

# **ATTACHMENT D**



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*Date:* October 12, 2017  
*Symbol:* LC-ESH: SLM-2017-004

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board, 1103M  
1200 Pennsylvania Avenue, NW  
Washington D.C. 20460

Re: Los Alamos National Security, LLC and U.S. Department of Energy for the Los Alamos National Laboratory  
Permit No: NM0028355  
Appeal No: NPDES 17-05

Greetings:

This letter responds to the *Order for Additional Briefing* dated September 21, 2017 in the above-referenced matter. This matter relates to an Informal Appeal filed with EPA's Environmental Appeals Board (EAB) by the Concerned Citizens for Nuclear Safety (CCNS) requesting review of the U.S. Environmental Protection Agency Region 6's (Region) denial of CCNS's request to terminate Outfall 051 under NPDES Permit No. 0028355 (NPDES Permit). The NPDES Permit is issued to the U.S. Department of Energy and the Los Alamos National Security, LLC (Co-Permittees) for the Los Alamos National Laboratory (the Laboratory).

The Laboratory strongly opposes CCNS' request to terminate NPDES Permit coverage for Outfall 051, and does not intend to request termination for this outfall associated with the Radioactive Liquid Waste Treatment Facility (RLWTF). The 2012 NPDES Permit Re-Application explicitly included coverage for Outfall 051, which is integral to RLWTF operations. CCNS has not alleged any factual basis to support the drastic measure of unilaterally terminating the Laboratory's NPDES Permit under 40 C.F.R. §122.64.

As requested by the Order, the Laboratory is providing information in the attached Affidavit that addresses the technical topics identified on page 3. See Enclosure, Affidavit of Michael T. Saladen.

We appreciate the opportunity to respond and would be pleased to provide additional information as necessary.

Respectfully Submitted,



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SLM:mma

Enclosure (Affidavit)

**CERTIFICATE OF SERVICE**

On this 12<sup>th</sup> day of October 2017, the undersigned certifies that copies of the forgoing *Letter Responding to the Order for Additional Briefing* was sent to the following persons by U.S. First Class Mail:


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Butch Tongate, Secretary  
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Santa Fe, NM 87502-5469

  
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Susan L. McMichael  
Attorney for Los Alamos National Security, LLC

# **ENCLOSURE**

Affidavit of Michael Thomas Saladen

## AFFIDAVIT OF MICHAEL THOMAS SALADEN

1. I, Michael Thomas Saladen, am an employee of Los Alamos National Security, LLC at the Los Alamos National Laboratory (LANL). I have been employed at LANL since April 1, 1991.
2. I am currently employed as an Environmental Manager 3 (ENV Manager 3). I have served in this position since April of 2016. Prior to this position, I served as an Environmental Manager 2 (ENV Manager 2) for approximately eight years. Prior to my position as an Environmental Manager, I served as a Technical Staff Member (TSM) at LANL.
3. As an Environmental Manager, I am the Team Leader for the Environmental Compliance Programs Group (EPC-CP), Water Quality Permitting, and Compliance Team. In this position, I provide leadership for several Laboratory environmental programs, including management and compliance with federal Clean Water Act and NPDES Permitting. I also provide support for EPC-CP's institutional environmental compliance programs, projects, work activities in compliance with regulatory requirements, Laboratory policies, and procedures.
4. As part of my current job responsibilities, I am the responsible line manager for compliance oversight for the NPDES Permit #NM0028355 (NPDES Permit) issued to the U.S. Department of Energy (DOE) and Los Alamos National Security, LLC (LANS) as co-permittees for the Los Alamos National Laboratory. I also served as the program lead for this NPDES Permit from 1991 through 2008. 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 Radioactive Liquid Waste Treatment Facility (RLWTF) through Outfall 051. The NPDES Permit has been renewed multiple times, and was re-issued on August 12, 2014 after a timely Re-Application was filed which is referenced as the "2012 NPDES Permit Re-Application February 2012" (CCNS Request to Terminate, September 14, 2017, Exhibit W).
5. I am familiar with the September 14, 2017 Petition to the EPA's Environmental Appeals Board filed by Concerned Citizens for Nuclear Safety (CCNS) requesting the Board to review EPA Region 6's decision to deny CCNS' Request to Terminate NPDES Permit #NM0028355.
6. The Laboratory opposes CCNS' Request to Terminate NPDES Permit #NM0028355, and has no intention of terminating coverage under the Permit for Outfall 051. The Laboratory has been operating RLWTF pursuant to the NPDES Permit, and, 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 (Attachment 051 to the February 2012 NPDES Permit Re-Application)).

7. I am also familiar with the *Order for Additional Briefing* issued by the EAB on September 21, 2017. I provide the following responses to technical questions raised on page 3 of the Order, and shown in italics below:

A. *[T]he information in the administrative record relating in the nature and extent of any discharges from Outfall 051 and when EPA publicly noticed the draft NPDES Permit No. 0028355 in June 2013, and when EPA issued a final permit decision in August 2014; and how that information compares to what is known now about the nature and extent of any discharges from Outfall 051.*

There has been no change to any condition that impacts the nature and extent of any discharge from Outfall 051 from the date the NPDES Renewal Application was submitted in 2012 until the current date, including from the date that EPA publicly noticed the draft NPDES permit (June 2013) to issuance of a final permit decision (August 2014). Under the NPDES permit, the Laboratory submits monthly Discharge Monitoring Reports (DMRs) to EPA Region 6, and these DMRs confirm that during this time period there have been no discharges from Outfall 051, and that there has been no change to the nature and extent of any discharges.

B. *Whether the permittee has constructed and made operational the “two new Concrete Evaporation Tanks” referenced at page 7 of the 2012 NPDES Permit Re-Application Outfall Fact Sheet (citations omitted).*

The two new Contract Evaporation Tanks (Tanks) referenced above at page 7 in 2012 NPDES Permit Re-Application Outfall Fact Sheet were constructed in September 2012. As explained below under Paragraph 7.C, these Tanks are the same as the Zero Liquid Discharge (ZLD) “Solar Evaporation Tanks” referenced at page 5 of the 2012 NPDES Permit Re-Application Outfall Fact Sheet.

The Laboratory has not and cannot operate the Solar Evaporative Tanks or “Tanks” because the operational use of these Tanks is also regulated by the 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). On May 5, 2017, NMED issued a public notice for comment on DP-1132 which on page 4 of the notice authorizes, among other items, the use and operation of these Tanks referenced in the notice as “Solar Evaporative Tanks.” A true and accurate copy of the Public Notice and Draft DP-1132 is included as Exhibit 1. Until the state administrative processes are complete and a final decision is issued by NMED, the Laboratory cannot operate the Solar Evaporative Tanks or “Tanks.” At the current time, this decision is anticipated in Spring of 2018.

C. Whether these "Concrete Evaporation Tanks" are the same as the "Solar Evaporation Tanks" referenced at page 5 of the 2012 NPDES Permit Re-Application Outfall Fact Sheet (citations omitted).

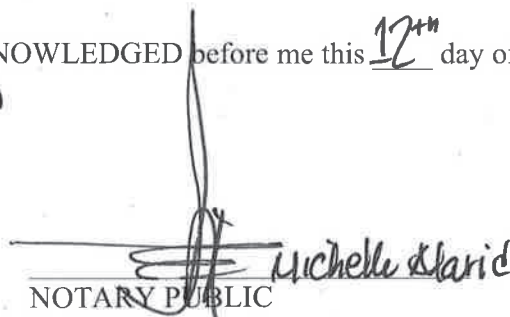
As stated above, the "Concrete Evaporation Tanks" are the same as the "Solar Evaporation Tanks" at page 5 of the 2012 NPDES Permit Re-Application Outfall Fact Sheet.

FURTHER AFFIANT SAYETH NAUGHT.

  
Michael T. Saladen

STATE OF NEW MEXICO                    )  
  ) ss.  
COUNTY OF LOS ALAMOS            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 12<sup>th</sup> day of October 2017, by Michael T. Saladen

  
NOTARY PUBLIC

My Commission Expires: 7/23/2018

