

Permit



LOS ALAMOS COUNTY

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Hazardous Waste Bureau

July 30, 2002

James P. Bearzi, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Sante Fe, NM 87505-6303

RE: Comments from Los Alamos County on the Draft Order Issued to Los Alamos National Laboratory on 2 May 2002

Dear Mr. Bearzi:

The County of Los Alamos, New Mexico ("County") respectfully submits by this letter comments on the draft Order issued by the New Mexico Environment Department ("NMED") to the United States Department of Energy ("DOE") and the University of California ("UC"), dated 2 May 2002 ("Order"). The Facility named in the draft Order is the Los Alamos National Laboratory located in Los Alamos, New Mexico ("LANL"), and DOE and UC are collectively referred to as "Respondents" in the draft Order.

The County's comments on the draft Order are provided below.

1. The Order appears to place a strong emphasis on monitoring for impacts to the regional aquifer, as well as alluvial and perched groundwater. While the County has not studied the details of the groundwater investigations required by the Order, the County strongly concurs with an emphasis on performing appropriate investigations and corrective actions intended to protect the regional groundwater aquifer that constitutes the only water supply for the Los Alamos community and LANL.
2. The County has observed that many Solid Waste Management Units ("SWMUs") listed in the hazardous waste facility operating permit for LANL ("Permit") are on private property or County property that was transferred out of DOE ownership nearly forty years ago. Examples of SWMUs located on non-Federal property are:

16082



00-011(d), 00-017, 00-019, 01-001(g), 01-001(s), 01-001(u), 01-006(h), 01-006(o). The County does not see in the draft Order, nor was it a listed goal at the public meeting in Los Alamos, that removal of SWMUs from the Permit is an intention or objective. The County has communicated with NMED and DOE in the past its concerns that continuing to have these sites on the Permit negatively affects non-Federal property ownership in the County. The County feels strongly that the final Order must have an objective of removing from the Permit all SWMUs on non-Federal property, including promptly implementing any investigation and corrective action activity required to accomplish that objective.

3. The draft Order does not provide schedules for further investigation or corrective action activities at most of the SWMUs listed in the Permit, but rather Section V.E indicates that NMED “may determine that further investigation is needed at any of the SWMUs or AOCs [Areas of Concern] listed in the Facility Operating Permit.” How will NMED enforce timely investigation and corrective action at SWMUs and AOCs not listed in the draft Order? The County is particularly concerned with the following SWMUs, which are located on Federal land parcels slated for transfer to the County in the near future and are not discussed in the draft Order: 00-003, 00-012, 00-030(b), 21-013(d,e), 21-024(f), and 21-029. Some of these SWMUs have received a written no-further-action determination from NMED, and others are being investigated by LANL under a voluntary corrective action program (see Comment No. 6). Delay in implementing investigations and corrective actions at these SWMUs could occur (a) if the Order compels DOE to focus funding on SWMUs listed in the Order, or (b) if there are delays in NMED review of reports for these SWMUs. Such delays would negatively impact the transfer of land to the County and delay the County’s efforts at self-sufficiency as intended by the Congress.
4. The County and private property owners have from time-to-time encountered previously unknown sites where materials have been deposited by LANL activity. Some of these materials have turned out to be non-hazardous and some have been major removal projects. In the past, the DOE and LANL have been able to respond quickly to the discovery of these materials and to quickly remove them. The County is concerned that the draft Order is so restrictive of DOE and LANL operations that this rapid response will not be available should future sites be discovered.

In particular, the County is concerned that a previously unknown site on County property or private property where materials are discovered could be considered a “suspected SWMU or AOC” under paragraph V.C of the Order. In some cases where a prompt removal of the material may fully mitigate the concerns, the Order could be construed to require extensive reporting and NMED reviews and approvals, thereby delaying the removal and impacting private, commercial, or County activity. The County feels that the final Order should allow the Respondents flexibility in addressing such sites, particularly when located on private property or County property. See also related Comment Nos. 5 and 6 below.

5. The Order defines “Facility” (page 14) to be the LANL site “owned” by DOE. This appears to exclude former DOE property now owned by private citizens, the County, or other entities, as well as property never owned by DOE but potentially impacted by an historic LANL activity. Paragraph III.A, page 13, indicates the purposes of the

Order relate to releases or migration of hazardous constituents “at or **from** the Facility” (emphasis added). Please clarify what is meant by “from” the Facility. For example, will the Order apply to a site that is not within the defined boundary of the Facility but where LANL has directly released materials in the past, such as if LANL waste material is found buried at an off-Facility property? Similarly, does the Order apply to identified SWMUs that are not located at the defined Facility (see Comment No. 2)? The County recommends that the final Order apply to all LANL release sites and identified SWMUs, whether located within or outside of the Facility, but that the Order explicitly allow the Respondents to voluntarily respond to releases located off the Facility whether or not NMED has formally requested a response. See related Comment No. 6.

6. LANL has previously used and is currently using a voluntary corrective action (“VCA”) approach to perform investigations and corrective actions at some SWMUs and AOCs. Under the VCA approach, we understand that LANL provides NMED with work plans for proposed work, implements the proposed work without waiting for formal NMED approval, and, when applicable, submits completion reports seeking no-further-action determinations from NMED. The VCA approach tends to expedite investigations and corrective actions.

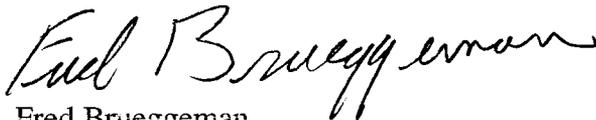
The County recommends that the Respondents be explicitly allowed, under the Order, to voluntarily perform investigation and corrective action activities at any SWMU or AOC where NMED has not formally required such activity (e.g., the SWMUs listed in Comment No. 3), provided the Respondents (a) provide a Work Plan to NMED, and (b) make all Work Plans available for public review no later than when the Work Plans are submitted to NMED. The County further requests that NMED commit to reviewing and responding in a timely manner to any completion reports that are submitted by the Respondents following such voluntary activity.

7. The County has observed that timely NMED review of documents submitted by the Respondents has been an obstacle to expediting investigations and corrective actions at SWMUs and AOCs on private or County lands. NMED should commit to a review period of three months or less for all reports and documents that are (a) submitted by the Respondents, (b) request or require NMED action, and (c) do not have statutory or regulatory requirements for NMED review time or public comment periods. In Section XI (“Reporting Requirements”) the Order should indicate for each deliverable the amount of time allotted for NMED review, and, where applicable, for public review and comment.
8. The cleanup levels for soil and groundwater referenced in Section VIII of the draft Order are based on a 10^{-5} incremental cancer risk level and a Hazard Quotient of 1.0 for each chemical. For locations where more than one chemical of concern is detected in soil or groundwater, the County suggests that the final Order require quantitative consideration of the cumulative risks from the multiple chemicals, such as use of the procedure described in Chapter 5 of NMED’s *Technical Background Document for Development of Soil Screening Levels* (December 18, 2000), or another scientifically defensible and accepted approach to considering cumulative risks.

9. In Section VIII of the draft Order, U.S. EPA Preliminary Remediation Goals (“PRGs”) for radionuclides are designated as reporting levels. The County notes that the PRGs are often below background levels. If the Respondents must report all detected concentrations above those PRGs, the County requests that the final Order also require reporting background concentrations for comparison to avoid raising public concerns over detection of radionuclides at background levels.
10. The reporting levels referenced in Section VIII for radionuclides do not include any values for tritium, a contaminant of concern at LANL and in the community.
11. Paragraph X.B requires that monitoring wells and piezometers must be designed and constructed in a manner that will ensure that the well will not serve as a conduit for contaminants to migrate between different stratigraphic units. The County strongly encourages NMED to carefully review proposed drilling methods and well construction methods to assure compliance with this requirement, since groundwater is the only source of potable water for the community and LANL.
12. For certain SWMUs in Technical Area 21, the compliance schedule in Section XII of the draft Order requires submittal of a “Voluntary Corrective Measures Plan” and/or “Voluntary Corrective Measures Report.” Neither of those documents are discussed or described in the draft Order. Since Technical Area 21 has been identified for possible future transfer to the County for private economic development purposes, the County requests that NMED and Respondent be required to consult with County representatives in the selection of remedies prior to NMED approval. The County would like to insure, to the extent possible, that any remediation be acceptable to future private owners and their financing sources.

I look forward to your response on these questions and comments.

Sincerely,



Fred Brueggeman
Deputy County Administrator

Cc: County Council
Mary MCIerny, County Administrator
Pamela Bacon, County Attorney