Kieling, John, NMENV

From: Dave McCoy [dave@radfreenm.org]

Sent: Friday, September 04, 2009 4:29 PM

To: De Saillan, Charles, NMENV; Leavitt, Marcy, NMENV; Bearzi, James, NMENV; Kieling, John, NMENV

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Subject: Citizens for Alternatives to Radioactive Dumping

Attachments: CA request for additional time Draft Part B LANL Permit.doc

Dear All,

Citizens for Alternatives to Radioactive Dumping (CARD) requests an extension of the public comment period for the LANL Draft Permit for additional time to submit comments.

CARD relies upon many of the reasons presented by Citizen Action in the attached request.

Thank you for your consideration.

Sincerely,

Janet Greenwald
Co-coordinator, CARD
contactus@cardnm.org

This inbound email has been scanned by the MessageLabs Email Security System.

September 3, 2009
James Bearzi, Chief, Hazardous Waste Bureau (HWB)
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In the Matter of Los Alamos National Laboratory's (LANL)
Draft Part B Resource and Conservation (RCRA) Permit

Citizen Action New Mexico (CA) Request for Extension of Time for Submission of Public Comments; Request for a Public Hearing; Request for Reopened Negotiations for Draft Permit Modifications as Reissued; Request for Denial of Draft Permit; and Comments
(Notice of Opposition)

Citizen Action is requesting an extension of the public comment period for the Los Alamos National Laboratory Resource Conservation and Recovery Act (RCRA) Draft Part B Permit (LANL draft permit). CA has participated in numerous technical and administrative proceedings before the NMED involving the Sandia National Laboratories (SNL) Resource Conservation and Recovery Act (RCRA) Draft Part B Permit and the SNL Chemical Waste Landfill (CWL) post closure permit. CA is very interested in the substantive requirements of the LANL draft permit and the post-closure care of the hazardous waste units at LANL in comparison to the SNL RCRA Draft Part B Permit (SNL draft permit) and also for the cumulative potential for impacts on public health and the environment from both permits.

The importance of the LANL draft permit to CA constituents and affiliated environmental organizations is underscored by reports in the popular media and scientific literature revealing the existence of large plumes of hexavalent chromium and high explosives contamination traveling in the groundwater from LANL toward municipal wells of the cities of Los Alamos and Santa Fe. There is contamination flowing from LANL to the Rio Grande River that is a source of drinking water for residents of Albuquerque, New Mexico.

During the first submission of the LANL permit and subsequent negotiations, CA was involved in time-consuming analyses of both the CWL and the SNL draft permit that reduced available time for full review of the LANL draft permit. CA currently has a scheduled meeting with the NMED regarding the cross-comparison of the 2 permits and that comparison will affect the CA comments for both the LANL and SNL draft permits especially with respect to consistency of application of the requirements of RCRA at both LANL and the SNL. The meeting will provide important information for comment on

the LANL draft permit but the meeting is scheduled for after the September 5, 2009 closure date for submission of public comments for the LANL draft permit.

Because of the volume and complexity and the changes made to the revised and reissued LANL draft permit; the issuance of a new 570 page addendum to a revised and reissued NMED Fact Sheet that is 108 pages in length; and records that are not included in the Administrative Record, the Department needs to recognize that an extension of the public comment period is necessary and appropriate.

For CA and other members of the public to adequately comment on the draft permit, we must have full access to parts of the administrative record that are currently unavailable. Because of the lack of availability of the full administrative record, CA and the public are unable to adequately make *informed* comment on the LANL draft permit. CA requests that the NMED extend the public comment period for the LANL draft permit for at least 90 days after provision is made for furnishing the full administrative record for the LANL draft permit. Failure to furnish the full administrative record is not in accordance with due process requirements or public participation requirements of RCRA or NMAC.

Currently missing from the administrative record are secret technical documents held in the NMED HWB Library that are relevant to the LANL draft permit. One such document is a January 9, 2002 TechLaw Inc. report relevant to Material Disposal Area (MDA) G, TA-54 that discusses numerous other documents related to groundwater flow and radionuclide transport in the vadose zone beneath Area G. The report is critical of the technical deficiency of a LANL computer code used for modeling of contaminant flow and transport through the complex geology associated with LANL. The code was apparently used by LANL but not subjected to a rigorous, independent review by the NMED.

Numerous and unknown other TechLaw, Inc. reports exist for LANL that have similarly been kept secret and that are not referenced or presented to the public for review within the administrative record. If a lawsuit were to be filed for the LANL draft permit, such secret documents, paid for by taxpayers funds, could be available under subpoena and discovery powers of the court and could result in great delay of the approval of the LANL draft permit if the permit were remanded for consideration of such secret reports.

Three significant technical reports issued by the Environmental Protection Agency (EPA) Kerr Laboratory regarding the reliability of the well monitoring network at LANL are not on the NMED website or included in the administrative record. Those reports should be considered within the permit as part of the administrative record just as were the National Academy of Science (NAS) reports. Those reports would also have bearing on the plans for monitoring wells that will be part of the post closure monitoring network and the use of alternative requirements.

The revised and reissued LANL draft permit does not contain all regulated units that operated at LANL. MDAs G, H and L are the only regulated units listed. Other regulated units that received hazardous waste after July 26, 1982 are MDA P, TA-16 and

the SWMU 16-021(c) (also called the 260 outfall) settling pond (a RCRA impoundment). Although not a regulated unit, MDA B at TA-21 is undergoing excavation, MDA B lacks any groundwater monitoring wells for post-closure care.

In the 2007 NAS Final Report on LANL Groundwater Protection Practices, the LANL scientists identified that of the nine (9) MDAs have significant potential for groundwater contamination with radionuclides. Accordingly, there is also potential for groundwater contamination by hazardous contaminants regulated by NMED. The monitoring well networks of all nine of these units are inadequate to provide protection of the groundwater. No attention is called to these dangerous, large inventory legacy waste dumps by the permit although they are listed in the 2005 Consent Order. The public will require additional time to review these units after their insertion into the LANL draft permit. There are the unlined dumps TA21-- A, B, T, U and V, and TA50—MDA C. MDA AB at TA49 will receive two (2) new monitoring units, but the public has been given no information as to where the monitoring wells will be located.

The unsettled state of the LANL well monitoring network is a reason for an extension of public comment. The public was informed that federal stimulus money would be available for 17 new monitoring wells to be placed at LANL. Seven (7) other LANL unidentified monitoring wells at LANL are planned for plugging and abandonment. CA and the public will require sufficient time, *after public notice and opportunity for review and comment* for the new location and depths of the LANL monitoring wells (see 40 CFR 270.42 Appendix I) to consider the new monitoring wells in relation to the LANL draft permit sections for ground water monitoring and long term monitoring and maintenance for post closure care and corrective action.

Time is necessary for CA and the public's review for non-enforcement of the analytical requirements of the Consent Order by the NMED at LANL. The same requirements are now required in the draft permit. The public needs to be confident that the analytical requirements for protection of the public are being enforced by the NMED.

All of the above statements are also to be considered as part of CA comments that will be supplemented by a subsequent set of comments.

Thank you for your consideration.

Respectfully submitted,

David B. McCoy, Executive Director
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