

January 11, 2008

By e-mail to: john.kieling@state.nm.us

John E. Kieling, Program Manager  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505-6303

Re: Comments to August 2007 draft Hazardous Waste Facility Permit  
Facility: Los Alamos National Laboratory (LANL)  
Facility Owner and Co-Operator: U.S. Department of Energy (DOE)  
Facility Co-Operator: Los Alamos National Security, LLC (LANS)  
EPA ID No.: NM0899910515

Dear Mr. Kieling:

The Embudo Valley Environmental Monitoring Group (EVEMG) is a non-governmental organization that formed in 2003 to address community concerns about the risks generated by the Cerro Grande Fire. As downwind neighbors to Los Alamos National Laboratory (LANL), EVEMG focuses on air emissions generated by LANL activities and their relationship to public and environmental health and safety. Located throughout the Embudo watershed are traditional land-based communities that are both culturally and economically dependent on a watershed that is free of contamination. Many families throughout our watershed area depend on small, family farms and kitchen gardens for both income and sustenance. We view healthy air, land and water as critical in providing local stability and security.

EVEMG conducts independent citizen based air monitoring, and has worked collaboratively with NMED, LANL Oversight Bureau in soil, produce and surface water sampling throughout the Embudo watershed, which is the wind shed of LANL. We work to increase our community's awareness of LANL's weapons research and development, and to effect positive change as an outcome of that greater awareness.

#### Request for Public Hearing and Negotiations

For the reasons that follow, EVEMG requests a public hearing on the draft LANL RCRA permit. Further, and prior to any notice of public hearing, pursuant to 20.4.1.901.A.4 NMAC, EVEMG requests that NMED, the Permittees, EVEMG, other parties, and if appropriate the Environmental Protection Agency, conduct negotiations to attempt to resolve issues related to this draft permit. EVEMG is confident that other parties and NMED would agree with some of the concerns and objections raised in the following

comments and that a revised draft permit could be developed prior to the public hearing.

EVEMG requests that NMED fully consider the comments and issue a revised draft permit before proceeding to a public hearing.

Following are general overall concerns about the draft permit and specific comments regarding the open burning and lack of open detonation provisions thereof.

**1. There is regulatory uncertainty about the hazardous waste disposal sites.** In the August 2007 Fact Sheet it is stated that DOE and LANL submitted an Application in 1980 for a permit for the disposal sites at Technical Area 54. These disposal sites are Material Disposal Areas (MDA) G (Area G), H and L, which are unlined pits, trenches and shafts used for the disposal of hazardous, toxic and radioactive wastes since the late 1950s. Over the years, DOE and LANL made several revisions to the Application, and then notified NMED that *“LANL would not seek a permit for hazardous waste disposal activities.”* p. 5.

Now, in Attachment O, MDA G, H and L are listed *“Permitted Units Undergoing Closure.”* Table O-4 specifically describes the disposal units as permitted units. As we understand it, there is no hazardous waste permit for operations at MDA G, H and L. How can the draft permit state that MDA G, H and L are permitted units? What is the legal status of MDA G, H and L?

**2. The “Imminent and Substantial Endangerment to Health and the Environment” Still Exists at LANL.** On May 2, 2002, NMED issued a determination that inadequacies in LANL’s hazardous waste management posed an “imminent and substantial endangerment to health and the environment” pursuant to the New Mexico Hazardous Waste Act. DOE and LANL sued NMED in both federal and state courts, resulting in the parties negotiating for almost 27 months. The public did not have a seat at the negotiating table. As part of the negotiations, NMED withdrew its imminent and substantial endangerment to health and the environment. We assert not much has changed at LANL since 2002 and that the imminent and substantial endangerment situation still exists from LANL operations. Some recent examples include:

- a. Hazardous and toxic contaminants have been found in surface water flowing over waste sites, including PCBs at 25,000 times the New Mexico water quality standard that is protective of human health and 1,000 times the New Mexico water quality standard that is protective of wildlife habitat standard;
- b. Contaminants have been found in ground water at LANL that include hexavalent chromium, or chrome 6, at eight times the New Mexico drinking water standard, and pentachlorophenol at six times the federal drinking water standard;

c. The draft permit anticipates making decisions about what to do with the many large dump sites at LANL. However, those decisions cannot be made because there is not a reliable monitoring network for ground water beneath the Pajarito Plateau in place, as required by the New Mexico Hazardous Waste Act, DOE Orders and standard industry practice.

d. Major seismic issues are outstanding. In December 2006, the Defense Nuclear Facilities Safety Board reported a 50% increase in the peak ground acceleration from 0.34 g to 0.52 g, or the magnitude of a seismic event at LANL. DNFSB December 22, 2006 Weekly Report.

**3. Open Burning/Open Detonation Sites.** EVEMG objects to NMED allowing LANL to open burn up to 60,000 pounds per year of liquid and solid hazardous waste at TA-16. NMED is allowing LANL to burn high explosives, volatile solvents, acids, bases and oils. The draft permit states "open burning of wastes at the TA-16 [open burning] units is conducted in a manner that does not threaten human health or the environment. Prior to OB operations at the TA-16 Burn Ground, the area is cleared of all but authorized Burn Ground personnel. A barrier is placed across the road to prevent entry." Attachment I, page 8.

It is noted that NMED is not requiring LANL to monitor the smoke plumes that carry the pollutants off the LANL site and the groundwater, even though the regulations require such monitoring. 40 CFR § 264.601 (a) and (c). If NMED is going to allow the open burning of these materials, it must also require LANL to monitor the air emissions from open burning and the groundwater resource beneath TA-16. Putting a barrier across the road will not identify contaminants or prevent dispersion of hazardous materials through the air pathway into surrounding communities.

#### OPEN BURNING SITES

We object to NMED permitting the open burning of high explosives and other hazardous materials as a waste management method at any LANL location, including TA-16-388 and TA-16-399. We specifically object to NMED permitting LANL to open burn these materials at TA-16-388 Flash Pad because on January 10, 2006 DOE/LANL stated that they do not have a need for that facility.

**Background.** In 2004, DOE/LANL applied for two new construction permits from the NMED Air Quality Bureau (AQB) for open burning activities at three technical areas at LANL, including the Flash Pad at TA-16-388. The NMED AQB issued the permits: Air Quality Permit 2195J for the TA-11 Wood and Fuel Fire Test Site and TA-16 Flash Pad and Air Quality Permit 2195K for the DX-TA-36 Sled Track. CCNS, Tewa Women United (TWU) and EVEMG appealed the permits to the Environmental Improvement

Board. On January 10, 2006, DOE/LANL wrote a letter to Richard Goodyear, Program Manager at the NMED AQB, requesting “the Bureau cancel these permits” because as the result of a review of the open burn activities, LANL “no longer needs to perform the types of testing and activities authorized by the permits.” A copy of the letter is attached to our comments as **Attachment 1**. We request that the letter be added to the Administrative Record.

During the public education campaign about the open burning/open detonation permits, 749 individuals signed postcards to NMED opposing the issuance of the permits. Copies of the receipts signed by NMED are attached to our comments as **Attachment 2** with an example of the postcard as **Attachment 3**.

Therefore, we request that NMED deny a permit for the open burning activities at TA-16-388. It appears that LANL applied for the permit in 2003, prior to the change in regulations requiring them to apply for a new construction permit for open burning activities.

We also request that NMED deny a permit for open burning activities at TA-16-399.

The draft permit states that “[t]he Permittees shall conduct open burning operations in accordance with this Permit Part, in accordance with 40 CFR Part 264, Subpart X and 40 CFR §§ 268.7(b) and 270, which are incorporated herein by reference, in accordance with Permit Part 12 (TA-16), and Attachment I (Open Burn Unit Management).” The draft permit requires soil monitoring, but does not require groundwater and air monitoring as required in 40 CFR § 264.401 (a) and (c), Subpart X.

If NMED refuses to deny a permit for open burning activities at TA-16-388 and TA-16-399, then the permit must also include the groundwater and air monitoring requirements found in 40 CFR 264, Subpart X “Miscellaneous Units,” specifically § 264.101 (a) and (c) “Environmental performance standards.”

If these sites are denied a permit, then they should be covered under the Consent Order, § IV.A.5 “Firing Sites,” and should be listed as non-deferred sites for corrective action in Table IV-1. In either case, please provide us with the current deferral or non-deferral status of TA-16-388 and TA-16-399.

## OPEN DETONATION SITES

Given the 749 individuals signed postcards to NMED, Governor Richardson, Senator Bingaman and Representative Udall opposing both the open burning and open detonation activities at LANL, we are surprised and alarmed that the open detonation

sites are not included in the draft permit. These sites must be included in any final permit.

In conclusion, at best the RCRA permitting process ought to provide protectiveness to the public and the environment from hazardous and toxic waste associated with LANL activities, at worst it allows for LANL's continuous irresponsible generation of toxic and hazardous waste and the dispersion of these contaminants, permeating the environment and saturating surrounding communities. There are too many outstanding issues associated with LANL hazardous waste operations that favor the industry. NMED must deny issuing a hazardous waste permit to LANL until the issues are resolved.

Thank you for your consideration of our comments.

Sincerely,

Sheri Kotowski  
Embudo Valley Environmental Monitoring Group  
PO Box 291  
Dixon, NM 87527505 579 4076  
serit@cybermesa.com

Enclosure: Attachments 1-3



concerned citizens  
for nuclear safety

107 Cienega St.  
Santa Fe, NM 87501  
505-986-1973 Tel  
505-986-0997 Fax  
ccns@nuclearactive.org  
www.nuclearactive.org

## RECEIPT

I, Jo Huntington  
received 664 individually signed postcards expressing citizen concern  
regarding New Mexico Environment Department Permits No. 2195J and  
2195K allowing for open burning of depleted uranium and high explosives  
at Los Alamos National Laboratory.

Dated: December 16, 2005

Secretary Ron Curry  
NM Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87502

CCNS is a 501(c)(3)  
organization and your  
donation is tax deductible  
to the extent of the law.  
Printed on recycled paper



concerned citizens  
for nuclear safety

107 Cienega St.  
Santa Fe, NM 87501  
505-986-1973 Tel  
505-986-0997 Fax  
ccns@nuclearactive.org  
www.nuclearactive.org

## RECEIPT

I, Jo HUNTINGTON  
received 85 individually signed postcards expressing citizen concern  
regarding New Mexico Environment Department Permits No. 2195J and  
2195K allowing for open burning of depleted uranium and high explosives  
at Los Alamos National Laboratory.

Dated: August 16, 2006

Secretary Ron Curry  
NM Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87502

CCNS is a 501(c)(3)  
organization and your  
donation is tax deductible  
to the extent of the law.  
Printed on recycled paper

392  
23¢



Senator Jeff Bingaman  
119 East Marcy Street  
Santa Fe, NM 87501

23¢



Representative Tom Udall  
811 St. Michael's Drive  
Suite 104  
Santa Fe, NM 87505

23¢



Secretary Ron Curry  
NM Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87502

23¢



Governor Bill Richardson  
State Capitol Building  
Room 400  
Santa Fe, NM 87501

Dear Senator Bingaman,

The open burning/open detonation permits (Nos. 2195J and 2195K) issued by the New Mexico Environment Department (NMED) to Los Alamos National Laboratory (LANL), which allow open burning of depleted uranium, high explosives and other contaminated materials, as written, are not protective of our health and environment. As a result, I request that NMED rescind these permits and any new permits must include requirements for:

- Real-time monitoring, with analysis, of all open burn/open detonation activities at LANL involving radioactive materials and hazardous chemicals, including dioxin.
- Monthly soil and water sampling and analyses in neighboring communities.
- A thorough and timely investigation by NMED and LANL of alternatives to open burn/open detonation practices, including cost estimates for development and a timeline for implementation.
- Health studies in communities within a 60-mile radius of LANL.

Thank you for your careful consideration of my request

Date: \_\_\_\_\_ Name: \_\_\_\_\_  
Signature: \_\_\_\_\_ Address: \_\_\_\_\_

Dear Representative Udall,

The open burning/open detonation permits (Nos. 2195J and 2195K) issued by the New Mexico Environment Department (NMED) to Los Alamos National Laboratory (LANL), which allow open burning of depleted uranium, high explosives and other contaminated materials, as written, are not protective of our health and environment. As a result, I request that NMED rescind these permits and any new permits must include requirements for:

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- A thorough and timely investigation by NMED and LANL of alternatives to open burn/open detonation practices, including cost estimates for development and a timeline for implementation.
- Health studies in communities within a 60-mile radius of LANL.

Thank you for your careful consideration of my request

Date: \_\_\_\_\_ Name: \_\_\_\_\_  
Signature: \_\_\_\_\_ Address: \_\_\_\_\_

Dear Secretary Curry,

The open burning/open detonation permits (Nos. 2195J and 2195K) issued by the New Mexico Environment Department (NMED) to Los Alamos National Laboratory (LANL), which allow open burning of depleted uranium, high explosives and other contaminated materials, as written, are not protective of our health and environment. As a result, I request that NMED require the following in these permits and any new permits:

- Real-time monitoring, with analysis, of all open burn/open detonation activities at LANL involving radioactive materials and hazardous chemicals, including dioxin.
- Monthly soil and water sampling and analyses in neighboring communities.
- A thorough and timely investigation by NMED and LANL of alternatives to open burn/open detonation practices, including cost estimates for development and a timeline for implementation.
- Health studies in communities within a 60-mile radius of LANL.

Thank you for your careful consideration of my request

Date: \_\_\_\_\_ Name: \_\_\_\_\_  
Signature: \_\_\_\_\_ Address: \_\_\_\_\_

Dear Governor Richardson,

The open burning/open detonation permits (Nos. 2195J and 2195K) issued by the New Mexico Environment Department (NMED) to Los Alamos National Laboratory (LANL), which allow open burning of depleted uranium, high explosives and other contaminated materials, as written, are not protective of our health and environment. As a result, I request that you direct NMED staff to require the following in any new permits:

- Real-time monitoring, with analysis, of all open burn/open detonation activities at LANL involving radioactive materials and hazardous chemicals, including dioxin.
- Monthly soil and water sampling and analyses in neighboring communities.
- A thorough and timely investigation by NMED and LANL of alternatives to open burn/open detonation practices, including cost estimates for development and a timeline for implementation.
- Health studies in communities within a 60-mile radius of LANL.

Thank you for your careful consideration of my request

Date: \_\_\_\_\_ Name: \_\_\_\_\_  
Signature: \_\_\_\_\_ Address: \_\_\_\_\_



Los Alamos National Laboratory/University of California  
Environmental Stewardship (ENV)  
Environmental Remediation and Surveillance (ERS) Program, MS M992  
Los Alamos, New Mexico 87545  
(505) 867-0499/FAX (505) 865-4747



National Nuclear Security Administration  
Los Alamos Site Office, MS A316  
Environmental Restoration Program  
Los Alamos, New Mexico 87544  
(505) 867-7203/FAX (505) 865-4504

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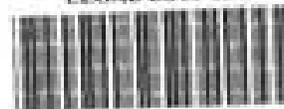
JAN 11 2006

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Date: January 10, 2006  
Refer To: ENV-DO-06-002

Richard Goodyear, Program Manager  
Permits Section, Air Quality Bureau  
New Mexico Environment Department  
2048 Galisteo  
Santa Fe, NM 87505

LEGAL COUNSEL



"L0600162"

**Subject: University of California and U.S. Department of Energy, NSR Air Quality Permit Nos. 2195-J and 2195-K**

Dear Mr. Goodyear:

On March 29, 2005, the Air Quality Bureau ("Bureau") of the New Mexico Environment Department issued NSR Air Quality Permit No. 2195-J for the TA-11 Wood and Fuel Fire Test Site and TA-16 Flash Pad and NSR Air Quality Permit No. 2195-K for the DX-TA-36 Sled Track to Los Alamos National Laboratory ("Laboratory"). These permits were issued under 20.2.72 NMAC for facilities that had operated for several years under open burn permits issued under 20.2.60 NMAC. The permits were appealed to the Environmental Improvement Board, and the appeals are currently pending.

As you are aware, the U.S. Department of Energy ("DOE") has recently awarded the contract to manage the Laboratory to a new entity. In addition, DOE is developing a strategic plan for missions at its national laboratory complex. In view of these events, and as part of its transition planning for the new contract, the Laboratory undertook a review of the testing and activities anticipated at the sites covered by the permits. The Laboratory recently completed this review and determined that, for the foreseeable future, it no longer needs to perform the types of testing and activities authorized by the permits.

Therefore, the Regents of the University of California, current operator of the Laboratory, and DOE, owner of the Laboratory, request that the Bureau cancel these permits. If, in the future, the Laboratory determines that activities at these sites are necessary, the Laboratory will apply to the Bureau for the appropriate approvals before such activities are initiated.