

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**



WQCC 15-07(A)

**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.**

**NEW MEXICO ENVIRONMENT DEPARTMENT'S
RESPONSE TO MOTION TO STAY**

Respondent the New Mexico Environment Department ("NMED") respectfully submits this response to Petitioner Communities for Clean Water's ("CCW") Opposed Motion to Stay Discharge Permit ("DP") 1793, which was filed with the Water Quality Control Commission ("WQCC") on August 21, 2015 and re-submitted on August 24, 2015.

I. Background

After an initial application submission in December of 2011, NMED's Ground Water Quality Bureau ("GWQB") received a revised application for a discharge permit from the U.S. Department of Energy ("DOE") and Los Alamos National Security LLC ("LANS") (collectively, "Permittees") on January 8, 2014 for discharges related to groundwater remediation activities at Los Alamos National Laboratory ("LANL"). Public Notice 1 was completed on December 5, 2014. The application was deemed complete by the GWQB on December 3, 2014 and a draft discharge permit (DP-1793) was issued on January 30, 2015, which correlated to the date of the second Public Notice. The Bureau received two (2) requests for hearing. The requestors were applicant DOE/LANS and Petitioner CCW. There were a total of three (3) persons on the interested parties list for the permit, one of which was the Petitioner. The GWQB met with

DOE/LANS and CCW to try to resolve any outstanding issues contained within the permit draft. At the conclusion of the outreach, DOE/LANS withdrew its request for hearing. CCW did not withdraw its request for hearing. After determining there was not substantial public interest in DP-1793, the Secretary of Environment denied CCW's request for hearing, and a final permit was issued on July 27, 2015.

II. Argument

A. A Stay is Inappropriate During a Permit Review Proceeding

There is no mechanism that affords the opportunity for a stay of a permit when it is brought before the WQCC for a permit review. As CCW correctly states in its motion, the only mention of the opportunity to request a stay before the WQCC is in Section 502 of its Guidelines for WQCC Regulation Hearings ("WQCC Guidelines"). CCW suggests that the WQCC can utilize the stay provisions from the WQCC Guidelines in a permit review, which is not founded in any authority or other WQCC guideline. Additionally, Section 502 of the WQCC Guidelines is specific to stays of regulations that have been appealed to the New Mexico Court of Appeals. The issue with using this mechanism in permit reviews is therefore twofold: the matter before the WQCC is not based upon a regulation, and it is not a matter that has been appealed to the Court of Appeals.

Stays of actions are referenced in Section 74-6-7(C) of the Water Quality Act ("WQA"), and in that instance, it provides the opportunity for either the WQCC or the Court of Appeals to grant a stay after an appeal of a WQCC action (including its final action in a permit review) has been filed with the Court of Appeals. Once again, as similarly found in the WQCC Guidelines, the trigger is the filing of an appeal with the Court of Appeals. In this matter, the WQCC has yet

to issue a final decision, and an appeal of such a decision has not been filed with the Court of Appeals. Therefore the motion currently before the WQCC is not appropriate at this juncture.

B. The Petitioner Has Failed to Demonstrate That Any of the Four Factors Required For a Stay Have Been Met

The WQCC Guidelines for Regulation Hearings Section 502 contain a four factor test to determine the appropriateness of a stay. The four factor test is similar to the stay test in *Tenneco Oil Co. v. New Mexico Water Quality Commission*, 1986-NMCA-033, 105 N.M. 708, *superseded by statute*, NMSA 1978, § 74-6-4(C), *as recognized in N.M. Mining Assoc. v. N.M. Water Quality Control Comm'n*, 2007-NMCA-010, 141 N.M. 41. The four factors 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, have been met. The court in *Tenneco Oil* stated that “[a]n administrative order or regulation will not be stayed pending appeal where the applicant has not made the showing of each of the factors required to grant a stay.” *Id.* ¶ 11 (internal citations omitted). If the WQCC chooses to use its Guidelines to determine the appropriateness of a stay in a permit review proceeding, CCW has not fulfilled any, let alone all, of the four factors of the stay test, and therefore a stay cannot be granted.

1. CCW Has Not Shown That It is Likely That It Will Prevail on the Merits

CCW argues that it will prevail on the merits in this matter because it was “entitled” to a public hearing due to the number of entities that make up the organization, and the number of times it submitted requests for hearing. Pet.’s Mot. P. 2-3. Further, CCW states that it will prevail because it was “likely that the Secretary did not have discretion to deny the hearing request.”

Pet.'s Mot. P. 3. The provisions for granting permit hearings are found in 20.6.2.3108.K NMAC, which states:

Following the public notice of the proposed approval or disapproval of an application for a discharge permit, modification or renewal, and prior to a 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. All comments will be considered by the department. Requests for a hearing shall be in writing and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the secretary determines there is substantial public interest. The department shall notify the applicant and any person requesting a hearing of the decision whether to hold a hearing and the reasons therefore in writing.

Contrary to CCW's argument, there is never a time in which the Secretary of Environment does not have discretion in either granting or denying a hearing request. The WQCC regulations are clear that it is the Secretary who determines if there is "substantial public interest." There is no bright line threshold that creates a mandate for a hearing on the issuance of a discharge permit.

Additionally, CCW argues that the number of requests for hearing should determine whether there is "substantial" public interest or not. The number of hearing requests alone is not indicative of substantiality. For example, there could be 100 requests for hearing submitted, but if the requests aren't substantive in the sense that they do not "set forth the reasons why a hearing should be held" or the reasons provided are either not substantive in nature or not within the purview of the Department, the Secretary will likely deny the hearing requests. In this instance, the Secretary of Environment denied CCW's hearing request because the reasons provided for requesting a hearing were not substantial in nature, and were deemed adequately addressed through the draft permit. *See* Administrative Record No. 139, attached as Exhibit A. As the Court of Appeals recognized in an opinion regarding another Department of Energy Facility in New Mexico, "[t]he fact that there is great public interest in the ... facility in general, the original granting of the permit, or various bigger changes that have taken or will take place does not mean that there must be a hearing for every administrative detail concerning the facility."

Southwest Research & Information Center v. State, 2003-NMCA-012, ¶ 39, 133 N.M. 179.

Because of the discretion the Secretary is afforded, and CCW's misapplication of "substantive," is not likely that CCW will prevail on the merits in this matter.

2. CCW Has Not Shown That It Will Suffer Irreparable Harm if a Stay is Not Granted

"Irreparable harm" has been defined by the state courts as being "...without adequate remedy at law... [and] must be actual and substantial, or an affirmative prospect thereof, and not a mere possibility of harm." *State v. City of Sunland Park*, 200-NMCA-044, ¶ 15-16, 129 N.M. 151. "Mere allegations of irreparable harm are not, of course, sufficient. A showing of irreparable harm is a threshold requirement in any attempt by applicants to obtain a stay." *Tenneco Oil*, 1986-NMCA-033, ¶ 12. CCW asserts that allowing the permit to be effective during the Permit Review period "undercuts the intention of the legislature in allowing such appeals" and therefore harms the organization. Pet.'s Mot. P. 4. CCW also argues that it was harmed by being denied the opportunity to "submit evidence, data, views or arguments orally or in writing and to examine witnesses testifying at the hearing," citing to Section 74-6-5(G) of the WQA.

CCW's allegations of irreparable harm are insufficient as the harm is theoretical and it has provided no evidence that the organization or its members would actually be harmed if a stay is not granted. Further, the irreparable harm that CCW alleges is not remedied by staying the permit, but by receiving a determination by the WQCC through the permit review process that either a hearing should have been held, or that the Secretary of Environment properly denied the hearing request. Since the alleged harm does not stem from the permit itself, CCW would not be irreparably harmed if the permit is not stayed.

3. CCW Has Not Shown That Substantial Harm Will Not Result to Other Interested Persons

The Petitioner argues that no harm will result to the other Interested Persons in this matter if a stay is issued by the WQCC because NMED and the Permittees had three years to work with the permit, compared to the six months the public was provided to participate in the permitting process, so further delay of the permit will cause no harm. NMED and the Permittees are not “Interested Persons” but are, instead, the permitting agency and the applicants/permittees. Interested Persons in the context of permit issuance are those who have submitted notice to NMED that they are interested in the permit in question. *See, e.g.*, 20.1.3.16.A(2)(b) NMAC and 20.6.2.3108.G NMAC. CCW has not provided an appropriate evaluation as to the harm to interested persons that would result from the stay, as it did not address such interested persons.

It can be argued however that the Permittees will be substantially harmed by a stay of the permit. If DP-1793 is stayed, the groundwater remediation projects that are covered by the discharge permit in question will be forced to slow or cease entirely until the resolution of this matter. This would impact the Permittees’ ability to meet its obligations to NMED and the public to clean up historical contamination at the facility.

4. CCW Has Not Shown That Harm Will Not Ensur to the Public Interest

The Petitioner argues that, because it is a member of the public, and public hearings are in the interest of the public, that public interest will be “vindicated” and not harmed if a stay is granted. Pet.’s Mot. P. 5. Looking at the broader reality of environmental permitting, the public interest will be harmed if DP-1793 is stayed during the Permit Review process. The legislature has tasked the WQCC with promulgating, and NMED with implementing, permitting regulations within the state of New Mexico. It benefits the public interest to have potential dischargers operating under a valid discharge permit issued by NMED, as NMED can regularly inspect such

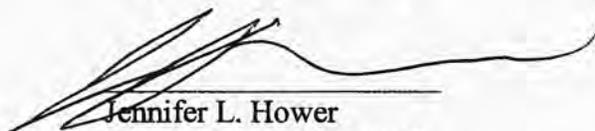
permitted facilities to ensure compliance, place conditions on the permitted facilities, and enforce if a permit is ignored. Currently, DP-1793 is an active permit. To stay the permit would place the permit in a holding pattern, limiting NMED's oversight of and negating important conditions NMED has placed on the discharge associated with DP-1793, which would be detrimental to the public interest.

Additionally, as stated previously, DP-1793 relates to discharges associated with the remediation of groundwater at LANL. Groundwater remediation projects undertaken at LANL are highly beneficial to the public interest, and cannot be fully accomplished or completed without a discharge permit in place. To stay the permit would mean that the remediation would slow or cease completely, harming the public interest.

III. Conclusion

NMED respectfully requests that the WQCC deny CCW's Motion to Stay DP-1793 due to the inappropriateness of a stay in this proceeding, and Petitioner's inability to meet the four factors it cites.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing Response was sent via electronic mail to all parties and the WQCC counsel on September 8, 2015.

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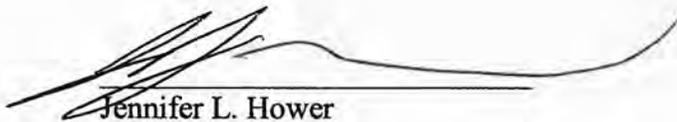
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RYAN FLYNN
Cabinet Secretary

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Deputy Secretary

MEMORANDUM

To: Trais Kliphuis, Director, Water Protection Division *TK*

Through: Michelle Hunter, Acting Chief, Ground Water Quality Bureau (GWQB)

From: Steve Huddleson, Program Manager, GWQB Pollution Prevention Section (PPS)

Date: July 8, 2015

Subject: Request for Hearing Determination for the DOE/LANS Discharge Permit Application DP-1793 for land application of treated groundwater

I. Facility Information – Need for Permit

The Los Alamos National Laboratory operates under the oversight of the United States Department of Energy (DOE) and Los Alamos National Security, LLC (LANS). The Laboratory has proposed to NMED-HWB to conduct interim measures (IM) for chromium plume control in accordance with Section VII.B.1 of the March 1, 2005, Compliance Order on Consent (the Consent Order). The IM are proposed to control chromium migration in groundwater while long-term corrective action remedies are under evaluation. Work proposed for IM involve pumping from an extraction well in an effort to hydraulically control potential plume migration beyond the Laboratory boundary and to achieve and maintain the 50 ppb downgradient plume edge within the Laboratory boundary.

In addition to the IM described above, the Laboratory is preparing to implement two activities under the Consent Order that will require land application of treated groundwater under this discharge permit. These activities are part of a set of ongoing investigations (including well drilling) that will lead to a revised CME Report for the TA-16, 260 Outfall (Consolidated Unit 16-021(c)-99) and include aquifer testing from several perched-intermediate groundwater wells to further characterize the hydrology and RDX contamination beneath the TA-16 area. Also included is implementation of tracer studies in the same perched zone for a study that will couple with the aquifer testing described above. The HWB has required implementation of the tracer work to begin by September 30, 2015, and revision to an already-approved work plan is pending submittal to NMED.

Near-term (2015) implementation of these interim measures requires that treated water be land applied under DP-1793. A second permit application has been submitted to NMED for re-injection of treated water (this DP is in initial draft stage as DP-1835). The Laboratory's goal is to initiate pumping, treatment, and land application by mid-August 2015. Delays beyond the August 2015 start date will adversely impact the Laboratory's ability to collect hydrologic data of sufficient duration in 2015 to keep the IM objectives on schedule, because termination of land application is required by approximately the end of November due to frozen ground conditions.

The Laboratory's schedule is to begin aquifer tests in late Summer – early Fall 2015 with the goal of 90 days of pumping, treatment, and land application by the end of November.

II. Ground Water Discharge Permit History

In December 2011, the Laboratory submitted an application to discharge treated groundwater for land application from a pumping test at monitoring well R-28. The Laboratory submitted supplemental information in March 2012 to broaden the scope of the discharge and NMED completed public notice (PN-1) in November 2012. It was jointly determined by NMED and DOE/LANS during meetings in July and December 2013 that the Discharge Permit DP-1793 application was not sufficiently broad, and needed amending. On January 8, 2014, NMED received a revised application and PN-1 was completed on December 5, 2014. NMED issued Draft Discharge Permit DP-1793 and completed the second public notice (PN-2) in January 2015. Three separate interested parties were identified during PN-1 and NMED provided these entities with copies of Draft DP-1793 upon publication of the second public notice on January 30, 2015. Comments were received by the applicant (DOE/LANS) and Communities for Clean Water (CCW, also represents Concerned Citizens for Nuclear Safety, Amigos Bravos, Tewa Women United, and Honor our Pueblo Existence). The Draft DP-1793 was revised to reflect comments received from both parties and re-submitted to DOE/LANS and CCW. In addition NMED arranged a technical meeting on April 15, 2015 to discuss the revised discharge permit and specific comments.

III. Permit Specifics

DP-1793 was written to allow the discharge of up to 350,000 gallons per day (gpd) of treated groundwater derived from aquifer testing, well development, or tracer studies. Treated water would be required to achieve 90% of the numeric standards of 20.6.2.3103 or the Tap Water screening levels established in Table A-1 of the NMED Risk Assessment Guidance for Site Investigations (most recent version). The discharge would be by land application at a location within the Los Alamos National Laboratory facility in one of 55 sections identified in the permit application, typically for dust control on dirt roads.

Due to the variability in the potential discharge locations, source and treatment of discharge water, and contaminants potentially present, the permit is intended to be broad, with specificity provided in individual workplans required to be submitted to NMED for approval prior to each discharge. The individual workplan must provide specific information regarding the proposed discharge including:

- Detailed description of the proposed activity, including a statement of purpose;
- A description of water conservation and reuse options considered;
- A topographic map showing the proposed land application sites and the location of all monitoring wells, Site Monitoring Areas (SMA), Solid Waste Management Units (SWMU), National Pollution Discharge Elimination System (NPDES) permit outfalls, groundwater discharge permits, Areas of Concern (AOC) identified in the 2005 NMED Order on Consent, drinking water wells, surface impoundments and surface drainage features in the vicinity;
- Existing data showing the depth to, and general groundwater quality at the proposed discharge location including concentrations of contaminants exceeding regulatory standards;
- Estimated groundwater flow direction;
- Detailed description of the on-site treatment system to remove contaminants of concern from the effluent;
- Schematic of treatment system and treatment unit specifications;
- Detailed descriptions of the storage/containment systems associated with the treatment;
- Safety Data Sheets for tracer constituents;
- Maximum estimated daily discharge volume;
- Total estimated volume of the proposed discharge;
- Proposed sampling plan to demonstrate treatment efficiency and compliance with regulatory standards;
- Proposed method(s) of land application, application rates and area of application; and
- Project schedule including the date the discharge is to commence and anticipated duration.

Each workplan is required (under current language in DP-1793) to be posted on the LANL Electronic Public Reading Room at the time of submittal to NMED. Public comments would be considered by NMED for a period of 30 days prior to issuing authorization for the individual discharge.

IV. Specific Concerns Raised by CCW in the Hearing Request

Specific concerns submitted by CCW are presented below in italics.

- 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.

NMED Response - While not defined in 20.6.2.7, the term ‘workplan’ is common in the environmental vernacular. The requirements for the ‘workplan’ are defined in the Draft DP-

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1793 (as described above), which also provides the opportunity for concerned citizens to provide comment for NMED consideration on each discharge described within the workplan.

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 quality 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.

NMED Response - A discharge permit modification is defined in 20.6.2.7.P NMAC as "a change to the requirements of a discharge permit that result from a change in the location of the discharge, a significant increase in the quantity of the discharge, a significant change in the quality of the discharge; or as required by the secretary". NMED does not believe that the workplan constitutes a modification of the Discharge Permit. As long as the workplan submitted for each individual discharge meets the limitations established in DP-1793 (less than 350,000 gpd, within one of the 55 sections identified and a discharge meeting 90% of the numeric standards of 20.6.2.3103 NMAC and Table A-1 of the Risk Assessment Guidelines for Site Investigation) it would not meet the definition of a permit modification.

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.

NMED Response - CCW may be concerned that abatement required under the authority of a ground water discharge permit is exempt (20.6.2.2.4105.A.6) from public notice and participation (20.6.2.4108). Given that all discharges must meet regulatory compliance standards, the likelihood of impact to shallow soils and subsequent abatement requirements is minimal. NMED provides the additional protection by stipulating in DP-1793 that prior to an individual discharge, LANL may be required to conduct baseline soil sampling, groundwater monitoring, or other pre-discharge sampling to determine site conditions prior to discharge, and may be required to perform post-discharge confirmation sampling. Reports documenting an exceedance must be posted to the Electronic Public Reading Room as a condition of the permit.

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.

NMED Response – NMED has made posting of the following items to the LANL Electronic Reading Room mandatory and enforceable under DP-1793:

- Condition 3 – Submittal of workplan for individual discharge to NMED;
- Condition 8 – Discharge (workplan completion) Report to NMED;
- Condition 13 Notification of groundwater exceedance and submittal of Corrective Action Plan to NMED;
- Condition 14 – Soil Sampling exceedance workplan; and

- Condition 17 – Release (“spill”) notification, corrective action report/plan and any abatement proposal.

In addition, NMED requests the following submittals be posted, however not as an enforceable condition.

- Condition 3 – NMED Response to Workplan Submittals;
- Condition 9 – Annual monitoring report – due March 1;
- Condition 15 – Improperly constructed groundwater well notification;
- Condition 16 – Groundwater well not hydrologically downgradient notification;
- Condition 18 – Notification of failure of discharge plan
- Condition 19 – Closure and post-closure activities – all documents submitted to the NMED by the permittees under this Condition;
- Condition 23 – Modifications and/or amendments – all documents submitted to the NMED by the permittees under this Condition;
- Condition 24 – Plans and specifications – all documents submitted to the NMED by the permittees under this Condition;
- Condition 28 – Right to appeal – all documents submitted to the Water Quality Control Commission by the permittees under this Condition; and
- Condition 29 – Transfer of discharge permit – all documents submitted to the NMED by the permittees under this Condition.

In previous comments, CCW has listed a total of 30 specific items that should be posted as mandatory. LANL has agreed to voluntarily post a somewhat smaller list of items, and the language in DP-1793 was intended to require posting of a limited number of specific, time critical items that would be of important nature, and voluntarily post an additional list of less time critical items. While there is nothing in the ground water quality regulations that prevents establishing a mandatory posting condition, there is also nothing that requires it.

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.

NMED Response - CCW has been provided clarifying language to support the permittees discharge quantity, specifically that pumping rates of the recovery wells is not the basis of the

discharge. Effluent will be treated and stored in storage units and the discharge will be conducted as batches, with the 350,000 gpd to be the maximum discharged per day.

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.

NMED Response - LANL has historically stated that as a Federal Agency, operating on Federal land that they are exempt from State Statutes related to professional engineering. Language in DP-1793 stipulates that all facility record drawings must comply with applicable DOE and LANL engineering standards.

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.*

NMED Response – Condition 19 establishes closure and post-closure activities following completion of the proposed discharge. These conditions are limited to the removal of remediation components, impoundments, treatment vessels, piping and other conveyances and units associated with the treatment and discharge of the effluent. CCW mentions a variance in Condition 19 that would allow the permittee to petition NMED to cease discharging while maintaining specific components of the remediation system if required for other obligations (Consent Order). The language is consistent with other similar discharge permits in which regulatory closure is managed under the oversight of a separate NMED or EPA program.

V. Hearing Determination Request

The Pollution Prevention Section (PPS) of the Ground Water Quality Bureau (GWQB) respectfully requests a determination regarding this hearing request in accordance with 20.6.2.4108.D NMAC. After discussion with both parties, NMED has drafted a Discharge

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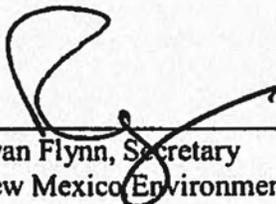
Permit that provides transparency and opportunity for community involvement at an unprecedented level. The proposed activity by LANL is intended to address historic impacts to groundwater and protect water resources and communities, and GWQB recommends that the request for hearing be denied.

Hearing Request Determination:

The request for hearing on the Draft Discharge Permit DP-1793

Denied

Approved



Ryan Flynn, Secretary
New Mexico Environment Department

Date: 7-7-2015