Conversation	LANL – RLWTF Interested Party
05/17/2012	08176-08201	Alison Dorries, LANL; Gene Turner, LANL	Jerry Schoeppner, NMED	Letter	Affidavit of Public Notice Completion, Discharge Permit Application DP-1132, TA- 50 RLWTF and TA-52 Zero Liquid Discharge Solar Evaporation Tanks
03/02/2012	08202-08214	Jerry Schoeppner, NMED	Kevin Smith, NNSA; Allison Dorries, LANS	Letter	Administrative Completeness Determination and Applicant's Public Notice Requirements, DP-1132, LANL
04/26/2012	08215-08221	Alison Dorries, LANL; Gene Turner, LANL	Jerry Schoeppner, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, First Quarter 2012, TA-50 RLWTF

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07/10/2012	08222-08234	Alison Dorries, LANL; Gene Turner, LANL	Jerry Schoeppner, NMED	Letter	Response to NMED GWQB Inspection Report, DP-1132 dated 3/20/12
07/17/2012	08235-08241	Alison Dorries, LANL; Gene Turner, LANL	Jerry Schoeppner, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Second Quarter 2012, TA-50 RLWTF
07/25/2012	08242-08243	Bob Beers, LANL	Robert George, NMED	Email	DOE/LANS/NMED GWQB Meeting Re: ZLD Evaporation Tanks
08/10/2012	08268-08313	Alison Dorries, LANL; Gene Turner, LANL	Jerry Schoeppner, NMED	Letter	Supplemental Information for Discharge Permit Application DP-1132, RLWTF and ZLD Solar Evaporation Tanks
08/22/2012	08314-08315	Bob Beers, LANL	Robert George, NMED; Jennifer Fullam, NMED; Clint Marshall, NMED; Jim Davis, NMED	Email	Correction Notice re: LANL ZLD Evaporation Tanks
10/29/2012	08323-08332	Alison Dorries, LANL; Gene Turner, LANL	Jerry Schoeppner, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Third Quarter 2012, TA-50 RLWTF
11/14/2012	08333-08335	LANL	Jerry Schoeppner, NMED	Letter	Supplemental Information for Discharge Permit

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					Application DP-1132, Zero Liquid Discharge (ZLD) Solar Evaporation Tanks, As-built Drawings
11/16/2012	08336-08338	Jerry Schoeppner, NMED	Governor Phillip Quintana, Pueblo de Cochiti	Letter	Notification of Proposed Ground Water Discharge Permit for LANL – RLWTF, DP- 1132
11/16/2012	08339-08341	Jerry Schoeppner, NMED	Governor Terry Aguilar Pueblo of San Ildefonso	Letter	Notification of Proposed Ground Water Discharge Permit for LANL – RLWTF, DP- 1132
11/16/2012	08342-08344	Jerry Schoeppner, NMED	Governor Walter Dasheno Pueblo of Santa Clara	Letter	Notification of Proposed Ground Water Discharge Permit for LANL – RLWTF, DP- 1132
11/16/2012	08349-08350	Jerry Schoeppner, NMED	Governor Joshua Madalena, Pueblo of Jemez	Letter	Notification of Proposed Ground Water Discharge Permit for LANL – RLWTF, DP- 1132
01/13/2014	08463-08464	Jennifer Pruett, NMED	Bob Beers, LANL; Jennifer Fullam, NMED	Email	Obtaining copies of public comments on Draft Discharge Permit DP-1132
01/17/2013	08465-08516	N/A	N/A	Report	Facility Operations Analysis and Sequence of Operations for the

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					TA-50 RLWTF Upgrade Project Low-level Waste Subproject
04/04/2013	08636- 08639	Robert George, NMED	Brian Shields, Amigos Bravos;	Email	LANL Discharge
04/04/2013	08641- 08644	Brian Shields, Amigos Bravos	Robert George, NMED	Email	Requesting information re: discharge observed on February 27.
04/05/2013	08645- 08649	Jennifer Fullam, NMED	Brian Shields, Amigos Bravos; Robert George, NMED	Email	LANL Discharge
04/30/2013	08681- 08683	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Discharge Plan DP- 1132 Quarterly Report, First Quarter 2013, TA- 50 RLWTF
05/17/2013	08780- 08782	Unknown	Unknown	CD	Gage Stations
06/14/2013	09062- 09064	Jerry Schoeppner, NMED	Myron Armijo, Governor of Santa Ana Pueblo	Letter	Preliminary Draft Discharge Permit, DP-1132, RLWTF. Transmitting preliminary draft.
06/14/2013	09065- 09067	Jerry Schoeppner, NMED	Terry Aguilar, Governor of San Ildefonso Pueblo	Letter	Preliminary Draft Discharge Permit, DP-1132, RLWTF. Transmitting preliminary draft.
06/14/2013	09068- 09070	Jerry Schoeppner, NMED	Vincent Toya, Sr., Governor of Jemez Pueblo	Letter	Preliminary Draft Discharge Permit, DP-1132, RLWTF.

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					Transmitting preliminary draft.
06/14/2013	09071-09073	Jerry Schoeppner, NMED	J. Leroy Arquero, Governor of Cochiti Pueblo	Letter	Preliminary Draft Discharge Permit, DP-1132, RLWTF. Transmitting preliminary draft.
06/14/2013	09074-09076	Jerry Schoeppner, NMED	J. Bruce Tafoya, Governor of Santa Clara Pueblo	Letter	Preliminary Draft Discharge Permit, DP-1132, RLWTF. Transmitting preliminary draft.
06/14/2013	09249-09251	Jerry Schoeppner, NMED	Myron Armijo, Governor of Santa Ana Pueblo	Letter	Preliminary Draft Discharge Permit, DP-1132, RLWTF. Resending preliminary draft.
07/24/2013	09267-09269	Bob Beers, LANL	Robert George, NMED	Email	Corrective Action Plan Pumping Test at Monitoring Well R-42
07/25/2013	09270-09284	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Second Quarter 2013, TA-50 RLWTF
08/06/2013	09375-09376	Jennifer Fullam, NMED	Rachel Conn, Amigos Bravos	Email	Second Public Notice for RLWTF DP-1132
08/13/2013	09377-09378	Bob Beers, LANL	Jennifer Pruett, NMED	Email	Requesting meeting with NMED, DOE, and LANS
09/10/2013	09394-09445	Jennifer Fullam, NMED	Gene Turner, DOE; Alison Dorries,	Letter	Ground Water Discharge Permit

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
			LANS		DP-1132 has been proposed for approval
09/13/2013	09449-09450	NMED	Public Notice	Public Notice 2	Public Notice of applications that have been proposed for approval.
09/17/2013	09453	Jennifer Fullam, NMED	N/A	Memorandum of Phone conversation	Conversation with Michael Chacon re: DP-1132
09/27/2013	09454-09456	Myron Armijo, Governor of Santa Ana Pueblo	Jennifer Fullam, NMED	Letter	The Pueblo of Santa Ana's Comments on the Draft Ground Water Discharge Permit (DP- 1132)
10/03/2013	09516-09565	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Request for Temporary Permission to Place New Influent Storage Tanks Into Service at LANL, DP-1132
10/16/2013	09575-09576	Bob Beers, LANL	Jennifer Fullam, NMED	Email	Draft Discharge Permit DP-1132 MS Word Version. Requesting a copy.
10/17/2013	09577-09584	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Third Quarter 2013, TA-50 RLWTF
10/28/2013	09589	Jennifer Fullam, NMED	N/A	Memorandum of Phone conversation	Dave McCoy left voicemail requesting

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					info on draft DP-1132
10/29/2013	09590-09595	Jennifer Pruett, NMED	John Kieling, NMED; Jerry Schoeppner, NMED; Jennifer Fullam, NMED; Dave McCoy, Citizen Action NM	Email	Missing Attachment for Draft LAN RLWTF. Providing link to monitoring well guidelines.
11/07/2013	09596-09597	Jennifer Fullam, NMED	Jerry Schoeppner, NMED; Jennifer Pruett, NMED	Email	Discussion with San Felipe Pueblo re: LANL RLWTF
N/A	09598-09599	N/A	N/A	Memorandum of Phone Conversation	Stout called Fullam to inform her that San Felipe Pueblo was planning on submitting comments
11/13/2013	09600-09601	Jennifer Fullam, NMED	Bob Beers, LANL	Email	Confirming dates of DP-1132 Public Comment Period
11/18/2013	09604	Jennifer Fullam, NMED	Robert Gilkeson	Email	Public Records Request
11/18/2011	09605-09615	James Davis, NMED	Anthony Grieggs, EPA	Letter	Response to Notice of Intent to Discharge and Discharge Permit Required for Zero Liquid Discharge Tanks, AI 856: PDR 20070004 and Updated Application

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					Submittal Required for the RLWTF DP-1132
11/26/2013	09619-09626	Gene Turner, DOE; Alison Dorries, LANS	Jennifer Fullam, NMED	NMED Routing Slip	Temporary Permission WMRM
12/06/2013	09631-09655	Jonathan Block, NMELC	Jerry Schoeppner, NMED; Jennifer Fullam, NMED	Email	CCW-TWU-3 Individuals-TA-50 RLWTF Permit First Set of Comments and Hearing Request
12/06/2013	09656-09679	Jonathan Block, NMELC	Jerry Schoeppner, NMED; Jennifer Fullam, NMED	Letter	Comments and Hearing Request of the Communities for Clean Water, Tewa Women United and three individuals on the proposed permit DP-1132 to RLWTF
12/12/2013	09683-09684	Scott Kovac, Nuclear Watch NM	Ryan Flynn, NMED; Jennifer Fullam, NMED	Email	Nuclear Watch NM Comments on Draft Discharge Permit DP-1132 – Cover email
12/12/2013	09685-09686	Jonathan Block, NMELC	Jerry Schoeppner, NMED; Jennifer Fullam, NMED; Brian Shields, Amigos Bravos; Rachel Conn, Amigos Bravos;	Email	2 <sup>nd</sup> Set of Comments and Hrg. Reg. from CCW, TWU and Individuals on DP-1132 for the RLWTF – Cover

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
			Kathy Sanchez, Pi'ee Quiyo Inc.; J.G. Sanchez; Marian Naranjo, Honor Our Pueblo Existence (HOPE); Robert Gilkeson; Joni Arends, CCNS		email
12/12/2013	09687- 09689	Scott Kovac, Nuclear Watch NM	Ryan Flynn, NMED; Jennifer Fullam, NMED	Comments	Nuclear Watch NM Comments on Draft Discharge Permit DP-1132
12/12/2013	09690- 09768	Jonathan Block, NMELC	Jerry Schoeppner, NMED; Jennifer Fullam, NMED; Brian Shields, Amigos Bravos; Rachel Conn, Amigos Bravos; Kathy Sanchez, Pi'ee Quiyo Inc.; J.G. Sanchez; Marian Naranjo, Honor Our Pueblo Existence (HOPE); Robert Gilkeson; Joni Arends, CCNS	Comments	2 <sup>nd</sup> Set of Comments and Hrg. Reg. from CCW, TWU and Individuals on DP- 1132 for the RLWTF
12/12/2013	09769- 09864	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Review Comments, Draft Discharge Permit, DP-1132, RLWTF
N/A	09865- 09881	Robert Gilkeson	CCW, TWU, NMED	Public Comment and Hearing Request	Deficiencies in Ground Water Protection in the

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Draft Ground Water DP-1132 Permit, by Independent Registered Geologist Robert H. Gilkeson
12/12/2013	09882-09883	Kathy Sanchez, TWU	Jerry Schoeppner, NMED; Jennifer Fullam, NMED; Brian Shields, Amigos Bravos; Rachel Conn, Amigos Bravos; Kathy Sanchez, Pi'ee Quiyo Inc.; J.G. Sanchez; Marian Naranjo, HOPE; Bob Gilkeson; Joni Arends, CCNS	Email	RE: got it.[sic] <sup>2nd</sup> Set of Comments and Hrg. Reg. from CCW, TWU and Individuals on DP-1132 for the RLWTF
01/14/2014	09884-09890	N/A	N/A	NMED Internal Document	DP-1132 Public Comments Summary
12/12/2013	09891-09895	Jay Coghlan Nuclear Watch NM; Scott Kovac Nuclear Watch NM	Ryan Flynn, NMED; Jennifer Fullam, NMED	Letter	Submitting comments for Draft Discharge Permit DP-1132
01/07/2014	09896-09897	Bob Beers, LANL	Jennifer Fullam, NMED	Email	Comments on DP-1132 Draft Discharge Permit
01/13/2014	09898-09899	Jennifer Pruett, NMED	Bob Beers, LANL; Jennifer Fullam, NMED	Email	Comments on DP-1132 Draft Discharge Permit

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
01/15/2014	09900-09904	Bob Beers, NMED	Melissa Mascarenas, NMED	Email	Request for Public Records – Public Comments – DP-1132- LANL
01/15/2014	09905-09909	Melissa Mascarenas, NMED	Bob Beers, LANL	Letter	3-Day Letter Response to Request for Public Records
01/16/2014	09910-09911	Jennifer Fullam, NMED	Bob Beers, LANL	Email	Forwarding documents requested in Request for Public Records
01/16/2014	09912-09920	Diana Sandoval, NMED	Jennifer Fullam, NMED	Email	IPRA – Beers – DP – 1132 – LANL
01/21/2014	09921-09924	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Fourth Quarter 2013, TA-50 RLWT
01/23/2014	09925-09933	Melissa Mascarenas, NMED	Jonathan Block NMELC	Letter	3-Day Letter Response to Request for Public Records
02/03/2014	09934-09936	Bob Beers, NMED	Jennifer Fullam, NMED	Email	Request for Public Records
02/06/2014	09937-09943	Jennifer Fullam, NMED	Jon Block, NMELC; Joni Arends, CCNS; Diana Sandoval, NMED; Melissa Mascarenas, NMED; Jerry Schoeppner, NMED	Email	IPRA – Block-LANL NMELC IPRA to NMED

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
02/07/2014	09944-09947	Jon Block, NMELC	Jennifer Fullam, NMED	Email	IPRA – Block LANL
02/07/2014	09948-10152	Jennifer Fullam, NMED	Jon Block, NMELC	Email	IPRA – Block – LANL, DP-1132 Comments from DOE-LANS; Santa Ana; Tewa Women and CCW
02/12/2014	10153-10154	Jennifer Fullam, NMED	Jon Block, NMELC	Telephone Conversation	IPRA
02/26/2014	10178-10180	Jennifer Fullam, NMED	Jerry Schoeppner, NMED; John Hall, NMED; Jennifer Pruett, NMED	Email	TP for WMRM DP-1132
03/08/2014	10183-10188	File – LANL DP-1132	Steve Pullen, NMED	Memorandum	RLWTF-UP LLW Subproject-Design Documents – 90% - January – dated March 28, 2014 – Contents of compact disc
04/01/2014	10190-10191	Jerry Schoeppner, NMED	Alison Dorries, LANS; Gene Turner, DOE	Letter	Temporary Permission to Discharge, WMRM Influent Storage Tanks at LANL RLWTF, DP- 1132
06/13/2014	10209-10211	Jonathan Block, NMELC	Joni Arends, CCNS; Brian Shields; Rachel Conn; Kathy Sanchez; Beata Tsosie; J. Gilbert Sanchez; Marian Naranio; Robert	Email	LANL DP-1132 PN-2 Draft Permit Withdrawal Questions about public notice

Date	Bates No.	From	To	Format	Subject
			Gilkeson; Jennifer Pruet, NMED		
06/13/2014	10212-10217	Jonathan Block, NMELC	Jennifer Pruet, NMED	Email	LANL DP-1132 PN-2 Draft Permit Withdrawal Questions about public notice
6/2/14	10219-10225	Robert Gilkeson	Unknown	Report	LANL Characterization Wells R-16 and R-16r require replacement because they are not reliable monitoring wells for LANL contaminants in groundwater travelling to the Buckman Well Field for the City of Santa Fe
07/09/2014	10226-10231	NMED	N/A	Meeting Memo	Ground Water Quality Bureau Response to Issues Discussed at June 2, 2014 DP-1132 Meeting
07/17/2014	10232-10242	N/A	N/A	Notes	
07/17/2014	10243-10252	N/A	N/A	Notes	
07/22/2014	10253-10256	Alison Dorries, LANS; Gene	Jerry Schoeppner, NMED	Letter	Discharge Plan DP-1132 Quarterly

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
		Turner, DOE			Report, Second Quarter 2014, TA-50 RLWTF
04/23/2014	10257-10262	Michael Brandt, LANS; Gene Turner, DOE	Erika Schwender, NMED	Letter	Filing of Plans and Specifications RLWTF Upgrade Project, LANL, DP-1132
07/30/2014	10270-12678	N/A	N/A	CDs	RLWTF Project LLW Subproject Design Documents Final Drawings and Specs
08/07/2014	12679-12682	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Filing of 100% Design Plans and Specifications, RLWTF Upgrade Project, DP- 1132
N/A	12683-12686	NMED	N/A	Meeting Memo	Ground Water Quality Bureau Meeting with LANL/DOE August 11, 2014
08/12/2014	12687-12695	N/A	N/A	Sign-in Sheet, Agenda, notes	August 12, 2014 meeting with LANL
08/21/2014	12698-12723	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Request for Additional Information, Discharge Permit Application DP-1132 RLWTF
N/A	12724-12726	N/A	N/A	Inspection Report	DP-1132, Inspection Date

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					August 25, 2014
08/29/2014	12727-12730	Jennifer Pruett, NMED	Bob Beers, LANL	Email	Progress on Re-draft of DP-1132
09/11/2014	12731-12751	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Corrected ENV-DO-14-0229, Request for Additional Information, Discharge Permit Application DP-1132, RLWTF
09/16/2014	12752-12757	John Kieling, NMED	Steven Huddleson, NMED; Dave Cobrain, NMED	Email	Suggested Closure Language
09/17/2014	12758-12760	Bob Beers, LANL	Steven Huddleson, NMED	Email	A Question. Response to question re: seismic standards
09/18/2014	12761-12764	Bob Beers, LANL	Steven Huddleson, NMED	Email	Reference for Sampling
09/18/2014	12765-12766	Steven Huddleson, NMED	Jennifer Pruett, NMED; John Hall, NMED; Jerry Schoeppner, NMED	Email	DP-1132 Latest (9-18-14 version)
09/22/2014	12767-12769	Jim Chiasson, NMED	Steven Huddleson, NMED	Email	LANL WWTF Plans and Specs Review
09/22/14	12770-12771	N/A	N/A	Summary Sheet	DOE/LANS Remaining Issues
09/26/2014	12772-12778	Jerry Schoeppner, NMED	Steven Huddleson, NMED	Email	Requesting a short meeting to discuss request for extension re:

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					WMRM influent storage tanks
10/03/2014	12779-12781	Jerry Schoeppner, NMED	Bob Beers, LANL	Letter	Comments on 90% and 100% Design Specifications RLWTF Upgrade Project
N/A	12782-12794	N/A	N/A	Agenda, Sign-in Sheet, Notes	Meeting of October 9, 2014
N/A	12795-12800	N/A	N/A	Sign-in Sheet, Notes	Meeting of October 15, 2014
10/20/2014	12801-12819	Bill Blankenship, LANL	Steven Huddleson, NMED; Cember Hardison, NMED	Email	NPR approval for TA50 RLWTF thermal evaporator
10/20/2014	12820-12825	Joni Arends, CCNS	Chris Del Signore, LANL; Jennifer Pruett, NMED; Michael Saladen, LANL; Alison Dorries, LANS; Gene Turner, DOE; Bob Beers, LANL; Anthony Grieggs, EPA; Steven Huddleson, NMED; Jerry Schoeppner, NMED; Jonathan Block, NMELC; Jennifer Hower, NMED	Email	CCNS – Receipt of FOIA Request
10/23/2014	12826-12828	Steven Huddleson, NMED	Bob Beers, LANL; Jennifer Pruett, NMED	Email	DP-1132 list of remaining issues

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10/24/2014	12829-12836	Joni Arends, CCNS; Marian Naranjo, Honor Our Pueblo Existence; Brian Shields and Rachel Conn, Amigos Bravos; Kathy Sanchez and Beata Tsosie- Peña, TWU; Joan Brown and Marlene Perrotte, Partnership for Earth Spirituality; Robert Gilkeson, Independent Registered Geologist; J. Gilbert Sanchez, Tewa Environmental Watch Alliance	Jennifer Pruett, NMED; Jerry Schoeppner, NMED; Steven Huddleson, NMED	Letter	CCW Comments to NMED TA-50 draft GWDP
10/27/2014	12837-12841	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Third Quarter 2014, TA-50 RLWTF
10/30/2014	12842-12847	Angeline Purdy, ENRD	Jonathan Block, NMELC; Joni Arends, CCNS	Email	Distributing LANL comments to CCW
10/30/2014	12848-12849	Steven Huddleson, NMED	Gene Turner, DOE	Email	Financial Assurance Question

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11/12/2014	12850-12852	Gene Turner, DOE	Steven Huddleson, NMED; Jennifer Pruett, NMED	Email	Response to Financial Assurance Question
N/A	12853-12855	N/A	N/A	Summary Sheet	DOE/LANS Remaining Issues (Updated 11/12/2014)
11/14/2014	12856-12863	N/A	N/A	Summary Sheet	CCW, Gilkeson and Sanchez Remaining Issues – Revised draft NMED GWDP-1132 (October 31, 2014)
N/A	12865-12877	N/A	N/A	Sign-in Sheet, Notes	November 17, 2014 CCW-LANS/DOE NMED Meeting
12/03/2014	12878-12892	N/A	N/A	Summary Sheet	CCW, Gilkeson and Sanchez Remaining Issues – Revised draft NMED GWDP-1132 (October 31, 2014)
12/15/2014	12893-12896	N/A	N/A	Summary Sheet	Typographical Errors and Minor Editorial Comments, Revised Draft Discharge Permit DP-1132 (Version 12/15/2014) DOE and LANS
12/15/2014	12897-12917	N/A	N/A	Summary Sheet	Typographical Errors and Minor Editorial

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					Comments, Revised Draft Discharge Permit DP-1132 (Version 12/15/2014) CCW, Glikeson and Sanchez
12/02/2014	12918-12920	Bob Beers. LANL	Steven Huddleson, NMED	Email	Draft Discharge Permit DP-1132, List of Other Wastestreams
01/13/2014	12921-12924	Alison Dorries, LANS; Gene Turner, DOE	Jerry Schoeppner, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Fourth Quarter 2014, TA-50 RLWTF
03/16/2015	12925-12931	Joni Arends, CCNS	Steven Huddleson, NMED; Bob Beers, LANL	Email	Agenda Items for Tuesday 3/17 Meeting
03/17/2015	12932-12934	CCW, Gilkeson and Sanchez	Steven Huddleson, NMED	Letter	Participation in March 17, 2017 Meeting on DP-1132 between NMED and DOE/LANS
03/15/2015	12935-12940	N/A	N/A	Sign-in Sheet, Notes, Agenda	March 15, 2015 Meeting
03/16/2015	12941-12942	Bob Beers. LANL	Steven Huddleson, NMED	Email/Agenda	Agenda for March 17, 2017 meeting between NMED and DOE/LANS, plus items DOE/LANS wish to add to the agenda

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N/A	12965-12971	N/A	N/A	Summary Sheet	Typographical Errors and Minor Editorial Comments, Revised Draft Discharge Permit DP-1132 (Version 12/15/2014) DOE and LANS
04/23/2015	12972-12974	Alison Dorries, LANS; Gene Turner, DOE	Phyllis Bustamante, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, First Quarter 2015, TA-50 RLWTF
N/A	12975-13035	N/A	N/A	Discharge Permit	Draft discharge permit 12/15 DOE/LANS revision
05/20/2015	13036-13198	Alison Dorries, LANS; Gene Turner, DOE	Phyllis Bustamante, NMED	Letter	DOE and LANS responses regarding issues identified during the April 16, 2015 meeting
06/01/2015	13199-13211	Lindsay Lovejoy, CCW	Phyllis Bustamante, NMED	Letter	Responding to proposed draft permit forwarded May 21, 2015
N/A	13212-13232	N/A	N/A	Fact Sheet	NPDES Permit No. NM0028355. Prepared June 26, 2013
N/A	13233-13234	NA/	N/A	Statement	Statement by Steve Huddleson re: wells having limited

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					relevance to groundwater protection goals
07/24/2015	13235-13236	Chiasson, Jim, NMED	Steve Huddleson, NMED	Email	Flow Meter Question
07/27/2015	13237-13238	Chris Del Signore, LANL	Steve Huddleson, NMED	Email	Pipe Diameter
07/28/2015	13239-13242	Alison Dorries, LANS; Gene Turner, DOE	Michelle Hunter, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Second Quarter 2015, TA-50 RLWTF
11/09/2015	13243-13244	Peter Maggiore, DOE	Steve Huddleson, NMED	Email	DP-1132 Issues - Signage
11/23/2015	13245-13251	CCW	Steve Huddleson, NMED	Memo	CCW Comments to September 18, 2015 draft DP-1132
01/20/2016	13255-13258	Alison Dorries, LANS; Jody Pugh, DOE	Michelle Hunter, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Fourth Quarter 2015, TA-50 RLWTF
01/21/2016	13259-13260	John Kieling, NMED	Steve Huddleson, NMED	Email	Closure Plan. HWB has no comments
01/29/2016	13261-13263	Michelle Hunter, NMED	Alison Dorries, LANL	Letter	Comments on 60% Design Plans and Specifications RLWTF – Upgrade Project Transuranic Liquid Waste Project, DP-1132
02/28/2016	13264-13267	Bob Beers, LANL	Steve Huddleson, NMED	Email	Request for Information:

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					Former Septic System at TA-50
04/28/2016	13266-13271	Alison Dorries, LANS; Jody Pugh, DOE	Michelle Hunter, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, First Quarter 2016, TA-50 RLWTF
06/03/2016	13272-13355	John McCann, LANS; Jody Pugh, DOE	Michelle Hunter, NMED	Letter	Supplemental Information for Discharge Permit Application DP-1132. RLWTF
07/06/2016	13356-13358	Michael Saladen, LANL	Steve Huddleson, NMED; Bob Beers, LANL; Chris Del Signore, LANL	Email	List of SWMU associated with RLWTF
07/19/2016	13359-13412	John McCann, LANS; Jody Pugh, DOE	Michelle Hunter, NMED	Letter	Revised Closure Plan for Draft Discharge Permit DP-1132
07/28/2016	13413-13416	Anthony Grieggs, LANS; Karen Armijo, NNSA	Michelle Hunter, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Second Quarter 2016, TA-50 RLWTF
10/19/2016	13417-13420	Anthony Grieggs, LANS; Karen Armijo, NNSA	Michelle Hunter, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Third Quarter 2016, TA-50 RLWTF
01/13/2017	13426-13434	Kathy Sanchez, TWU; Beata Tsosie-Pena, TWU; Marian	Steven Huddleson, NMED; Jennifer Hower, NMED	Letter	CCW comments on October 1, 2016 final draft permit DP-1132 and

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		Naranjo, HOPE; Joni Arends, CCNS; Joan Brown and Marlene Perrotte, Partnership for Earth Spirituality			revised closure plan for LANL RLWTF at TA-50
01/17/2017	13435- 13437	Jon Block, NMELC	Jennifer Hower, NMED	Email	DP-1132 comments by CCW
01/18/2017	13438- 13441	Anthony Grieggs, LANS; Karen Armijo, DOE	Michelle Hunter, NMED	Letter	Discharge Plan DP- 1132 Quarterly Report, Fourth Quarter 2016, TA- 50 RLWTF
01/18/2017	13442- 13451	Anthony Grieggs, LANS; Karen Armijo, DOE	Michelle Hunter, NMED	Letter	Filing of 90% Design Plans and Specifications, RLWTF Upgrade – Transuranic Liquid Waste Project, DP- 1132
02/15/2017	13452- 13472	Anthony Grieggs, LANS; Karen Armijo, DOE	Michelle Hunter, NMED	Letter	Filing of 100% Design Drawings, RLWTF, Sodium Hydroxide Chemical Feed System, DP-1132
03/13/2017	13473- 13475	Michelle Hunter, NMED	Karen E. Armijo, NNSA; Anthony Grieggs, LANS	Letter	NMED Comments on 100% Design Specifications: Sodium Hydroxide Chemical Feed System, DP-1132

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04/17/2017	13476-13479	Karen E. Armijo, NNSA; Anthony Grieggs, LANS	Michelle Hunter, NMED	Letter	Discharge Plan DP-1132f Quarterly Report, First Quarter 2017, TA-50 RLWTF
05/05/2017	13481-13494	N/A	N/A	Public Notice 2	Groundwater Discharge Permits applications have been proposed for approval
06/05/2017	13495-13761	Communities for Clean Water	Kathryn Hayden, NMED	Letter	Comments and Hearing Request on DP-1132
06/09/2017	13762-13764	Kathryn Hayden, NMED	Steve Pullen, NMED	Email	Forwarding Comments and Hearing Request on DP-1132
07/06/2016	13765-13767	Michael Saladen	Steven Huddleson, NMED; Bob Beers, LANL; Chris Signore	Email	List of SWMU associated with RLWTF
07/12/2017	13768-13770	Steve Pullen, NMED	Bob Beers, LANL	Email	DP-1132 – Integration with the Consent Order
07/17/2017	13771-13773	Bob Beers, LANL	Steve Pullen, NMED	Email	DP-1132 – Integration with the Consent Order
07/20/2017	13774-13775	Bob Beers, LANL	Steve Pullen, NMED	Email	DP-1132 – Integration with the Consent Order
07/24/2017	13776-13777	Steve Pullen, NMED	Joni Arends, CCNS	Email	LANL DP-1132 – monitoring equipment

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07/24/2017	13778-13781	Joni Arends, CCNS	Steve Pullen, NMED; Rachel Conn; Marian Naranjo; Kathy Sanchez; Beata Tsosie-Pena; Marlene; Joan Brown; Jon Block, NMELC; Lindsay Lovejoy	Email	CCW Comments and Hearing Request on DP-1132 – monitoring equipment
07/24/2017	13782-13786	Karen E. Armijo, NNSA; Anthony Grieggs, LANS	Michelle Hunter, NMED	Letter	Filing of 100% Design Plans and Specifications, RLWTF Upgrade – Transuranic Liquid Waste Project, DP-1132
07/26/2017	13787-13796	Joni Arends; CCNS	Steve Pullen, NMED et al.	Email	11-14-14 CCW, Gilkeson & Sanchez Comments to DP-1132
08/16/2017	13797-13803	William Honker, US EPA	Lindsay Lovejoy; Jonathan Block, NMELC	Letter	Request to Terminate NPDES Permit #NM0028355 as to Outfall #051 for RLWTF
09/14/2017	13804-13810	N/A	N/A	NMED Internal Memo	Request for Hearing Determination for the draft DOE/LANS Discharge Permit, DP-1132, Radioactive Liquid

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					Waste Management Facility – Background
09/14/2017	13811-13814	Steve Pullen, NMED	Butch Tongate, NMED	Memorandum	Request for Hearing Determination for the DOE/LANS Discharge Permit Application DP-1132, Discharges from the RLWTF
N/A	13815-13824	N/A	N/A	Table	DP-1132 Hearing Determination – Table – LANL draft DP-1132 Public Comment – CCW
10/12/2017	13825-13829	Joni Arends, CCNS	Melissa Mascarenas, NMED	Email/IPRA	File review – LANL DP-1132 for the RLWTF, No. GWB 17-20 (P)
10/19/2017	13838-13839	Melissa Mascarenas, NMED	Joni Arends, CCNS	Letter	3-Day Letter Response to IPRA
10/30/2017	13840-13843	Taunia Van Valkenburg, LANL	Michelle Hunter, NMED	Letter	Discharge Plan DP-1132 Quarterly Report, Third Quarter 2017, TA-50 RLWTF
10/30/2017	13844-13850	Deborah Reade	Michelle Hunter, NMED	Email	MASE also signs on to the letter
01/27/2017	13851-13860	N/A	N/A	Summary Report	EJSCREEN ACS Summary Report
10/30/2017	13861-13862	Joni Arends, CCNS	Steve Pullen, NMED	Email	DP-1132 – Center for Public Integrity:

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					Nuclear Negligence
10/30/2017	13863-13865	Steve Pullen, NMED	Steve Pullen, NMED	Email	Request to stop the comment period for DP- 1817 and the hearing process for DP-1132
10/30/2017	13867-13869	Steve Pullen, NMED	Steve Pullen, NMED	Email	Request to stop the comment period for DP- 1817 and the hearing process for DP-1132
10/30/2017	13870-13880	Deborah Reade	Michell Hunter, NMED	Email	MASE also signs on to the letter
01/31/2000	13881-13882	Maura Hanning, NMED GWQB	Gurule/Erickson DOE/LANS	Letter	Status update on the Discharge Permit (DP-1132)
09/15/2008	13883-13890	Anthony Grieggs, LANS	Jennifer Fullam, NMED GWQB	Letter	Response to request for additional information, DP-1132. Includes RLWTF Upgrade Project – 60% plans and specifications on compact disc
12/27/2013	13891-13892	Jerry Schoeppner, NMED GWQB	Dorries/Turner LANS/DOE	Letter	Temporary permission to discharge to the Waste Mitigation and Risk

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Management influent storage tanks – DP-1132
04/23/2014	13893-13897	Brandt/Turner, LANS/DOE	Erika Schwender, NMED RPD	Letter	DP-1132 - RLWTF Upgrade Project – 90% plans and specifications on compact disc
09/21/2016	13898-14020	Grieggs/Armijo LANS/DOE	Michelle Hunter, NMED GWQB	Letter	Revised Closure Plan and comments on the draft DP-1132
12/15/2017	14021-14028	Lochlin Farrell, NMED GWQB	ABQ Journal	Email/Notice	Public hearing notice – DP-1132 – request for placement in legal section – both English and Spanish
12/15/2017	14029-14030	NMED	Listserve	Notice	Public notice of draft discharge permit (PN2) – call for public comment and request for hearing – includes a link to draft permit
12/15/2017	14031-14036	NMED	NA	Notice	Copy of public notice of public hearing on DP-1132 – refers to a hearing date of January 17,

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					2018 and a hearing location of the UNM Los Alamos campus
12/15/2017	14037-14042	NMED	Listserve	Email/Notice	Copy of notice of public hearing on DP-1132 – refers to a hearing date of January 17, 2018, and a hearing location of the UNM Los Alamos campus – includes a link to draft permit – notice in English and Spanish
12/11/2017	14043-14044	NMED	NA	Website posting, newspaper ads, mailings to interested parties, mailings to affected government agencies, and mailings to tribes	Public hearing notice for DP-1132 – includes notice in English and Spanish – includes link to draft DP-1132
01/29/2018		Taunia Van Valkenburg & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	Discharge Plan DP-1132 Quarterly Report, Fourth Quarter 2017, TA-50 RLWTF
03/07/2018	14045	NMED	NA	Notice	Copy of public notice of draft permit DP-1132 - (PN2) – call for public comment

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					and request for hearing – includes a link to draft permit - re-notice to provide current and correct version of the Closure Plan
03/12/2018	14046-14051	NMED	NA	Notice	Copy of notice of public hearing on DP-1132 – refers to a hearing date of April 19, 2018, and a hearing location of the Fuller Lodge – includes a link to draft permit – notice in English and Spanish
04/04/2018	14052-14111	Joni Arends, CCW	Steve Pullen, NMED-GWQB	Email	Proposed changes to the DP-1132 Administrative Record Index
05/01/2018	14112-14116	Taunia Van Valkenburg & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	Discharge Plan DP-1132 Quarterly Report, First Quarter 2018, TA-50 RLWTF
05/22/2018	14117-14121	Taunia Van Valkenburg, LANL	Michelle Hunter, NMED-GWQB	Letter	Notification of Pre-Start Surrogate Water Test, Radioactive Liquid Waste Treatment Facility Upgrade Project, DP-1132

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
07/27/2018	14122-14123	Taunia Van Valkenburg & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	Discharge Plan DP-1132, Quarterly Report, Second Quarter 2018, TA-50 RLWTF
09/12/2018	14124-14137	William Mairson & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	Transfer Notice for Ground Water Discharge Permit No. 1132 (DP-1132)
09/18/2018	14138-14139	Michelle Hunter, NMED-GWQB	John Bretzke & Cheryl Rodriguez, LANL	Letter	Discharge Permit, DP-1132, Radioactive Liquid Waste Treatment Facility, Los Alamos National Laboratory
09/20/2018	14140	Andrew Romero, NMED-GWQB	Bob Beers, LANL	Email	DP-1132, Condition No. 29, Effluent Sampling
09/26/2018	14141-14142	Michelle Hunter, NMED-GWQB	John Bretzke & Cheryl Rodriguez, LANL	Letter	Updated Discharge Permit, DP-1132, Radioactive Liquid Waste Treatment Facility, Los Alamos National Laboratory
10/11/2018	14143-14145	Taunia Van Valkenburg & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition No. 13, Maintenance and Repair
10/18/2018	14146-14157	Taunia Van Valkenburg & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition No. 4, Quarterly Monitoring Report,

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Third Quarter 2018
10/24/2018	14158	Andrew Romero, NMED-GWQB	Karen Armijo, LANL	Email	DP-1132 Condition No. 13 Time Extension granted
10/29/2018	14159	Bob Beers, LANL	Andrew Romero, NMED-GWQB	Email	DP-1132, Condition No. 40, Cessation of Operation of Specific Units
10/31/2018	14160-14162	Taunia Van Valkenburg & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition No. 53, Request for an Extension of Time to Complete SET Pipeline Water Tightness Testing
10/31/2018	14163-14195	Taunia Van Valkenburg & Karen Armijo	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition No. 30, Soil Moisture Monitoring System Workplan
11/13/2018	14196-14197	Andrew Romero, NMED-GWQB	Karen Armijo & Bob Beers, LANL	Email	DP-1132, Condition No. 8, Request for an Extension of Time Approval
11/19/2018	14198-14207	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition No. 7, Verification of Secondary Containment
11/19/2018	14208-14217	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition No. 33, Alluvial Monitoring Wells Workplan
12/04/2018	14218-14224	Enrique Torres & Karen Armijo,	Michelle Hunter, NMED-	Letter	DP-1132, Status Update on

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
		LANL	GWQB		Malfunctioning RLWTF Vault and Sump Alarms
12/04/2018	14225-14262	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED- GWQB	Letter	DP-1132, Condition No. 40, 100K Tank and Clarifier #1
12/18/2018	14263-14267	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED- GWQB	Letter	DP-1132, Condition No. 20, Summary of Emergency Response Procedures
12/27/2018	14268-14271	Michelle Hunter, NMED-GWQB	Enrique Torres & Karen Armijo, LANL	Letter	Approval of Stabilization Work Plans for the 100K Tank and Clarifier #1, LANL RLWTF, DP-1132
01/18/2019	14272-14273	Michelle Hunter, NMED-GWQB	John Bretzke & Cheryl Rodriguez, LANL	Letter	Updated Discharge Permit with 2016 Closure Plan, DP- 1132, RLWTF, LANL
01/23/2019	14274-14276	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED- GWQB	Letter	DP-1132, Condition No. 53, Request for an Extension of Time to Complete Outfall 051 Pipeline Water Tightness Testing
01/25/2019	14277-14345	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED- GWQB	Letter	DP-1132, Condition No. 41, Stabilization Plans for RLWTF Clarifier #2,

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Gravity Filter, WM2-North/South Tank, and 75K Tank
01/30/2019	14346-14349	Steve Pullen, NMED-GWQB	Taunia Van Valkenburg & Karen Armijo, LANL	Letter	Approval, Soil Moisture Monitoring System Workplan, LANL RLWTF, DP-1132
01/30/2019	14350-14351	Steve Pullen, NMED-GWQB	Enrique Torres & Karen Armijo	Letter	Approval of Alluvial Monitoring Wells Workplan, LANL RLWTF, DP-1132
01/30/2019	14352-14369	Taunia Van Valkenburg, LANL	Michelle Hunter, NMED-GWQB, Shelly Lemon, NMED SWQB	Letter	Triad Quarterly Discharge Report (October 1, 2018 – December 31, 2018)
1/31/2019	14370-14479	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Annual Update and Fourth Quarter Monitoring Report for 2018
02/04/2019	14480-14481	N/A	N/A	Inspection Report	DP-1132, Inspection Date February 4, 2019
02/26/2019	14482-14492	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Status Update on Malfunctioning RLWTF Vault and Sump Alarms
03/08/2019	14493	Andrew Romero, NMED-GWQB	Bob Beers, LANL	Email	Alluvial Monitoring Wells Workplan Approval

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Discrepancies
03/20/2019	14494-14506	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Status Update, Condition No. 7, Verification of Secondary Containment
04/03/2019	14507-14508	Andrew Romero, NMED-GWQB	Bob Beers, LANL	Email	DP-1132, Approval of Request for Extension of Time, Condition No. 53
04/09/2019	14509-14512	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition Nos. 21 and 22, Installation and Calibration of Flow Meters
04/17/2019	14513-14527	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Final Status Update on Malfunctioning RLWTF Vault and Sump Alarms
04/17/2019	14528-14556	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, First Quarter Monitoring Report for 2019
04/25/2019	14557-14558	Steve Pullen, NMED-GWQB	Enrique Torres & Karen Armijo, LANL	Letter	Approval of Stabilization Plans for Clarifier #2, Gravity Filter, WM2-North/South Tank, and 75K Tank, LANL RLWTF, DP-1132
05/22/2019	14559-14563	Taunia Van Valkenburg, LANL	Michelle Hunter, NMED-	Letter	Notice of Intent to Discharge Storm

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
			GWQB		Water from Technical Area 52 Solar Evaporation Tank
06/03/2019	14564-14587	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition No. 7, Verification of Secondary Containment, May 2019 Revision
06/07/2019	14588-14589	Michelle Hunter, NMED-GWQB	Taunia Van Valkenburg, LANL	Letter	Response to Notice of Intent to Discharge; DP Not Required for LANL, AI-856
06/12/2019	14590-14599	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition No. 8, Completion of Water Tightness Test, Outfall 051 Pipeline
06/19/2019	14600-14601	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	DP-1132, Condition No. 41, Stabilization of Individual Units and Systems, 100K Tank, Removal of Process Liquids
06/25/2019	14602-14606	NM WQCC	NMED	Order	Corrected Order to Vacate Agency Decision and Remand the Petition for Review of DP-1132
07/16/2019	14607-14608	Steve Pullen, NMED-GWQB	Joni Arends, CCNS	Email	DP-1132 - Discharge to

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					Outfall 051
07/18/2019	14609-14610	NMED	Subscribers of GWQB-Public Notice of Discharge Permit Actions (922 recipients)	Email bulletin	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) - July 19, 2019
07/19/2019	14611-14613	NMED	Albuquerque Journal	Legal Ad	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) - July 19, 2019 (English)
07/19/2019	14614	NMED	Albuquerque Journal	Legal Ad	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) - July 19, 2019 (Spanish)
07/19/2019	14615	NMED	Los Alamos Monitor	Legal Ad	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) - July 19, 2019 (English)
07/19/2019	14616-14620	Albuquerque Journal	NMED	Affidavit	Affidavits of publication for English & Spanish PN-2
07/19/2019	14621-14627	NMED	N/A	Fact Sheet	Fact Sheet for draft

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					DP-1132 (English)
07/23/2019	14628-14635	NMED	N/A	Fact Sheet	Fact Sheet for draft DP-1132 (Spanish)
07/22/2019	14636-14672	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter with attachments	Monitoring Report, RLWTF, 2nd Quarter 2019
07/22/2019	14673	Joni Arends, CCNS	Steve Pullen, NMED-GWQB	Email	RE: redline/strikeout version of the latest version of DP-1132
07/25/2019	14674-14703	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	Request for Temporary Permission to Discharge Treated Wastewater, RLWTF, Discharge Permit DP-1132
07/30/2019	14704-14705	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	TA-50 RLWTF, Maintenance and Repair Notification
08/07/2019	14706-14707	William Foley, LANL	Steve Pullen, NMED-GWQB	Email	SET Moisture Monitoring Workplan - Update on boreholes SET-MM-1 and SET-MM-2
08/16/2019	14708	William Foley, LANL	Steve Pullen, NMED-GWQB	Email	SET Moisture Monitoring Workplan - Update on boreholes SET-MM-3
08/21/2019	14709-14710	Michelle Hunter, NMED-GWQB	Enrique Torres & Karen	Letter	Temporary Permission to

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
			Armijo, LANL		Discharge, RLWTF, DP-1132
08/23/2019	14711-14716	NMED	Subscribers of GWQB-Public Notice of Discharge Permit Actions (922 recipients)	Email bulletin	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) - August 23, 2019
08/23/2019	14717-14731	NMED	NA	webpage	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) - August 23, 2019 (English)
08/23/2019	14732-14746	NMED	NA	webpage	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) - August 23, 2019 (Spanish)
08/23/2019	14747-14755	NMED	Albuquerque Journal	Legal Ad	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) - August 23, 2019 (English)
08/23/2019	14756-14758	NMED	Albuquerque Journal	Legal Ad	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) -

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
					August 23, 2019 (Spanish)
08/23/2019	14759-14760	NMED	Los Alamos Monitor	Legal Ad	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) – August 23, 2019 (English)
08/23/2019	14761-14762	NMED	Los Alamos Monitor	Legal Ad	Groundwater Discharge Permit Applications Proposed for Approval (PN-2) – August 23, 2019 (Spanish)
09/03/2019	14763-14771	Taunia Van Valkenburg, LANL	Steve Pullen, NMED-GWQB	Letter	Submittal of Construction and Lithologic Logs for Alluvial Monitoring Wells, RLWTF, LANL, Temporary Permission to Discharge
09/13/2019	14772-14784	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED- GWQB	Letter	Request for Renewal of Temporary Permission to Discharge Treated Wastewater, RLWTF, Discharge Permit DP-1132
09/19/2019	14785-14823	Enrique Torres & Karen Armijo,	Michelle Hunter, NMED-	Letter	Submittal of Well Completion Report

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
		LANL	GWQB		for Alluvial Monitoring Wells, RLWTF, LANL
09/25/2019	14824-14825	Enrique Torres & Karen Armijo, LANL	Michelle Hunter, NMED-GWQB	Letter	Stabilization of the 75K Influent Storage Tank, RLWTF at LANL, Temporary Permission to Discharge
09/23/2019	14826-14835	Tewa Women United, New Mexico Acequia Association, Honor Our Pueblo Existence, Concerned Citizens for Nuclear Safety	Andrew Romero, NMED-GWQB	Comments in Track Changes	Comments about DP-1132 Fact Sheet in Track Changes
09/23/2019	14836-14852	Tewa Women United, New Mexico Acequia Association, Honor Our Pueblo Existence, Concerned Citizens for Nuclear Safety	Andrew Romero, NMED-GWQB	Letter	Public Comments on the July 19, 2019 draft DP-1132 and the September 2016 DP-1132 Closure Plan for LANL RLWTF at TA-50
09/26/2019	14853-14854	Rachel Conn, Amigos Bravos	Andrew Romero, NMED-GWQB	Letter	Public Comments on DP-1132 – Discharge Permit for LANL’s Radioactive Liquid Waste Treatment Facility
10/02/2019	14855	Alexa Jaramillo	Andrew Romero,	Letter	DP-1132 Public Comment

<b>Date</b>	<b>Bates No.</b>	<b>From</b>	<b>To</b>	<b>Format</b>	<b>Subject</b>
			NMED-GWQB		
10/16/2019	14856-14857	Michelle Hunter, NMED-GWQB	Enrique Torres & Karen Armijo, LANL	Letter	Temporary Permission to Discharge, RLWTF, DP-1132
10/28/2019	14858-14859	Jennifer Payne & Karen Armijo, LANL	Michelle Hunter, NMED- GWQB	Letter	Request for Extension of Time to Complete Mobilization for 100K Tank Stabilization, RLWTF, DP-1132
10/28/2019	14860-14893	Jennifer Payne & Karen Armijo, LANL	Michelle Hunter, NMED- GWQB	Letter	Monitoring Report, RLWTF, 3Q2019

**NEW MEXICO ENVIRONMENT DEPARTMENT  
BEFORE THE SECRETARY OF THE ENVIRONMENT**



IN THE MATTER OF PROPOSED DISCHARGE )  
PERMIT 1132 FOR THE RADIOACTIVE LIQUID )  
WASTE TREATMENT FACILITY AT THE )  
LOS ALAMOS NATIONAL LABORATORY, )  
LOS ALAMOS, NEW MEXICO )

**No. GWB-19-24(P)**

**REPLY BRIEF ON MOTION TO DISMISS DP-1132 PROCEEDING**

**Preliminary statement**

This memorandum is submitted on behalf of Concerned Citizens for Nuclear Safety (“CCNS”), Tewa Women United, Honor Our Pueblo Existence, and the New Mexico Acequia Association (collectively, “Citizens” herein) in reply to contentions contained in the response briefs filed by the U.S. Department of Energy/NNSA, Los Alamos National Laboratory (“LANL”) Laboratory Counsel, Triad National Security, LLC (“Applicants”), and the Environment Department (“NMED”).

**I. INTRODUCTION.**

Citizens submit that this proceeding has consumed enough time and resources, having begun in 1996, having undergone a plenary public hearing in 2018, having been appealed once to the Water Quality Control Commission (“WQCC”), and having been the subject of a Petition for Mandamus in the New Mexico Supreme Court. It is high time to resolve the fundamental jurisdictional

issue, namely: whether the State has jurisdiction to issue a discharge permit under the Water Quality Act, NMSA 1978, § 74-6-1 *et seq.* (“WQA”), for the LANL Radioactive Liquid Waste Treatment Facility (“RLWTF”). Applicants are scrambling to obtain a WQA permit as part of their structure of exemptions intended to prevent the application of the Hazardous Waste Act, NMSA 1978, § 74-4-1 *et seq.* (“HWA”).

The WQA is the *only* source of legal authority to issue a permit. That law expressly circumscribes NMED’s authority:

The Water Quality Act does not apply to any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] . . .

NMSA 1978, § 74-6-12.B. Contrary to Applicants’ repeated assertion, § 74-6-12.B is not “language in New Mexico’s Hazardous Waste Act” and “a provision of the HWA.” (App. Br. 2, 13). It is an integral part of the Water Quality Act.

The key issue under the WQA is whether the activities to be regulated by a WQA permit are, in fact, subject to the HWA. Applicants and NMED try to dodge this question. Thus, they assert that it was long ago determined that the RLWTF is entitled to a WQA permit (App. Br. 2, 13), that someone else, in some other bureau, should decide such issues (*id.* 2-3, 14, 15; NMED Br. 11), that the U.S. Environmental Protection Agency (“EPA”) has decided that a NPDES permit should issue for the RLWTF (App. Br. 3, 12; NMED Br. 8), and that the

Applicants do not have the burden of establishing that the RLWTF is entitled to a WQA permit. App. Br. 13-14, 18. Applicants' reference to § 74-6-2, containing various statutory definitions (App. Br. 13-14), does not affect the explicit limitation in § 74-6-12.B. Finally, Applicants argue the evidence that establishes they do not intend to discharge contaminated wastewater from Outfall 051 has been stricken from the Administrative Record. *Id.* 6-11.

The issue however, is squarely presented on the Record, and it must be decided. The fact that it may also have arisen in other proceedings is irrelevant. App. Br. 2-3, 15. Furthermore, whatever NMED supposedly decided, *sub silentio*, "more than a decade ago" (*id.* 13) plainly does *not* concern *today's* RLWTF, which is the relevant facility.

## **II. THE DISPOSITIVE ISSUES.**

There is no dispute that the RLWTF manages hazardous waste. *See* references cited at Citizens' *Motion to Dismiss* at 20 note 12. Applicants and NMED do not contest this fact. Under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6925(a), 40 C.F.R. § 270.1(c), and the HWA, the RLWTF is required to have a HWA permit. Thus, the RLWTF's management of hazardous waste is an "activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act" and falls *outside* the scope of the WQA.

However, Applicants maintain that the WQA may apply to the RLWTF, because it is exempt from the HWA under the “wastewater treatment unit” (“WWTU”) exemption. *See generally*, 42 U.S.C. § 6903 (27); 40 C.F.R. § 260.10 (*Tank system; Wastewater treatment unit*); § 264.1(g)(6). It is the Applicants who have the burden of establishing an exemption, *i.e.*, “proving the facts relied upon to justify the proposed discharge plan, renewal or modification and meeting the requirements of the regulations.” 20.6.2.3110.C (1) NMAC. They cannot do so; indeed, they do not attempt to do so, and this proceeding must be dismissed.

Application of the “wastewater treatment unit” exemption depends upon the regulations issued and interpreted by the responsible agency: the EPA. The RLWTF has no plan to discharge, except in the highly unlikely event that both of the RLWTF’s evaporation systems are unavailable due to maintenance or malfunction or its mission is changed—circumstances that counsel for Applicants has rightly termed “speculative” Tr. 113-14 (April 18, 2018). In the years since the November 2010 cessation of discharge, those circumstances have not arisen.<sup>1</sup> There is no authority to issue a Clean Water Act, 33 U.S.C. § 1251 *et seq.* (“CWA”) permit under 33 U.S.C. § 1342 to a non-discharging facility. *Waterkeeper Alliance, Inc. v. U.S. EPA*, 399 F.3d 486, 505 (2d Cir. 2005); *National Pork Producers Council v. U.S. EPA*, 635 F.3d 738, 750 (5th Cir. 2011).

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<sup>1</sup> It should be noted that Applicants have discharged treated water during the pendency of this permit dispute. *See infra*, at 6-7.

EPA has flatly stated that the WWTU exemption does not apply to a facility that has no discharge: “This exemption is not intended to apply to wastewater treatment units that are not required to obtain an NPDES permit *because they do not discharge treated effluent.*” EPA release, 53 Fed. Reg. 34079, ¶ 2 (Sept. 2, 1988), (emphasis added). Without any basis for a CWA permit, the RLWTF has *no* WWTU exemption from the HWA, the HWA applies to the RLWTF, and the WQA is, by its own terms, ousted from application.

NMED claims that Applicants’ expressed intention to discharge only in limited, and highly unlikely, circumstances may not be demonstrated in this proceeding, because the evidence is

by necessity null and void, given the June 18, 2019 WQCC Order. NMED does not intend to include any such materials in the Administrative Record for the present proceeding, for the same reason that citation to these materials is improper.

NMED Br. 4. Thus, NMED would avoid adverse evidence simply by deleting it from the Administrative Record. Order and justice, however, are not so easily defeated. Under the rules, the Administrative Record includes *all* items submitted to or generated by NMED:

The administrative record *shall* consist of the application, any additional information required by the department, any information submitted by the discharger or the general public, other information considered by the department, the proposed approval or disapproval of an application for a discharge permit, modification or renewal prepared pursuant to Subsection H of 20.6.2.3108 NMAC, and, if a

public hearing is held, *all* of the documents filed with the hearing clerk, *all* exhibits offered into evidence at the hearing, *the written transcript or tape recording of the hearing*, any hearing officer report, and any post hearing submissions.

20.6.2.3109.A. NMAC. (Emphasis added). The evidence Citizens cited in its *Motion to Dismiss* was admitted as part of the Administrative Record. *Id.* at 4-17. NMED has neither the authority nor authorization to delete inconvenient evidence. The WQCC Order of remand (June 18, 2019) says *nothing* about removing any evidence from the Administrative Record. The normal practice when an adjudicating officer is found to have been disqualified by a party's influence, as happened here, is to vacate the orders that the miscreant official entered. *In re Al-Nashiri*, 2019 U.S. App. LEXIS 11067 (D.C. Cir., April 16, 2019) (slip op. at 25). The WQCC so ordered, but it *did not* order that the Administrative Record be altered in any way.<sup>2</sup>

Applicants argue that there was a release of asserted "treated effluent" from Outfall 051 on June 18, 2019. App. Br. 16. The discharge did not involve *any*

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<sup>2</sup> The colloquy cited by NMED concerned the extent of the *vacatur* of orders entered by the disqualified Hearing Officer, not expunging the Administrative Record, as NMED asserts. NMED Br. 4. The WQCC decision on June 18, 2019 was summed up by a commissioner immediately before the WQCC voted:

Yes, Madam Chair, and we are not specifying anything other than the remand for the new hearing, with the new Hearing Officer. We are not laying out any other parameters for how the Environment Department proceeds from there.

Tr. 28, June 18, 2019. The WQCC did *not* direct the destruction of any records.

constituents exceeding the limits set forth in 20.6.2.3103 NMAC that would trigger the requirement of a permit to discharge. More importantly, there has been no change in Applicants' expressed intention, stated on the Record, to only use Outfall 051 when, in the future, the evaporation units are unavailable *or* its mission changes—both highly unlikely circumstances. Motion to Dismiss at 12-17; Mason Aff., Ex. 1 to App. Br., at ¶¶ 5, 7. Issuance of a permit *must* be decided on the basis of the Applicants' intentions, stated in the Record, as to future discharges. 20.6.2.1201.C, D, § 3106.C NMAC. Applicants express *no* intention actually to discharge in the future.

Moreover, even if there were intended discharges from Outfall 051, and even if a renewed CWA permit were issued for the outfall, *the WWTU exemption would not apply*. EPA, which issued the WWTU exemption regulations and is entitled to initial deference in its interpretation of those regulations, has addressed this issue, *viz*: whether a facility that released treated hazardous wastewater to a CWA outfall at certain times and, at other times, directed such wastewater to other functions could be eligible for the WWTU exemption. EPA's answer was an emphatic negative. Recall that a "wastewater treatment unit" is defined as a tank system that discharges via a CWA outfall:

Wastewater treatment unit means a device which:

- (1) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and
- (2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in § 261.3 of this chapter[;]
- (3) Meets the definition of tank or tank system in § 260.10 of this chapter.

40 CFR 260.10. Thus, when EPA refers here to wastewater “treatment,” it is referring to treatment in a tank system that discharges through an outfall that is subject to CWA § 402, 33 USC § 1342. EPA has explained that the WWTU exemption does not apply where a tank system is used, in part, to direct discharges to a CWA outfall and, in part, for other purposes:

You ask what EPA meant by the language “dedicated” [for use with an on-site wastewater treatment facility] and offer two possible interpretations. One interpretation, you suggest, is that the WWTU must be dedicated solely for wastewater treatment at all times. A second interpretation, you suggest, is an “alternating use” scenario in which a WWTU may operate as a WWTU for a portion of the year, dedicated for wastewater treatment for that period of time in use, and then operate as an accumulation tank for a different part of the year. The Agency confirms the first interpretation, described above. That is, in order to satisfy the WWTU exemption, a tank must be dedicated solely for on-site wastewater treatment at all times and for no other purpose. EPA believes that the preamble language is clear on this point. *EPA did not intend the WWTU exemption to apply in situations involving “dual use” of a tank (when a tank is concurrently used for wastewater treatment and for another purpose). Nor did EPA intend for the exemption to apply in situations, such as the one your letter describes, involving “alternating use” of a tank.* Since the purpose of this exemption is to avoid dual regulation under the Clean Water Act and the Resource

Conservation and Recovery Act (RCRA), EPA believes that *a tank must be used only for wastewater treatment purposes at all times in connection with an on-site wastewater treatment facility in order to qualify for the exemption.* EPA did not intend for the exemption to apply in either the “dual use” or “alternating use” scenario. Accordingly, a tank that operates on an “alternating use” basis, as you describe above, does not satisfy the WWTU exemption and is subject to all relevant RCRA regulations.

Letter, E.A. Cosworth, Acting Director, Office of Solid Waste, to S. Pendleton, RO 14262, 1998. (Emphasis added). This opinion letter has been cited in recent EPA briefing and must be considered authoritative. *See, e.g.,* Complainants’ Reply Brief on a Motion for Partial Accelerated Decision, citing *In re Chemsolv, Inc.*, 2011 EPA Admin. Enforce. LEXIS 33581 at 5 (Dec. 22, 2011).<sup>3</sup>

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<sup>3</sup> Numerous EPA releases state that the WWTU exemption does not apply where wastewaters are shipped “off-site.” S.K. Lowrance to T.A. Hopkins (Aug. 15, 1990) (RO 11551); D. Bussard to J.C. Mulligan (June 1, 1990); RCRA/Superfund Hotline Monthly Summary (Oct. 1988) (RO 13226); RCRA/Superfund Hotline Monthly Summary (July 1988) (RO 13203); Hazardous Waste Tank System Standards to Ancillary Equipment and Exempted Elementary (Jan. 27, 1988) (RO 13126); Wastewater Treatment and Elementary Neutralization Units Exemption (Dec. 21, 1987) (RO 13112). EPA has explained that a reference to shipment “off-site” means shipment of wastewater out of a system that is permitted by EPA under the CWA to another, non-EPA-regulated, system—one which is therefore outside the exemption:

EPA’s position revolves around whether or not a facility is subject to sections 307(b) or 402 of the CWA. The underlying assumption used in justifying the wastewater treatment unit exemption was that tanks used to handle hazardous wastewater at these facilities would be provided with EPA oversight under the Clean Water Act, thereby ensuring no significant decrease in environmental control afforded at these facilities. We understand that using the terms “on-site” and “off-site” may have

EPA, as the issuing agency, is entitled to deference in its interpretation of the WWTU exemption. *See Kisor v. Wilkie*, \_\_\_ U.S. \_\_\_, 139 S.Ct. 2400, 2411 (2019) (a court should defer to the agency’s construction of its own regulation). Since the WWTU exemption clearly does not apply to the RLWTF, the facility is subject to the HWA, and the WQA does not apply. No WQA permit may issue.

### III. OTHER ISSUES.

Respondents advance several minor arguments. Applicants say that NMED defines “discharge” to include unintentional discharges (App. Br. 18)—as if such were the same as the supposed “potential” to discharge, which is in issue here. A “potential” discharge is not a discharge at all; it is the absence of discharge. The WQA explicitly authorizes only “a permit for the discharge of any water

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represented a confusing way to explain this concept, and wish to further clarify our long-standing intent regarding the scope of the exemption. . .

The concern that lead [*sic*] to the “on-site”, “off-site” distinction in the September 2, 1988 notice was that many wastewater treatment facilities are not actually being subjected to NPDES regulatory requirements. If they are unregulated by the NPDES program, it would be inappropriate to exempt them from RCRA regulation.

Letter, D. Bussard, Acting Director, WMD, to J.C. Mulligan (June 1, 1990) (FaxBack# 11519). Here, the construction and operation of the MES and SET evaporation equipment are not regulated by EPA under the CWA. These units are not even mentioned in the NPDES permit. Request Ex. SS. The operations of the RLWTF clearly result in most hazardous wastewater being diverted to the unregulated evaporation units. Therefore, the WWTU exemption has no application to the RLWTF.

The Request to EPA and related documents are available at: [https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/77355bee1a56a5aa8525711400542d23/f777dd058c3cdb758525819c004d493c!OpenDocument](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/77355bee1a56a5aa8525711400542d23/f777dd058c3cdb758525819c004d493c!OpenDocument)

contaminant” (NMSA 1978, § 74-6-5.A)—*not* for a “potential” discharge, a concept that would be very challenging to define, were it in the statute, which it is not.

NMED says that the WQA language addressing a discharge which states that it “may move directly or indirectly” into ground water provides NMED with the authority to lawfully demand a WQA permit from one whose “activities” *may* result in water contaminants moving directly or indirectly into ground water. NMED Br. 6-7. This argument however, *supports* Citizens’ point: The WQA does not prohibit “activities.” It prohibits certain types of a “discharge” – that is, an unpermitted one containing pollutants above specific state standards. Thus, it authorizes a permit for a “discharge.” *Absent a discharge, the WQA has no lawful function.*

NMED then says, “nowhere in the [WQA] or its implementing regulations is a discharge required to be actual, or already occurring, for a permit to be issued.” NMED Br. 7. To repeat, the WQA authorizes a permit *only* for a “discharge of any water contaminant” (NMSA 1978, § 74-6-5.A); it could hardly speak more clearly of an event occurring in the real world. Statutory elements cannot be satisfied by imaginary events. Regulations require an application from one who *intends* to discharge—not one who imagines a possible discharge. 20.6.2.3106.B NMAC. The statement that “it is the potential for the discharge of water contaminants that

may move into ground water that triggers the authority of the Water Quality Act, and thus the Secretary's authority to issue a discharge permit" (NMED Br. 7) is simple wishful assertion backed by nothing, and citing no language anywhere telling the regulator or the Water Quality Control Commission how to identify a "potential for the discharge."

NMED claims the authority to require a permit when it senses a risk of mechanical failure that may cause a leak. NMED Br. 7-8. But this argument claims too much. Nearly any tank or pipe or basin *may possibly* leak. But a *possible* leak is just another term for a *potential* discharge—for which the WQA does not authorize a permit. The WQA is a mandatory statute; where it applies, a permit must be obtained, and a failure to comply with the WQA is punishable. NMSA 1978, §§ 74-6-5, 74-6-10, 74-6-10.1. The theory that the *possibility* of a leak requires a WQA permit would result in a near-infinity of WQA permits covering numberless sites. One cannot seriously claim that the Legislature intended such a result, and NMED, in practice, does not seek that result.

WQA permits<sup>4</sup> which, supposedly, regulate "potential" discharges cannot nullify the statutory limits on NMED's authority. NMED Br. 9; App. Br. 18-19.

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<sup>4</sup> The factual premises underlying such permits and the negotiations that led to the terms now urged in this proceeding are not known and are obviously not in the record of this proceeding. Reliance on the existence, standing alone, of such permits does not establish that NMED has exercised a supposed power over

No court has ever sustained the authority that NMED claims, and its assertion that it has issued permits to regulate *potential* discharges may only mean that NMED has disregarded the WQA’s express language for many years. Yet, merely managing to accumulate a long history of violating a statute does not amend it. An agency, such as NMED, cannot add or subtract a word—such as “potential”—that is not plainly included in the statute. That it desires to do so, either for its own convenience or that of a regulated entity, does not justify such *ultra vires* action. On this point, the law is clear. “The authority of administrative agencies is constrained by the language of the statute they administer.” *Texas v. United States*, 497 F.3d 491, 500-01 (5th Cir. 2007) (citing, generally, *Massachusetts v. EPA*, 549 U.S. 497(2007)).

This principle is echoed and further explained in numerous state cases. *See, e.g. In re Petition of the Intervale Ctr.*, No. 89-5-08 Vtec, slip op. at 14 (Vt. Envtl. Ct. Feb. 24, 2009) (Durkin, J.) (“It is a fundamental rule of law that agencies cannot act beyond the authority conferred on them by statute”); *In re Agric., Aquacultural, & Horticultural Water Usage Certification Rules*, 410 N.J. Super. 209, 217, 981 A.2d 99, 103 (Super. Ct. App. Div. 2009) (“An administrative agency cannot give a statute greater effect than its language allows under the guise of interpretation”); *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 899

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potential discharges, much less that it has openly asserted that such power is lawful.

(Tex. 2017) (“[w]e presume the Legislature included each word in the statute for a purpose and that words not included were purposefully omitted”) (citing *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008); *Commonwealth v. Am. Ice Co.*, 406 Pa. 322, 332, 178 A.2d 768, 773 (1962) (“[A]n administrative agency ... “cannot, by mere usage, invest itself with authority or powers not fairly or properly within the legislative grant; it is the law which is to govern rather than departmental opinions in regard to it.”) (quoting *Fed. Deposit Ins. Corp. v. Bd. of Fin. & Revenue*, 368 Pa. 463, 472, 84 A.2d 495, 499 (1951)); accord *Susquehanna Area Reg'l Airport Auth. v. Pa. Pub. Util. Comm'n*, 911 A.2d 612, 617 n.8 (Pa. Cmwlth. 2006); *Boaden v. Dep't of Law Enf't*, 171 Ill. 2d 230, 239, 215 Ill. Dec. 664, 668, 664 N.E.2d 61, 65 (1996) (“In addition, our deference to administrative expertise will not serve to license a governmental agency to expand the operation of a statute”) (citing *Northern Trust Co. v. Bernardi*, 115 Ill. 2d 354, 365, 105 Ill. Dec. 220, 504 N.E.2d 89 (1987); *Chem. Specialties Mfrs. Ass'n v. Jorling*, 85 N.Y.2d 382, 394, 626 N.Y.S.2d 1, 7, 649 N.E.2d 1145, 1151 (1995) (interpreting a statute requires that one infer that the Legislature intended to omit or not include specific words); *Burlington N. v. Johnston*, 89 Wash. 2d 321, 333, 572 P.2d 1085, 1091 (1977) (“an administrative agency cannot alter or amend a statute by interpretation, even with legislative acquiescence, and the court must give effect to the plain meaning of the language used”).

Applicants say that the “central objective” of the WQA is to prevent, not to abate, pollution. App. Br. 18. Of course, the WQA seeks to prevent pollution. The specific means it uses to that end is to require a permit for a “discharge of any water contaminant,” and no court or agency may ignore the Legislature’s specific choice of strategy. The same “statutory purpose” argument was made as to the Clean Water Act, which similarly authorizes the permitting of a “discharge of any pollutant” (33 U.S.C. § 1342(a)), and the Second Circuit held that courts cannot ignore the specific legislative authorization in pursuit of a general legislative goal. *Waterkeeper*, 399 F.3d at 505-06.

NMED argues that the activities which would be regulated under DP-1132 are not regulated under the HWA, so there is no conflict, and the WQA limitation, NMSA 1978, § 74-6-12B, does not apply. NMED Br. 10-11. This is demonstrably incorrect. The WQA phrase “activity or condition” subject to the HWA is plainly broad language. The HWA and its regulations address the construction and operation of facilities that manage hazardous waste, which may be liquid waste, and address in technical detail, *e.g.*, the management of wastes in tanks and tank systems (40 C.F.R. §§ 264.191-.200) and the design and operation of systems of monitoring wells (40 C.F.R. §§ 264.90-.101). Such activities are all addressed by DP-1132. *See* Draft DP-1132 ¶¶ 7-15 (as to tanks and tank systems), ¶¶ 30-37 (as

to monitoring wells). The overlap is considerable, and any contrary claim is meritless.

Applicants urge also that the requested permit will not be a “nullity” since the RLWTF will not be a “zero-liquid-discharge” facility, after all. App. Br. 19. However, Applicants have not changed their representation to NMED that Outfall 051 *will not* discharge unless the evaporators are unavailable or its mission changes, a policy that led to zero discharges from November 2010 until recently—a time span longer than the term of a WQA permit. NMSA 1978, § 74-6-5.I.

Last, Applicants argue that EPA’s Environmental Appeals Board has decided that a CWA permit may validly regulate a “zero discharge” facility. App. Br. 20. The Board decision expressly disavows any such decision (Ex. 3 to App. Br. at 19 note 19); moreover, the Board decision is on review before the Tenth Circuit, therefore irrelevant to this case. *Concerned Citizens v. EPA*, United States Court of Appeals for the 10th Circuit, Docket No. 18-9542 (Oral argument March 19, 2019).

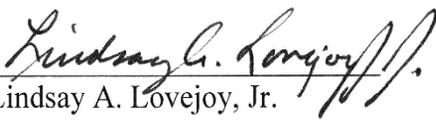
#### **IV. CONCLUSION.**

Enough time, energy, and resources have been expended by the Citizens and by NMED on LANL’s struggle to obtain a discharge permit for the RLWTF, a facility that has no plan to discharge. The purpose of LANL’s struggle, of course, is to obtain an exemption from the stricter requirements of RCRA and the HWA.

The WQA authorizes permits, but not for an activity that is subject to the HWA. “The Water Quality Act is a separate regulatory scheme and does not overlap with the Hazardous Waste Act.” *Schwartzman, Inc. v. Atchison, T. & S.F. Ry.*, 857 F.Supp. 838, 847 n.4 (D.N.M. 1994). Since the RLWTF manages hazardous wastewaters and directs all, or nearly all, of such wastewaters to evaporation units that are beyond the scope of any regulation imposed by LANL’s CWA permit, the RLWTF has no exemption from regulation under RCRA and the HWA. Since the HWA applies to the RLWTF, the WQA cannot apply to it, and this proceeding should be dismissed.

If the Hearing Officer were to disagree, Citizens submit that the further relief requested by Appellants (App. Br. 20-21), limiting the scope of the hearing, would conflict with the statutory provision for a public hearing, NMSA 1978, § 74-6-5.G, as well as the June 18, 2019 WQCC order remanding this matter for a new hearing.

Respectfully submitted this 30th day of October, 2019:

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**CERTIFICATE OF SERVICE**

I, Jonathan M. Block, hereby certify that on this 30th day of October, 2019, I caused the foregoing *Reply Brief on Motion to Dismiss DP-1132 Proceeding* to be served on the parties listed below by email and filing an original and one copy with the Administrator of Boards and Commissions.



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