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December 16, 2004

By email to: whitten-hill.darlene@epa.gov

Environmental Protection Agency, Region 6
Water Enforcement Branch (6EN-WC)
Attn: Ms. Darlene Whitten-Hill
Docket No. CWA-06-2005-1701
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Re: Los Alamos National Laboratory Federal Facilities Compliance Agreement
Docket No. CWA-06-2005-1701

Dear Ms. Whitten-Hill:

Concerned Citizens for Nuclear Safety (CCNS) and Amigos Bravos make the following general and specific comments about the draft Clean Water Act (CWA) Federal Facilities Compliance Agreement (FFCA) between the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy (DOE) at Los Alamos National Laboratory (LANL). We appreciate the fact that EPA released the draft FFCA for a 30-day public comment period and granted a 10-day extension due to the unavailability of associated documents.

First, CCNS and Amigos Bravos believe that the FFCA does not bring DOE into compliance with the CWA at LANL and will only delay issuance of the individual permit for storm water discharges.

On May 2, 2002, the New Mexico Environment Department (NMED) issued a "Determination of an Imminent and Substantial Endangerment to Health and the Environment" and a "Draft Corrective Action Order" under the New Mexico Hazardous Waste Act, NMSA §§74-4-10.1 and 74-4-13, to DOE and the University of California (UC), manager and operator of LANL. The Determination listed LANL

operations and waste management activities that released contaminants to surface water as well as the toxicity of contaminants that posed an imminent and substantial endangerment to human health and the environment. On November 26, 2002, NMED issued a Final Order called "Re: Proceedings Under the New Mexico Hazardous Waste Act §§74-4-10.1 and 74-4-13." As a result, DOE and UC sued NMED. For over eighteen months the parties negotiated behind closed doors.

Those settlement negotiations resulted in the draft Order on Consent, which was released for a 30-day public comment period on September 1, 2004. DOE, UC and NMED agreed that NMED would withdraw the Determination and Final Order, as well as remove the surface water provisions previously found in the Corrective Action Order and that EPA and DOE would sign a CWA FFCA for surface water at LANL. Because the draft FFCA lacks definitive deadlines that require EPA to review and approve DOE submittals, it is uncertain as to when the individual permit for storm water discharges will be issued. It is also unclear as to what enforcement actions EPA may take in the meantime. By entering into the FFCA, EPA is unnecessarily tying its own hands by limiting enforcement action to the terms and conditions of the FFCA.

1. Individual storm water permit. The FFCA requires submittal of an application for an individual storm water permit, but it is open ended as to when such a permit will be established and the form it will take. Until then, the LANL facility will be allowed to continue to operate under the multi-sector general permit, which has been found to be inadequate. The FFCA needs to contain a definitive date by which the individual permit will be in place and how it will be structured.

2. Lack of effluent limits. Though the FFCA includes monitoring of over 300 individual storm water sources, solid waste management units (SWMUs) and areas of concern (AOCs), there are no permit limits. As now designed, there will be only water screening action levels (wSALs) based on presumed standards, but these will not be set as permit limits. Exceedance of a wSAL is not considered a violation, only failure to take corrective action if a wSAL is exceeded. We believe that numeric permit limits need to be set for each discharge and exceedance of such limits be defined as permit violations along with the failure to take action.

3. Monitoring locations. It is unclear if the monitoring locations of the 317 sources (SWMUs and AOCs) are the same as individual source outfalls as per storm water regulations. Though different from the watershed monitoring sites, the point source monitoring locations are described as being "near specific sites," which may be different from what would be outfalls. Such locations need to be selected to avoid dilution from other waters and to provide representative monitoring of the specific pollution sources.

4. Existing data. The draft FFCA and supporting documents do not provide existing data to show documented discharges from the various storm water sources. All that is provided is the erosion matrix score. While it is understood that all sites have

not been monitored, it is also understood that some monitoring has been done in recent years for at least some sites. We request that existing data be made available and included in the documentation. Appendix F of the Storm Water Monitoring Plan document contains data marked as “sample only.” It is unclear if this is actual data or just an example of how the data will be reported. It is crucial for the public and downstream communities to have access to this data to determine the level of threat to public health from storm water running off the site.

5. Parameters. The monitoring plan does not appear to include toxicity testing. We suggest that this be added to the storm water parameters.

6. Derivation of LANL Storm Water Screening Action Levels (wSALs). Appendix C of the Storm Water Monitoring Plan, Rev. 0, LA-UR-04-2157, November 2004, demonstrates the decision flow logic for the derivation of the LANL wSALs. In reviewing Table C-1, we find that in some cases the most protective criteria was not chosen for the wSAL. For example, the most protective criteria for zinc is the acute aquatic life standard at 117 µg/L. However, the wSAL is 25,355 µg/L, which is the livestock watering standard. The most protective criteria should be used to determine the wSALs. At the very least, at the conclusion of the ongoing triennial review process of 20.6.4 NMAC- Standards for Interstate and Intrastate Surface Waters before the New Mexico Water Quality Control Commission, the wSALs should be updated to reflect the likely upgrading of uses of waters on LANL property.

7. Public Access to Documents. CCNS and Amigos Bravos strongly support the proposal of the Northern New Mexico Citizens’ Advisory Board that DOE or EPA establish or use an existing website for posting documents associated with compliance with the FFCA. We also support DOE or NMED establishing or using an existing website where the documents associated with compliance with the Consent Order be posted. It should be noted that some citizens do not have internet access or may have a slow connection making access, especially to large files, difficult, limited, or non-existent. Provision should be made to accommodate those without, or with limited computer access.

8. Specific Changes.

- a. In ¶24 C., please add “unfiltered” to “If four or more ‘unfiltered’ samples.”
- b. In ¶32, please add “tribal” to list of applicable requirements.

Thank you for the opportunity to comment. Should you have any questions or comments, please contact Joni Arends by telephone at (505) 986-1973 or email at jarends@nuclearactive.org or Brian Shields by telephone at (505) 758-3874 or bshields@amigosbravos.org.

Sincerely,

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