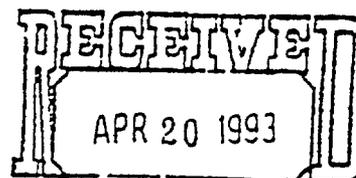


BEFORE THE NEW MEXICO WATER QUALITY CONTROL COMMISSION

IN RE: CONDITIONAL CERTIFICATION)
OF DRAFT NATIONAL POLLUTANT)
DISCHARGE ELIMINATION SYSTEM)
(NPDES) PERMIT NO. NM0028355)

THE REGENTS OF THE UNIVERSITY OF)
CALIFORNIA and the UNITED STATES)
DEPARTMENT OF ENERGY,)

Petitioners.)



NM WATER QUALITY
CONTROL COMMISSION

SETTLEMENT AGREEMENT

The United States Department of Energy, The Regents of the University of California (collectively, the "Petitioners"), and the New Mexico Environment Department ("NMED"), agree:

1. Recitals. On October 14, 1992, Petitioners filed a Petition for Review with the New Mexico Water Quality Control Commission ("Commission") appealing the conditional certification dated September 11, 1992, by NMED (the "Conditional Certification") of the draft NPDES Permit published May 16, 1992 (the "1992 Draft NPDES Permit") by the United States Environmental Protection Agency ("USEPA"). Pursuant to an order of the Hearing Officer, the parties met on March 17, 1993 for purposes of negotiation of a possible settlement of this proceeding. At the settlement conference, the parties agreed to certain points of settlement and agreed to continue settlement negotiations. Settlement negotiations have been ongoing since that date, and an agreement in principle with respect to settlement of this matter has been reached.

2. Purpose. The purpose of this agreement is to set forth all of the terms and conditions of the settlement among Petitioners and NMED in this proceeding.

3. Conditional Certification. NMED will withdraw the Conditional Certification and issue a new certification certifying the 1992 Draft NPDES Permit based upon effluent limitations that protect livestock and wildlife watering, as set forth in Section 3-101 and other applicable sections of the New Mexico Water Quality Standards for Interstate and Intrastate Streams in New Mexico ("The New Mexico Water Quality Standards") and other applicable state and federal laws and regulations. The effluent limitations in the certification shall be those set forth in Exhibit 1 to this agreement. Exhibit 1 to this agreement is incorporated into this agreement as if fully set forth in this agreement. The new certification shall provide for a term of the 1992 NPDES Permit of five years from the date issued and shall provide for a reopener clause containing the provisions set forth in paragraph 4 below.

4. Reopener Clause. The 1992 NPDES Permit shall contain a reopener clause to allow the permit to be modified, as required, under the following circumstances:

- (A) to reflect any applicable changes to the New Mexico Water Quality Standards;
- (B) to impose new or additional permit limitations as allowed by law or regulation that

arise as a result of the information obtained from the study referred to below in Section 6; (C) as provided by law. For the purpose of this paragraph 4C, Petitioners will provide NMED with copies of its annual environmental surveillance reports, the addition and deletion of new outfalls, its waste stream characterization final studies, and its NPDES discharge monitoring reports.

5. Voluntary Dismissal of Petition for Review and Withdrawal of Motions. Petitioners shall file a voluntary dismissal of their Petition for Review and the parties shall withdraw all pending motions after NMED has withdrawn the Conditional Certification and issued the new certification.

6. Study. A study shall be conducted for the purpose of identifying the stream uses associated with the watercourses in the canyons into which Petitioners discharge waters subject to NPDES regulation. The study shall be prepared by a neutral, unbiased, third party who shall be selected as provided under the New Mexico Procurement Code for the provision of services by professional consultants. A four-person selection committee composed of two representatives of Petitioners and two representatives of NMED shall be established. The selection committee shall prepare a request for proposals ("RFP"), including a statement of work, and select the consultant to conduct the study. The parties shall have the right to fully

participate in drafting the RFP, including the scope of workplans and required studies necessary to accomplish the purpose of the study and to review all drafts of the study and provide comments on all drafts.

If the selection committee cannot agree on any matter within its responsibility, the matter shall be referred to a dispute resolution committee whose members shall be the Secretary or Deputy Secretary of NMED, the Associate Director for Operations of the Los Alamos National Laboratory and the Manager of the Los Alamos Area Office of the Department of Energy. The dispute resolution committee shall make a good faith effort to resolve the matter. If the dispute resolution committee cannot unanimously agree on a resolution of the matter, the Secretary of NMED shall make the final decision concerning the matter.

7. NMED Review of Data and Studies. After NMED issues the new certification, the parties shall have the right to submit data and studies, including water quality, hydrological and ecological data and studies, to the consultant selected under the RFP only after prior NMED determination that the water quality data for use by the consultant adheres to the methods authorized under 40 C.F.R. § 136 and Section 1-103 of the New Mexico Water Quality Standards, to the extent that 40 C.F.R. § 136 and Section 1-103 are applicable to the data being submitted. Copies of any data or studies provided to the consultant by NMED shall be provided to Petitioners.

8. Access to Data. The parties shall have the right to access and copy, during normal business hours, all raw and validated data associated with any data or studies submitted to or prepared by the consultant for purposes of conducting the study.

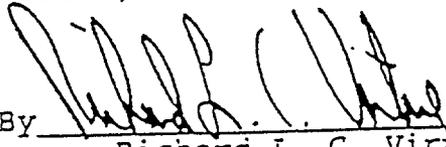
9. Cost of the Study. Petitioners shall contribute up to \$180,000 for fees and costs of the consultant that conducts the study described in paragraph 6.

10. Approval by Commission. Pursuant to paragraph 12 of the Procedural Order entered by the Commission in this proceeding, this agreement is subject to approval of the Commission.

11. Entire Agreement - Binding Effect. This agreement constitutes the entire agreement of the parties and the obligations hereunder shall be binding on the parties and their successors jointly and severally after approval by the Commission.

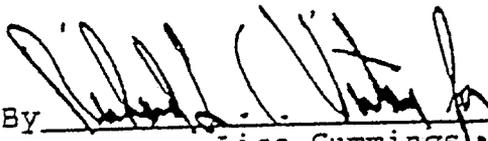
DATED: April 20, 1993.

VIRTUE, WILSON & NAJJAR

By 

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UNITED STATES DEPARTMENT OF
ENERGY

By 
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4-20-13

NEW MEXICO ENVIRONMENT DEPARTMENT

By 
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P.O. Box 26110
Santa Fe, NM 87501

APPROVED:

William R. Hendley
Hearing Officer

APPROVED:

NEW MEXICO WATER QUALITY
CONTROL COMMISSION

By _____
Chairperson

We hereby certify that we have mailed a copy of the foregoing pleading to the following persons this 21st day of April, 1993, *except as noted below*

Ms. Gloria Miller *by hand delivery on April 20*
Hearing Clerk
New Mexico Environment Department
P. O. Box 26110
Santa Fe, NM 87501

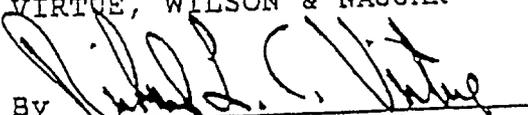
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VIRTUE, WILSON & NAJJAR

By 

Richard L. C. Virtue

stlmt.agr

Parameter ¹	Adjusted WQS/Effluent Limit ²
Aluminum	5.0 mg/l
Arsenic	0.04 mg/l
Boron	5.0 mg/l
Cadmium	0.2 mg/l
Chromium	5.1 mg/l
Cobalt	1.0 mg/l
Cooper	1.6 mg/l
Lead	0.4 mg/l
Mercury	0.01 mg/l
Radium 226 + 228	30.0 pCi/l
Selenium	0.05 mg/l
Tritium ³	3×10^{-2} μ Ci/ml (3,000,000 pCi/l)
Vanadium	0.10 mg/l
Zinc	95.4 mg/l
fecal coliform bacteria ⁴	500/100 ml
Chemical Oxygen Demand ⁵	125 mg/l
pH ⁵	between 6.0 and 9.0 S.U.

All values based upon Water Quality Standards for Interstate and Intrastate Streams in New Mexico (WQS) §3-101.K, unless otherwise noted. All values are expressed as "total." Federal regulation 40 CFR 122.45(c) requires effluent limit values for metals to be expressed as "total." In order to make the transition from dissolved WQS to total effluent limits, the WQS values are translated to "total" utilizing partition coefficients from the EPA document entitled Technical Guidance Manual for Performing Wasteload Allocations, Book II Streams and Rivers Chapter 3 Toxic Substances, EPA-440/4-84-022, June 1984. For parameters with no coefficient in the cited document, the total value is considered to be the same as the dissolved.

¹Standards adjusted as necessary to TSS=15 mg/l, where partition coefficients are available. TSS value represents average of ambient TSS data collected by NMED May 5-7, 1992.

²Based upon WQS §1-102.G. Applicable where meets definition of "pollutant" at 40 CFR 122.2.

³In accordance with Work Element 6 of the NM Water Quality Management Plan. Applies only to sanitary outfalls.

⁴As delineated in the July 16, 1992 State certification enclosure pg. 3, § 3, attached hereto as exhibit A.

⁵In accordance with Work Element 6 of the NM Water Quality Management Plan. Applies at all outfalls.

State Certification
 NPDES Permit # WX0022153
 Los Alamos National Laboratory
 July 16, 1992

The fecal coliform limit for these outfalls must be 500/100ml daily maximum.

It is understood that LANL was supposed to eliminate all sanitary outfalls by July, 1992, with the exception of 05S and 11S. However, this has not occurred and fecal coliform limitations apply to all discharges of treated domestic wastewater in New Mexico. Compliance with these limitations can be addressed in the permittee's Federal Facility Compliance Agreement (FFCA) or through a compliance schedule developed by EPA's Enforcement Branch. A waiver for sources without chlorination shall not be written into the permit as currently proposed by the permit writer; especially one that includes a schedule which terminates on a date that violates the permittee's current FFCA and Administrative Order. (See endnotes: 1, 2 & 3).

3. A Chemical Oxygen Demand (COD) effluent limitation of 125 mg/l shall be included in the permit for those outfall categories which exhibited COD values in excess of this value in samples taken either for the permit application or for past Discharge Monitoring Reports. These categories should include, but are not limited to, 051, 045, 045, 09S and all other categories which have a probability of exceeding this value. This limit for these outfalls is necessary in order for conditions of this permit to be compatible with appropriate State regulation which may be found at § 2-101 of the New Mexico Water Quality Control Commission Regulations, as amended through August 10, 1991. (See endnotes: 2 & 3)
4. Mass based effluent limits for Biochemical Oxygen Demand (BOD5) and Total Suspended Solids must be included at outfall 12S. Mass-based effluent limits are required for NPDES permits at 40 CFR 122.45. Mass-based limits should be calculated using 'long term daily average' and 'design maximum' flows at this facility. (See endnote: 3)
5. Limitations and monitoring requirements for radium, tritium, or other naturally occurring and accelerator produced radiological contaminants contributed to the wastewater treatment facilities at TA-50 (outfalls 050 and 051) and TA-53 (outfall 09S) should be included in the permit. We agree with the draft permit that tritium needs to be limited at TA-53; however, we feel the discharge limitation should be 20,000 pCi/l (see above table of WCS). This number should also be applied at Outfalls 050 and 051. (See endnotes: 1, 2 & 3).

BEFORE THE NEW MEXICO WATER QUALITY CONTROL COMMISSION

IN RE: CONDITIONAL CERTIFICATION)
OF DRAFT NATIONAL POLLUTANT)
DISCHARGE ELIMINATION SYSTEM)
(NPDES) PERMIT NO. NMOO28355)
THE REGENTS OF THE UNIVERSITY OF)
CALIFORNIA and the UNITED STATES)
DEPARTMENT OF ENERGY,)
Petitioners.)

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AMENDMENT TO SETTLEMENT AGREEMENT

The United States Department of Energy, The Regents of the University of California (collectively, the "Petitioners"), and the New Mexico Environment Department ("NMED"), (collectively the "Parties") agree:

1. Recitals. The Parties in this matter entered into a Settlement Agreement dated April 20, 1993 (the "Settlement Agreement"). The New Mexico Water Quality Control Commission ("Commission") and the Hearing Officer in this matter subsequently approved that Settlement Agreement. In association with furthering the goals of the Settlement Agreement, the Parties have reached an agreement in principal with respect to certain amendments to the Settlement Agreement.
2. Purpose. The purpose of this Amendment is to modify certain terms and conditions of the Settlement Agreement among Petitioners and NMED in this proceeding.
3. Paragraph 6 of the Settlement Agreement shall be deleted in its entirety and the following language shall be substituted in its place:

6. Study. A study shall be conducted for the purpose of identifying the stream uses associated with the watercourses in the canyons into which Petitioners discharge waters subject to NPDES regulation. The study shall be prepared by the Fish and Wildlife Service of the United States Department of Interior ("U.S. Fish and Wildlife"). The parties believe that U.S. Fish and Wildlife is the most cost effective and technically qualified organization to conduct this study because of its technical expertise, its experience in conducting similar studies for other state and federal agencies, its knowledge of the subject matter covered by the scope of this study and its familiarity with the facility and the surrounding area.

The parties shall have the right to fully participate in and approve the statement of work, scope of workplans and required studies necessary to accomplish the purpose of the study to be conducted by U.S. Fish and Wildlife. If the parties cannot agree upon any of these matters, the dispute shall be referred to a dispute resolution committee whose members shall be the Secretary or Deputy Secretary of the NMED, the Director or Deputy Director of the ESH Division of the Los Alamos National Laboratory and the Manager of the Los Alamos Area Office of the Department of Energy. The dispute resolution committee shall make a good faith effort to resolve the matter. If the dispute resolution committee cannot unanimously agree on a resolution of the matter, the Secretary of NMED shall make the final decision concerning the matter. The parties shall also have the right to review and comment on all drafts of the study prepared by U.S. Fish and Wildlife.

4. Paragraph 7 of the Settlement Agreement shall be deleted in its entirety and the following language shall be substituted in its place:

7. NMED Review of Data and Studies. After NMED issues the new certification, the parties shall have the right to submit data and studies, including water quality, hydrological and ecological data and studies, to U.S. Fish and Wildlife only after prior NMED determination that the water quality data for use by the consultant adheres to the methods authorized under 40 C.F.R. S 136 and Section 1103 of the New Mexico Water Quality Standards, to the extent that 40 C.F.R. S 136 and Section 1103 are applicable to the data being submitted. Copies of any data or studies provided to U.S. Fish and Wildlife by NMED shall be provided to Petitioners.

5. Paragraph 9 of the Settlement Agreement shall be deleted in its entirety and the following language shall be substituted in its place:

9. Cost of the Study. Petitioners shall pay to U.S. Fish and Wildlife up to \$180,000 for the fees and costs of conducting the study described in Paragraph 6 of the Settlement Agreement, as said paragraph is modified by Paragraph 3 of this Amendment to the Settlement Agreement.

6. Approval by Commission. Pursuant to paragraph 12 of the Procedural Order entered by the Commission in this proceeding, this Amendment is subject to approval of the Commission.

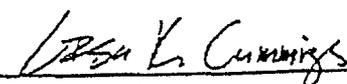
7. Entire Agreement - Binding Effect. The Settlement Agreement, as modified by this Amendment to Settlement Agreement, constitutes the entire agreement of the Parties and the obligations hereunder shall be binding on the Parties and their successors jointly and severally after approval by the Commission.

Los Alamos National Laboratory

By 

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U.S. Department of Energy

By  *by Victoria George ✓*
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APPROVED:

New Mexico Water Quality
Control Commission

By Jim Ratz
Chairperson