

Permit

John Kieling

From: Cmtimmpe@aol.com
Sent: Tuesday, September 28, 2004 5:09 PM
To: hazardous_waste_comment@nmenv.state.nm.us
Subject: LANL Order on Consent

Mr. James P. Bearzi, Chief
Hazardous Waste Bureau
New Mexico Environment Department

Re: LANL Order on Consent

I have reviewed the subject order and submit the attached comments. Should you need to contact me for clarification of any of my comments, I am available at the numbers shown below.

Thank you,

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16227

COMMENTS – NMED/LANL/DOE Consent Order

September 28, 2004

Christopher M. Timm

Section I No Comments

Section II

1. **II.A.2. The Facility.** A table listing the aggregation of watersheds into the Canyon Watershed Investigation Areas addressed in Section IV.B would be very helpful here.

Section III

1. **III.B. Definitions.**

- A) Add a definition for site and site-specific in order to differentiate between “facility-wide” and “watersheds” with multiple sites and sites and TA’s, which can presumed to be specific sites (See 2nd paragraph of Section I introduction for discussion of what is covered and compare to opening paragraph of Section IX).
- B) Add a definition of immediate threat (or hazard) – see IV.A.5.b, third paragraph.

2. **III.H. Force Majeure.**

- A) Recognition of safety violations should be listed as an example force Majeure. In fact, the underlying need for a strong safety program is ignored by this consent order.
- B) B) II.H.2. In the list of examples, why modify No. 3 with the term “unanticipated”? Why not just say “Accidental breakage of”?

3. **III.I.1. Informal Negotiations.** This section is incomplete since it does not provide a mechanism for dispute resolution. A requirement for a meeting between the Bureau Chief and the appropriate LANL PM needs to be included.

4. **III.M Work Plans.**

- A) Section II.M.1. Item No. 2 doesn’t make sense. Why would a work plan “state that work meeting the requirement of this Consent Order has been completed”? I believe the intent is for the work plan to summarize the work previously completed towards meeting the requirements of the Consent Order.
- B) Section II.M.1. Item No. 3. Change the first verb from ‘shall’ to ‘may’. Not every work plan will need alternate requirements. Also, this item should cross-reference to Section III.J.

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5. **III.O Entry and Inspection.** Modify the third line to read: “the Facility at reasonable times and in accordance with applicable *safety* and security requirements.

 6. **III.V. Relationship to Work Completed.** A list of work deemed satisfactorily completed by NMED or EPA as of 1/1/2004 (or later if possible) would be a good addition to this Consent Order and provide a good basis for preventing backtracking.

 7. **III.W.3.a Class 3 Permit Modifications to Remove Corrective Acton Requirements.**
 - A) Change the second sentence of this section by substituting either “*regulated*” for the verb “*conducted*” or by adding the phrase “*in accordance with the terms of*” after the verb “*conducted*”.
 - B) The last sentence could be deleted since that intention is stated in more detail in Section III.W.6

 8. **III.W.3.b Class 3 Permit Modifications for Corrective Acton Complete.**
 - A) Third sentence: delete the word “only” from before the phrase “those controls” at the end of the ninth line.
 - B) This section ends with an incomplete thought/action. It needs to describe the sequence of events after the Department initiates a Permit modification.

 9. **III.W.6. Contingencies.**
 - A) In the fourth line in this section add the phrase “*and agreement*” after the word “*understanding*”. It is essential that the Respondents both understand and agree to the terms of the Consent Order.
 - B) The discussion about vacating the Consent Order in the last sentence of this sentence needs to be clarified. Is it the intent of the Parties that the whole Consent Order is vacated or just those activities specified in the consent order that are addressed by the Permit Modification be vacated? Major difference.

 10. **III.Y.1.b. Department’s Determination.** There should be some formal notification of both the Respondents and the proposed recipient of the land even if the Department has concluded that no further corrective measures are necessary. Generally, any title investigation on private property that had been contaminated would look for some confirmation from the Department that is was now acceptable for the proposed uses. That same confirmation should be supplied to the Respondents and recipient.

 11. **III.Y.2.b. Department’s Determination.** Same comment as Comment 10 above.

Section IV

- 12. IV.A.3.b. Groundwater Monitoring Plan.** The discussions about the submittal periodic monitoring reports contained in the last two sentence of this section are confusing. According to Table XII-5, there are 10 watersheds and there is to be quarterly monitoring reports submitted for each. That equals 40 monitoring reports. Thus, it is not clear how the Department arrived at the requirement for only eight initial reports.
- 13. IV.A.3.d Background Investigation.** The background investigation report should be submitted to the Department before the Interim Plan (Sec. IV.A.3.b) rather than 90 days after the Interim Plan. It is not good science to develop a groundwater monitoring plan without know the background conditions first. I would expect that the Respondents have sufficient information in hand to easily prepare the Background Investigation Report first.
- 14. IV.A.3.e Monitoring Wells and Piezometers and IV.A.3.f. Springs.**
- A) The same requirement stated the sampling subsections for wells (IV.A.3.e.i. 9, IV.A.3.e.ii.8, and IV.A.3.e.ii.10) for the submission of a long-term monitoring plan should be specified for the springs.
 - B) The requirements in the sampling subsection (4.) of IV.A.3.f appear to be meant to be applied for all sampling. If so, they should be renumbered as a separate section (IV.A.3.g).
 - C) Paragraph 4. of IV.A.3.f, should be modified to indicate that the required constituents to be sampled will be as specified in the Interim plan or the subsequent long-term monitoring plans as approved by the Department.
- 15. IV.A.4 Sediment Investigation.**
- A) Item 4. Do geomorphic investigations normally evaluate for the presence of contaminants? Is the intent to look for discolorations, or check for odors?
 - B) Item 5. Given the question about item 4. above, the second sentence of Item 5. should be modified to by substituting “has been” for “is” in front of the word “detected”. This will take into account both historical data and the results from the current monitoring plan.
- 16. IV.A.5.b Testing Hazard Zones.** The title of Table IV-1 should be changed to: “Sites to undergo Corrective Action”.
- 17. IV.A.6. Reporting.** This section should be cross-referenced to Section IV.A.3.b.
- 18. IV.B. Canyon Watershed Investigations.**

- A) Add an introduction to this section that lists the six canyon watersheds and their components canyons.
- B) In the second paragraph of this section, the first sentence indicates investigations should start at 'point of origin' while the third sentence indicates that the source areas on the mesa tops are to be investigated separately. This could result in gaps in the watershed investigation reports depending on the timing of the mesa top investigations. Requirement should be to submit a comprehensive work plan that covers all known potential contamination sources and includes a timeline that shows that the investigations of all sites are planned to ensure that the overall watershed investigation is complete (and timely).
- C) The requirement in paragraph 4. to list and describe all known and *suspected* material is too broad and open ended. Given the nature of LANL operations, one could suspect any and all contaminants to have been present at each SWMU. Somehow, this needs to be clarified.
- D) Paragraph 7. specifies that the results of *all* sampling events be included, while paragraphs 13. and 14. specify only the results from the four most recent sampling events. Which is it to be?
- E) The topic of the last paragraph is the historical investigation *report* not the summaries. Modify the language accordingly.
- F) General. Several work plans are identified in the discussions of the six Canyon Watersheds that are not listed in the Schedules. For example, the Groundwater Work Plans for both Los Alamos/Pueblo Canyon and Mortendad Canyon were submitted in CY 03, but are not listed in Schedule XII-3. I suspect there are probably others that were also missed.
- G) General. In every specific canyons investigation section, the last sentence in the opening paragraph of the groundwater monitoring section is repeated verbatim as the last sentence of the investigations report section. Delete one or the other.

19. IV.B.1 Los Alamos/Pueblo Canyons Investigation.

- A) Section IV.B.1.b.ii. The second, third and part 4. of the fourth paragraph should all be combined into a new section **IV.B.1.b.vi Subsequent Investigations**. That section should start with the old third paragraph and end with either the second paragraph or part 4. of the fourth paragraph (both are identical and only one is needed).
- B) Of the six canyon investigation sections, only the Los Alamos/Pueblo Canyons Investigation section discusses the possible need for subsequent investigations. Is this deliberate or an oversight?
- C) In section IV.B.1.b.iv, there are numerous inconsistencies – parts 1. and 3. refer to groundwater samples and parts 2. and 4. refer to alluvial groundwater samples. The same lack of attention of consistency of terms is pervasive throughout the Consent Order.

D) In section IV.B1.b.v. The third sentence says that the results of the intermediate and regional groundwater investigations shall NOT be addressed in the investigations report. Why not? Also, again this is the only one of the six canyons investigations section that includes this statement. Intentional or oversight?

20. IV.B.4.b. Pajarito Canyon. In subsection iv. of this section, item 2. is poorly worded. Revise to read: Any additional regional aquifer wells specified in the approved work plan shall also be installed.

Section VII

21. VII.B.5 Emergency Interim Measures. This section requires advance approval to implement emergency interim measures. This is a major concern since I did not see any authority anywhere else in this document for the Respondents to take action of protect the health and environment without Department approval. Effectively, if an MDA is breached or if some other natural or man-made activity causes the release and spread of contamination from sites covered by this Consent Order, the Respondents are not allowed to take preventative action unless the Department approves it.

Somewhere in this order, perhaps under Force Majeure, there needs to be a clear statement that the Respondents are authorized to take immediate responsible actions to control/contain contamination due to forces of nature or man-made accidents but must notify the Department within no more than 24 hours of initiating the emergency measures. Otherwise, the Respondents would need to notify and the approval of the Department for such basic emergency response as fire-fighting.

22. VII.D.2 Corrective Measures Evaluation Report. The specific details about the report in this section should be merged with Section XI.F and thus deleted from this section. This would furthes the intent stated by the Department to simplify reporting.

23. VII.D.6 Relationship to Corrective Action Requirements. The text in this section doesn't address the subject of the section.

24. VII.F Accelerated Cleanup Process.

- A) This section uses the terms *Corrective Measures* and *Corrective Actions* almost interchangeably. Both terms need to be defined.
- B) The Accelerated Corrective Measures Work Plan section (VII.F.1) references both Sections III.M and XI.B for content, format, and process with respect to the

work plan, Section VII.F.3, Accelerated Corrective Action Work Plan, however, only references Section XI.B. Why the difference?

Section IX

- 25. Introduction.** This section does not contain any provisions for notification of the Department about any changes in investigation and sampling methods and procedures during field activities. A general statement is needed that states how changes will be managed in the field and reported to the Department. There should be some specification of what changes are considered minor and can be reported in the subsequent investigation report and what changes are considered major and require stop work and work plan revision, resubmission and approval.

Section X

- 26. General** This section does not contain any provisions for notification of the Department about any changes in well construction methods and procedures. A general statement is needed that states how changes will be managed in the field and reported to the Department. There should be some specification of what changes are considered minor and can be reported in the subsequent investigation report and what changes are considered major and require stop work and work plan revision, resubmission and approval.
- 27. X.B. Drilling Methods.** Revise the first sentence by deleting the modifier “high quality” from before “samples” and replace with *representative*. The intent is understood, but, in fact, a contaminated groundwater sample, particularly if the contamination levels exceed WQCC standards or MCLs, is not considered “high quality” but certainly should be representative.