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SEP 26 2019

Date:
 Refer To: N3B-19-0261

Esteban Herrera, Chief
 Water Enforcement Branch (6EN-WS)
 Compliance Assurance and Enforcement Division
 U.S. Environmental Protection Agency, Region 6
 1201 Elm Street, Suite 500
 Dallas, Texas 75270-2102

Subject: NPDES Permit No. NM0030759 – U.S. Department of Energy Environmental Management Los Alamos Field Office Response to Written Public Comment on the Alternative Compliance Requests for Seven Site Monitoring Areas

Dear Mr. Herrera:

The U.S. Department of Energy (DOE) and Newport News Nuclear BWXT-Los Alamos, LLC (N3B), hereafter the Permittees, submitted requests for alternative compliance for 15 Site Monitoring Area (SMA)/Site combinations to the U.S. Environmental Protection Agency (EPA) on April 22, 2019. Part I.E.3(b) of the Individual Industrial Storm Water National Pollutant Discharge Elimination System Permit No. NM0030759 (the Individual Permit or Permit) requires the Permittees to make available the alternative compliance request and all supporting documentation for public review and written comment for a period of 45 days. The public notice for this alternative compliance request was published on May 5, 2019.

Public comments were received from Communities for Clean Water (CCW) on June 19, 2019. The Permittees have prepared written responses to all relevant and significant comments, which will also be posted on the Individual Permit website (<https://ext.em-la.doe.gov/ips/Home/AlternativeCompliance>). The enclosures to this letter include copies of CCW's comments and the Permittees' written response.

The alternative compliance requests address 7 SMAs regulated under the Individual Permit. These 7 SMAs (3M-SMA-4, ACID-SMA-2, ACID-SMA-2.1, LA-SMA-3.1, M-SMA-1.2, PT-SMA-1, and T-SMA-7) include 13 sites: 18-002(b), 18-003(c), 18-010(f), 01-002(b)-00, 45-001, 45-002, 45-004, 01-001(e), 01-003(a), 03-049(a), 15-004(f), 15-008(a), and 04-003(b). Alternative compliance was


requested for these 15 SMA/site combinations because the Permittees have determined that target action level exceedances

- are not associated with legacy Site operations,
- are a result of other active industrial National Pollutant Discharge Elimination System- (NPDES-) permitted outfalls, and/or
- are within the range expected for nonpoint source pollutant runoff from natural and urban landscape environments.


As a result of the considerations specified, it will not be possible to certify completion of corrective action under Part I.E.2 of the Individual Permit.

If you have questions, please contact Steve Veenis at (505) 309-1362 (steve.veenis@em-la.doe.gov) or David Nickless at (505) 257-7933 (david.nickless@em.doe.gov).

Sincerely,


Elizabeth Lowes
Program Manager
Environment, Safety and Health
N3B-Los Alamos

Sincerely,


David Nickless, Acting Director
Office of Quality and Regulatory Compliance
Environmental Management
Los Alamos Field Office

Enclosure(s): One hard copy with electronic files –

1. Response to Public Comments from Communities for Clean Water on the Alternative Compliance Request for Seven Site Monitoring Areas, NPDES Permit No. NM0030759 (EM2019-0345)
2. Communities for Clean Water Comments on the Alternative Compliance Request for Seven Site Monitoring Areas, NPDES Permit No. NM0030759

cc: (letter and enclosure[s] emailed)
Carol Johnson, EPA Region 6
Curry Jones, EPA Region 6
Laurie King, EPA Region 6
Brent Larsen, EPA Region 6
Sarah Holcomb, NMED-SWQB
Steve Yanicak, NMED-DOE-OB
Peter Maggione, NA-LA
Arturo Duran, EM-LA
David Nickless, EM-LA
William Alexander, N3B
Don Carlson, N3B
Emily Day, N3B
Mary Erwin, N3B
Erich Evered, N3B

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Jeff Yarbrough, N3B
emla.docs@em.doe.gov
N3B Records
Public Reading Room (EPRR)
PRS Website

**Response to Public Comments from Communities for Clean Water on the Alternative Compliance
Request for Seven Site Monitoring Areas, NPDES Permit No. NM0030759,
Dated June 19, 2019**

INTRODUCTION

To facilitate review of this response, the Communities for Clean Water (CCW) comments are included verbatim. The U.S. Department of Energy (DOE) and Newport News Nuclear BWXT-Los Alamos, LLC (N3B) responses follow each CCW comment. Reference information for each alternative compliance request is included at the end of this comment response.

SPECIFIC COMMENTS

CCW Comment

1. Ongoing Monitoring and Maintenance (Lines 23 to 32, p. 1 of 3)

The removal of a monitoring constituent does not alleviate the Permittees from other obligations associated with the SMAs and SWMUs. The Permittee must continue to monitor and minimize stormwater discharges associated with remaining pollutants of concern and continue their maintenance responsibilities associated with control measures located onsite. A site and/or constituent(s) should not be entirely removed from the Individual Permit but instead, should be entered into long-term stewardship. Regular inspection and maintenance are needed to ensure long-term functionality of existing control measures.

This comment applies to all sites in this request.

DOE Response

1. Comment noted. The Permittees will continue to inspect and maintain the control measures that were installed in accordance with Part I.A of the Individual Industrial Storm Water National Pollutant Discharge Elimination System Permit No. NM0030759 (the Individual Permit, Permit, or IP) and the terms identified in the Alternative Compliance plan, if approved by the U.S. Environmental Protection Agency (EPA).

CCW Comment

2. 95% UTL (Lines 33 to 43, p. 1 and 2 of 3)

Using the 95% UTL for developed and undeveloped land background concentrations to screen out constituents is too generous and if used, would inappropriately eliminate pollutants of concern. Due to uncertainty and variability of stormwater data, a 95th percentile is likely to result in the elimination of sites that are still contributing pollutants of concern to receiving waters (false positives). The 75th percentile UTL is a more appropriate parameter that better reflects the uncertainty associated with stormwater data while ensuring that sites with significant background contributions are identified.

This comment applies to 3M-SMA-4, ACID-SMA-2, ACID-SMA-2.1, LA-SMA-3.1, and PT-SMA-1, T-SMA-7.

DOE Response

2. Comment noted. The 95th percentile value represents a range of results where 95% of the data are less than the value of the UTL. The 95–95% UTL is established by EPA as the default statistic for characterizing background values. The 95–95% UTL is routinely used for background values throughout the nation.

CCW Comment

3. *Receiving Water Quality Contributions (Lines 44 to 53, p. 2 of 3)*

At several sites, the Permittees state that the exceedance is a result of nonpoint source runoff from developed or undeveloped background sources. They also state that the rationale for not implementing enhanced control measures or total retention, is because even if these controls were implemented, receiving water downstream of the site would still exceed the TAL. CCW rejects this argument as the Permittee is responsible for the discharge of pollutants from its sites regardless of other contributions to downstream receiving waters.

This comment applies to 3M-SMA-4, ACID-SMA-2, ACID-SMA-2.1, LA-SMA-3.1, PT-SMA-1, and T-SMA-7.

DOE Response

3. Comment noted. Nonpoint source natural background runoff pollution is not regulated by the Individual Permit.

A site-specific demonstration will be conducted for storm water sample results collected at these locations following EPA's issuance of the Permittees' new Individual Permit.

CCW Comment

4. *Control Measure Implementation (Lines 54 to 72, p. 2 of 3)*

As stated in the Permit, if monitoring indicates exceedances of TALs, Permittees must take corrective action through installation of measures. Permittees can place a site into alternative compliance after measures have been installed to minimize pollutants in storm water discharges at the site. In the Alternative Compliance Request, Permittees indicates that enhanced control measures and total retention may be feasible at five of the seven sites, but those options have not been pursued or implemented at these sites.

The existing control measures identified at most sites include practices such as rip rap, gabions and check dams. While these control measures are effective at preventing erosion, they do little to improve the quality of storm water runoff.

CCW does not believe the Permittees have implemented adequate control measures as required by the Individual Stormwater Permit and is therefore not eligible for Alternative Compliance. Under the Permittee are required to first implement feasible control measures, such as onsite retention ponds or bioretention areas, that intercept and treat stormwater runoff before requesting alternative compliance.

This comment applies to 3M-SMA-4, ACID-SMA-2, ACID-SMA-2.1, LA-SMA-3.1, and PT-SMA-1.

DOE Response

4. Comment noted. The Permittees have installed measures to minimize pollutants in their storm water discharges as required by Part I.A of the Permit but are unable to certify Completion of Corrective Action under Section E.2.a–d because of non-point source pollution that is not regulated under the IP.

CCW Comment

5. *PCBs and Alternative Compliance (Lines 73 to 86, pp. 2 and 3 of 3)*

Section 7.1.3. (for sites ACID-SMA-2 and ACID-SMA-2.1) states that PCB TAL exceedances are likely linked to industrial activities. If the Site's activities are linked to a pollutant of concern and exceeding the TAL, then the Permittee is responsible for implementing control measures to reduce the discharge of the pollutant, regardless of the level of developed or undeveloped land concentrations. As a result, the constituent, PCBs, is not eligible for Alternative Compliance. Similarly, for LA-SMA-3.1, Section 7.1.2 states that PCB TAL exceedances are likely linked to industrial activities. This section also indicates that total PCB concentration in the 2018 IP stormwater sample is lower than the 2013 NMED stormwater samples and the reduction can be attributed to recent aggregate area remediation activities. If remediation activities have resulted in total PCB reductions, but monitoring still results in TAL exceedances, that indicates that additional efforts are needed to continue to reduce PCBs linked to industrial activities.

This comment applies to ACID-SMA-2, ACID-SMA-2.1, and LA-SMA-3.1.

DOE Response

5. Comment noted. The installation of additional controls and/or remediation activities to address pollutant concentrations that are within nonpoint source ranges representing natural and urban background values is outside the regulatory scope of the Individual Permit.

A site-specific demonstration will be conducted for storm water sample results collected at these locations following EPA's issuance of the Permittees' new Individual Permit.

CCW Comment

6. *M-SMA-1.29 (Lines 87 to 93, p. 3 of 3)*

In the report for M-SMA-1.29, the Permittee indicates that no corrective action is needed for this site (in response to copper TAL exceedance), because EPA previously stated that non-storm water discharges from those Sites are not authorized under the Individual Permit. CCW disagrees with this interpretation. Permit No. NM0030759 is primarily to address discharge of pollutants in stormwater runoff, not non-stormwater discharges. Therefore Permit No. NM0030759 still applies to stormwater discharges resulting from M-SMA-1.29.

DOE Response

6. Comment noted. Permittees contend that the discharge at M-SMA-1.2 is non–storm water discharge associated with an active National Pollutant Discharge Elimination System outfall that is outside the regulatory scope of the Individual Permit.

CCW Comment

7. PT-SMA-1 (Lines 94 to 97, p. 3 of 3)

Section 7.2 indicates that Permittees are considering a watershed-scale control for the Site below the sampler location and upstream of the confluence of this drainage with Potrillo Canyon. CCW supports the Permittees efforts to implement additional controls at this site.

DOE Response

7. Comment noted.

REFERENCES

Newport News Nuclear BWXT-Los Alamos, LLC, "Alternative Compliance Request for 3M-SMA-4: NPDES Permit No. NM0030759," N3B document number EM2019-0101, Los Alamos, New Mexico (April 2019).

Newport News Nuclear BWXT-Los Alamos, LLC, "Alternative Compliance Request for ACID-SMA-2: NPDES Permit No. NM0030759," N3B document number EM2019-0103, Los Alamos, New Mexico (April 2019).

Newport News Nuclear BWXT-Los Alamos, LLC, "Alternative Compliance Request for ACID-SMA-2.1: NPDES Permit No. NM0030759," N3B document number EM2019-0100, Los Alamos, New Mexico (April 2019).

Newport News Nuclear BWXT-Los Alamos, LLC, "Alternative Compliance Request for LA-SMA-3.1: NPDES Permit No. NM0030759," N3B document number EM2019-0108, Los Alamos, New Mexico (April 2019).

Newport News Nuclear BWXT-Los Alamos, LLC, "Alternative Compliance Request for M-SMA-1.2: NPDES Permit No. NM0030759," N3B document number EM2019-0102, Los Alamos, New Mexico (April 2019).

Newport News Nuclear BWXT-Los Alamos, LLC, "Alternative Compliance Request for PT-SMA-1: NPDES Permit No. NM0030759," N3B document number EM2019-0099, Los Alamos, New Mexico (April 2019).

Newport News Nuclear BWXT-Los Alamos, LLC, "Alternative Compliance Request for T-SMA-7: NPDES Permit No. NM0030759," N3B document number EM2019-0104, Los Alamos, New Mexico (April 2019).



Communities For Clean Water

Steve Veenis
Program Manager
Water Program Monitoring and Compliance
Environment Remediation
600 6th St.
Los Alamos, NM 87544
Sent via email to:
N3boutreach@em-la.doe.gov
Steve.Veenis@em-la.doe.gov

June 19, 2019

Re: Alternative Compliance Request for Seven Site Monitoring Areas. NPDES Permit No. NM0030759

Dear Mr. Veenis:

Communities for Clean Water (CCW) submits the following comments on the April 22nd 2019 Alternative Compliance Requests for Seven Site Monitoring Area/Site Combinations Exceeding Target Action Levels from Nonpoint Sources.

I. Ongoing Monitoring and Maintenance

The removal of a monitoring constituent does not alleviate the Permittees from other obligations associated with these SMAs and SWMUs. The Permittee must continue to monitor and minimize stormwater discharges associated with remaining pollutants of concern and continue their maintenance responsibilities associated with control measures located onsite. A site and/or constituent(s) should not be entirely removed from the Individual Permit but instead, should be entered into long-term stewardship. Regular inspection and maintenance are needed to ensure long-term functionality of existing control measures.

This comment applies to all sites in the request.

II. 95% UTL

Using the 95% UTL for developed and undeveloped land background concentrations to screen out constituents is too generous and if used, would inappropriately eliminate pollutants of concern. Due to uncertainty and variability of stormwater data, a 95th percentile is likely to

37 result in the elimination of sites that are still contributing pollutants of concern to receiving
38 waters (false positives). The 75th percentile UTL is a more appropriate parameter that better
39 reflects the uncertainty associated with stormwater data while ensuring that sites with
40 significant background contributions are identified.

41

42 This comment applies to 3M-SMA-4, ACID-SMA-2, ACID-SMA-2.1, LA-SMA-3.1, and PT-SMA-1, T-
43 SMA-7.

44 III. Receiving Water Quality Contributions

45 At several sites, the Permittees state that the exceedance is a result of nonpoint source runoff
46 from developed or undeveloped background sources. They also state that the rationale for not
47 implementing enhanced control measures or total retention, is because even if these controls
48 were implemented, receiving water downstream of the site would still exceed the TAL. CCW
49 rejects this argument as the Permittee is responsible for the discharge of pollutants from its sites
50 regardless of other contributions to downstream receiving waters.

51

52 This comment applies to 3M-SMA-4, ACID-SMA-2, ACID-SMA-2.1, LA-SMA-3.1, PT-SMA-1, and T-
53 SMA-7

54 IV. Control Measure Implementation

55 As stated in the Permit, if monitoring indicates exceedances of TALs, Permittees must take
56 corrective action through installation of measures. Permittees can place a site into alternative
57 compliance after measures have been installed to minimize pollutants in stormwater discharges
58 at the site. In the Alternative Compliance Request, Permittees indicates that enhanced control
59 measures and total retention may be feasible at five of the seven sites, but those options have
60 not been pursued or implemented at these sites.

61

62 The existing control measures identified at most sites include practices such as rip rap, gabions
63 and check dams. While these control measures are effective at preventing erosion, they do little
64 to improve the quality of stormwater runoff.

65

66 CCW does not believe the Permittees have implemented adequate control measures as required
67 by the Individual Stormwater Permit and is therefore not eligible for Alternative Compliance.
68 Under the Permittee are required to first implement feasible control measures, such as onsite
69 retention ponds or bioretention areas, that intercept and treat stormwater runoff before
70 requesting alternative compliance.

71

72 This comment applies to 3M-SMA-4, ACID-SMA-2, ACID-SMA-2.1, LA-SMA-3.1, and PT-SMA-1

73 V. PCBs and Alternative Compliance

74 Section 7.1.3. (for sites ACID-SMA-2 and ACID-SMA-2.1) states that PCB TAL exceedances are
75 likely linked to industrial activities. If the Site's activities are linked to a pollutant of concern and
76 exceeding the TAL, then the Permittee is responsible for implementing control measures to
77 reduce the discharge of the pollutant, regardless of the level of developed or undeveloped land
78 concentrations. As a result, the constituent, PCBs, is not eligible for Alternative Compliance.
79 Similarly, for LA-SMA-3.1, Section 7.1.2 states that PCB TAL exceedances are likely linked to
80 industrial activities. This section also indicates that total PCB concentration in the 2018 IP
81 stormwater sample is lower than the 2013 NMED stormwater samples and the reduction can be
82 attributed to recent aggregate area remediation activities. If remediation activities have resulted
83 in total PCB reductions, but monitoring still results in TAL exceedances, that indicates that
84 additional efforts are needed to continue to reduce PCBs linked to industrial activities.
85
86 This comment applies to ACID-SMA-2, ACID-SMA-2.1, and LA-SMA-3.1

87 **VI. M-SMA-1.29**

88 In the report for M-SMA-1.29, the Permittee indicates that no corrective action is needed for this
89 site (in response to copper TAL exceedance), because EPA previously stated that non-storm
90 water discharges from those Sites are not authorized under the Individual Permit. CCW
91 disagrees with this interpretation. Permit No. NM0030759 is primarily to address discharge of
92 pollutants in stormwater runoff, not non-stormwater discharges. Therefore Permit No.
93 NM0030759 still applies to stormwater discharges resulting from M-SMA-1.29.

94 **VII. PT-SMA-1**

95 Section 7.2 indicates that Permittees are considering a watershed-scale control for the Site
96 below the sampler location and upstream of the confluence of this drainage with Potrillo
97 Canyon. CCW supports the Permittees efforts to implement additional controls at this site.
98
99 Thank you for the opportunity to review and comment on these alternative compliance requests.
100 We welcome the opportunity to discuss these comments further and look forward to the
101 response to comment document.

102

103 Sincerely,

104

105 Rachel Conn on behalf of CCW

106 rconn@amigosbravos.org

107 575.758.3874

108

109

110 cc: Shelly Lemon, NMED

111 Sarah Holcomb, NMED

112 Brent Larsen, EPA