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June 15, 2015

Ms. Evelyn Rosborough
Water Quality Protection Division (6WQ-NP)
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: MS4 Designation for Los Alamos

Dear Ms. Rosborough:

In response to the United States Environmental Protection Agency's ("EPA") "Notice of Availability of Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act" published in the Federal Register on March 17, 2015, the New Mexico Environment Department ("NMED") provides the following comments.

NMED does not support the proposed small municipal separate storm sewer system ("MS4") designation for Los Alamos at this time. Although designation of the Los Alamos MS4 could provide a mechanism to coordinate efforts to address contaminated stormwater that is responsible for multiple water quality impairments identified on New Mexico's 303d List of Impaired Waters, NMED believes the designation is premature because the designation is not adequately substantiated and may also preempt the State efforts currently underway to address these impairments.

As you are aware, designation of an entity as a MS4, requiring a National Pollutant Discharge Elimination System ("NPDES") permit, occurs by meeting one of the applicability criteria in 40 C.F.R. § 122.26. Most commonly, an entity can be designated a MS4 pursuant to the federal Clean Water Act (33 U.S.C. §§ 1251 to 1388) based on the population of a given area or its designation as an "urban area." In this proposed action the Regional Administrator is utilizing a significantly less common method, known as the "residual designation authority," to designate portions of Los Alamos County ("County"), Los Alamos National Laboratory ("LANL"), and surrounding area as a MS4. This authority requires the Regional Administrator to determine that a discharge, or category of discharges within a geographic area, contribute to a violation of a

water quality standard or is a significant contributor of pollutants to waters of the United States. Because of the substantial implications and significant local stakeholder opposition, NMED believes that an extensive and detailed basis that clearly identifies the criteria used to determine that stormwater discharges from the County or LANL are the cause or are significantly contributing to the exceedances of water quality standards for the areas receiving is necessary. While the rule does not detail any specific requirements or criteria for the Regional Administrator to make the determination and thereby invoke the designation, NMED is concerned that this determination, as detailed below, is not sufficiently supported by the information provided in the Designation Document by EPA and is therefore premature or unfounded.

First, while NMED understands that the Regional Administrator used information from the NMED 303d/305b Integrated report in their Designation Document, it is unclear how carefully this information was considered. While it is true that significant number of waters in Los Alamos County are listed as impaired for one or for contaminants, the most recent EPA approved 303d/305 Integrated Report NMED Surface Water Quality Bureau does not find that stormwater is a source of the contaminants or pollutants; presently the probable source(s) for these listing is identified as "unknown". Perhaps more concerning is the inclusion of the community of White Rock in the Designation Document even as the two receiving waters for stormwater from this community (Canada del Buey and Pajarito Canyon) are not listed as impaired. Surely for these waters EPA cannot find that stormwater discharges are causing or contributing to a water quality impairment. NMED recommends that the EPA Regional Administrator re-evaluate all relevant data sources as part of their determination and use the most recently approved NMED 303d/305b impairment documents.

Second, NMED is also concerned by the Regional Administrator's use of the two LANL reports in making the Designation that stormwater discharges cause of contribute to water quality impairments. The conclusions of these reports have an inherent conflict of interest as they were developed by LANL to demonstrate that stormwater discharges from solid waste management units ("SWMUs") and areas of concerns ("AOCs") regulated under LANL's individual stormwater permit (Permit #NM0030759) were not the cause of water quality impairments. Further these reports have not been vetted or approved by any outside agency, including NMED or EPA. Although LANL has substantial institutional quality control and assurance in their data collection efforts, the ramifications of unverified data analysis and conclusions is so substantial for this situation that an independent review and analysis is critical. NMED recommends that the Regional Administrator conduct an independent receiving water study to determine if stormwater discharges are causing or contributing to receiving water quality exceedences.

Third, the area of the proposed MS4 has a varied geophysical nature, which includes complex geology with a canyon and mesa topography with a mix of residential, commercial and national laboratory facilities. If this Designation is truly based on water quality impairments, then a watershed approach to the designation as opposed to a piecemeal approach based on "urban clusters" and the LANL boundary would be more appropriate. As currently proposed, there are several small excluded areas that are completely surrounded by lands currently proposed for designation. It is unclear what advantage there would be to the MS4 program, or to the

regulated parties, in excluding these and other small properties within the overall impaired watersheds on which this designation is based. As recently discussed with Region 6 staff, one of the excluded areas is the Royal Crest trailer and RV park on the rim of Sandia Canyon, and another is the Bayo Wastewater Treatment Facility (NM0020141). In addition, several SWMUs and AOCs are outside the Los Alamos County-based MS4 boundary in Santa Fe County. Depending on their current status and level of remediation, coverage of these sites may be warranted. NMED asks that the Regional Administrator provide the specific facts used to make the boundary determination and explain why these areas were not considered.

Finally, as EPA is aware, NMED is currently in the process of drafting Total Maximum Daily Load (TMDL) planning documents as well as working with LANL to develop "4B" TMDL alternatives for many of the waters considered in this Designation. It is through this public process that New Mexico works to identify the "probable source(s)" of impairment and change this from "unknown" to specific sources, potentially including stormwater discharges. Further, through the 4B TMDL alternative NMED works with local stakeholders to identify pollution control measures that are in place such that they are reasonably expected to result in attainment of the water quality standard in the near future. NMED is concerned that this Designation will preempt this on-going State effort. NMED recommends that EPA allow this State effort, working jointly with the potential permitees in this designation, sufficient time to be completed and implemented.

For the reasons described above, NMED believes the MS4 designation for Los Alamos is premature and requests that EPA provide additional detailed and properly vetted information upon which a designation of this type should be based. More specifically, NMED requests that the Regional Administrator provide the specific facts, evidence, and publicly adopted documents used in reaching this designation decision including what standard of proof was applied in review of such data that lead to his decision to regulate stormwater under the residual designation authority of 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i). A designation, if appropriate, should not leave a significant stakeholder such as the County with so many unanswered questions and concerns. Thank you for considering our comments. If you have any questions, please contact me at (505) 827-2855 or via email at ryan.flynn@state.nm.us.

Sincerely,

Ryan Flynn
Secretary

cc: Brent Larsen, USEPA, 6EN-WC, via email
Kevin Powers, Los Alamos County, via email
Paul Kavanaugh, Santa Fe County, via email
Ted Barber and Hashem Faidi, NMDOT, via email
Michael Saladen, LANS, via email
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Trais Kliphuis, NMED, Water Protection Division Director