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Walnut Creek, CA 94597
August 31, 2009

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



Dear Mr. Keiling:

Thank you for the opportunity to comment on the July 6, 2009 version of the revised draft Resource Conservation and Recovery Act [RCRA] permit for renewal of the existing 1989 permit for the Los Alamos Scientific Laboratory [LANL]. My comments are attached. Some of them are a repeat of my August 27, 2007 draft permit comments, which NMED has not addressed in the current draft and now considers moot. Also, NMED provided no response to my comments on that draft, in direct contradiction to NMED's stated policy that says, "The Department will respond in writing to all public comments." [Page 19 of the NMED fact sheet for the August 2007 draft permit].

Based on these experiences and other observations, I find it necessary to oppose issuing the current draft and ask that the New Mexico Environment Department [NMED] convene a public meeting to answer the fundamental question, "Does NMED have the capability to administer this permit in a fair, impartial, effective and efficient manner?" Until this question is satisfactorily answered, the permit should not be issued. NMED's performance over the past 13 years in attempting to deal with this renewal suggests that the agency has failed to act fairly, impartially, effectively or efficiently in this regard. Since NMED chose not to respond to my previous questions, I think it is vitally necessary that these issues be addressed to better serve all involved.

Points that should be covered in such a hearing include but are not limited to:

1. Are there any past associations of NMED management with LANL, the Department of Energy [DOE], and/or public interest groups that might affect their impartiality?
2. Can NMED demonstrate regulatory consistency between what it expects of LANL and of other NMED-regulated entities within the state?
3. NMED has legal obligations to respond within a reasonable time to documents provided to it by LANL. What is the NMED record on responding to LANL in a timely manner? It is my understanding that the signing of the consent order resulted in the clock being "reset" to zero for those items that LANL had previously provided to NMED but upon which no action had been taken. Is this

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correct and has the clock been reset at other times to improve NMED's timeliness record?

4. It has been 13 years since LANL started submitting documents to NMED for this permit **renewal**, which was to have been completed by NMED 10 years ago. How does NMED justify this time lag? Would NMED allow a permittee to be 10 years late on a submission?
5. What are the criteria for including documents in the administrative record?
6. How is cost effectiveness factored into NMED's requests?
7. The more complicated documents become, the more room there is for error and misunderstanding by both state inspectors and permittees. How does NMED strive for clarity in the permit?
8. What have the costs been to date for LANL, DOE, and NMED in getting the permit to the current status?
9. What resources are required for NMED to administer the permit and how are they funded?
10. Has NMED considered turning RCRA permitting back to the Environmental Protection Agency? If not, why not?
11. With the delays and other problems associated with the current permit renewal, what are NMED's plans for improving the permitting process?
12. What were the results of the 35-40 closed meetings over five months with those who had requested a hearing on the previous permit draft?
13. I was specifically told I could not participate in the meetings on the draft permit because I had not requested a public hearing. However, San Ildefonso Pueblo, which did not request a public hearing, was involved in those meetings. What is the reason for the discrepancy in allowed participation?
14. The participants in the closed meetings considered the meetings to be negotiations on the permit. What qualifies a person or group to be a party to the permit so that they can be involved in negotiations of the actual language of the permit?

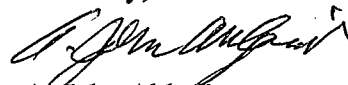
If public hearings are requested on issues other than these, I would like to be a participant in any and all negotiations on the same.

For the record, I live at the address above and represent myself. I have been retired for over three years. My interests come from having lived in Los Alamos where I worked for LANL directly on these matters for 11 years. I then served in an oversight capacity on these matters for 13 years while employed at DOE Headquarters and subsequently at the University of California Office of the President.

Your prompt response to my formal request for a public hearing would be appreciated.

Thank you.

Sincerely,



A. John Ahlquist

**COMMENTS ON THE DRAFT RCRA PERMIT FOR
THE LOS ALAMOS NATIONAL LABORATORY**

by A. John Ahlquist

January 10, 2008

Resubmitted with August 2009 updates

The fundamental question in the permitting process for a Resource Conservation and Recovery Act [RCRA] permit for the Los Alamos National Laboratory [LANL] is "Is the New Mexico Environment Department [NMED] capable of upholding its obligations under the delegation of RCRA authority to NMED from the Environmental Protection Agency [EPA]?" Based on past performance, the answer is "No!" Without a fundamental change in how NMED evaluates, reviews, and issues permits for federal facilities, NMED should voluntarily turn back its authority to the EPA for its management of RCRA permitting for federal facilities. The basis for these concerns follows:

1. The draft permit was issued for public comment on August 27, 2007 or about NINE years late. The re-permitting process began in 1996 for a permit set to expire in November 1999. A draft permit for comment should have been issued in 1998 to give time for public comment and drafting of the permit for issuance in 1999. **Update:** *It took NMED nearly 2 years to come out with a revised permit. Should a final permit ever be issued, it will be over 10 years late.*
2. The eleven-year [so far] permitting process involved 1.5 MILLION pages of administrative record to date with more to come. NMED must be incredibly risk averse to spend so much time requiring so much of an applicant and then reviewing all this material in order to make a decision. Such risk aversion and subsequent information requirements are sure to cause confusion in any applicant. **Update:** *NMED's permitting process is now at thirteen years and counting.*
3. For self-inflicted burdens such as 1.5 million pages of material [500 boxes if put into binders], NMED does not have the staff to properly review and write permits in a timely manner nor is NMED likely to get State funding to have the huge staff required for such a permitting process. **Update:** *The administrative record must now be at 1.6 to 1.7 million pages and is still growing.*
4. The costs to LANL and the State for such a process are likely to be in the tens to hundreds of million dollars – mostly wasted taxpayer money. **Update:** *The costs continue to mount.*

Please provide what NMED considers to be staffing needs to properly manage permits in this manner, what would the costs be and where this funding would come from. Please provide what the costs have been for this permit for both LANL and NMED.

The NMED effort for writing the RCRA permit for Sandia National Laboratory Albuquerque [SNLA] should be compared to that for the LANL permit and made public. Since SNLA and LANL are similar institutions as far as complexity of hazardous waste permitting, there should not be a huge discrepancy in permitting effort. If there is, then why is one federal institution singled out over the other?

Please provide any plans for changes to the RCRA permitting process for federal facilities for future permitting efforts.

Additionally, on page 17 of the NMED fact sheet announcing this public comment period, NMED "requires the Permittees to close MDAs G, H, and in their entirety under this permit." Since Area G is primarily devoted to radioactive waste, what is the NMED's authority to make such a requirement? Has the Nuclear Regulatory Commission delegated such authority to the State? Please provide under which authority such a requirement can be put on the permit. Provide NMED's proposed solution to radioactive waste disposal at LANL if Area G were closed and an evaluation of the impacts of such a decision. **Update:** *I will not pursue this item any further at this time.*

In summary, without a fundamental change in the RCRA permitting process by NMED for federal facilities, NMED should voluntarily turn back RCRA permitting authority to the EPA. NMED would still have a strong advisory role but would be relieved of the burden of permitting which has caused great anxiety, anguish and expense to both NMED and LANL. The public would benefit from improved timeliness, better clarity of the process and likely a higher quality permit to protect the employees and public.

Update: *Since these comments were not addressed in writing during this round of the permitting process, which is in violation of NMED's stated policy, and rendered moot by NMED when the July 6, 2009 draft was issued, it becomes clear that a public hearing is required to determine if NMED is capable of administering RCRA, as it applies to LANL. Therefore, I formally request that a public hearing be held to discuss whether NMED is able to administer RCRA permitting at LANL in a fair, impartial, effective, and efficient manner.*

Comments on the July 6, 2009 Draft

1. The title to Table K-1 is "SWMUs and AOCs Requiring Corrective Action". The list seemed awfully long until the following statement was found on page 203:

"Corrective measures options shall include the range of available options including, but not limited to, a no action alternative, institutional controls....."

Suggesting that a no action alternative is a corrective action is a way to inflate the number of "corrective actions" required and to give a misleading indication that things are much worse at LANL than they really are. NMED should use standard RCRA terminology for this RCRA permit and title Table K-1 "RCRA Facility Investigation Units."

2. On page 6 of the Fact Sheet it mentions that LANL is "to receive only sealed source wastes that are eligible for disposal" at WIPP and to "receive no more than one 55-gallon drum of sealed source waste per year..." If there is a pathway to disposal, why is there a limit on the number of drums that can be received? It is vitally important to national security to have the flexibility to gather up unused and orphan sources from unsecure locations to prevent their use for terror-type activities and to ensure their proper disposal. The source recovery program at LANL has done an excellent job. Perhaps the current national need may only be one or several drums per year, but if there is an unforeseen increase in the unused/orphan source inventory, the country should have the ability to deal with it without obstacles created by some unnecessary regulatory control. NMED should not have a limit on such drums but instead insert a clause to assure the drums are sent to WIPP within one year of receipt.
3. Soil cleanup levels are provided in Section 11.4.2.1 and are to be based on residential and industrial land use. This pre-judges the field situation. Contamination on steep canyon walls and other similar situations should not be evaluated for residential or industrial scenarios because the likelihood of the land use for these scenarios is remote to none. To set the cleanup goal at such a value does little to nothing to reduce long-term risk to the public and ensures considerable funds will be spent with no commensurate gain. In fact the total risk to the public may be higher because of the risks incurred in implementing mitigating measures. It is recommended on line 28 of page 117 that "residential and industrial land use" be deleted and substituted with "a credible land use scenario."
4. The fact sheet, which is 111 pages long with a 570-page addendum, indicates failure to focus on what's important and prioritize. Whether planned or not, a fact sheet of 681 pages is guaranteed to confuse and obfuscate what is happening. It does not clearly communicate.
5. On pages 7-18 of the fact sheet addendum, there is a lot of discussion over abandoned or removed sanitary septic tanks that served primarily residential units and other low risk facilities. NMED is concerned that there might be RCRA constituents present, and the permittees must demonstrate that they are not there or are in such low concentrations as to be of no concern. However, one could have the same concern over the many thousands of current, abandoned, and removed sanitary septic tanks in New Mexico. It is quite likely that virtually all have received household chemicals, paint thinners, and paints from normal usage and thus could show RCRA constituents in their drain fields. Has NMED exhibited the same zeal in requiring owners at all other sanitary septic tanks to determine there are no RCRA constituents in or near their tanks? NMED should demonstrate that they have required the same rigor of all owners of sanitary septic tanks to ensure regulatory consistency throughout the state. If NMED cannot do

that, they should reduce their requirements to those they expect of the rest of the state.

6. On pages 21 and 22 of the addendum, NMED requires the permittees to investigate a 1940's borrow pit location and a concrete block manufacturing site for RCRA constituent contamination. Again, in the name of regulatory consistency, NMED should demonstrate they require the same level of investigation at all borrow pit locations and places where concrete has been made in the State of New Mexico or reduce the requirements in the permit to those they place on the rest of the state. It appears NMED is unwilling or unable to consider cost/benefit when it comes to investigations at LANL.

7. It is difficult to determine what the criteria are for NMED to include something in the administrative record. The first item in the 412-page list is titled "Is cobalt of any significance in the treatment of milk anemia with iron and copper?" from a technical journal in 1938. The early part of the list [prior to 1989] is unnecessary because it lists early documents that would be included/summarized or provide background to reports provided to NMED as part of the environmental characterization program. This is another indication of how NMED cannot determine what is important and how to manage a permit for LANL. If NMED cannot provide the documentation to show the same level of administrative recording for other permits, all the extraneous material should be removed. NMED must be consistent to be fair. Documents provided to NMED and from NMED to stakeholders are correctly in the administrative record.