



April 15, 2015

Evelyn Rosborough
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U.S. EPA Region 6
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Dallas, TX 75202

Submitted via email to rosborough.evelyn@epa.gov

Re: Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act, 80 Fed. Reg. 13,852 (Mar. 17, 2015)

Dear Ms. Rosborough:

The Natural Resources Defense Council (NRDC) and American Rivers appreciate the opportunity to comment on the preliminary designation of stormwater discharges from sites in Los Alamos County, New Mexico. NRDC and American Rivers strongly support this exercise of EPA's authority to designate known and potential contributors to water quality violations, and we urge the agency to finalize the designation as proposed.

As EPA notes in the designation document, the Clean Water Act provides that the agency shall require a permit for any "stormwater discharge [that] contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States,"¹ a mandate that is echoed in EPA's own implementing regulations.² This "residual designation authority" (RDA) is a critical tool to ensure that problematic discharges of stormwater do not go uncontrolled.

Once EPA has made a finding that a discharge meets the statutory criterion of "contribut[ing] to a violation of a water quality standard," it must designate that discharge for regulation, and the discharger "*shall* be required to obtain a NPDES permit."³ In other words, "the Agency's residual designation authority is not optional."⁴ As EPA has explained, "designation is

¹ 33 U.S.C. § 1342(p)(2)(E).

² 40 C.F.R. § 122.26(a)(9)(i)(D).

³ *Id.* (emphasis added).

⁴ *In re Stormwater NPDES Petition*, 910 A.2d 824, 835-36 (Vt. 2006).

appropriate as soon as the adverse impacts from storm water are recognized.”⁵ EPA has not previously defined a threshold level of contribution to water quality standards violations that would suffice to make such a determination. However, the agency has advised delegated States that “it would be reasonable to require permits for discharges that contribute more than *de minimis* amounts of pollutants identified as the cause of impairment to a water body.”⁶ The Supreme Court of Vermont has recognized this analysis as a valid interpretation of the RDA threshold.⁷

The preliminary designation of stormwater discharges in Los Alamos County far exceeds the statutory and regulatory minimum criteria for the use of EPA’s residual designation authority. The rules’ designation trigger is satisfied upon a showing that the discharges in question are a contributing source of non-*de minimis* levels of pollutants for which receiving waters are listed as impaired. Petitioners have provided more than enough evidence to meet this test and prove that the Los Alamos County discharges are contributing to water quality standards violations.

First, the petitioners (Amigos Bravos) have more than adequately proved that the Los Alamos County discharges contain the same pollutants that are impairing receiving waters. All that EPA needed in order to make this determination was a basic understanding of the contaminants routinely found in the type of discharges to be regulated (and, in fact, the designation document cites several sources of such information, including the Nationwide Urban Runoff Program and the National Stormwater Quality Database). Amigos Bravos far exceeded this standard of proof by citing monitoring data from the particular Los Alamos County areas in question.

Further, showing that the pollutants in the designated discharges are contributing to exceedances of water quality standards can be done by evaluating the water quality downstream of the discharges. Amigos Bravos has more than adequately verified the impact of the discharges on receiving water quality by citing documented impairments downstream from the Los Alamos County areas proposed for designation. We agree with EPA that New Mexico’s 303d/305b list is an appropriate source for the agency to rely on in confirming that the Los Alamos County discharges are a source of pollution contributing to water quality standards violations.

⁵ Letter from G. Tracy Mehan III, EPA Assistant Administrator, to Elizabeth McLain, Secretary, Vermont Agency of Natural Resources at 2 (Sept. 16, 2003).

⁶ *Id.* at 3.

⁷ *In re Stormwater NPDES Petition*, 910 A.2d at 836 n.6.

In conclusion, we support EPA's proposal to exercise its residual designation authority and designate the Los Alamos County discharges for permitting.

Sincerely,



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