

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



In the matter of a petition appealing)
The Secretary of the Environment's)
Denial of a Hearing on DP-1793)
)
Communities for Clean Water,)
Petitioner)

WQCC- 15-07 (A)

COMMUNITIES FOR CLEAN WATER
OPPOSED MOTION TO STAY DISCHARGE PERMIT 1793

Communities for Clean Water ("CCW") by and through counsel, The New Mexico Environmental Law Center ("NMELC"), hereby moves the Water Quality Control Commission ("the Commission"), pursuant to 20.1.3.15 NMAC, for a stay of the effectiveness of discharge permit 1793 ("DP-1793") pending the resolution of CCW's Petition for Review to the Commission of the denial of a public hearing in the matter of DP-1793 and the approval of DP-1793, and a hearing on this Motion. Counsel for New Mexico Environment Department ("NMED") and for Los Alamos National Laboratory ("LANL") were contacted regarding this Motion, and both NMED and LANL oppose this Motion. The basis for granting the Petition for Review is set forth in the separately filed Petition, which is incorporated herein by reference. For the reasons set forth below, the Commission should grant a hearing on this Motion for Stay and issue a stay pending its decision on the Petition for Review.

I. THE COMMISSION SHOULD GRANT A STAY OF DP-1793 PENDING PERMIT REVIEW.

A. The Standard For Granting A Stay of Proceedings.

The sole indication of the Commission's requirements for issuance of a stay is in a guidance document relating to stays of administrative regulations. *See generally*, "Guidelines for Water Quality Control Commission Regulation Hearings" at Section 502 (Approved November

10, 1992; Amended June 8, 1993). Section 502 requires that there be a written motion and that the Commission will only grant a stay if a hearing is held on the motion and good cause for granting the stay is shown. *Id.* at 502(A). "Good cause" is defined under Section 502 in a manner consistent with the requirements for granting injunctive relief under the New Mexico Rules of Civil Procedure. Compare *Id.* at 502(B) and Rules of Civil Procedure at 1-066(A).¹

These requirements for "good cause" are:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) whether the moving party will suffer irreparable harm if a stay is not granted;
- (3) whether substantial harm will result to other interested persons; and
- (4) whether harm will ensue to the public interest.

"Guidelines for Water Quality Control Commission Regulation Hearings" at Section 502

(Approved November 10, 1992; Amended June 8, 1993). CCW meets each of these criteria, as demonstrated below.

B. There Is Good Cause To Grant A Stay Of DP-1793.

A stay of the effectiveness of DP-1793 should be granted pending the resolution of CCW's Petition for Review for the following reasons:

1. It is likely that CCW will prevail on the merits of the Petition for Review.

CCW's Petition for Review has a fundamental basis: the Water Quality Control Act, NMSA 1978, 74-5-6(G), and its implementing regulation 20.6.2.3108.K NMAC, entitle CCW to a public hearing in the matter of DP-1793 where an interested party requests such a hearing and substantial public interest exists in the matter at issue. CCW demonstrated substantial public

¹ To obtain a preliminary injunction under Rule 1-066 NMRA, a plaintiff must show that plaintiff will suffer irreparable injury unless the injunction is granted; the threatened injury outweighs any damage the injunction might cause a defendant; the issuance of the injunction will not be adverse to the public's interest; and there is a substantial likelihood plaintiff will prevail on the merits. *LaBalbo v. Hymes*, 1993-NMCA-010 , ¶ 11, 115 N.M. 314, 850 *cert. denied*, 115 N.M. 359 (1993).

interest through three requests for a hearing, three sets of comments submitted to NMED, and CCW's participation in the permitting process.

In its hearing request, CCW—which is an organization comprised of other public interest organizations—stated its aims and objectives, as well as those of its member organizations. It is readily evident that CCW represents a large number of persons who, through their representatives in CCW, have demonstrated an interest in having a public hearing on DP-1793. *See generally*, Petitioner CCW Exhibit 1, attached hereto, “Public Comments and Request for Public Hearing of the New Mexico Environment Department January 30, 2015 Public Notice 2 for the Los Alamos National Laboratory Remediation Project, draft DP-1793” (March 2, 2015); and Petitioner CCW Exhibit 2, attached hereto, “CCW Response to April 15, 2015 Discussions about Draft DP-1793 for Los Alamos National Laboratory Remediation Project” (April 20, 2015); and Petitioner CCW Exhibit 3, attached hereto, “CCW Comments about May 28, 2015 draft DP-1793 for Los Alamos National Laboratory Groundwater Projects” (June 15, 2015). Thus, it is likely that the Secretary did not have discretion to deny this hearing request, as there was plainly substantial public interest.

2. CCW will suffer irreparable harm if the stay is not granted.

In this matter, CCW raised several issues in its Petition for Review of the Secretary's denial of a hearing and final approval of DP-1793 (filed on August 24, 2015), which flow from CCW's submission of three sets of comments on the permit (all of which requested a hearing) and participation in a meeting with the permit applicant (“applicant”) and the Ground Water Bureau. CCW was denied the opportunity to “submit evidence, data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.” NMSA 1978 § 74-6-5(G).

Allowing the permit to become effective during the period in which a Petition for Review may be filed and heard completely undercuts the intention of the Legislature in allowing such appeals under the New Mexico Water Quality Act. *Id.* at (O). To allow DP-1793 to go into effect while CCW's Petition for Review is pending further denies Petitioners their right to a meaningful hearing under the Act. *Id.* at G. The harm is patent: giving Petitioner a hearing on the permit at issue after allowing the permit to go into effect is to grant a hearing on a matter that is moot. This cannot be what the Legislature intended in providing the public with a broad opportunity for hearings on permits under the Act. NMSA 1978, 74-6-5(G).

3. No substantial harm will result to other persons interested in this matter if a stay is granted.

As a matter of fact, the Applicant first filed its draft permit application nearly three years and nine months (3.75 years) ago. During that time, on information and belief, the Applicant and the New Mexico Environment Department (NMED) worked on obtaining a final form for the permit and releasing it to the public. The permit in its current form was not made available for public comment until the last day of January 2015. That means the Applicant and the NMED had approximately 3 years and 2 months in which to work on this permit. The public was provided six (6) months to participate in the permit process. An additional, and foreseen, delay for the Commission to determine whether there has been a violation of the Water Quality Act in denying CCW a hearing on DP-1793 and the subsequent approval of DP-1793 will not harm the Applicant or NMED, given the amount of time they have had to resolve this issue without doing so.

4. There will be no harm to the public interest if a stay is granted.

Given that the issue in this matter is the apparent violation of the Water Quality Act provisions for public access to hearings on permits, it is the public interest that will be vindicated if a stay is granted. There is no harm – as indicated in relation to whether such exists for the Applicant and the NMED – to anyone in granting a stay. However, there is harm to the public – as CCW is a member of the public and comprised of numerous members of the public represented through each of CCW’s constituent organizations – in denying a stay, as set forth above.

II. CONCLUSION

For the reasons set forth above, the Commission should hear this motion in oral argument and enter a stay in this matter.

Dated: August 24, 2015.

NEW MEXICO ENVIRONMENTAL LAW CENTER

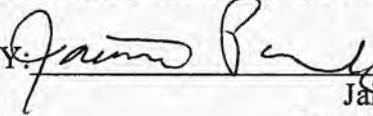
BY: 

Jaimie Park
Jonathan Block
Eric Jantz
Douglas Meiklejohn
1405 Luisa Street, Ste. 5
Santa Fe, NM 87505
(505) 989-9022, Ext. 23
jpark@nmelc.org

CERTIFICATE OF SERVICE

I, Jaimie Park, certify that the below listed persons were served digitally via email on this 24th day of August, 2015, and that the Administrator for the Water Quality Control Commission was provided with the original of this Motion and the requisite number of copies on this day:

NEW MEXICO ENVIRONMENTAL LAW CENTER

BY:  _____
Jaimie Park

Jonathan Block

Eric Jantz

Douglas Meiklejohn

1405 Luisa Street, Ste. 5

Santa Fe, NM 87505

(505) 989-9022, Ext. 23

jpark@nmelc.org

Jennifer Hower,
Deputy General Counsel
New Mexico Environment Department
121 Tijeras Ave NE, Suite 1000
Albuquerque, NM 87102-3400
Jennifer.Hower@state.nm.us

Tim Dolan
Office of Laboratory Counsel
Los Alamos National Laboratory
P.O. Box 1663, MS A187
Los Alamos, NM 87545
tdolan@lanl.gov



Communities For Clean Water

March 2, 2015

By email to: steve.huddleson@state.nm.us

Steve Huddleson, Environmental Scientist
Ground Water Quality Bureau
New Mexico Environment Department
P. O. Box 5469
Santa Fe, NM 87502-5469

Re: Public Comments and Request for Public Hearing of the New Mexico Environment Department January 30, 2015 Public Notice 2 for the Los Alamos National Laboratory Remediation Project, draft DP-1793

Dear Mr. Huddleson:

The Communities for Clean Water ("CCW") submit the following environmental justice, general and specific public comments, and request for a public hearing in response to the January 30, 2015 Public Notice 2 (PN2) of the New Mexico Environment Department ("NMED") draft Ground Water Discharge Permit for the Los Alamos National Laboratory ("LANL") Remediation Project, DP-1793.

CCW is a network of organizations whose mission is to ensure that community waters impacted by LANL are kept safe for drinking, agriculture, sacred ceremonies, and a sustainable future. Our growing network includes Concerned Citizens for Nuclear Safety, Amigos Bravos, Honor Our Pueblo Existence, the New Mexico Acequia Association, the Partnership for Earth Spirituality, and Tewa Women United. CCW brings together the vast expertise and commitment of widely respected and well-tested advocacy groups from culturally diverse backgrounds. Collectively CCW represents the only community-based coalition in Northern New Mexico that has been monitoring and advocating for better public water policy to address the toxic threats from LANL. As the sacred homeland of the Pueblo Peoples, it is vitally important that clean water be protected on the Pajarito Plateau. CCW has been working as a coalition to address contaminated water from LANL and Los Alamos County since 2006.



Request for Public Hearing

CCW respectfully requests a public hearing about the draft permit. There is significant public interest in this permit because the draft permit is incomplete.

For example, the draft permit allows for discharge of 350,000 gallons per day (gpd) – more than an acre-foot of water a day – at unspecified locations across the entire 36-square mile site.

There are no provisions for additional public review and comment for the treatment and discharge workplans that will be submitted by the Department of Energy (“DOE”) and Los Alamos National Security, LLC (“LANS”) (“the Permittees”).

There are no requirements that guide techniques or requirements for land application aside from reference to LANL’s standard operating procedures, a document that is not available on the Permittees’ Electronic Public Reading Room (“EPRR”).

There is no requirement for the Permittees to post pertinent documents in a timely manner to the EPRR in order to provide notice to the public that such activities are planned.

For those living downwind and downstream of LANL, the draft permit for “umbrella-coverage to a diversity of ground water activities at Los Alamos National Laboratory” appears to be an open invitation to discharge over an acre foot of water “anywhere within the 36 square mile Los Alamos National Laboratory site,” every day on the Sacred Pajarito Plateau.

General Comments

The draft permit is very broad. It allows the Permittees to discharge “anywhere within the 36-square mile LANL site.” Accordingly, DOE/LANS propose to include all 55 sections as possible discharge locations.” *Amended Discharge Permit Application DP-1793, ENV-DO-13-0343, LAUR-13-29467, Jan. 7, 2014, Part A, p. 3.*

The draft permit provides general requirements. It relies on the Permittees’ workplans to provide the specificity about the activities, location, timing, length of time, monitoring, location for land application, cleanup and closure, etc. There is no opportunity for public review and comment for the workplans.

There is no mention in the permit about taking care to ensure no run on or run off to or from the site monitoring areas (SMAs) in the Individual Stormwater Sites, National Pollution Discharge Elimination System (NPDES) permits, groundwater discharge

permits, well locations, drinking water wells, surface impoundments, and surface drainage features, etc.

Specific Comments

1. Timely postings to LANL's Electronic Public Reading Room (EPRR). As required in the Individual Stormwater Permit, the Hazardous Waste Permit, etc., the permit should require the Permittees to post the following documents in the EPRR:
 - a. Condition 3 - written notification (workplan) to NMED
 - b. NMED's response to the written notification (workplan), along with the NMED response to public comments
 - c. Condition 8 - discharge report to NMED
 - d. NMED's response to the discharge report
 - e. Condition 9 - semi-annual monitoring reports - due August 1 and February 1
 - f. NMED's response to the semi-annual monitoring reports
 - g. Condition 12 - groundwater exceedance notification
 - h. Condition 12 - submittal of corrective action plan (CAP) to NMED for approval
 - i. NMED's response and/or approval, including correspondence requesting additional information
 - j. Permittees' responses to NMED requests
 - k. Condition 13 - soil sampling exceedance workplan for "comprehensive investigation of the nature and extent of impact and a corrective action/remedial plan to address exceedances" to NMED
 - l. NMED's response and/or approval, including correspondence requesting additional information
 - m. Permittees' response to NMED requests
 - n. Condition 14 - defective groundwater well construction notification to NMED
 - o. NMED's response and/or approval, including correspondence requesting additional information
 - p. Permittees' responses to NMED requests
 - q. Condition 15 - groundwater well not hydrologically downgradient of the discharge location(s) it is intended to monitor notification to NMED
 - r. NMED's response and/or approval, including correspondence requesting additional information
 - s. Permittees' responses to NMED requests
 - t. Condition 16 - release (commonly known as a "spill") notification, corrective action report/plan and any abatement proposal
 - u. NMED's response and/or approval, including correspondence requesting additional information
 - v. Permittees' responses to NMED requests
 - w. Condition 17 - failures of discharge plan

- x. NMED's response and/or approval, including correspondence requesting additional information
- y. Permittees' responses to NMED requests
- z. Condition 18 - closure and post-closure activities - all documents exchanged between NMED and the Permittees under this Condition
- aa. Condition 22 - modifications and/or amendments - all documents exchanged between NMED and the Permittees under this condition
- bb. Condition 23 - plans and specifications - all documents exchanged between NMED and the Permittees under this condition
- cc. Condition 27 - right to appeal - all documents exchanged between the Permittees and the Water Quality Control Commission
- dd. Condition 28 - transfer of discharge permit - all documents exchanged between NMED and the Permittees under this condition
- ee.

2. Opportunity for Review and Comment about Permittee's Workplans. The draft permit provides a framework for the actual work to be done. The details are not provided; those are provided in the individual workplans. For that reason, the workplans should be required to be posted for public review and comment. A public comment period should be provided. We suggest at least thirty (30) days.

The LANL site is complicated with multiple levels of permitting. These permitted activities will impact both surface and groundwater. Allowing for review and a public comment period of the workplans will ensure that ground and surface water will be protected "for present and potential future use as domestic and agricultural water supply and other uses to protect public health." Draft Permit, Para. 2, p. 1. Water is precious and every effort should be made to ensure its protection and use. Review of the workplans by the public will ensure that water is protected.

3. Calculations for 350,000 gallons per day (gpd) discharge. It is unclear how the Permittees and the Department arrived at the 350,000 gpd discharge limit. It is unclear whether this volume is exclusively for land application. A daily discharge volume of 250 gallons per minute (gpm) for 10 hours per day is given. Please provide the calculations used. We did not find calculations in the Permittees' application.

4. Reference to NMED Risk Assessment Guidance. It is unclear whether this is for site screening or tap water. Will NMED require the most recent version of the guidance for compliance? Id., Para. 4, p. 1.

For all references to the Risk Assessment guidances, the permit should require the most recent version of the guidances be used.

5. No Justification for Allowing the Discharge to Contain Water Contaminants Which May Be Elevated above 20.6.2.3103 NMAC and/or Subsection WW of 20.6.2.7

NMAC. We find no justification either in the draft permit or the Permittees' application for allowing the Permittees to discharge containing water contaminants above the Water Quality Control Commission (WQCC) standards. In fact, the permit requires, "[p]rior to discharge, all groundwater will be treated to achieve standards equal to < [less than] 90% of the numeric standards of 20.6.2.3103 NMAC or < [less than] 90% of the numeric standards established in Table A-1, NMED Risk Assessment Guidance SSLs [Site Screening Levels] for tap water for constituents not listed in 20.6.2.3103 NMAC." Id., Para. 5, p. 1. The water is required to be treated to less than 90% of the applicable standards. If the water is not below standards, the permit should not allow it to be discharged. If it is above standards, then the permit should require operations to cease and a corrective action plan is submitted by Permittees. See also, Enclosure 2 of the NMED Discharge Permit Application Part B General, Jan. 7, 2014, ENV-DO-13-0343, LAUR-13-29467, Sec. B-11 (b), p. 4.

6. Permit Term. What is the permit term? 5 years? 10 years?

7. Land Application. We find it inappropriate to allow the entire site to be available for discharge and land application of the treated water. Details of land application techniques, calculation of application rates and calculation of 'water balance' for the site should be presented in the workplan. The water balance, when properly prepared, can be used to minimize or eliminate runoff and erosion from applied water from the site as it takes into account seasonality of precipitation, evapotranspiration, measured infiltration rates, conservative Ksat safety factors, etc. to ensure that reasonable infiltration occurs. The water balance can also be used to inform operational plans to balance storage, inflows and outflows.

Additionally, land application strategies/technologies and identification of sites using topographic maps that show slopes, drainages, land features and other wells should be included in the workplan and made available for public review and comment.

The monitoring plans (as required by Section B of the discharge permit) should include not only total volumes of water land-applied but also area covered to ensure that point-loading, runoff, and erosion is minimized and that conditions of the Permittees' *Land Application of Groundwater* standard operating procedures are met.

8. Section III. Authorization to Discharge. Does the draft permit allow one discharge per the 55 "separate surface locations identified in tabular format as Attachment 1" at a time? This language may need to be clarified.

9. Condition 3. Workplan. The workplan should provide a listing of all applicable water permits and the covered sites in the work area, as well as those downstream to the Rio Grande river.

10. Condition 4. Land Application. We could not find the LANS/DOE Standard Operating Procedure, ENV-RCRA-OP-010.3, *Land Application of Groundwater* in the LANL Electronic Public Reading Room. We have requested an electronic copy from DOE/LANS and reserve the right to provide additional comments after we receive it.

This section should include criteria to prevent run-on.

11. Condition 10. Use of the Interim Facility-Wide Groundwater Monitoring Plan. The condition should include a requirement that the Permittees use the most recently NMED approved version of the plan. We have serious concerns about the quality of data provided by the Permittees to support the Interim Facility-Wide Groundwater Monitoring Plan. We excerpt the following from the Appendix A (pp. A-11 and A-12), by Independent Registered Geologist Robert H. Gilkeson, to the December 12, 2013 CCW comments to the Department regarding the proposed permit DP-1132 for the Radioactive Liquid Waste Treatment Facility:

The National Academy of Sciences issued a report entitled, *Plans and Practices of Groundwater Protection at Los Alamos National Laboratory*, in 2007 that described the requirement to replace many, and possibly all, of the LANL characterization wells. See <http://dels.nas.edu/Report/Plans-Practices-Groundwater-Protection/11883>

The NAS report states in pertinent part:

Many if not all of the wells drilled into the regional aquifer under the LANL Hydrogeologic Workplan appear to be compromised in their ability to produce water samples that are representative of ambient groundwater for the purpose of monitoring. *Id.*, p. 49.

In November 2010, the NMED Hazardous Waste Bureau (HWB) issued General Responses to Comment on the LANL Renewal RCRA Permit. See <http://www.nmenv.state.nm.us/HWB/Permit.htm> On the NMED webpage under the heading "Renewal Permit," click on the topic "General Response to Comments."

In the document, the NMED HWB agreed with the conclusions in the NAS 2007 Report about the greater than 40 LANL characterization wells installed for the LANL Hydrogeologic Workplan. The NMED described the LANL characterization wells as not meeting the requirement to be monitoring wells for the NMED 2005 Order on Consent or the NMED 2010 Renewal of the Federal Resource Conservation and Recovery Act (RCRA) Permit for LANL.

For example, in the NMED 2010 General Response to Comment, the Department stated:

The Department agrees with many of the conclusions in the referenced National Academy of Sciences (NAS) Report; however the report is based on conditions at the time that the NAS conducted the evaluation. Since that time, the Permittees have installed, replaced and rehabilitated numerous wells completed in the intermediate perched aquifers and the regional aquifer at the Facility. The NAS report does not account for the additional groundwater characterization and actions taken to address deficient wells.

The NAS report references wells that were installed as part of LANL's groundwater characterization efforts that were conducted in accordance with their Hydrogeologic Work Plan (1998). These [characterization] wells were not installed for contaminant detection or groundwater monitoring. Therefore, these wells have limited relevance to groundwater protection goals set forth by the March 1, 2005 Consent Order. [Emphasis supplied.]

Reliance on the Interim Facility-Wide Groundwater Monitoring Plan to provide information about water contamination is inappropriate given the on-going concerns about the use of characterization wells for monitoring purposes.

12. Condition 11. Soil Sampling. The condition should require the use of the most recent Table A-1 *Risk Assessment Guidance for Site Investigations and Remediation*, as NMED does update the requirements from time to time.
13. Condition 13. Soil Sampling. Does NMED approve the corrective action/remediation plan? If so, the permit should so state.
14. Condition 18. Closure and Post-Closure Measures. The permit should properly cite the Consent Agreement as the "2005 NMED Order on Consent for LANL." This condition needs to be clarified that it includes both closure and post-closure activities.
15. Condition 19. Record Keeping. The Permittees should be required to keep all records under this permit until at least the time the *2005 NMED Order on Consent for LANL* is completed.
16. Permittees' Application - Tracer Studies. We are concerned that the Permittees may use radioactive tritium, or other radioactive materials in the tracer studies. See Enclosure 2 of the *NMED Discharge Permit Application Part B General*, ENV-DO-13-0343, LAUR-13-2967, p. 1. If tritium were used, what standard for tritium discharge would be used? What standard will be used for other radioactive materials that may be used?

17. Operational Plan. We are concerned that responsibility for work to be done falls on subcontractors. The Permittees have not properly managed and overseen their subcontractors, e.g., waste characterization issues. We are concerned about placing this level of responsibility on the subcontractors, without specific oversight responsibilities for the Permittees:

At the conclusion of treatment activities, management of treatment system solids will be the responsibility of the treatment system subcontractor; management will be conducted in accordance with all applicable local, state, and federal regulations. Id., Part 3, p. 3.

Management of spent treatment system resins and media will be the responsibility of the subcontractor and will be conducted in accordance with all applicable local, state, and federal regulations. Id., p. 6.

Thank you for your careful consideration of our comments. We look forward to next steps.

Sincerely,

Joni Arends
Concerned Citizens for Nuclear Safety
jarends@nuclearactive.org

Kathy Sanchez and Beata Tsosie-Peña
Tewa Women United
Kathy@tewawomenunited.org
Beata@tewawomenunited.org

Marian Naranjo
Honor Our Pueblo Existence
mariannaranjo@icloud.com

Rachel Conn
Amigos Bravos
rconn@amigosbravos.org

Joan Brown and Marlene Perrotte
Partnership for Earth Spirituality
marlenep@swcp.com
joankansas@swcp.com



Communities For Clean Water

April 29, 2015

By email to: steve.huddleson@state.nm.us

Steve Huddleson, Environmental Scientist
Ground Water Quality Bureau
New Mexico Environment Department
P. O. Box 5469
Santa Fe, NM 87502-5469

Re: CCW Response to April 15, 2015 Discussions about draft DP-1793 for
Los Alamos National Laboratory Remediation Project

Dear Mr. Huddleson:

The Communities for Clean Water ("CCW") submit the following in response to the three hour April 15, 2015 meeting between CCW, the New Mexico Environment Department ("NMED") and representatives of the Department of Energy ("DOE"), National Nuclear Security Administration ("NNSA"), Los Alamos National Security, LLC ("LANL") (together, "the Applicants") to discuss the draft groundwater discharge permit DP-1793 for the Los Alamos National Laboratory ("LANL") Remediation Project.

CCW provides these comments in good faith. We question the bases for the permit under the New Mexico Ground Water Quality Act and its implementing regulations. NMSA 1978, Section 74-6-1 *et seq.* CCW believes the Resource Conservation and Recovery Act ("RCRA") may apply to the proposed activities. We, therefore, reserve our right to raise issues under RCRA.

CCW Request for Public Hearing

CCW restates our request for a public hearing about the draft permit. There is significant public interest in this permit because the proposed permit does not require recycling and/or reuse of the water, does not address the increasing seismic risk in New Mexico, and does not require the posting of all deliverables/ documents



exchanged between NMED and the Applicants under the permit to LANL's Electronic Public Reading Room ("EPRR"), among other issues.

March 2, 2015 CCW Comments

CCW incorporates our March 2, 2015 public comments to NMED about the draft permit by reference. We begin by providing our March 2, 2015 comments below, state our understanding of the resolution of the issues during the April 15th meeting *in italics*, and in some cases provide additional information. If our understandings are not correct, we request a written response from NMED before the permit is finalized.

Specific Comments

1. Timely postings to LANL's Electronic Public Reading Room ("EPRR"). As required in the Individual Stormwater Permit, the Hazardous Waste Permit, etc., the permit should require the Permittees to post the following documents in the EPRR:
 - a. Condition 3 - written notification (workplan) to NMED
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 - c. Condition 8 - discharge report to NMED
 - d. NMED's response to the discharge report
 - e. Condition 9 - semi-annual monitoring reports - due August 1 and February 1
 - f. NMED's response to the semi-annual monitoring reports
 - g. Condition 12 - groundwater exceedance notification
 - h. Condition 12 - submittal of corrective action plan (CAP) to NMED for approval
 - i. NMED's response and/or approval, including correspondence requesting additional information
 - j. Permittees' responses to NMED requests
 - k. Condition 13 - soil sampling exceedance workplan for "comprehensive investigation of the nature and extent of impact and a corrective action/remedial plan to address exceedances" to NMED
 - l. NMED's response and/or approval, including correspondence requesting additional information
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 - n. Condition 14 - defective groundwater well construction notification to NMED
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- r. NMED's response and/or approval, including correspondence requesting additional information
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- t. Condition 16 - release (commonly known as a "spill") notification, corrective action report/plan and any abatement proposal
- u. NMED's response and/or approval, including correspondence requesting additional information
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- w. Condition 17 - failures of discharge plan
- x. NMED's response and/or approval, including correspondence requesting additional information
- y. Permittees' responses to NMED requests
- z. Condition 18 - closure and post-closure activities - all documents exchanged between NMED and the Permittees under this Condition
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- bb. Condition 23 - plans and specifications - all documents exchanged between NMED and the Permittees under this condition
- cc. Condition 27 - right to appeal - all documents exchanged between the Permittees and the Water Quality Control Commission
- dd. Condition 28 - transfer of discharge permit - all documents exchanged between NMED and the Permittees under this condition

On April 15th, NMED asked that we provide a list of mandatory and voluntary postings. The Applicants said that they would not post the NMED responses.

The Applicants have responsibilities to keep the public informed about activities that have the potential to impact/harm. The purpose of 20.6.2.3000 through 20.6.2.3114 NMAC "Permitting and Ground Water Standards," is

to protect all ground water of the state of New Mexico which has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply, and to protect those segments of surface waters which are gaining because of ground water inflow, for uses designated in New Mexico Water Quality Standards. 20.6.2.3101.A NMAC

During our discussions, the Applicants provided a map of approved and prohibited land application areas in Sandia and Mortandad Canyons. "Enclosure 3," ENV-DO-15-0040, LA-UR-15-20756. It appears that the proposed approved land application areas are near Los Alamos County drinking water wells, a domestic water supply. Further, Sandia and Mortandad Canyons flow to the Rio Grande. At the mouth of the canyons, there are springs at the river that discharge groundwater into the gaining Rio Grande. In addition, the City of Santa Fe and the Santa Fe County draws

water from the Rio Grande for their domestic water supply at the Buckman Direct Diversion Project directly east of Sandia and Mortandad Canyons. The City also has 13 deep wells for its domestic water supply, located directly east of the canyons.

The permit allows land application of remediation waters into the canyons that flow to the Rio Grande and drinking water supplies. CCW finds that the permit does not protect all ground water of the state of New Mexico as required by 20.6.2.3101 NMAC. Our requested posting of key permit deliverables/documents to the EPRR would help protect all ground water of the state of New Mexico because LANL would be required to be transparent with its activities. The public would have an opportunity to monitor the deliverables/documents. The permit must require the Applicants to post the requested documents.

As Sister Marlene so poignantly described: Our self-interest is our communities. LANL's self-interest is LANL. Sometimes our self-interest is the same. In this case, our interests are the same - to protect all ground water. In order to do that, NMED should require the Applicants to post all the requested Applicant and NMED deliverables/documents to LANL's EPRR in a timely manner.

Nothing in the Ground Water regulations prevents NMED from requiring the Applicants to post the deliverables/documents to the EPRR.

2. Opportunity for Review and Comment about Permittee's Workplans. The draft permit provides a framework for the actual work to be done. The details are not provided; those are provided in the individual workplans. For that reason, the workplans should be required to be posted for public review and comment. A public comment period should be provided. We suggest at least thirty (30) days.

The LANL site is complicated with multiple levels of permitting. These permitted activities will impact both surface and groundwater. Allowing for review and a public comment period of the workplans will ensure that ground and surface water will be protected "for present and potential future use as domestic and agricultural water supply and other uses to protect public health." Draft Permit, Para. 2, p. 1. Water is precious and every effort should be made to ensure its protection and use. Review of the workplans by the public will ensure that water is protected.

NMED, the Applicants and CCW agreed that a public review and comment period would be required in the permit. The draft work plan would be posted to the EPRR. The Applicants suggested a 15-day public comment period and a 15-day period for NMED to review the work plan, the public comments and either approve, deny or approve the work plan with modifications. The applicable regulations require more time for the NMED and public processes.

Under 20.6.2.3108 NMAC "Public Notice and Participation," the proposed work plans constitute a modification to the permit. As stated on April 15th, the details will be provided in

the work plans. Examples of the details include where the discharge will take place, the possibility of discharging off the LANL site (in Los Alamos County, on U.S. Forest Service lands, etc.), whether tracers will be used, whether there would be seeding with native seeds following land application, and options for configuring pump-treat-discharge systems (Applicants' February 25, 2014 Comment No. 2), etc.

The Applicants should have planned ahead to incorporate the regulatory time frames into their work preparations. The original application was submitted to NMED in December 2011 and withdrawn and re-submitted on January 8, 2014 – what happened in the meantime?

The regulations are clear about the time required for NMED to process the applications/work plans and the requirements for public notice and participation. For example,

“Within 15 days of receipt of an application for a discharge permit, modification or renewal, the department shall review the application for administrative completeness.” 20.6.2.3108.A NMAC.

“Within 30 days of the department deeming an application for discharge permit or discharge permit modification administratively complete, the applicant shall provide notice, in accordance with the requirements of Subsection F of 20.6.2.3108 NMAC, to the general public in the locale of the proposed discharge in a form provided by the department....” 20.6.2.3108.B NMAC.

“Within 15 days of completion of the public notice requirements in Subsection B or C of 20.6.2.3108 NMAC, the applicant shall submit to the department proof of notice, including an affidavit of mailing(s) and the list of property owner(s), proof of publication, and an affidavit of posting, as appropriate.” 20.6.2.3108.D NMAC.

“Within 60 days after the department makes its administrative completeness determination and all required technical information is available, the department shall make available a proposed approval or disapproval of the application for a discharge permit, modification or renewal, including conditions for approval proposed by the department or the reasons for disapproval.” 20.6.2.3108.H NMAC.

“In the event that the proposed approval or disapproval of an applications for a discharge permit, modification or renewal is available for review within 30 days of deeming the application administratively complete, the department may combine the public notice procedures of Subsections E and H of 20.6.2.3108 NMAC.” 20.6.2.3108.J NMAC.

“Following the public notice of the proposed approval or disapproval of an application for discharge permit, modification or renewal, and prior to the final decision by the secretary, there shall be a period of at least 30 days during which written comments may be submitted to the department and/or a public hearing may be requested in writing. The 30-day comment period shall begin on the date of publication of notice in the newspaper.” 20.6.2.3108.K NMAC.

Section 20.6.2.3109 "Secretary Approval, Disapproval, Modification or Termination of Discharge Permits, and Requirement for Abatement Plans" provides for additional time requirements for a public hearing. The draft permit states that the permit would be issued under Subsection C of 20.6.2.3109 NMAC. Draft Permit, p. 1.

The regulations are clear. If the Applicants want a permit to land apply remediation waters, they should have planned ahead.

3. Calculations for 350,000 gallons per day (gpd) discharge. It is unclear how the Permittees and the Department arrived at the 350,000 gpd discharge limit. It is unclear whether this volume is exclusively for land application. A daily discharge volume of 250 gallons per minute (gpm) for 10 hours per day is given. Please provide the calculations used. We did not find calculations in the Permittees' application.

On April 28, 2015 Danny Katzman provided the following to NMED in an email:

The 350,000 gpd represents a maximum allowable daily application rate. 350,000 gpd may reflect the amount of total daily pumping and treatment at any given time (which equates to a total of approximately 250 gpm) or it may be the amount of water that would be land applied after storing treated groundwater pumped from two or more wells at a cumulative rate less than 250 gpm. Stored water will be held in tanks and impoundments and processed for land application in batches not to exceed the 350,000 gpd limit.

The final permit should incorporate this language, perhaps in paragraph 4 on page 1.

4. Reference to NMED Risk Assessment Guidance. It is unclear whether this is for site screening or tap water. Will NMED require the most recent version of the guidance for compliance? Id., Para. 4, p. 1.

For all references to the Risk Assessment guidances, the permit should require the most recent version of the guidances be used.

It was agreed that the final permit would specify whether the NMED Risk Assessment Guidance was for soil screening or tap water. It was agreed that the final permit would require most recent version of the guidances.

5. No Justification for Allowing the Discharge to Contain Water Contaminants Which May Be Elevated above 20.6.2.3103 NMAC and/or Subsection WW of 20.6.2.7 NMAC. We find no justification either in the draft permit or the Permittees' application for allowing the Permittees to discharge containing water contaminants above the Water Quality Control Commission (WQCC) standards. In fact, the permit requires, "[p]rior to discharge, all groundwater will be treated to achieve standards equal to < [less than] 90% of the numeric standards of 20.6.2.3103 NMAC or < [less than] 90% of

the numeric standards established in Table A-1, NMED Risk Assessment Guidance SSLs [Site Screening Levels] for tap water for constituents not listed in 20.6.2.3103 NMAC." *Id.*, Para. 5, p. 1. The water is required to be treated to less than 90% of the applicable standards. If the water is not below standards, the permit should not allow it to be discharged. If it is above standards, then the permit should require operations to cease and a corrective action plan is submitted by Permittees. See also, Enclosure 2 of the NMED Discharge Permit Application Part B General, Jan. 7, 2014, ENV-DO-13-0343, LAUR-13-29467, Sec. B-11 (b), p. 4.

We understand that the first sentence in Para. 5, p. 1 of draft permit is boilerplate permit language. Nevertheless, it is disconcerting. This paragraph should include language that the Applicants will batch water before application.

For clarity, we suggest the final permit include "[less than]" following the use of the ">" symbol in this paragraph.

Again, we ask what is the technical basis for the Applicants to treat the water to less than 90% of the applicable standards? We did not find any justification in the Applicants' applications. Why not treat the water to less than 50% of the applicable standards?

6. Permit Term. What is the permit term? 5 years? 10 years?

The permit term is five years. The final permit should so state.

7. Land Application. We find it inappropriate to allow the entire site to be available for discharge and land application of the treated water. Details of land application techniques, calculation of application rates and calculation of 'water balance' for the site should be presented in the workplan. The water balance, when properly prepared, can be used to minimize or eliminate runoff and erosion from applied water from the site as it takes into account seasonality of precipitation, evapotranspiration, measured infiltration rates, conservative Ksat safety factors, etc. to ensure that reasonable infiltration occurs. The water balance can also be used to inform operational plans to balance storage, inflows and outflows.

Additionally, land application strategies/technologies and identification of sites using topographic maps that show slopes, drainages, land features and other wells should be included in the workplan and made available for public review and comment.

The monitoring plans (as required by Section B of the discharge permit) should include not only total volumes of water land-applied but also area covered to ensure that point-loading, runoff, and erosion is minimized and that conditions of the Permittees' *Land Application of Groundwater* standard operating procedures are met.

Applicants stated that land application would protect cultural and historical places, would not occur on any lands with a slope greater than five percent (5%), and the discharge would not occur on permeable surfaces. The final permit should so state these limitations.

Please see our comments in No. 9 below, "Condition 3. Workplan."

8. Section III. Authorization to Discharge. Does the draft permit allow one discharge per the 55 "separate surface locations identified in tabular format as Attachment 1" at a time? This language may need to be clarified.

The final permit should be clear that the entire LANL site is available for discharge and there may be discharges on lands outside of LANL. We understand that there are criteria in the Applicants' "internal" standard operating procedure, ENV-RCRA-OP-010.3, "Land Application of Groundwater," which is not available to NMED or the public. How do we ensure all the criteria are met?

This section should include the hours of discharge. The Applicants stated they would land apply for up to 10 hours per day.

9. Condition 3. Workplan. The workplan should provide a listing of all applicable water permits and the covered sites in the work area, as well as those downstream to the Rio Grande river.

Besides the list in the draft permit, the work plans should also include:

- a. *The requirements listed in 20.6.2.3106.C NMAC;*
- b. *A description of possible re-use of the water and proposed demonstrations of water re-use;*
- c. *A description of possible opportunities for water conservation and proposed demonstrations of water conservation;*
- d. *how the discharge will meet the requirements of 20.6.2.3109.C.3.c NMAC:
" (i) the monitoring system proposed in the discharge plan includes adequate provision for sampling of effluent and adequate flow monitoring so that the amount being discharged onto or below the surface of the ground can be determined;
" (ii) the monitoring data is reported to the secretary at a frequency determined by the secretary."*
- e. *the monitoring plans should include not only total volumes of water land-applied, but also the area covered to ensure that point-loading, runoff, and erosion is minimized;*
- f. *soil sampling to determine the background concentrations of pollutants before land application begins;*
- g. *soil sampling after land application to determine if the pollutant concentrations have increased;*
- h. *calculations of application rates;*

- i. *calculations of 'water balance' for the site. The water balance, when properly prepared, can be used to minimize or eliminate runoff and erosion from applied water from the site as it takes into account seasonality of precipitation, evapotranspiration, measured infiltration rates, conservative Ksat safety factors, etc. to ensure reasonable infiltration occurs. The water balance can also be used to inform operational plans to balance storage, inflows and outflows;*
- j. *the required map(s) should include topographic features, such as slopes, drainages, land features and other wells;*
- k. *the type of flow meters that will be used; their efficiency; and how they will be calibrated;*
- l. *potential impacts to nearby drinking water supply wells, characterization/monitoring wells, wetlands, surface impoundments, etc.;*
- m. *document the surrounding Site Monitoring Areas ("SMAs") covered by the Individual Stormwater Sites, National Pollution Discharge Elimination System ("NPDES") sites, sites covered by NMED groundwater discharge permits, SMAs and Areas of Concern ("AOCs") covered by the NMED 2005 Order on Consent for LANL, sites covered by the NMED Hazardous Waste Permit for LANL, surface impoundments and surface drainage features;*
- n. *ensure there will be no run on or run off from SMAs, AOCs, and surface impoundments;*
- o. *groundwater flow direction;*
- p. *closure plan and post-closure plan, if applicable. See Section D "Closure Plan" in draft permit. Also 20.6.2.3107.A.11 NMAC; and*
- q. *whether tracers will be used, the specific radionuclide and its half-life.*

10. Condition 4. Land Application. We could not find the LANS/DOE Standard Operating Procedure, ENV-RCRA-OP-010.3, *Land Application of Groundwater* in the LANL Electronic Public Reading Room. We have requested an electronic copy from DOE/LANS and reserve the right to provide additional comments after we receive it.

This section should include criteria to prevent run-on.

Applicants stated that the Land Application of Groundwater SOP is an internal document and not available to NMED nor the public. Applicants said that they would provide the criteria found in the SOP for inclusion in the permit. We have not seen the criteria.

The permit needs to define "watercourse," which is found in the first two listed items. Can a watercourse be ephemeral?

Does "cannot result in runoff to watercourse" mean there will be no surface runoff? We suggest language such as "no signs of soil erosion as a result of the land application" may be inserted in the second listed item.

11. Condition 10. Use of the Interim Facility-Wide Groundwater Monitoring Plan. The condition should include a requirement that the Permittees use the most recently NMED approved version of the plan. We have serious concerns about the quality of data provided by the Permittees to support the Interim Facility-Wide Groundwater Monitoring Plan. We excerpt the following from the Appendix A (pp. A-11 and A-12), by Independent Registered Geologist Robert H. Gilkeson, to the December 12, 2013 CCW comments to the Department regarding the proposed permit DP-1132 for the Radioactive Liquid Waste Treatment Facility:

The National Academy of Sciences issued a report entitled, Plans and Practices of Groundwater Protection at Los Alamos National Laboratory, in 2007 that described the requirement to replace many, and possibly all, of the LANL characterization wells. See <http://dels.nas.edu/Report/Plans-Practices-Groundwater-Protection/11883>

The NAS report states in pertinent part:

Many if not all of the wells drilled into the regional aquifer under the LANL Hydrogeologic Workplan appear to be compromised in their ability to produce water samples that are representative of ambient groundwater for the purpose of monitoring. *Id.*, p. 49.

In November 2010, the NMED Hazardous Waste Bureau (HWB) issued General Responses to Comment on the LANL Renewal RCRA Permit. See <http://www.nmenv.state.nm.us/HWB/Permit.htm> On the NMED webpage under the heading "Renewal Permit," click on the topic "General Response to Comments."

In the document, the NMED HWB agreed with the conclusions in the NAS 2007 Report about the greater than 40 LANL characterization wells installed for the LANL Hydrogeologic Workplan. The NMED described the LANL characterization wells as not meeting the requirement to be monitoring wells for the NMED 2005 Order on Consent or the NMED 2010 Renewal of the Federal Resource Conservation and Recovery Act (RCRA) Permit for LANL.

For example, in the NMED 2010 General Response to Comment, the Department stated:

The Department agrees with many of the conclusions in the referenced National Academy of Sciences (NAS) Report; however the report is based on conditions at the time that the NAS conducted the evaluation. Since that time, the Permittees have installed, replaced and rehabilitated numerous wells completed in the intermediate perched aquifers and the regional aquifer at the Facility. The NAS report does not account for the

additional groundwater characterization and actions taken to address deficient wells.

The NAS report references wells that were installed as part of LANL's groundwater characterization efforts that were conducted in accordance with their Hydrogeologic Work Plan (1998). These [characterization] wells were not installed for contaminant detection or groundwater monitoring. Therefore, these wells have limited relevance to groundwater protection goals set forth by the March 1, 2005 Consent Order. [Emphasis supplied.]

Reliance on the Interim Facility-Wide Groundwater Monitoring Plan to provide information about water contamination is inappropriate given the on-going concerns about the use of characterization wells for monitoring purposes.

Even though NMED wrote that the characterization wells "have limited relevance to groundwater protection goals set forth by the March 1, 2005 Consent Order," we agreed to disagree.

12. Condition 11. Soil Sampling. The condition should require the use of the most recent Table A-1 *Risk Assessment Guidance for Site Investigations and Remediation*, as NMED does update the requirements from time to time.

Agreed.

13. Condition 13. Soil Sampling. Does NMED approve the corrective action/remediation plan? If so, the permit should so state.

The final permit should state, "The plan shall be enacted as approved by NMED," as provided in Condition 12.

14. Condition 18. Closure and Post-Closure Measures. The permit should properly cite the Consent Agreement as the "2005 NMED Order on Consent for LANL." This condition needs to be clarified that it includes both closure and post-closure activities.

There were questions about what would happen to the water used to clean the tanks, lagoons, liners and treatment systems. See 3-13-12 Application, §B-18. The final permit should address this.

When all post-closure requirements have been met, we requested a 30-day comment period prior to NMED terminating the discharge permit.

15. Condition 19. Record Keeping. The Permittees should be required to keep all records under this permit until at least the time the 2005 NMED Order on Consent for LANL is completed.

16. Permittees' Application - Tracer Studies. We are concerned that the Permittees may use radioactive tritium, or other radioactive materials in the tracer studies. See Enclosure 2 of the NMED Discharge Permit Application Part B General, ENV-DO-13-0343, LAUR-13-2967, p. 1. If tritium were used, what standard for tritium discharge would be used? What standard will be used for other radioactive materials that may be used?

The January 30, 2015 PN2 states that the potential contaminants include radionuclides. The workplans should state what radiologic contaminants are present in the water to make sure that contaminant is not used as a tracer.

17. Operational Plan. We are concerned that responsibility for work to be done falls on subcontractors. The Permittees have not properly managed and overseen their subcontractors, e.g., waste characterization issues. We are concerned about placing this level of responsibility on the subcontractors, without specific oversight responsibilities for the Permittees:

At the conclusion of treatment activities, management of treatment system solids will be the responsibility of the treatment system subcontractor; management will be conducted in accordance with all applicable local, state, and federal regulations. *Id.*, Part 3, p. 3.

Management of spent treatment system resins and media will be the responsibility of the subcontractor and will be conducted in accordance with all applicable local, state, and federal regulations. *Id.*, p. 6.

NMED stated that the Applicants are responsible for all work.

Applicants' Comments

1. We support the following Applicants' February 25, 2014 (2015?) Comments (Enclosure 2), ENV-DO-15-0054, LA-UR-15-21000:

- * Comment 1,
- * Comment 2,
- * Comment 3 – the final permit should reference the internal working agreement/ decision tree between NMED and Applicants that allows discharge without a permit, with the discharge reported in an annual report. The name of the annual report should be included in the final permit.
- * Comment 4 - with modification, *see* comments above for Introduction, paragraph 5,

- * Comment 5 - we note Applicants' statement that the water will not be used for snowmaking,
- * Comment 6,
- * Comment 7,
- * Comment 9,
- * Comment 15
- * Comment 18,
- * Comment 19,
- * Comment 20,
- * Comment 21 - with the addition of "clean" to Condition 18(b), *also see our comments above in No. 14,*
- * Comment 23, and
- * Comment 25.

2. We do not support the following Applicants' Comments, Id.:

- * Comment 8 - we support NMED's position to leave in reference to the Chromium Project.

- * Comment 10 - we support NMED's position to require "soil sampling methodology following application." *Also see our comments above at No. 9, for Condition 3.*

- * Comment 11 - we support "land application must be supervised at all times" because mistakes can be made. Protection of the watershed is the priority and supervision will help to accomplish that goal.

- * Comment 12 - we support the use of independent environmental laboratories certified by the National Environmental Laboratory Accreditation Program (NELAP). LANL is a high impact facility subject to public scrutiny. Independent laboratory analysis is essential to transparency.

- * Comment 13 - we support and the regulations require water quality and soil sampling. 20.6.2.3107.8 NMAC. We support soil sampling before and after application to determine the cumulative levels of pollutants. *Also see our comments above.*

- * Comment 14 - we support semi-annual reporting. This level of reporting will provide transparency about the sampling results of the land application.

- * Comment 16 - we support sampling for metals or other inorganic constituents. The pollutants do not break down and therefore can accumulate. We need to know if the metals accumulate in soils to levels that exceed standards. Those soils will need to be cleaned up so that the pollutants will not be re-mobilized in storm water.

- * Comment 17 - we need more information in order to comment.

- * Comment 22 - we do not support the removal of the requirement that the facility record drawings "bear the seal and signature of a licensed New Mexico professional engineer." The NMED Hazardous Waste Permit for LANL requires the signature and stamp of a registered professional engineer. Below are two examples:

- a. **10.2.3 Completion of Post-Closure Requirements**
The certification must be signed by the Permittees and an independent, New Mexico registered professional engineer. Documentation supporting the independent, registered professional engineer's certification must be furnished to the Department in conjunction with the certification. (see 40 CFR §§ 264.120 and 270.32(b)(2)).
- b. **11.8.8.1 Remedy Completion Report**
 - (2) a statement, signed by a registered professional engineer, that the remedy has been completed in accordance with the Department approved work plan for the remedy;
 - (3) as-built drawings and specifications signed and stamped by a registered professional engineer;

<https://cloud.env.nm.gov/waste/?c=185&k=14aade0874> see Parts 1 through 11.

* Comment 24 - we support semi-annual reporting for the reasons described above.

Additional Comments

1. The permit should limit land application to March 16th to December 15th of each year. See Applicants' February 25, 2014 (or 2015?) Comments No. 14.
2. Condition 6(e) should read "Resource Conservation and Recovery Act."

Thank you for your careful consideration of our comments. Please contact us with any questions, comments or concerns. We look forward to next steps.

Sincerely,

Joni Arends
Concerned Citizens for Nuclear Safety
jarends@nuclearactive.org

Kathy Sanchez and Beata Tsosie-Peña
Tewa Women United
Kathy@tewawomenunited.org
Beata@tewawomenunited.org

Marian Naranjo
Honor Our Pueblo Existence
mariannaranjo@icloud.com

Rachel Conn
Amigos Bravos
rconn@amigosbravos.org

Joan Brown and Marlene Perrotte
Partnership for Earth Spirituality
marlenep@swcp.com
joankansas@swcp.com



Communities For Clean Water

June 15, 2015

By email to: steve.huddleson@state.nm.us

Steve Huddleson, Environmental Scientist
Ground Water Quality Bureau
New Mexico Environment Department
P. O. Box 5469
Santa Fe, NM 87502-5469

Re: CCW Comments about May 28, 2015 draft DP-1793 for
Los Alamos National Laboratory Groundwater Projects

Dear Mr. Huddleson:

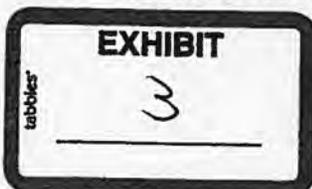
The Communities for Clean Water ("CCW") submit the following request for a public hearing and specific comments about the above referenced draft Discharge Permit DP-1793 for Los Alamos National Laboratory ("LANL") Groundwater Projects. We incorporate by reference our March 2, 2015 and April 29, 2015 comments into these comments.

CCW provides these comments in good faith. We question the bases for the permit under the New Mexico Ground Water Quality Act and its implementing regulations. NMSA 1978, Section 74-6-1 *et seq.* CCW believes the Resource Conservation and Recovery Act ("RCRA") may apply to the proposed activities. We, therefore, reserve our right to raise issues under RCRA.

CCW Request for Public Hearing

CCW restates our request for a public hearing about the draft permit. There is substantial public interest in this permit by the CCW member groups and our individual constituencies. A public hearing should be held because the permit is too broad and as a result, violates our procedural due process rights.

1. **Permit is Too Broad.** The draft permit allows for discharge/land application across 55 sections at LANL with no specificity. The details are provided in the



Condition 3 workplans. The public process for the workplans is limited. Condition 3 does not provide formal public notice. It provides a limited opportunity for review and comment, but it does not provide opportunity to request a public hearing - an important right to address a new method for utilizing treated groundwater.

The term "workplan" is not defined in 20.6.2 NMAC. As a result, it is vague and ambiguous.

A workplan is a "discharge permit modification" because each workplan could change "the location of the discharge," and/or could allow "a significant increase in the quantity of the discharge." 20.6.2.7.P NMAC. Under the draft permit, no one specifically knows the location and the proposed quantity of the discharge. *Id.* The discharge quantity is provided in the fifth paragraph in the Introduction of the draft permit. The increase in quantity could be more than the NMED guideline of 10 percent; in fact, in some cases it could be 100% because previously the discharge/land application had not been allowed.

A discharge permit modification allows for formal public notice, opportunity for review and comment, and opportunity to request a public hearing. 20.6.2.3108 NMAC - Public Notice and Participation. The draft permit provides for a minimal, non-mandatory public notice through the Applicants' Electronic Public Reading Room (EPRR) and no opportunity to request a public hearing. This is unacceptable and violates our procedural due process rights.

Further, Condition 13 provides that the

permittee may be required to abate water pollution pursuant to Sections 20.6.2.4000 through 20.6.2.4115 NMAC [Prevention and Abatement of Water Pollution], should the corrective action plan not result in compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC [Abatement Standards and Requirements] within 180 days of confirmed ground water contamination." [Subsection A of 20.6.2.3107 NMAC, Subsection E of 20.6.2.3109 NMAC]

Within the abatement regulations, Section 20.6.2.4108 - Public Notice and Participation - allows for public notice, review and comment, and opportunity to request a public hearing. Section 20.6.2.4114 - Appeals from Secretary's Decisions - provides for appeals to the Water Quality Control Commission by a person who participated in the "action before the secretary and who is adversely affected by the decision."

But, there are exemptions within the abatement regulations. Section 20.6.2.4105 - Exemptions from Abatement Plan Requirements - exempts:

a person who is abating water pollution

(6) under the authority of a ground-water discharge plan approved by the secretary, provided that such abatement is consistent with the requirements and provisions of Section 20.6.2.4101, 20.6.2.4103, Subsections C and E of Section 20.6.2.4106 [Abatement Plan Proposal], Section 20.6.2.4107 [Other Requirements] and 20.6.2.4112 NMAC [Completion and Termination];

A workplan may serve as a groundwater discharge plan; but we don't know because "workplan" is not defined. In a worst case scenario, CCW and our constituents would be excluded from public notice, public review and comment and opportunity to request a public hearing on the abatement. Our public participation opportunities to prevent the need for abatement are found in 20.6.2.3108 NMAC - Public Notice and Participation - regulations. *Please see* our analysis in our April 29, 2015 comments about the nature of the public notice and participation requirements.

The workplans are discharge permit modifications and the public should be provided with a formal public notice, public review and comment and opportunity to request a public hearing. The final permit should not attempt to shortcut our 20.6.2.3108 NMAC procedural due process rights.

2. Electronic Public Reading Room (EPRR) postings. Condition 12. CCW objects that all documents required to be submitted by the Permittees to the NMED, and the NMED responses, are not required to be posted promptly to the EPRR.

Nothing in the Ground Water Quality regulations prevent NMED from requiring the Applicants/Permittees to post in a timely manner their deliverables/documents and the NMED responses to the EPRR.

3. Amount of Discharge. The draft permit does not accurately reflect the amount of the discharge. The draft permit allows for a maximum daily discharge of 350,000 gallons per day (gpd). Section III - Authorization to Discharge. Operations are limited to daylight hours and for a maximum of 10 hours per day. Condition 4. The discharge is limited to 250 gallons per minute (gpm). Our calculations find that the maximum daily discharge should be 150,000 gpd and not 350,000 gpd.

$$250 \text{ gpm} \times 60 \text{ min/hr} = 15,000 \text{ gallons per hour} \times 10 \text{ hrs} = 150,000 \text{ gpd}$$

The final permit should limit the daily discharge to 150,000 gpd.

4. No Certification Process for Plans and Specification Approval. The draft permit does not require a licensed New Mexico professional engineer to approve plans and specifications required by the permit. Condition 20(d). The proposed language is incomplete in that it does not require a professional to approve the plans and

specification. There is no requirement that the Applicants have to certify that the facility record drawings "comply with all applicable statutes, regulations and codes including applicable DOE and LANL Engineering Standards."

Nothing in the Ground Water Quality regulations prevent NMED from requiring approval by a licensed New Mexico professional engineer.

Recent history of errors at LANL clearly shows that more oversight of the nuclear weapons facility is needed. This is the facility that took shortcuts to get waste to the Waste Isolation Pilot Plant (WIPP) and as a result shut down waste disposal operations for an indeterminate period of time at a cost of at least a half a billion dollars. Requiring the certification of a NM licensed professional engineer should be required in order to add another layer of protection of the waters and public health and safety.

5. No Public Comment about Closure and Post-Closure Activities. Condition 19 does not require a public comment period about the closure and post-closure activities under the draft permit. And in fact, the condition allows the Permittees to apply for a variance. It is unclear if the variance would be under the Ground Water Quality regulations or the Resource Conservation and Recovery Act (RCRA) 2005 NMED Order on Consent for LANL. More information should be required in the permit.

Specific Comments

1. Limit discharges to times when the ground is not frozen as discussed at the April 15, 2015 meeting. See Applicants' February 25, 2014 (or 2015?) Comment No. 14, which stated discharges/land applications would be done from March 16th to December 15th. Section III Authorization to Discharge.
2. Require full public notice, review and comment and opportunity for a public hearing as required by 20.6.2.3109 NMAC for the Condition 3 workplans.
3. Condition 3. Require pre- and post soil sampling in the area used for discharge/land application.
4. Condition 3. Require notification about whether the proposed area for land application has been used before or is being used concurrently for another project.
5. Condition 4. It is not clearly stated that NMED approves the discharge/land application "off LANL property."
6. Condition 6 states that the "most recent edition" will be used. However (a) states that the "18th, 19th or current" version may be used. Please clarify.
7. Condition 6(e) - RCRA is the Resource Conservation and Recovery Act.
8. The *NMED Risk Assessment Guidance for Site Investigations and Remediation*, December 2014 should be listed in Condition 6.
9. Condition 9. Require soil sampling, if required by NMED (Condition 8), to be included in the annual monitoring report.

10. Condition 9. Require influent and effluent concentrations be included in the annual monitoring report.
11. Condition 9. Require annual reporting for areas where land application was done more than once during the reporting period and the cumulative use over the permit term.
12. Condition 10. Add, "approved" in "(most recent *approved* version).
13. Condition 12. Under protest, CCW submits the following:
 - A. Mandatory Postings: NMED stated that they would copy CCW on all correspondence between the Department and the Permittees. We do not find such language in the draft permit.
 1. Condition 3 - submittal of workplan for individual discharge to NMED and NMED's responses;
 2. Condition 8 - discharge (workplan completion) report to NMED and NMED's responses;
 3. Condition 13 - notification of groundwater exceedance and submittal of Corrective Action Plan to NMED and NMED responses;
 4. Condition 14 - notification of soil sampling exceedance workplan and NMED responses;
 5. Condition 15 - improperly constructed groundwater well notification and NMED responses;
 6. Condition 16 - groundwater well not hydrologically downgradient notification and NMED responses;
 7. Condition 17 - release ("spill") notification, corrective action report/plan and any abatement proposal and NMED responses;
 8. Condition 18 - notification of failure of discharge plan and NMED responses;
 9. Condition 19 - closure and post-closure activities - all documents submitted to NMED by Permittees under this condition and NMED responses;
 10. Condition 23 - modification and/or amendments - all documents submitted to NMED by Permittees under this condition and NMED responses;
 11. Condition 24 - plans and specifications - all documents submitted to NMED by Permittees under this condition and NMED responses; and
 12. Condition 29 - transfer of discharge permit - all documents submitted to NMED by Permittees under this condition and NMED responses.
 - B. Voluntary postings:
 1. Condition 9 - annual monitoring report - due March 1 - and NMED responses; and
 2. Condition 28 - right to appeal - all documents submitted to the Water Quality Control Commissions by the Permittees and NMED under this condition;

14. Condition 19. Provide regulatory cite for new variance language in the last paragraph. Are there public notice and participation requirements associated with applying for a variance?
15. Condition 20. We object to the deletion of the requirement for the signature and seal of a licensed New Mexico professional engineer.

Thank you for your careful consideration of our comments. Please contact us with any questions, comments or concerns. We look forward to next steps.

Sincerely,

Joni Arends
Concerned Citizens for Nuclear Safety
jarends@nuclearactive.org

Kathy Sanchez and Beata Tsosie-Peña
Tewa Women United
Kathy@tewawomenunited.org
Beata@tewawomenunited.org

Marian Naranjo
Honor Our Pueblo Existence
mariannaranjo@icloud.com

Rachel Conn
Amigos Bravos
rconn@amigosbravos.org

Joan Brown and Marlene Perrotte
Partnership for Earth Spirituality
marlenep@swcp.com
joankansas@swcp.com