



Original via Electronic Mail

April 28, 2022

Mr. Charles Maguire, Director
Water Quality Protection Division (6WD)
U. S. Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, Texas 75202
Maguire.Charles@epa.gov

Re: **State Certification, Los Alamos County Wastewater Treatment Facility, NPDES Permit No. NM0020141**

Dear Director Maguire:

Enclosed, please find the state certification for the following proposed National Pollutant Discharge Elimination System (NPDES) permit NM00201141, Los Alamos County Wastewater Treatment Facility (WWTF). Comments and conditions are enclosed on separate sheets.

The U.S. Environmental Protection Agency (EPA) proposes to regulate discharges under the above referenced NPDES individual permit. A state Water Quality Certification is required by the federal Clean Water Act (CWA) Section 401 to ensure that the action is consistent with state law (New Mexico Water Quality Act, New Mexico Statutes Annotated (NMSA 1978, §§ 74-6-1 to -17) and complies with State of New Mexico Water Quality Standards and the Water Quality Management Plan and Continuing Planning Process, including Total Maximum Daily Loads (TMDLs) and the Antidegradation Policy.

Pursuant to State regulations for permit certification (Section 20.6.2.2001 of the New Mexico Administrative Code (NMAC)), EPA, jointly with the New Mexico Environment Department (NMED or Department), issued a public notice of the draft permit and announced a public comment period. NMED posted the notice on the Department's web site at <https://www.env.nm.gov/public-notices/> on Saturday, January 29, 2022. The original NMED comment period was scheduled close on Monday, February 28, 2022. Los Alamos County requested an extension to the public comment period to March 30, 2022. NMED granted the extension and the NMED public comment period closed on Wednesday, March 30, 2022. NMED received comments from Los Alamos County and considered those comments as part of this certification.

Sincerely,

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

cc: (w/ enclosures)

Evelyn Rosborough, USEPA (6WDPN), via email Rosborough.Evelyn@epa.gov

Brent Larsen, USEPA (6WDPE), via email Larsen.Brent@epa.gov

Tung Nguyen, USEPA (6WDPE), via e-mail Nguyen.Tung@epa.gov

Bryn Copson, USEPA (6WDPE), via e-mail Copson.Bryn@epa.gov

Nancy Williams, USEPA (6ECDWA), via email Johnson.Nancy@epa.gov

Kathryn Becker, Tribal Liaison, NMED, via email Kathryn.Becker@state.nm.us

Christal Weatherly, Office of General Counsel, NMED, via email Christal.Weatherly@state.nm.us

Susan Lucas Kamat, Program Manager, NMED, via email Susan.LucasKamat@state.nm.us

Barbara Cooney, Point Source Regulation Section, NMED, via email Barbara.Cooney@state.nm.us

Jason Martinez, Municipal Team Supervisor, NMED, via email Jason.Martinez@state.nm.us

Philo Shelton, Los Alamos County, via email Philo.Shelton@lacnm.us

Jennifer Baca, Los Alamos County, via email Jennifer.Baca@lacnm.us

Jack Richardson, Deputy Utility Manager, GWS, via email jack.richardson@lacnm.us

James Alarid, Los Alamos County, via email james.alarid@lacnm.us

Steve Lynne, Los Alamos County, via email steven.lynne@lacnm.us

Cornell Wright, Chair Los Alamos County Board of Public Utilities, via email cornell.wright@lacnm.us

Randall Ryti, Chair, Los Alamos County Council, via email randall.ryti@lacnm.us

Kevin Powers, Los Alamos County, via email kevin.powers@lacnm.us

Alvin Leaphart, Los Alamos County, via email alvin.leaphart@lacnm.us

Raymond Martinez, Director of Environment and Cultural Preservation, San Ildefonso Pueblo, via email rmartinez@sanipueblo.org

Honorable Christopher Moquino, Governor, San Ildefonso Pueblo, via email governor@sanipueblo.org

Governor Assistant, San Ildefonso Pueblo, via email governorassistant@sanipueblo.org

Dr, Earthea Nance Regional Administrator
U.S. Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, TX 75202

April 28, 2022

STATE CERTIFICATION

RE: Los Alamos County Wastewater Treatment Facility, NPDES Permit No. NM0020141

Dear Regional Administrator Nance:

The Cabinet Secretary of the New Mexico Environment Department (NMED) delegated signatory authority for state certifications of federal Clean Water Act permits to the Surface Water Quality Bureau Chief. NMED examined the proposed National Pollutant Discharge Elimination System (NPDES) permit referenced above. Compliance with the terms and conditions of the permit and this certification provides reasonable assurance that the permitted activities will be conducted in a manner that will not violate applicable State water quality standards and water quality management plan and will comply with the State's antidegradation policy.

The State of New Mexico

- ☒ (X) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law.
- ☐ () certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit (see attachment).
- ☐ () denies certification for the reasons stated in the attachment.
- ☐ () waives its right to certify.

In order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent unless changes are in response to formal comments received by EPA, the changes are discussed with NMED, and NMED concurs with the changes prior to the finalization of the proposed permit.

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

Please contact Susan A. Lucas Kamat at (505) 946-8924 if you have any questions concerning this certification.

Sincerely,

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

**State of New Mexico CWA Section 401 Comments and Conditions on the Proposed NPDES Permit
Los Alamos County WWTF
NPDES Permit No. NM0020141
April 28, 2022**

Federal and State Citations

National Pollutant Discharge Elimination System (NPDES) regulations at 40 Code of Federal Regulations (C.F.R.) 122.44(d)(1)(i) require that permit "limitations must control all pollutants or pollutant parameters...which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality."

40 C.F.R. 124.53(e)(1) states that State certification shall be in writing and shall include "conditions which are necessary to assure compliance with the applicable provisions of Clean Water Act (CWA) Sections 208(e), 301, 302, 303, 306 and 307 and with appropriate requirements of State law."

40 C.F.R. 124.53(e)(2) states that for each condition more stringent than those in the draft permit, "...the certifying State agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition."

40 C.F.R. 124.53(e)(3) states that for each condition less stringent than those in the draft permit, "a statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards. Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process."

New Mexico adopted surface water quality standards (WQS) in accordance with CWA Section 303 and the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 to -17. State WQS are published in Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code (20.6.4 NMAC), *Standards for Interstate and Intrastate Surface Waters*, as amended by the New Mexico Water Quality Control Commission (WQCC) and approved by the U.S. Environmental Protection Agency (EPA). The regulations at 20.6.4.8 NMAC outline the State's antidegradation policy and implementation plan. Appendix A of the Water Quality Management Plan and Continuing Planning Process (WQMP/CPP) details the antidegradation policy implementation procedures related to and in concurrence with 20.6.4.8 NMAC. The WQMP/CPP also includes Appendix B, New Mexico's list of approved Total Maximum Daily Loads (TMDLs). Additional State regulations and standards are published in Title 20, Chapter 6, Part 2 of the New Mexico Administrative Code (20.6.2 NMAC), *Ground and Surface Water Protection*.

The following conditions of certification are necessary to assure compliance with the applicable provisions of the Federal Clean Water Act (CWA) Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including the antidegradation policy and the statewide water quality management plan.

Conditions of Certification

None.

Comments that are not Conditions of Certification

1. Under Part III.D.7 Reporting Requirements, 24-hour reporting, NMED suggests that Los Alamos County be required to report any permit exceedance and/or spills, which may endanger health or the environment, to San Ildefonso Pueblo as a downstream entity.

Then contact information for reporting to San Ildefonso is:

Raymond Martinez,
Director of Environment and Cultural Preservation
02 Tunyo Po
Santa Fe, NM 87506
rmartinez@sanipueblo.org
505-455-4127

2. In the proposed permit, EPA established monitoring frequency requirements for adjusted gross alpha, polychlorinated biphenyls (PCBs), aluminum and selenium (total recoverable forms) because the receiving stream, Pueblo Canyon, has designated use impairments related to these pollutants. EPA proposed a monitoring frequency for aluminum and selenium at once per quarter.
 - NMED recommends a monitoring frequency for aluminum and selenium at once every six months, which is consistent with the other required monitoring related to Sufficiently Sensitive Methods (SSM).
 - NMED agrees with the continued monitoring frequency of once per permit term for adjusted gross alpha and PCBs for this permit.
3. EPA regulations at 40 C.F.R. § 122.44(d)(1)(i) state, "Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality."

EPA Region 6, the permitting authority in New Mexico, uses a reasonable potential ("RP") analysis to determine whether a discharge, alone or in combination with other sources of pollutants to a waterbody, could lead to an excursion above a narrative or numeric criterion within the State water quality standards. If there is RP for a specific pollutant or pollutant parameter, then EPA must include a limitation to control it. These limitations are known as water quality-based effluent limits, or WQBELs.

As a result of the RP analysis, EPA found that there is reasonable potential for the discharge to cause or contribute to an excursion above the State's water quality criteria for dioxin, copper, and manganese; therefore, EPA established limitations to control the discharge of these pollutants into Pueblo Canyon. EPA also established interim limitations and a three-year compliance schedule to meet the "final" effluent limitations for these pollutants.

- NMED agrees with the monitoring requirements and limitations for dioxin, copper, and manganese based on the RP analysis. However, based on conversations with Los Alamos

County and potential laboratory costs for analysis of dioxin, NMED requests that EPA consider one of the following reduced monitoring frequency scenarios for dioxin in the final permit: 3/month (interim) and weekly (final); or once/2 weeks (interim) and weekly (final); or 2/month (interim) and 3/month (final); or monthly (interim) and once/2 weeks (final).

- NMED agrees with the compliance schedule conditions in Part I.B. that require Los Alamos County to evaluate potential causes, select control options, and construct control mechanisms to achieve final effluent limitations for dioxin, copper, and manganese. The County should investigate potential causes/sources to determine those actions necessary to reduce or eliminate these pollutants in the influent and effluent and comply with the final water quality based effluent limits. For this evaluation, NMED recommends the County evaluate contributing industries and possibly eliminate contributing industries or establish pretreatment requirements to help mitigate or eliminate these pollutants in their discharge.