



ENVIRONMENTAL PROTECTION AGENCY

[EPA-R06-OW-2023-0566; FRL-11561-01-R6]

Notice of Availability of Initial Revised Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is providing notice of an initial revised designation determination that storm water discharges from the Los Alamos Urban Area (as defined by the latest decennial Census) and Los Alamos National Laboratory (LANL) property in Los Alamos County and Santa Fe County, New Mexico are contributing to violations of New Mexico water quality standards (WQS) and require National Pollutant Discharge Elimination System (NPDES) permit coverage under the Clean Water Act (CWA). This action is in response to a June 30, 2014, petition filed with EPA by Amigos Bravos entitled “A Petition by Amigos Bravos for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit,” and revises the Agency’s prior December 16, 2019, designation decision, which was remanded to EPA for reconsideration by the Tenth Circuit Court of Appeals.

DATES: Comments must be received on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The “Initial Revised Designation Decision and Record of Initial Decision in Response to A Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require Clean Water Act Permit Coverage” was signed on November 6, 2023. The EPA will hold an informal virtual

public meeting in January 2024, at least two weeks before the end of the public comment period. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments on the Initial Designation Determination, identified by Docket ID No. **EPA-R06-OW-2023-0566**, by the following method:

- Federal eRulemaking Portal: <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the **EPA-R06-OW-2023-0566** for this Initial Designation Determination. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the Initial Designation Determination, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For further information contact Ms. Evelyn Rosborough via email: rosborough.evelyn@epa.gov, or may be mailed to Ms. Evelyn Rosborough, Environmental Protection Agency, Region 6, Water Division (6WQ-NP), 1201 Elm Street, Suite 500, Dallas, TX 75270.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments as detailed in the **ADDRESSES** section. Do not submit to EPA any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not

consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system).

B. Participation in Virtual Public Meeting

More information on how to participate in the informal virtual public meeting planned for January 2024 will be available soon via the New Mexico section of the Public Notices at U.S. EPA web page at <https://www.epa.gov/publicnotices>. Public comments will not be accepted during the public meeting, but the date of the meeting will provide at least two weeks after the meeting to submit written comments prior to the end of the public comment period.

II. General Information

A. Does this action apply to me?

Small MS4s operated by the County of Los Alamos, Los Alamos National Laboratory, including Triad National Security, LLC and the U.S. Department of Energy's National Nuclear Security Administration, and the New Mexico Department of Transportation would potentially be regulated as a result of this action. To determine whether your entity is affected by this action, you should also review the description of EPA's action in Section II.B of this notice and the Initial Designation Determination document available in Docket ID No. **EPA-R06-OW-2023-0566** at the Federal eRulemaking Portal: <https://www.regulations.gov/> or online via the Public Notice web page for New Mexico at: <https://www.epa.gov/publicnotices>. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Summary and Availability of Designation Documents

The Regional Administrator of EPA Region 6 has made an initial designation of stormwater discharges from certain MS4s for regulation under the NPDES permitting program pursuant to Section 402(p)(2)(E) and (6) of the CWA and EPA's implementing regulations at 40 CFR 122.26(a)(9)(i)(C)-(D). Those provisions authorize the Agency to regulate stormwater discharges that contribute to a WQS violation or that are a significant contributor of pollutants to waters of the United States, or where controls are needed based on wasteload allocations that are part of total maximum daily loads. This authority is often referred to as "residual designation authority" or RDA. EPA is providing notice of its revised initial designation that storm water discharges from the Los Alamos Urban Area (as defined by the latest decennial Census) and LANL property in Los Alamos County and Santa Fe County, New Mexico are contributing to violations of New Mexico WQS and require NPDES permit coverage under the CWA.

This proposed initial designation revises EPA's prior December 16, 2019, decision designating stormwater discharges from small MS4s operated by the County of Los Alamos, LANL, and the New Mexico Department of Transportation for NPDES permitting. The County of Los Alamos filed a petition for review of EPA's 2019 designation with the U.S. Court of Appeals for the Tenth Circuit. Following the filing of the petition for review, EPA filed a motion for voluntary remand to reconsider its response to the Petition considering the Supreme Court's intervening decision in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020) (*Maui*) and based on other relevant factors. On January 21, 2022, the Court granted EPA's motion, remanding the matter to EPA "for the limited purpose of reconsidering the EPA's decision that is the subject of this petition for review. Specifically, the EPA should reconsider its decision in light of the Supreme Court's decision in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020). The EPA may conduct any and all proceedings it deems necessary and

appropriate to reconsider the decision at issue in this case.” Order, United States Court of Appeals, Tenth Circuit, January 21, 2022, Case # 20-9534, at 2. In addition to considering the Supreme Court’s decision in *Maui*, EPA has also considered the facts at issue in this matter considering the recent Supreme Court decision in *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023). EPA has carefully considered all record information, including stormwater discharge data collected by NMED, LANL, and the Buckman Direct Diversion, NMED’s water quality assessments and lists of impaired waters and any supplemental information submitted by LANL or the County regarding EPA’s previous 2019 designation decision, as well as the public comments submitted on that decision. EPA also conducted a site visit in September 2022 to examine first-hand the effects of the discharges and waters at issue. EPA is hereby proposing its initial determination for public comment. EPA is soliciting public comment and may revise its findings based on public input.

Upon reconsideration of the Petition on remand, EPA has initially determined that stormwater discharges from small MS4s located in the Los Alamos Urban Area as defined by the latest decennial Census and MS4s located on LANL property within Los Alamos and Santa Fe Counties, New Mexico require NPDES permit coverage because the discharges are contributing to violations of NM WQS in waters of the United States. The initial designation plus supplementary information relating to it are available on the EPA Public Notice webpage at: <https://www.epa.gov/publicnotices>. Please refer to that website to review these materials and then follow the directions above in this Notice for submitting any comments.

Dated: November 27, 2023.

Dzung Kim Ngo Kidd,

Acting Director, Water Division, Region 6.

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