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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AMIGOS BRAVOS, a non-profit organization; CONCERNED CITIZENS FOR NUCLEAR SAFETY, a non-profit organization; EMBUDO VALLEY ENVIRONMENTAL MONITORING GROUP, a non-profit organization; THE NEW MEXICO ACEQUIA ASSOCIATION, a non-profit organization; DON GABINO ANDRADE COMMUNITY ACEQUIA; PARTNERSHIP FOR EARTH SPIRITUALITY, a non-profit organization; RIO GRANDE RESTORATION, a non-profit organization; SOUTHWEST ORGANIZING PROJECT, a non-profit organization; TEWA WOMEN UNITED, a non-profit organization; and J. GILBERT and KATHY SANCHEZ, individuals, Plaintiffs, vs.	Civil Action No. CIV 08-137 JB/KBM FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

UNITED STATES DEPARTMENT OF ENERGY, a federal department; SAMUEL W. BODMAN, in his official capacity as Secretary of the U.S. Department of Energy; LOS ALAMOS NATIONAL SECURITY, LLC, as manager and operator of Los Alamos National Laboratory; MICHAEL R. ANASTASIO, in his official capacity as President of Los Alamos National Security and director of Los Alamos National Laboratory,

Defendants.

INTRODUCTION

1. Plaintiffs hereby bring this civil action for declaratory and injunctive relief and request for civil penalties against the above named Defendants (hereinafter "Los Alamos National Laboratory" or "LANL") pursuant to section 505 (a)(1) of the Federal Water Pollution Control Act (hereinafter "Clean Water Act" or "CWA"), 33 U.S.C. § 1365 (a)(1).

2. This civil action arises out of LANL's historic and continuing failure to comply with the terms and conditions of its storm water National Pollution Discharge Elimination System ("NPDES") permit for industrial activities (hereinafter "storm water permit," "NPDES permit," or "permit").

3. For the past sixty plus years, LANL's nuclear testing and industrial activities have generated an enormous amount of solid, hazardous, and radioactive waste. This waste includes, high explosives such as TNT and RDX, volatile organic compounds, metals, inorganic compounds, perchlorate, hexavalent chromium, and PCBs.

4. Once generated, these contaminants are often dumped at various disposal areas strewn

throughout the 40 square mile LANL Facility (hereinafter "the Facility" or "the Lab"). In fact, from the 1940s until the early 1980s, LANL dumped its toxic and hazardous waste directly into the various watersheds that dissect the Lab.

5. Today, the New Mexico Environment Department ("NMED") estimates that approximately 2,093 such dump sites have been created since the Lab began operating in the early 1940s. While some of these sites have been cleaned up or are in the process of being cleaned up by LANL, many continue to discharge contaminated storm water. In fact, recent storm water monitoring data from both LANL and NMED confirms that contaminants from these dump sites runs off into the soils, surface water, and shallow groundwater of LANL's seven watersheds, eventually traveling down-gradient to the Rio Grande. This is precisely why such sites are currently regulated under the CWA and required to obtain coverage under an industrial storm water NPDES permit. See 33 U.S.C. § 1342 (p) (regulation of industrial storm water discharges); 40 C.F.R. § 122.26 (industrial storm water regulations).

6. At issue in this civil action is LANL's prolonged and continued failure to comply with the terms and conditions of its NPDES permit for approximately 109 storm water sites located in the Los Alamos and Pueblo Canyon watershed.

7. Specifically, LANL has violated, is violating, and is reasonably likely to continue violating the effluent standards and limitations in its NPDES permit, including the NPDES permit's prohibition on violating water quality standards, failing to comply with the permit's monitoring and reporting requirements, and failing to adhere to the permit's mandate that LANL have effective effluent limitations and pollution control measures in place for each of the

approximately 109 sites. In addition, LANL is allowing the unauthorized discharge of pollutants into waters of the United States from sites not covered by an NPDES permit.

8. LANL's failure to comply with the terms and conditions of its NPDES permit, as described more fully below, continues to harm Plaintiffs' concrete interests in protecting, restoring, and using the natural resources of the Rio Grande watershed and its tributaries and Plaintiffs' concrete interests in monitoring and educating the public about water contamination issues at the Lab.

9. Wherefore, Plaintiffs – a coalition of local residents, farmers, pueblo members, conservation organizations, acequia associations, community groups, and religious entities – are hereby compelled to bring this civil action.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 33 U.S.C. § 1365(a) and 28 U.S.C. § 1331 (Federal Question).

11. The Court has the authority to review the violations complained of herein, and grant the relief requested, pursuant to section 505 of the CWA, 33 U.S.C. § 1365 and 28 U.S.C. §§ 2201 and 2202.

12. Proper notice of this civil action was provided to LANL pursuant to section 505(b) of the CWA, 33 U.S.C. § 1365(d). LANL did not respond to Plaintiffs' notice. Neither the EPA nor the State of New Mexico has commenced or is diligently prosecuting an action to redress the violations of the CWA alleged in the 60-day notice letter and thus Plaintiffs are not prohibited

from commencing an action as provided in CWA section 505(b)(1)(B), 33 U.S.C. § 1365(b)(1)(B). Claims for civil penalties asserted in this action are not barred by any prior administrative penalty under CWA section 309(g)(6)(B), 33 U.S.C. § 1319(g)(6)(B).

13. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory Judgment), 28 U.S.C. § 2202 (Injunctive Relief), 33 U.S.C. § 1319 (civil penalties), and 33 U.S.C. § 1365.

14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) and 33 U.S.C. § 1365(c)(1) because the sources of all violations occurred in the District of New Mexico.

15. There is a present and actual controversy between the parties because defendants have violated, continue to violate and are reasonably likely to continue to violate effluent standards or limitations in their NPDES permit and the Act.

PARTIES

16. Plaintiff AMIGOS BRAVOS is a 501(c)(3) non-profit, state-wide river conservation organization with offices in Taos and Albuquerque, New Mexico. Amigos Bravos has approximately 1700 members in New Mexico. Many of these members live in and around the Rio Grande watershed and its tributaries, including adjacent to or downstream from, the Lab property. Amigos Bravos is guided by social justice principles and has a concrete interest in preserving and restoring the ecological and cultural integrity of all of New Mexico's streams, rivers and watersheds. Specifically, Amigos Bravos' concrete interests are in: (1) returning New Mexico's waters and the Rio Grande watershed to drinkable quality wherever possible and to contact quality everywhere else; (2) seeing that natural flows are maintained and where those flows have been disrupted by human intervention to see that they are regulated to protect and

reclaim the river ecosystem by approximating natural flows; (3) preserving and restoring the native riparian and riverine biodiversity; (4) supporting the environmentally sound and sustainable traditional ways of life of indigenous cultures; (5) ensuring that environmental justice and social justice go hand-in-hand; and (6) informing and educating all members of the public about water pollution concerns and issues throughout the State of New Mexico. In furtherance of these interests, Amigos Bravos' staff and members spend time meeting with state and federal regulators and facilities such as LANL, cleaning up various rivers and streams in New Mexico (including the Rio Grande and its tributaries), setting up and participating in water quality sampling trips along the Rio Grande and its tributaries, commenting on various permits and agency decisions affecting water quality in New Mexico, attending hearings, hiring experts, drafting reports, participating in various administrative and legal processes, publishing "bulletins" and sending out e-mail alerts to educate the public, organizing and setting up a library of various water related publications in their Taos Office (the library is organized by subject and open to members of the public), and requesting and reviewing discharge monitoring reports (DMRs), sampling data, and agency and/or expert reports on water contamination issues in New Mexico. All of Amigos Bravos' members and staff derive aesthetic, artistic, ecological, conservation, recreational, spiritual, and professional benefits from working to protect and restore the natural resources and biological integrity of the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and spending time in the area and have been adversely impacted by defendants discharges. Amigos Bravos' members and staff have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been,

and are being, discharged.

17. Plaintiff CONCERNED CITIZENS FOR NUCLEAR SAFETY ("CCNS") is a 501(c)(3) non-profit community based organization in Santa Fe, New Mexico. CCNS was founded in 1988 to voice community concerns about the transportation of nuclear waste from LANL, the nation's oldest nuclear weapons production facility, to the Waste Isolation Pilot Plant, the nation's first permanent nuclear weapons waste repository, through Santa Fe. Many of the members of CCNS live in and around the Rio Grande watershed and its tributaries, including adjacent to or downstream from, the Lab property. The mission of CCNS is to protect all living beings and the environment from the effects of radioactive and other hazardous materials now and in the future. CCNS is specifically committed to educating members of the public on the operations being conducted at LANL and the resulting contamination issues. CCNS is also committed to ensuring that LANL is in full compliance with all applicable laws and regulations and that the natural resources and biological integrity of New Mexico's air and water is protected and restored. Towards this end, CCNS staff and members spend time meeting with and providing briefing to local, state and federal officials and regulators about LANL contamination issues, organize public information and educational events, and review and provide public comments about proposed permits, environmental impact statements and other technical documents to state and federal governmental agencies. CCNS has hired experts and written technical reports about public health and water issues at LANL, as well as participated in three independent Clean Air Act audits of LANL's radionuclide emissions. Since 2002, CCNS has set up and participated in water quality sampling trips along the Rio Grande and its tributaries.

Since 1988, CCNS has produced a weekly radio program about nuclear safety issues at DOE sites, including LANL, which is distributed to radio stations throughout the Rio Grande watershed. CCNS sends out e-mail action alerts to educate the public. CCNS's members and staff derive aesthetic, artistic, ecological, conservation, recreational, spiritual, and professional benefits from this work and spending time along the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and have been adversely impacted by defendants discharges. CCNS's members and staff have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been, and are being, discharged.

18. Plaintiff EMBUDO VALLEY ENVIRONMENTAL MONITORING GROUP is a non-profit organization located in New Mexico's Embudo River Valley. The Embudo Valley Environmental Monitoring Group focuses on the public and environmental health and safety issues related to air quality emissions and water quality contamination generated by activities at Los Alamos that affect the Rio Grande watershed. Members and staff of the Embudo Valley Environmental Monitoring Group derive aesthetic, artistic, ecological, conservation, recreational, spiritual, and professional benefits from working to protect and restore the natural resources and biological integrity of the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and spending time in the area and have been adversely impacted by defendants discharges. Members and staff of the Embudo Valley Environmental Monitoring Group have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been, and are being, discharged.

19. Plaintiff the NEW MEXICO ACEQUIA ASSOCIATION ("NMAA") is a 501(c)(3)

non-profit grassroots, membership-based organization based in Santa Fe, New Mexico. The NMAA has members that live in and around the Rio Grande watershed and its tributaries, including adjacent to or immediately downstream from, the Lab property. The NMAA's members work to protect and strengthen acequias. Acequias are community-based systems of irrigation and water governance in New Mexico. An acequia also refers to the community of farmers that cooperatively maintain the ditch and share water through custom and tradition. The NMAA uses community education, community organizing and policy advocacy to achieve its mission to sustain a way of life for acequia communities, protect water as a community resource, and strengthen the agricultural traditions of our families and communities. Members and staff of the NMAA derive aesthetic, artistic, ecological, conservation, recreational, spiritual, and professional benefits from working to protect and restore the natural resources and biological integrity of the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and spending time in the area and have been adversely impacted by defendants discharges. Members and staff of the NMAA have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been, and are being, discharged.

20. Plaintiff DON GABINO ANDRADE COMMUNITY ACEQUIA ("DGACA") is a sub-division of the State of New Mexico, governed by an elected board of commissioners. DGACA is committed to using community education, community organizing and policy advocacy to achieve its mission to sustain a way of life for acequia communities, protect water as a community resource, and strengthen the agricultural traditions of our families and communities. Members and staff of the DGACA derive aesthetic, artistic, ecological,

conservation, recreational, spiritual, and professional benefits from working to protect and restore the natural resources and biological integrity of the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and spending time in the area and have been adversely impacted by defendants discharges. Members and staff of the DGACA have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been, and are being, discharged.

21. Plaintiff PARTNERSHIP FOR EARTH SPIRITUALITY is a 501(c)(3) non-profit membership organization based in Albuquerque, New Mexico with approximately 400 members. Partnership for Earth Spirituality brings together people from various religious traditions, ages, cultures and economic backgrounds to promote a better understanding of the interdependence of ecology and spirituality. The Partnership's vision is explored through retreats, forums, seasonal rituals, wilderness experiences, programs for children, hands-on projects and education for sound environmental policies. Members and staff of the Partnership for Earth Spirituality derive aesthetic, artistic, ecological, conservation, recreational, spiritual, and professional benefits from working to protect and restore the natural resources and biological integrity of the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and spending time in the area and have been adversely impacted by defendants discharges. Members and staff of the Partnership for Earth Spirituality have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been, and are being, discharged.

22. Plaintiff RIO GRANDE RESTORATION is a 501(c)(3) non-profit policy advocacy group based in Pilar, New Mexico with approximately one hundred supporters. Rio Grande

Restoration's mission is to foster the restoration of the Rio Grande by providing an improved flow regime of high-quality water. Rio Grande Restoration seeks to achieve its mission using the tools of river and watershed education, policy advocacy, alliance building, and river and habitat restoration. Supporters and staff of Rio Grand Restoration derive aesthetic, artistic, ecological, conservation, recreational, spiritual, and professional benefits from working to protect and restore the natural resources and biological integrity of the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and spending time in the area and have been adversely impacted by defendants discharges. Supporters and staff of Rio Grand Restoration have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been, and are being, discharged.

23. Plaintiff, SOUTHWEST ORGANIZING PROJECT ("SWOP") is a 501(c)(3) non-profit statewide multi-racial, multi-issue, community based membership organization based in Albuquerque, New Mexico. SWOP works to make it possible for thousands of New Mexicans to begin to have a place and voice in social, economic and environmental decisions that affect our lives. SWOP's mission is to work to empower our communities to realize racial and gender equality and social and economic justice. Members and staff of the NMAA derive aesthetic, artistic, ecological, conservation, recreational, spiritual, and professional benefits from working to protect and restore the natural resources and biological integrity of the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and spending time in the area and have been adversely impacted by defendants discharges. Members and staff of SWOP have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been,

and are being, discharged.

24. Plaintiff, TEWA WOMEN UNITED, is an independent women centered and Native women run non-profit 501(c)(3) organization located within the Northern Pueblos of New Mexico. Tewa Women United is dedicated to a vision of making a healthy, safe and culturally enriched self, family and community a reality. Tewa Women United promotes and supports activities which nurture and care for the well being of our Mother Earth, including being free of all nuclear contamination. Many of Tewa Women United's members are long time residents and owners of property adjacent to, downstream of, and/or near LANL and have a concrete interest in the continued preservation and protection of an area that many of Tewa Women United's members and staff have and will continue to use. Members and staff of Tewa Women United derive aesthetic, artistic, ecological, conservation, recreational, spiritual, and professional benefits from working to protect and restore the natural resources and biological integrity of the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and spending time in the area and have been adversely impacted by defendants discharges. Members and staff of Tewa Women United have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been, and are being, discharged.

25. Plaintiffs J. GILBERT and KATHY SANCHEZ are individuals with specific, concrete interests in Los Alamos and Pueblo canyon watersheds. J. Gilbert Sanchez is a member of Tribal Environmental Watch Alliance and a community activist at the Pueblo of San Ildefonso. Kathy Sanchez is Director of Tewa Women United and a community activist at the Pueblo of San Ildefonso caring for Mother Earth. As local residents, J. Gilbert and Kathy

Sanchez derive aesthetic, artistic, ecological, conservation, recreational, spiritual, and professional benefits from working to protect and restore the natural resources and biological integrity of the Rio Grande watershed and its tributaries (including the Pajarito Plateau) and spending time in the area and have been adversely impacted by defendants discharges. J. Gilbert and Kathy Sanchez have used, and will continue to use, the waters into which the contamination and pollutants from LANL have been, and are being, discharged.

26. The concrete interests of the Plaintiffs, described above, including the concrete interests of their individual members and staff have been harmed, and will continue to be harmed, by LANL's failure to comply with the terms and conditions of its NPDES storm water permit as outlined in this complaint. Such harm includes, but is not limited to, harm to: (1) Plaintiffs' use of the Rio Grande watershed and its tributaries, including Los Alamos and Pueblo Canyons (the violations of water quality standards and illegal discharge of contaminants into canyons and waters by LANL, and concern over such violations and discharges, has resulted in Plaintiffs' inability to use and decision not to use the area and water for ceremonial, spiritual, farming, domestic, artistic, aesthetic, ecological, and recreational purposes, including Plaintiffs' decision to refrain from fishing in the Rio Grande and eating the fish from the Rio Grande, due to concerns about an advisory issued by NMED that PCBs are present in fish in the Rio Grande and concerns about additional pollutants from LANL being present in fish in the Rio Grande); (2) Plaintiffs' concrete interests in working to protect and restore the natural resources and biological integrity of the Rio Grande watershed; and (3) Plaintiffs' ability to inform and educate members of the public about the contamination issues emanating from LANL (LANL's failure to comply

with the monitoring and reporting requirements is keeping Plaintiffs from obtaining, reviewing, and providing such information to the public).

27. Plaintiffs bring this civil action on behalf of themselves and their adversely affected members and staff.

28. If the Court grants the relief requested and orders LANL to comply with the terms and conditions of its NPDES storm water permit, then the harm to Plaintiffs will be alleviated.

29. Defendant UNITED STATES DEPARTMENT OF ENERGY is a federal department and owner of LANL. As the federal department that owns LANL, the U.S. Department of Energy is the federal entity with ultimate responsibility for applying and implementing the federal laws and regulations challenged in this complaint.

30. Defendant SAMUEL W. BODMAN is sued in his official capacity as Secretary of the U.S. Department of Energy. As Secretary, Mr. Bodman is the Department of Energy official with ultimate responsibility for all actions or inactions of LANL officials challenged in this complaint. If ordered by the court, Mr. Bodham has the authority and ability to remedy the harm inflicted by Defendants' actions.

31. Defendant LOS ALAMOS NATIONAL SECURITY LLC ("LANS") is sued as manager and operator of LANL. LANS is a limited liability corporation made up of Bechtel National, Inc., the University of California, BWX Technologies, Inc., and the Washington Group International, Inc. As manager and operator of LANL, LANS has responsibility for applying and implementing the federal laws and regulations challenged in this complaint. LANS took over management and operation of LANL in June, 2006 from the Regents of the University of

California.

32. Defendant MICHAEL R. ANASTASIO, is sued in his official capacities as President of LANS and Director of LANL. As President of LANS, Mr. Anastasio has responsibility for ensuring that the federal laws and regulations challenged in this complaint are applied and implemented. As Director of LANL, Mr. Anastasio has the responsibility for ensuring that the federal laws and regulations challenged in this complaint are applied and implemented. If ordered by the court, Mr. Anastasio has the authority and ability to remedy the harm inflicted by Defendants' actions.

BACKGROUND

LOS ALAMOS NATIONAL LABORATORY

33. Los Alamos National Laboratory ("the Facility" or "the Lab") is located in Los Alamos County approximately 60 miles north-northeast of Albuquerque, New Mexcio and 25 miles northwest of Santa Fe, New Mexico.

34. The Lab is bordered by Bandelier National Monument to the south, the town of White Rock and the Rio Grande river to the east, San Ildefonso Pueblo to the northeast, and the Jemez Mountains and the Santa Fe National Forest to the west. The Lab is upstream from Cochiti Pueblo.

35. The 40-square mile Facility is situated on the Pajarito Plateau, which consists of a series of finger-like mesas separated by seven deep west-to-east oriented watersheds with streams that all flow towards and into the Rio Grande, an traditional interstate navigable water.

36. These seven distinct watersheds on the Lab property, include (from north to south):

(1) the Los Alamos and Pueblo Canyon watershed; (2) the Sandia Canyon watershed; (3) the Mortandad Canyon watershed; (4) the Pajarito Canyon watershed; (5) the Water/Canon de Valle watershed; (6) the Ancho Canyon watershed; and (7) the Chaquehui Canyon watershed.

37. In May, 2000 the Cerro Grande fire, the largest fire in New Mexico history, burned for sixteen days on the Pajarito Plateau. The fire destroyed over 100 structures at the Lab and many homes in the nearby community of Los Alamos. The fire also burned tens of thousands of acres of adjacent forest and Pueblo lands including major forested portions of the seven watersheds.

38. In LANL's own words, "the Cerro Grande fire changed the water resources environment by removing vegetation and surface organic layers, and decreasing the ability of the soil to take in water. These changes caused increased surface water runoff and soil erosion to adversely affect local water resources by accelerating the movement of contaminants in sediments transported in stormwater downstream of LANL."

39. According to NMED, "the Cerro Grande fired burned 43,000 acres of land along the eastern flanks of the Jemez Mountains and on the Pajarito Plateau. Approximately 1,200 acres, nearly 80% of the upper Pueblo Canyon watershed was subjected to a high intensity burn." The fire resulted in a "complete loss of vegetative cover (overstory, understory, and ground cover) and intense heat created conditions that reduced the soil's ability to absorb moisture, thereby increasing runoff." These conditions "led to a greater frequency and magnitude of storm water flows in the canyons on the Pajarito Plateau."

40. Since the fire, LANL has documented a dramatic increase in the amount of surface

water runoff and erosion levels in the canyons.

41. According to LANL, despite "some successful watershed rehabilitation, storm water runoff and sediment yield increased significantly after the Cerro Grande fire."

42. According to LANL, "flow volumes in Pueblo Canyon remain more than 5 times higher than the pre-Cerro Grande fire average."

43. According to LANL, "[p]lutonium has moved down Pueblo Canyon, through Los Alamos Canyon, off-site across San Ildefonso Pueblo lands, and reaches the Rio Grande near the Otowi Bridge." Other, "[n]onradiological constituents detected at significant concentrations in the Los Alamos Canyon watershed include [PCBs], benzo(a)pyrene, mercury, copper, lead, and zinc."

44. Surface and ground water from the Lab and the Rio Grande is a major source of drinking water for the region, including the cities of Santa Fe and Albuquerque. Los Alamos County residents rely 100% on the regional aquifer for their drinking water.

LANL'S WASTE DUMP SITES

45. For the past sixty plus years, LANL's nuclear weapons testing, production, and industrial activities, i.e., high explosives testing and chemical and material science research, have generated an enormous amount of solid, hazardous, and radioactive waste.

46. The waste generated by LANL includes high explosives such as RDX, HMX, TNT; volatile organic compounds and semi-volatile organic compounds; metals such as arsenic, barium, beryllium, cadmium, chromium, copper, lead, mercury, molybdenum, selenium, silver, zinc; inorganic compounds such as ammonia, nitrate, and fluoride; perchlorate; and PCBs

("contaminants").

47. Once generated these contaminants are often dumped, discharged, and stored at various tanks, unlined pits and landfills, and material disposal areas ("MDAs") located throughout the Facility.

48. NMED, the Environmental Protection Agency ("EPA"), and LANL refer to such hazardous dump, discharge sites, or storage areas as Solid Waste Management Units ("SWMUs"), Areas of Concern ("AOCs"), or Potential Release Sites ("PRSs").

49. By definition a SWMU is "any discernable site at which solid wastes have been placed at any time, regardless of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at or around a facility at which solid wastes have been routinely and systematically released, such as waste tanks, septic tanks, firing sites, burn pits, sumps, landfills (material disposal areas), outfall areas, canyons around LANL, and contaminated areas resulting from leaking product storage tanks (including petroleum)." Standard Operating Procedure ("SOP") 02.01.

50. An AOC is "any area that may have had a release of a hazardous waste or hazardous constituent, which is not [classified] as a SWMU." SOP -02.01.

51. A PRS is "a site suspected of releasing or having the potential to release contaminants into the environment. A PRS is a generic U.S. Department of Energy term that includes all SWMUs, hazardous waste sites . . . and sites identified as radioactive AOCs." SOP-02.01 at 5.

52. For the purposes of this complaint, all SWMUs, AOCs, and/or PRSs, will

collectively be referred to as "sites" or "storm water sites."

53. Originally, there were an estimated 2,093 documented storm water sites at the Lab.

54. By 1995 EPA determined that approximately 542 of these sites required No Further Action ("NFA"). NMED subsequently determined that an additional 146 sites qualified for NFA status. To date, approximately 688 of the total 2,093 sites have received formal NFA status.

55. NFA status is given by the regulatory agency (now NMED) as part of the RCRA corrective action process. NFA status indicates a decision by the regulatory agency that no further investigation or remediation of a site is warranted because: (1) the site could not be located or does not exist; (2) no waste or contamination is associated with the site; (3) no release to the environment from the site occurred; (4) a release from the site occurred, but the site was fully remediated; or (5) the site was fully characterized and remediated in accordance with all applicable laws. SOP 02.01 at 9.

56. At present, there are approximately 1,405 sites at the Lab that have not received NFA status. These sites typically include old material and liquid disposal areas, hazardous waste landfills, old dilapidated structures, contamination areas, dumping grounds, explosive testing sites, storm drains, firing ranges (active and dormant), septic systems, and seepage pits.

57. In an April 1, 2005 submission to EPA (individual permit application), LANL states that there are approximately 1,300 sites (950 SWMUs and 350 AOCs) at the Facility that remain "active," i.e., have not received NFA status.

58. Following rain or snow melting events contaminants from these approximately 1,300 to 1,405 sites run off into the soils, surface water, and shallow groundwater of the Lab's seven

watersheds and canyons eventually traveling down-gradient to the Rio Grande. These storm water runoff events are well-documented by LANL, NMED, and EPA.

59. According to LANL, stormwater runoff "is the principal agent for moving Laboratory-derived constituents off-site and possibly into the Rio Grande." Such runoff can "redistribute sediment in a streambed to locations far downstream from where [a] release or spill occurs."

60. Data from LANL's water quality database, a joint study between NMED and LANL, and NMED's own data (both from the DOE Oversight Bureau and Surface Water Quality Bureau) confirm the presence of contaminants (i.e, metals, explosive compounds, organic constituents, PCBs and even radionuclides (RADs)) in LANL's sediments, surface water, shallow groundwater, and the Rio Grande from these sites.

61. At present, CWA regulation of storm water discharges from the approximately 1,300 to 1,405 sites at LANL is covered under a NPDES permit Storm Water Multi-Sector General Permit ("MSGP") Nos. NMR05A734 and NMR05A735 which became effective on December 23, 2000 pursuant to 65 Fed. Reg. 64746 (hereinafter "permit" or "NPDES permit" or "storm water permit").

62. LANL's storm water NPDES permit expired on December 23, 2005. However, it has been administratively extended pending the issuance of a new, individual NPDES permit which is still forthcoming. LANL must comply with the terms and conditions of the NPDES permit until a new, individual permit becomes effective.

63. In the NPDES permit, most of the approximately 1,300 to 1,405 sites at LANL fall

within sector K (hazardous waste treatment, storage, or disposal facilities) of the permit but may also include: sector L (landfills and land application sites); sector D (asphalt paving and roofing materials); sector F (primary metals); sector N (scrap recycling facilities); sector O (steam electric generating facilities); sector P (land transportation); and sector AA (fabricated metals products).

64. LANL's storm water NPDES permit includes a number of mandatory requirements for each of the sites, such as: (1) the requirement to prepare a Stormwater Pollution Prevention Plan ("SWPPP") with effective pollution control measures or Best Management Practices ("BMPs"); (2) a site map identifying all potential pollutant sources and outfalls; (3) monitoring requirements; (4) numeric limitations on the amount and types of pollutants discharged; (5) sector specific requirements; and (6) various reporting requirements.

65. In the course of reviewing LANL's NPDES permit for the sites at the Facility, EPA determined that LANL was failing to comply with the terms and conditions of its permit in a number of significant respects.

66. EPA determined that LANL was failing to effectively monitor and control runoff from all of the sites.

67. In response, on February 3, 2005 LANL and EPA entered into a Federal Facility Compliance Agreement ("FFCA") for the sites.

68. The purpose of the FFCA was to establish a program and schedule of compliance for regulation of storm water discharges from all sites (i.e., SWMUs, AOCs, and PRSs) at LANL until EPA issues a new individual NPDES storm water permit to regulate those discharges.

69. In the FFCA, EPA determined that the unique nature and shear volume of the number of industrial storm water sites at LANL warranted the issuance of an individual NPDES permit for such sites (as opposed to a MSGP).

70. The FFCA is designed to bring LANL into compliance with the CWA until a new, individual NPDES permit is issued.

71. During the time the FFCA is in effect, and until a new individual permit becomes effective, LANL must continue to comply with all terms and conditions of its current NPDES permit.

72. The FFCA requires LANL to implement pollution control measures and monitoring at all sites that scored over 40 on LANL's Erosion Matrix Score ("EMS") assessment.

73. Pursuant to SOP 02.01, LANL evaluated approximately 1,336 sites using its EMS assessment to determine whether a particular site has the potential to adversely affect surface water quality. LANL initiated the EMS assessment procedure in 1997.

74. The EMS examines whether a particular site "has the potential to adversely affect surface-water quality." SOP 02.01 at 4. This examination includes: (1) taking sediment and surface water samples (if available) to test for constituents; (2) documenting the location of the site (i.e., in the canyon floor, in channel of canyon, or on a mesa top); (3) taking photographs of the site (to document the field characteristics); (4) documenting the "percentage of canopy and ground cover" present at the site; (5) documenting the slope of the site; and (6) and applying various "runoff factors." SOP 02.01 at Attach. B. The runoff factors include looking at whether there is "visible evidence of water and/or sediment discharging from the [site]," whether the

runoff is channelized, where the runoff terminates, and whether the runoff has caused visible erosion.

75. After completion of the EMS assessment, each of the 1,336 sites assessed were given an EMS "score" and categorized as to their low, medium, or high potential for constituents to migrate off-site. If the score was equal to or less than 40, then the site was put in the "low potential" category. This means the site is considered to have a low potential for constituents in surface water and/or sediment in storm water runoff to migrate off the site and impact surface water quality. Approximately 1,042 sites at LANL were put in this "low potential" category.

76. Sites that scored between 40 and 60 on the EMS assessment were put into a "medium potential" category. This means that the site is considered to have a medium potential for constituents in surface water and/or sediment in stormwater runoff to migrate off the site and impact surface water quality. Approximately a 196 sites were put into this category.

77. Sites that scored over 60 on the EMS assessment were put into the "high potential" category. These are sites that are considered to have a high potential for constituents in surface water and/or sediment in storm water runoff to migrate off the site and impact surface water quality. Approximately 98 sites were deemed to be high potential sites.

78. In total, the EMS assessment process, required by the FFCA, identified approximately 294 sites that scored over 40 and thus, have a medium or high potential for constituents in surface water and/or sediment in storm water runoff to migrate off the site and impact surface water quality.

79. Pursuant to the FFCA, on April 1, 2005 LANL submitted an application for an

individual NPDES permit to EPA to cover the sites. LANL's permit application sought coverage for approximately 1,300 sites, including sites that scored under 40 on the EMS assessment.

80. Since April 1, 2005, LANL has consistently revised the total list of sites to be covered by the new individual NPDES permit.

81. According to LANL, the 2005 application required updating because "numerous corrective activities and data collection activities have been completed, site conditions have changed, and other implementation requirements of the FFCA have been fulfilled."

82. In 2007, LANL revised the list of sites to be covered by the new individual NPDES permit, once again, after completing a new re-evaluation of most of the approximately 1,300 to 1,405 sites and, in addition to the EMS assessment, applying a new "Clean Water Act Evaluation Process."

83. LANL's "Clean Water Act Evaluation Process" evaluates whether each site: (1) contains waste material received from "industrial" activities; (2) contains only radioactive waste which would be exempt from CWA regulation pursuant to the Atomic Energy Act (42 U.S.C. § 201 et seq.); (3) is exposed to storm water (e.g., not capped or subsurface); (4) contains significant industrial material (e.g., not cleaned up or remains with contamination in place); and (5) potentially impacts surface water.

84. Following LANL's 2007 re-evaluation of the sites, and application of its new "Clean Water Act Evaluation Process," on December 26, 2007 LANL submitted a "final" list of approximately 283 sites that should be covered under the new individual NPDES permit because they meet all the criteria for regulation under the CWA. On January 18, 2008 LANL provided a

list of approximately 153 additional sites that were not "re-evaluated" in 2007 and may need to be covered under the new individual NPDES permit.

85. At issue in this civil action are: (1) approximately 109 sites in the Los Alamos and Pueblo Canyon watershed that were re-evaluated in 2007 and determined to meet all the criteria for regulation under the CWA and coverage in the new individual storm water NPDES permit; and (2) any additional site(s) in the Los Alamos and Pueblo Canyon watershed that have impacted or have the potential to impact surface water quality.

LANL'S STORM WATER SITES IN THE LOS ALAMOS AND PUEBLO CANYON WATERSHED

86. The Los Alamos and Pueblo Canyons watershed encompasses approximately 57 square miles and includes a number of sub-watersheds such as Rendija, Barrancas, Guaje, Bayo, Pueblo, Acid, Los Alamos (Upper, Middle, and Lower), and DP Canyons (hereinafter "LA/P Canyon watershed" or "the watershed").

87. The LA/P Canyon watershed, which is located on federal and San Ildefonso Pueblo land (the watershed crosses Pueblo land before entering the Rio Grande) contains numerous springs as well as perennial, seasonal, ephemeral, and intermittent streams all of which flow into and affect the Rio Grande.

88. The LA/P Canyon watershed is a water of the United States that flows persistently into the Rio Grande, a traditional navigable water.

89. There are approximately 277 storm water sites located in the LA/P Canyon watershed. These are sites that have not received NFA status. These approximately 277 sites are

known to LANL and were specifically identified by number in Plaintiffs' March 29, 2007 60-day notice of intent to sue letter.

90. Over the years, these approximately 277 active sites have generated an enormous amount of solid and hazardous waste in the Los Alamos/Pueblo Canyon watershed.

91. When significant precipitation events occur contaminants from these approximately 277 sites runoff into Los Alamos/Pueblo Canyon watershed's surface waters, soils, and shallow groundwater, and into to the Rio Grande.

92. According to NMED, runoff from Los Alamos/Pueblo Canyon waterhsed's sites has "contributed to contaminant releases within the canyon systems."

93. Based on LANL's 2007 "re-evaluation" of all sites – including sites in the LA/P Canyon watershed – and application of CWA criteria (described above), LANL now states that there are approximately 109 sites in the watershed that meet the criteria for regulation under the CWA.

94. The 109 sites in the LA/P Canyon watershed that meet the criteria for regulation under the CWA and are the subject of this civil action include: 1. C-00-020, 2. C-00-041, 3. 00-011(c), 4. 00-011(e), 5. 00-011(a), 6. 00-011(d), 7. 00-030(g), 8. 01-002(b)-00, 9. 45-001, 10. 45-002, 11. 45-004, 12. 01-002(b)-00, 13. 73-001(a), 14. 73-004(d), 15. 73-002 , 16. 73-006, 17. 00-019, 18. 00-018(a), 19. 03-055(c), 20. 00-017, 21. 00-017 (listed twice), 22. 43-001(b2), 23. C-43-001, 24. 01-001(f), 25. 01-003(a), 26. 01-003(b), 27. 01-006(b), 28. 01-001(c), 29. 01-006(c), 30. 01-006(d), 31. 01-001(d), 32. 01-003(e), 33. 01-003(d), 34. C-41-004, 35. 32-004, 36. 32-003, 37. 02-003(a), 38. 02-003(e), 39. 02-006(b), 40. 02-007, 41. 02-008(a), 42. 02-009(a),

43. 02-009(b), 44. 02-009(c), 45. 02-011(a), 46. 21-013(b), 47. 21-013(g), 48. 21-018(a), 49. 21-023(c), 50. 21-027(d), 51. 21-027(a), 52. 21-024(i), 53. 26-001, 54. 53-002(a), 55. 53-008, 56. 21-029, 57. 21-011(k), 58. 21-024(h), 59. 21-013(c), 60. 00-015, 61. 00-018(b), 62. 00-030(f), 63. C-00-044, 64. 01-001(a), 65. 01-001(b), 66. 01-001(e), 67. 01-001(g), 68. 01-001(o), 69. 01-006(a), 70. 01-006(h), 71. 02-003(b), 72. 02-004(a), 73. 02-005, 74. 02-006(b), 75. 02-006(c), 76. 02-006(d), 77. 02-006(e), 78. 02-008(c), 79. 02-011(b), 80. 02-011(c), 81. 02-011(d), 82. 10-001(a), 83. 10-001(b), 84. 10-001(c), 85. 10-001(d), 86. 10-004(a), 87. 10-004(b), 88. 10-008, 89. 10-009, 90. 21-009, 91. 21-013(a), 92. 21-021, 93. 21-022(h), 94. 21-024(a), 95. 21-024(b), 96. 21-024(c), 97. 21-024(d), 98. 21-024(g), 99. 21-024(j), 100. 24-024(l), 101. 21-024(n), 102. 21-026(d), 103. 21-027(c), 104. 26-002(a), 105. 26-002(b), 106. 26-003, 107. 31-001, 108. 32-002(b), 109. 41-002(c), and any additional site(s) in the Los Alamos/Pueblo Canyons that have impacted or have the potential to impact surface water quality (hereinafter "109 sites" or "approximately 109 sites")

95. On December 26, 2007, and in supplements in January and February 2008, LANL provided EPA documentation on each of the 109 sites as part of its application for a new individual storm water NPDES permit.

COUNT I
VIOLATION OF WATER QUALITY STANDARDS

96. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

97. Pursuant to section 3.3 of the NPDES permit, discharges from the approximately 109 sites "must not be causing or have the reasonable potential to cause or contribute to a violation of

a water quality standard." Where "a discharge is already authorized under [a] permit and is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard . . . [LANL] must take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard." NPDES permit § 3.3.

98. Pursuant to section 313 of the CWA, 33 U.S.C. § 1323, LANL must comply with the State of New Mexico's regulations (20.6.2 NMAC) and the State of New Mexico's Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC).

99. LANL has violated, and continues to violate section 3.3 of the NPDES permit and section 313 of the CWA, both of which qualify as "effluent standards or limitations" pursuant to 505(a)(1) and 505(f)(6) of the CWA.

100. Storm water discharges from the approximately 109 sites have caused, are causing, and/or have a reasonable potential to continue to cause or contribute to the violation of New Mexico's water quality standards for PCBs in Los Alamos and Pueblo Canyons.

101. The PCB water quality standard to protect human health in Los Alamos and Pueblo Canyons is 0.00064 micrograms per liter ("ug/L") or .64 nanograms per liter ("ng/L") (water quality data from LANL and NMED is expressed in either ug/L or ng/L).

102. The PCB water quality standard to protect wildlife habitat in Los Alamos and Pueblo Canyons is 0.014 ug/L or 14 ng/L.

103. Storm water monitoring data from LANL and the New Mexico Environment Department ("NMED") shows that discharges from the approximately 109 Sites have caused, are

causing, and have a reasonable potential to continue to cause or contribute to violations of the PCB water quality standards for human health and wildlife habitat.

104. LANL's and NMED's storm water monitoring data from LA-SMA-2 which monitors storm water discharges from SWMU number 01-001(f) (an old septic tank at hillside 140) detected PCBs at levels up to 38,000 times the water quality standard.

105. On August 6, 2004, PCBs at LA-SMA-2 were detected at concentrations of 1,600 ng/L.

106. On August 15, 2004, PCBs at LA-SMA-2 were detected at concentrations of 2,400 ng/L.

107. On August 18, 2004, PCBs at LA-SMA-2 were detected at concentrations of 3,800 ng/L.

108. On August 20, 2004, PCBs at LA-SMA-2 were detected at concentrations of 2,200 ng/L.

109. On May 3, 2005, PCBs at LA-SMA-2 were detected at concentrations of 8,700 ng/L.

110. On August 4, 2005, PCBs at LA-SMA-2(B) were detected at concentrations of 8,100 ng/L.

111. On August 11, 2005, PCBs at LA-SMA-2 were detected at concentrations of 5,580 ng/L.

112. On August 22, 2005, PCBs at LA-SMA-2 were detected at concentrations of 8,900 ng/L.

113. On September 28, 2005, PCBs at LA-SMA-2 were detected at concentrations of 76 ng/L.

114. On July 21, 2006, PCBs at LA-SMA-2 were detected at concentrations of 2,400 ng/L.

115. On September 6, 2006, PCBs at LA-SMA-2 were detected at concentrations of 7,900 ng/L.

116. On May 2, 2007, PCBs at LA-SMA-2 were detected at concentrations of 5,100 ng/L.

117. On May 8, 2007, PCBs at LA-SMA-2 were detected at concentrations of 4,900 ng/L.

118. On May 13, 2007, PCBs at LA-SMA-2 were detected at concentrations of 16,300 ng/L.

119. On August 18, 2007, PCBs at LA-SMA-2 were detected at concentrations of 24,800 ng/L.

120. On August 18, 2004, PCBs at LA-SMA-5 were detected at concentrations of 280 ng/L.

121. On August 1, 2006, PCBs at LA-SMA-5 were detected at concentrations of 380 ng/L.

122. On September 11, 2006, PCBs at LA-SMA-5 were detected at concentrations of 260 ng/L.

123. On July 24, 2004, PCBs at LA-SMA-6 were detected at concentrations of 58 ng/L.

124. On July 3, 2006, PCBs at LA-SMA-6.5 were detected at concentrations of 680 ng/L.

125. On August 8, 2006, PCBs at LA Canyon near Otowi Bridge were detected at concentrations of 300 ng/L.

126. On July 23, 2004, PCBs at LA Canyon above DP were detected at concentrations of 120 ng/L.

127. On August 12, 2005, PCBs at LA Canyon above DP were detected at concentrations of 880 ng/L.

128. On October 19, 2005, PCBs at LA Canyon above DP were detected at concentrations of 62 ng/L.

129. On June 29, 2006, PCBs at LA Canyon above DP were detected at concentrations of 3000 ng/L.

130. On August 1, 2006, PCBs at LA Canyon above DP were detected at concentrations of 66 ng/L.

131. On July 15, 2005, PCBs at LA Canyon above SR-4 were detected at concentrations of 960 ng/L.

132. On August 7, 2006, PCBs at LA Canyon above SR-4 were detected at concentrations of 59 ng/L.

133. On May 13, 2007, PCBs at LA Canyon above SR-4 were detected at concentrations of 156 ng/L.

134. On August 8, 2006, PCBs at LA Canyon below ice rink were detected at concentrations of 78 ng/L.

135. On April 24, 2005, PCBs at LA Canyon below LA Weir were detected at concentrations of 57 ng/L.

136. On August 12, 2005, PCBs at LA Canyon below LA Weir were detected at concentrations of 360 ng/L.

137. On August 5, 2006, PCBs at LA Canyon below LA Weir were detected at concentrations of 68 ng/L.

138. On August 7, 2006, PCBs at LA Canyon below LA Weir were detected at concentrations of 44 ng/L.

139. On August 8, 2006, PCBs at LA Canyon below LA Weir were detected at concentrations of 82 ng/L.

140. On March 23, 2007, PCBs at LA Canyon below LA Weir were detected at concentrations of 120 ng/L.

141. On July 15, 2007, PCBs at LA Canyon below LA Weir were detected at concentrations of 440 ng/L.

142. On August 8, 2006, PCBs at LA Canyon below Omega West were detected at concentrations of 300 ng/L.

143. On August 19, 2006, PCBs at LA Canyon below Omega West were detected at concentrations of 202 ng/L.

144. On October 9, 2006, PCBs at LA Canyon below Omega West were detected at concentrations of 78 ng/L.

145. On May 13, 2007, PCBs at LA Canyon below Omega West were detected at

concentrations of 118 ng/L.

146. On August 1, 2006, PCBs at Pueblo above SR-502 were detected at concentrations of 230 ng/L.

147. On August 7, 2006, PCBs at Pueblo above SR-502 were detected at concentrations of 81 ng/L.

148. On August 11, 2005, PCBs at P-SMA-3 were detected at concentrations of 740 ng/L.

149. On August 22, 2005, PCBs at P-SMA-3 were detected at concentrations of 220 ng/L.

150. On July 6, 2006, PCBs at P-SMA-3 were detected at concentrations of 150 ng/L.

151. In addition to LANL's data, samples collected by NMED from August 23, 2003 to August 24, 2005 at LA-SMA-6.6 (E030) show PCB concentrations ranging from 250 ng/L to 16,900 ng/L.

152. Samples collected from NMED from September 6, 2003 to August 25, 2006 at E060 in Pueblo Canyon show PCB concentrations ranging from 82 ng/L to 2,490 ng/L, well above the wildlife and human health standards.

153. LANL states that PCB levels in the LA/P Canyon watershed were detected at "at a concentration estimated to be 70 times greater than the New Mexico human health standard and 7 times the wildlife standard . . .[and] benzo(a)pyrene [was detected] in sediment samples . . . at 11 times the EPA residential soil screening level and in a sediment sample from Los Alamos Canyon below DP Canyon at 22 times the residential screening level."

154. The LA/P Canyon watershed is included on the State of New Mexico's § 303 (d) list of impaired waters. The watershed is water quality impaired for PCBs.

155. On August 30, 2007 NMED's Hazardous Waste Bureau drafted LANL a letter concerning contamination in the LA/P Canyon watershed. In the letter, NMED states that LANL "has failed to comply with surface water quality standards outlined in the Clean Water Act (33 U.S.C. §§ 1251 to 1387), the New Mexico WQCC Regulations (20.6.2. NMAC), and the State of New Mexico Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC), as required in Section VIII.C. of the [Hazardous Waste] Consent Order."

156. In the August 30, 2007 letter, NMED states that they are "particularly concerned with the recent destabilization of stream banks and remobilization of contaminants entrained in sediment in Los Alamos and Pueblo Canyons . . . .NMED's data collected from 2003 through 2006 document that storm water in both canyons contains detectable concentrations of polychlorinated biphenyls (PCBs). . . .NMED's April, 2007 report also shows that suspended sediment form Los Alamos and Pueblo Canyons reaches the Rio Grande during storm events with greater magnitude and frequency than before the Cerro Grande Fire . . .at least since the 1950s."

157. LANL's failure to comply with New Mexico's water quality standards in the LA/P Canyon watershed as outlined above is a violation of section 3.3. of the NPDES permit, sections 313, 505(a)(1), and 505(f)(6) of the CWA, and the CWA's implementing regulations. These violations are on-going and are reasonably likely to continue.

COUNT II
FAILURE TO CONDUCT REPRESENTATIVE MONITORING

158. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

159. Pursuant to 40 C.F.R. § 122.41 (j) and section 9.16.1 of the NPDES permit, all "[s]amples and measurements taken for the purpose of monitoring *shall be representative* of the monitored activity."

160. LANL has violated, and continues to violate, 40 C.F.R. § 122.41(j) and section 9.16.1 of the NPDES permit by: (1) failing to collect representative samples and measurements from all of the approximately 109 sites; (2) only conducting monitoring at the "site monitoring area" or "SMA" level instead of at the 109 sites; (3) using one SMA to conduct samples and measurements from more than one site (e.g., ACID-SMA-2 is used to collection samples from 4 sites, P-SMA-2 is used to collect samples at 2 sites, LA-SMA-5.5 is used to collect samples from 9 sites, and LA-SMA-5.9 is used to collect samples from 5 sites); (4) failing to demonstrate pursuant to section 5.2.4 of the NPDES permit that use of an SMA to collect samples from two or more sites is justified because the two or more sites "discharge substantially identical effluents"; (5) treating the SMA – the "monitoring area" – as the "outfall" instead of the individual site(s); (6) designing SMA monitoring devices in such a way and placing SMAs in locations and at distances from sites such that samples from the SMAs are subject to significant dilution prior to reaching the SMA (e.g., P-SMA-2 is located approximately 600 feet from 2 Sites, at the base of a large, open, and steep drainage area); (7) using one, small SMA to monitor large drainage areas in excess of 30 acres (e.g., R-SMA-2 covers 796.846 acres, ACID-SMA-2

covers 52.661 acres, P-SMA-1 covers 30.051 acres, LA-SMA-5.5 covers 76.088 acres, and LA-SMA-5.9 covers 49.953 acres); and (8) failing to conduct any verification and/or follow-up monitoring for the approximately 218 "other" sites in the LA/P Canyon watershed.

161. LANL's failure to comply with 40 C.F.R. § 122.41(j) and section 9.16.1 of the NPDES permit as outlined above is a violation of CWA sections 505(a)(1), 505(f)(6) and the CWA's implementing regulations. These violations are on-going and are reasonably likely to continue.

COUNT III
FAILURE TO CONDUCT QUARTERLY VISUAL MONITORING

162. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

163. Pursuant to section 5.1.1.1 of the NPDES permit, LANL is required to "perform and document a quarterly visual examination of a storm water discharge associated with industrial activity from each outfall" except for exempted discharges, i.e., discharges for which a waiver has been obtained. An outfall – which is a "point source" – is the place "from which pollutants are or may be discharged." 40 C.F.R. § 122.2.

164. The visual examinations must be conducted at each outfall and "must be made during daylight hours" (e.g., normal working hours). NPDES permit § 5.1.1.1. Visual examinations must also be made of samples collected within the first 30 minutes of a storm or snow melt event (or as soon thereafter as is practicable but not to exceed one hour of when the runoff or snowmelt begins discharging from the facility). NPDES permit § 5.1.1.2. In conducting such examinations, the examiner should look for variations in color, odor, clarity,

floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious pollution indicators.

165. If "no storm event resulted in runoff from the facility during a monitoring quarter, [LANL] is excused from visual monitoring for that quarter, provided [that LANL] document in [its] monitoring records that no runoff occurred. [LANL] must sign and certify the documentation in accordance with Part 9.7." NPDES permit § 5.1.1.2.

166. With respect to "inactive and unstaffed" sites, LANL may exercise a waiver of these visual monitoring requirements if: (1) the "facility remains inactive and unstaffed;"(2) LANL maintains a certificate with its SWPPP stating that the site is inactive and unstaffed; and (3) LANL determines, in the certificate, that "performing visual examinations during a qualifying event is not feasible." NPDES permit § 5.1.1.4.

167. LANL has violated, is currently violating, and is reasonably likely to continue violating, section 5.1.1. of the NPDES permit by failing to conduct and document quarterly (4 times a year) visual examinations of storm water discharges at each of the approximately 109 sites. The date(s) of these violations are the 4 times a year that LANL has failed, and continues to fail, to conduct the requisite monitoring. LANL violated this monitoring requirement by failing to conduct quarterly visual monitoring at each of the 109 sites over the past six years, in 2002, 2003, 2004, 2005, 2006, and 2007.

168. LANL has not obtained a waiver of the visual monitoring requirements pursuant to section 5.1.1.4 of the NPDES permit.

169. LANL's failure to comply with section 5.1.1 of the NPDES permit as outlined

above is a violation of CWA sections 505(a)(1), 505(f)(6) and the CWA's implementing regulations. These violations are on-going and are reasonably likely to continue.

COUNT IV
FAILURE TO CONDUCT BENCHMARK MONITORING

170. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

171. Pursuant to section 5.1.2 of the NPDES permit, LANL is required to conduct benchmark monitoring at each of the approximately 109 sites.

172. Benchmark monitoring at each of the 109 sites was to occur between October 1, 2001 and September 30, 2002 (year two of the permit) and October 1, 2003 to September 30, 2004 (year four of the permit). LANL was to "monitor quarterly (4 times a year) during at least one, and potentially both, monitoring periods." NPDES permit § 5.1.2.1.

173. With respect to "inactive and unstaffed" sites, LANL may exercise a waiver from these benchmark monitoring requirements if: (1) the "facility remains inactive and unstaffed;"(2) LANL maintains a certificate with its SWPPP stating that the site is inactive and unstaffed; and (3) LANL determines, in the certificate, that "performing benchmark monitoring during a qualifying event is not feasible." NPDES permit § 5.1.2.3.

174. LANL has violated, and continues to violate, section 5.1.2 of the NPDES permit by failing to conduct benchmark monitoring at each of the approximately 109 sites. The date(s) of these violations are the 4 times a year that LANL has failed, and continues to fail, to conduct the requisite benchmark monitoring. These violations occurred first during year two of the NPDES permit, from October 1, 2001 to September 30, 2002, and again during year four of the NPDES

permit (from October 1, 2003 to September 30, 2004) at each of the 109 sites.

175. LANL has not obtained a waiver from the benchmark monitoring requirements pursuant to section 5.1.2.3 of the NPDES permit.

176. LANL's failure to comply with section 5.1.2 of the NPDES permit as outlined above is a violation of CWA sections 505(a)(1), 505(f)(6) and the CWA's implementing regulations. These violations are on-going and are reasonably likely to continue.

COUNT V
FAILURE TO CONDUCT COMPLIANCE MONITORING

177. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

178. Pursuant to sections 5.1.4 and 6.K (including Table K-1) of the NPDES permit, LANL is required to conduct compliance monitoring to evaluate compliance with numerical effluent limitations at each of the approximately 109 sites.

179. LANL has violated, and continues to violate, sections 5.1.4 and 6.K (including Table K-1) of the NPDES permit by failing to conduct compliance monitoring to evaluate compliance with numerical effluent limitations at each of the approximately 109 sites. Pursuant to the NPDES permit, LANL was to conduct compliance monitoring once a year during each year of the term of the NPDES permit. See NPDES permit § 6.K.5. The date(s) of these violations are the one time a year, over the past five years, that LANL has failed, and continues to fail, to conduct the requisite compliance monitoring. LANL has violated this monitoring requirement by failing to conduct compliance monitoring in 2002, 2003, 2004, 2005, 2006, and 2007.

180. LANL's failure to comply with sections 5.1.4 and 6.K (including Table K-1) of the NPDES permit as outlined above is a violation of CWA sections 505(a)(1), 505(f)(6) and the CWA's implementing regulations. These violations are on-going and are reasonably likely to continue.

COUNT VI
REPORTING VIOLATIONS

181. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

182. Pursuant to section 7.1 of the NPDES permit LANL is required to "submit analytical monitoring results obtained from each outfall associated with industrial activity . . . on a Discharge Monitoring Report (DMR) form (one form must be submitted for each storm event sampled)."

183. LANL has violated, and continues to violate, section 7.1 of the NPDES permit. LANL has failed to submit DMRs for the approximately 109 sites. Under the NPDES permit, such DMRs for monitoring of numeric limitations are to be submitted to the EPA by the 28th day of the month following the monitoring period. For the past 6 years, LANL has failed, and continues to fail, to submit DMRs for the 109 sites by the 28th day of the month following the monitoring period. These violations occurred approximately 12 times a year (i.e., on a monthly basis) in 2002, 2003, 2004, 2005, 2006, and 2007. For benchmark monitoring, LANL is to save and submit its results for the first monitoring year (2001-2002) by January 28, 2003 and save and submit its results for the second monitoring year (2003 - 2004) by January 28, 2005. The violations for reporting benchmark monitoring occurred on January 28, 2003 and January 28,

2005 for each parameter. These violations are on-going.

184. LANL's failure to comply with sections 7.1 of the NPDES permit as outlined above is a violation of CWA sections 505(a)(1), 505(f)(6) and the CWA's implementing regulations. These violations are on-going and are reasonably likely to continue.

COUNT VII
POLLUTION CONTROL VIOLATIONS

185. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

186. Pursuant to section 4.3 of the NPDES permit, LANL must maintain all best management practices ("BMPs") used to control pollution from the approximately 109 sites "in effective operating condition." If "site inspections . . .identify BMPs that are not operating effectively, maintenance must be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls." NPDES permit § 4.3.

187. Pursuant to 40 C.F.R. § 122.41(e), LANL "shall at all times properly operate and maintain all . . .systems of treatment and control . . .which are installed or used . . .to achieve compliance with the conditions of [a] permit."

188. LANL has violated, and continues to violate, section 4.3 of the NPDES permit and 40 C.F.R. § 122.41 (e) by failing to maintain effective BMPs for the approximately 109 sites. All of the 109 sites have BMPs in place but still have a medium or high potential to discharge pollutants to Los Alamos/Pueblo Canyons based on LANL's erosion matrix scoring (EMS) system. For example, Site 00-011 (a), a mortar impact area in Rendija Canyon, has BMPs in place but received an EMS score of 87.0. Site 01-001 (f), an old septic tank (hillside 140), has

BMPs in place but is still a major source of PCB contamination in Los Alamos Canyon.

189. LANL's failure to comply with section 4.3 of the NPDES permit and 40 C.F.R. § 122.41 (e) as outlined above is a violation of CWA sections 505(a)(1), 505(f)(6) and the CWA's regulations. These violations are on-going and are reasonably likely to continue.

COUNT VIII
UNPERMITTED DISCHARGES

190. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

191. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant from a point source into navigable waters of the United States, unless pursuant to the terms of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

192. Pursuant to the MSGP, LANL is only authorized to discharge stormwater from those sites that are "specifically identified by outfall or discharge location in the SWPPP."

193. LANL has discharged and continues to discharge pollutants from one or more sites in the LA/P Canyon watershed at the Lab that are not covered by its NPDES permit. These sites include the specific sites listed in Plaintiff's March 29, 2007 notice letter, additional sites that are known, or should be known, to LANL, and additional sites that will be discovered through the discovery process.

194. Following significant precipitation events contaminants from sites not covered by an NPDES permit run off into the soils, surface water, and shallow groundwater of the LA/P Canyon watershed and into to the Rio Grande. Discharges from each of the sites represents an unauthorized discharge under the CWA because they are not covered by, or identified in,

LANL's MSGP.

195. These violations will continue to occur when significant precipitation events occur (even when such events produce less than 0.1 inch of rain) and until corrective action is taken.

196. LANL's unauthorized discharges are violations of sections 301, 505(a)(1), and 505(f)(1) of the CWA and the CWA's regulations. These violations are on-going and are reasonably likely to continue.

PRAYER FOR RELIEF

196. Plaintiffs repeat and incorporate by reference the allegations of all foregoing paragraphs.

197. WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Issue a declaratory judgment that LANL's actions and/or inactions, as alleged in this complaint, have violated, and continue to violate the CWA and the CWA's implementing regulations;

B. Issue a mandatory injunction requiring LANL to comply fully with the CWA and CWA's implementing regulations, as alleged in this complaint, including the terms and conditions of the NPDES permit and New Mexico's water quality standards in Los Alamos and Pueblo Canyons;

C. Issue an order assessing civil penalties for violating the terms and conditions of the NPDES permit, the CWA, and the CWA's implementing regulations pursuant to section 309(d) of the CWA, 33 U.S.C. § 1319(d);

D. Issue such declaratory and/or injunctive relief, including remediation of the sites to ensure compliance with effluent standards pursuant to sections 505(a)(1), 505(f)(6), and such other relief as Plaintiffs may subsequently request or that this Court may deem appropriate;

E. Retain continuing jurisdiction of this matter until LANL fully remedies the violations of law complained of herein;

F. Grant Plaintiffs their costs and expenses of litigation, including reasonable attorneys' fees pursuant to section 505(d) of the CWA, 33 U.S.C. § 1365(d);

G. Grant such other relief as this Court may deem just and proper.

Respectfully submitted this 12th day of March, 2008.

/s/ Megan Anderson
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