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Residual Designation Rule: Los Alamos, New Mexico Files U.S. EPA Environmental Appeals Board Petition Challenging Stormwater/Water Quality Determination

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The County of Los Alamos, New Mexico (“Los Alamos”) filed a January 17th petition (“Petition”) challenging a United States Environmental Protection Agency (“EPA”) decision titled:

Designation Decision and Record of Decision in Response to 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 Permits (“Designation Decision”)

The EPA *Designation Decision* is stated to have been a response to a Petition from Amigos Bravos that had been submitted to the Region 6 Office under 33 U.S.C. § 1342(p)(2) of the Clean Water Act.

The Clean Water Act provision addressed in the Petition is also denominated the Residual Designation Rule. The Amigos Bravos Petition requested that the EPA Region 6 Administrator issue a determination that Los Alamos and other parties’ discharges:

... contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. . .

The EPA Region 6 Administrator is stated to have, on March 17, 2015, published a notice in the Federal Register of a preliminary determination that:

... discharges of stormwater from small municipal separate storm systems (MS4s) on LANL property and urban portions of Los Alamos County contribute to the violations of one or more NM WQS.

A final *Designation Decision* is stated to have been issued on December 16, 2019 which Los Alamos is challenging.

The arguments in support of the Los Alamos Petition include:

1. The EAB must dismiss the *Designation Decision* pursuant to 40 C.F.R. § 122.16 (f)(5) due the Regional Administrator’s failure to issue his *Designation Decision* within 90 days.
2. The Regional Administrator fails to establish that the County’s alleged discharges were to jurisdictional waters of the United States, a pre-requisite to establishing NPDES and MS4 jurisdiction.

3. The Regional Administrator's *Designation Decision* was in error, an abuse of discretion, and contrary to F.R. § 124.17(b).
4. The Regional Administrator improperly used data and information that does not reasonably or rationally support the assertion of the Regional Administrator that County's alleged discharges "contribute to" exceedances of water quality standards.

A link to the Petition can be found [here](#).