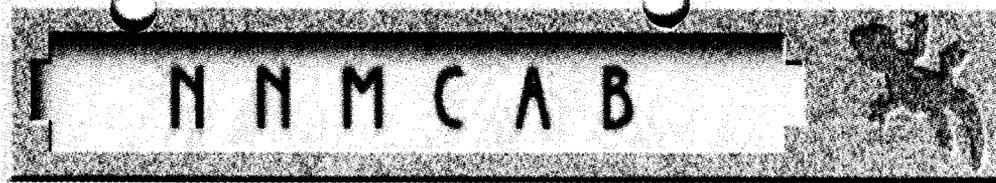


LANL FFCA 04

NNMCAB
COMMENTS
FFCA



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Northern New Mexico Citizens' Advisory Board
A U.S. Department of Energy Site-Specific Advisory Board
1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505
Phone: (505) 989-1662 or 1-800-218-5942
Fax: (505) 989-1752 www.nnmcab.org

November 15, 2004

Richard Greene
United States Environmental Protection Agency,
Region VI, Dallas, Texas



Dear Mr. Greene:

The Northern New Mexico Citizens' Advisory Board (NNMCAB) appreciates this opportunity to comment on the draft Federal Facility Compliance Agreement (FFCA). The NNMCAB views this public comment period to be a critical part of the regulatory process which allows public involvement regarding decisions that directly affect their community.

NNMCAB has prepared the following comments upon careful consideration of the FFCA between the Environmental Protection Agency (EPA), the Department of Energy (DOE) and the Los Alamos National Laboratory (LANL) -- docket No. CWA-06-2005-1701. The NNMCAB's comments are organized initially as general overall statements regarding the FFCA followed by very specific comments linked according to section and paragraph found in the draft document.

Additionally, the NNMCAB would like to recognize the assistance provided by the DOE and the LANL with briefings on the FFCA and the current status of the Surface Water Monitoring Program at LANL at the last Board meeting. The Board found the presentations very helpful.

Spirit of Cooperation

The FFCA was written to establish a compliance program whereby the EPA will regulate storm water discharges from Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs) with the DOE at the LANL. The NNMCAB strongly encourages the EPA to fully involve the New Mexico Environment Department (NMED) in the implementation and oversight of this compliance program for the regulation of storm water discharges from SWMUs and AOCs at the LANL, which are covered by this proposed agreement. The NNMCAB also encourages the EPA to expedite the authorization of NMED to implement the Clean Water Act (CWA) provisions in the State of New Mexico.

Comprehensive Public Involvement



46 The NNM CAB is disappointed to find no provisions in the draft FFCA for
47 informing the public of data, directives, and conclusions resulting from monitoring
48 activities. The NNM CAB notes that the public most affected by discharges from the
49 LANL are the citizens of north central New Mexico. These citizens are increasingly
50 concerned about runoff from LANL, particularly following the 2000 Cerro Grande Fire.
51 The NNM CAB considers these citizens to be justifiably concerned that material
52 migrating from the LANL may have a direct effect on their well being.

53 The NNM CAB believes that providing the public with clear, comprehensible, and
54 factual information in a timely and transparent fashion is in the best interest of the EPA,
55 the DOE, and the LANL. The FFCA stipulates that the LANL must supply the NMED
56 with monitoring results and proposed changes to the sampling program (Section 22). The
57 NNM CAB believes that the required information can and should also be supplied to
58 NMED and the public via the Internet at little, if any, additional cost to DOE.

59

60 **Publicly Available Geographic Information System**

61 In addition, the NNM CAB believes that the DOE and the LANL would be well
62 served to include Geographical Information System (GIS) maps showing locations of the
63 SWMUs and AOCs in question. Citizens could then easily identify and best judge the
64 magnitude of any hazard to their communities. To further public understanding, the DOE
65 and the LANL would do well to attach photos to each site in the GIS, as per LA-UR-00-
66 3767, which shows post fire mitigation efforts at 91 sites. Such photos should be useful
67 to NMED personnel and would inform the public of the Best Management Practice
68 (BMP) devices installed to control storm water runoff.

69 The NNM CAB understands and appreciates the DOE's and the LANL's concern
70 for security. However, SWMUs and AOCs are also regulated under RCRA. Therefore,
71 information on these sites has had wide public distribution since 1987 under the laws of
72 that act. The NNM CAB believes that, despite years of public information meetings, DOE
73 and LANL have not gained the trust and confidence of the neighboring public. The
74 NNM CAB believes that the storm water compliance agreement offers the DOE and the
75 EPA an opportunity to offer the public useful and easily understood information at little
76 additional cost regarding a matter of great concern.

77

78 **Specific Comments by Section:**

79

80 **Section I. Purpose and Scope**

81 Paragraph 1.

82 1) A cross-referenced document or table supplying a list of Solid Waste
83 Management Units (SWMUs) and definition of Areas of Concern (AOCs) should
84 be provided.

85 2) The State of New Mexico Standards for Interstate and Intrastate Surface Waters
86 (20.6.4 NMAC) YY definition of water contaminant should be clarified; "water
87 contaminant" means any substance that could if discharged or spilled alter the
88 physical, chemical, biological or radiological qualities of water. "Water
89 contaminant" does not mean source, special nuclear or by-product material as
90 defined by the Atomic Energy Act of 1954, but may include all other radioactive
91 materials, including but not limited to radium and accelerator-produced isotopes.

92 **Section II. Findings of Fact and Conclusions of Law**

93 Paragraph 2. *(no comments)*

94 Paragraph 3. a., b., c., d. *(no comments)*

95 Paragraph 4. *(no comments)*

96 Paragraph 5. *(no comments)*

97 **Section III. Parties**

98 Paragraph 6. *(no comments)*

99 Paragraph 7. *(no comments)*

100 **Section IV. Compliance Program**

101 Paragraph 8. The language in these paragraphs could be interpreted to mean that a storm
102 water discharge permit application must be submitted for each SWMU and AOC rather
103 than one application that covers all of the Sites. NNM CAB suggests that the word
104 “separate” be substituted for “individual”.

105 Paragraph 9. *(no comments)*

106 Paragraph 10. a. Add the phrase (see Paragraphs 13 through 16 for more details) after
107 Storm Water Monitoring Plan (SWMU) in the fourth line of this paragraph. Also, Table
108 1 is not attached to the website Word copy, b. Add the phrase (see Paragraphs 18
109 through 23 for more details) at the end of the first sentence of this part. Also, the last
110 sentence of this paragraph is redundant and should be deleted.

111 Paragraph 11. a., b., c. *(no comments)*

112 Paragraph 12. *(no comments)*

113 Paragraph 13. *(no comments)*

114 Paragraph 14. *(no comments)*

115 Paragraph 15. Revise the last two sentences to read: “If new information warrants, DOE
116 shall also conduct storm water monitoring at other locations. These other locations must
117 be submitted to EPA for approval as a part of the annual updates to the SWMP as
118 discussed in paragraph 14.”

119 Paragraph 16. Given the specification of analytical parameters in this section it is
120 suggested that the phrase “pollutants and contaminants” in section 11 be deleted.

121 Paragraph 17. The NNM CAB believes that the intent of the FFCA as stated in Paragraph
122 15 directs that the SWMP arrange to sample all storm events that generate sufficient
123 runoff for sampling. In order to avoid confusion with respect to required number of
124 samples to be collected, we recommend modifying the first sentence of this paragraph to
125 read: “After at least four samples are collected . . .” The NNM CAB also recommends
126 this evaluation process be ongoing so that all samples collected in each calendar year will
127 be used as a part of the annual update process.

128 Paragraph 18. *(no comments)*

129 Paragraph 19. The requirements in this paragraph are unclear and more specific
130 objectives for the SWMU/SWPPP should be included.

131 Paragraph 20. *(no comments)*

132 Paragraph 21. a., b., c., d., e., f. NNM CAB suggests that this paragraph be moved to
133 follow paragraph 18 and be renumbered paragraph 19. It is a very detailed discussion of
134 what is to be in the SMWU/SWPPP and should logically follow the paragraph that
135 requires the SWMU/SWPPP. In fact it may even replace paragraph 19. Otherwise also
136 renumber paragraph 19 as paragraph 20 and paragraph 20 as paragraph 21.

137 Paragraph 22. a., b., c., d., e. *(no comments)*

138 Paragraph 23. Page 8, Section IV, paragraph 23. This paragraph should be modified by
139 rephrasing the first sentence to read: "Site-specific monitoring stations shall generally be
140 located downstream of the Site discharge point and upstream of the confluence."

141 Paragraph 24. a., b., c., d. This paragraph is very awkward. Suggested changes include:
142 1. Define wSAL the first time used (second sentence). 2. Define BMPs. 3. Move the
143 eighth and ninth sentence to follow the second sentence. This provides a more logical
144 thought structure to the paragraph. 4. The sentence, "The wSALs shall be established in
145 the SWMP and the SWMU/SWPPP." should appear earlier in this paragraph.

146 **Section V. Reporting**

147 Paragraph 25. **The NNMCAB urges the parties to modify Section V of the draft**
148 **FFCA to allow public access to monitoring results at LANL SWMUs and AOCs.**

149 Therefore the NNMCAB suggests revising Paragraph 25 as follows "All results for
150 watershed monitoring submitted by March 31st of each year in accordance with this
151 Agreement shall be made available by DOE at the same time to the public on a website.
152 All the monitoring data on the publicly available website shall be reported in a
153 Geographic Information System (GIS) format using a commercially available program.
154 Any exceedances of wSALs reported in accordance with this Agreement shall also be
155 reported to the public by DOE on the public website at the same time they are reported to
156 EPA and NMED."

157 Revise the following sentence as shown: "Exceedances of wSALs shall be reported in
158 writing to EPA and NMED monthly by the 28th day of the following that month in which
159 analytical results are received."

160 Paragraph 26. Revise "Section V. REPORTING, Paragraph 26 to read: All results for
161 Site-specific monitoring according to the SWMU/SWPPP submitted by March 31st of
162 each year in accordance with this Agreement shall be made available by DOE at the same
163 time to the public on a website. All the monitoring data on the publicly available website
164 shall be reported in a Geographic Information System (GIS) format using a commercially
165 available program. Any exceedances of wSALs reported in accordance with this
166 Agreement shall also be reported to the public by DOE on the public website at the same
167 time they are reported to EPA and NMED."

168 NNMCAB suggests: "Exceedances of wSALs shall be reported in writing to EPA and
169 NMED monthly by the 28th day of that following month in which analytical results are
170 received."

171 Paragraph 27. a., b., c., d., e. Revise this paragraph to state that the DOE shall make
172 public and post the entire Quarterly Status Report submitted to EPA and NMED in
173 accordance with Paragraph 27 of this Agreement on the publicly available website
174 together with all monitoring data.

175 Paragraph 28. *(no comments)*

176 Paragraph 29. *(no comments)*

177 Paragraph 30. *(no comments)*

178 Paragraph 31. *(no comments)*

179 **Section VI Compliance with other Laws and Regulations**

180 Paragraph 32. *(no comments)*

181 **Section VII. Entry and Inspection**

182 Paragraph 33. a., b., c., d. *(no comments)*

183 **Section VIII. Dispute Resolution**

- 184 Paragraph 34. *(no comments)*
185 Paragraph 35. *(no comments)*
186 Paragraph 36. *(no comments)*
187 Paragraph 37. *(no comments)*
188 Paragraph 38. *(no comments)*
189 Paragraph 39. The EPA and DOE should involve NMED in any Dispute Resolution
190 discussions or resolutions.
191 Paragraph 40. *(no comments)*
192 Paragraph 41. *(no comments)*
193 Paragraph 42. *(no comments)*
194 Paragraph 43. Revise to add the following sentence: "Following the resolution of any
195 dispute raised by DOE with respect to this Agreement or any other enforcement action
196 taken by EPA, the results of the resolution will be made available to the public by posting
197 a timely summary of the resolution on the publicly available website together with all
198 monitoring data."
199 **Section IX. Modifications**
200 Paragraph 44. *(no comments)*
201 Paragraph 45. a., b., c., d., e. *(no comments)*
202 Paragraph 46. *(no comments)*
203 Paragraph 47. *(no comments)*
204 **Section X. Funding**
205 Paragraph 48. *(no comments)*
206 Paragraph 49. *(no comments)*
207 Paragraph 50. *(no comments)*
208 **Section XI. General Provisions**
209 The three sources of "pollutants and contaminants" listed in this section should be made
210 more clear. For example, the following definition seems quite open ended:
211 . . . from the State of New Mexico Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC) (Section) YY, "water
212 contaminant" means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological
213 qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic
214 Energy Act of 1954, but may include all other radioactive materials, including but not limited to radium and accelerator-produced
215 isotopes.
216 The NNMCAB recommends that more specific listings be referenced.
217 Paragraph 51. *(no comments)*
218 Paragraph 52. *(no comments)*
219 Paragraph 53. *(no comments)*
220 Paragraph 54. *(no comments)*
221 Paragraph 55. *(no comments)*
222 Paragraph 56. *(no comments)*
223 **Table 1:**
224 1) NNMCAB suggest the following language modification, "where a sample is
225 higher than a wSAL..." be changed to "where an analytical result is higher than a
226 wSAL".
227 2) The language "Order Requested Analytical Suite" in the right hand column
228 doesn't seem appropriate. Instead "Agreement Required Analytical Suite" would
229 seem more appropriate.

230 3) The DOE shall identify potential new parameters for inclusion in the annual
231 modification of the SWMU / SWPPP, based on results from the NMED Order on
232 Consent and other site monitoring programs.
233

234 Thank you for your attention to the matters referenced herein by the NNMCAB for
235 consideration by the EPA, the DOE and the LANL.

236
237 Sincerely,

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242
243 Timothy A. DeLong, Chair
244 NNMCAB

245
246
247 References:

- 248 1. Veenis, S.J. The Cerro Grande Fire Aftermath: Environmental Restoration Project
249 Activities to Reduce the Migration of Contamination from Potential Release Sites.
250 LA-UR-00-3767, LANL, Los Alamos, NM August 7, 2000.
251 2. Federal Facilities Compliance Agreement, Docket No. CWA-06-20005-1701
252 3. NMED / LANL Draft Order on Consent, September 1, 2004
253 4. Ryti, et al., 1998
254 5. <http://www.epa.gov/earth1r6/6en/w/public-notice-doe.htm>
255 6. www.epa.gov/region6/6en/w/public-notice-doe.htm
256

257
258 Cc:

259 Senator Jeff Bingaman
260 Senator Pete Domenici
261 Representative Tom Udall
262 Representative Heather Wilson
263 New Mexico Governor Bill Richardson
264 Secretary Ron Curry, New Mexico Environment Department (NMED)
265 Frederick Dowd, DOE, Public Participation
266 Director Pete Nanos, Los Alamos National Laboratory
267 Ed Wilmot, Manager, Los Alamos Site Office, Department of Energy (DOE)
268 Ken Hargis, Division Leader, RRES, LANL
269 Rich Mayer, EPA Region VI
270 James Bearzi, Hazardous Waste Chief, NMED