



Permit

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July 27, 2006

Mr. David Cobrain
State of New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East
Building One
Santa Fe, New Mexico 87505-6303



Reference: Work Assignment No. 06280.170.0002; State of New Mexico Environment Department, Santa Fe, New Mexico; Los Alamos National Laboratory; Public Comments on the Class III Permit Modification to the Hazardous Waste Facility Permit for U.S Department of Energy, Los Alamos National Laboratory; Task 2 Deliverable.

Dear Mr. Cobrain:

Enclosed please find the deliverable for the above-referenced work assignment. The deliverable consists of compiled and summarized public comments on the Class III Permit Modification for the LANL Hazardous Waste Permit, provided to TechLaw by you via email.

The majority of the comments were received by the Permittee, and their main concern appeared to be associated with inconsistency between the Permit and the Consent Order. They also had some concerns regarding some inaccurate listing of SWMUs in Tables A, B and C.

Please note on comment number F.9, that there appears to be an error in the comment itself where the same SWMU number is listed twice.

The document is formatted in Word. The deliverable was emailed to you on July 27, 2006 at david.cobrain@state.nm.us. A formal hard (paper) copy of this deliverable will be sent via mail.

If you have any questions, please call me at (303) 763-7188.

Sincerely,

June K. Dreith
Program Manager

32536



**Index of Comments Received by NMED on the LANL Class III Permit Modification
Public Notice No. 06-02
Dated: January 31, 2006**

Commenter ID	Comment Number	Date of Letter or e-mail	Commenter - Association	Subject: Issue or Comment	Response
A	1	Not dated	Ms. Laurie King, Section Chief, Federal Facilities, U.S EPA, Region 6	Page 7; Section B.5., Closure: The commenter is not sure that this section is necessary in the permit since all the hazardous waste impoundments at LANL have been closed, either under the hazardous waste permit (previous modules) or interim status closure/post closure plans approved by NMED.	
A	2	Not dated	Ms. Laurie King, Section Chief, Federal Facilities, U.S EPA, Region 6	General Comment: NMED did not identify in the permit the HSWA requirements for Subpart AA- Air Emissions for Process Vents; Subpart BB- Air Emissions for Equipment leaks; and, Subpart CC - Air Emissions for Tanks, Surface Impoundments and Containers. These requirements may be included in the other Modules of the RCRA permit. Please clarify this issue.	
A	3	Not dated	Ms. Laurie King, Section Chief, Federal Facilities, U.S EPA, Region 6	Page 5; Waste Minimization Requirements: The commenter recommends adding the following requirement to this condition: "A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years".	

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				Also, under section B.1.(a)(10)(a), The commenter recommends adding mercury and lead to that condition, in addition to the existing contaminated lead requirement. Under section B.1.(a)(10)(b), The commenter recommends adding a new condition with the following language :“A program that substitutes other materials for mercury containing devices”.	
A	4	Not dated	Ms. Laurie King, Section Chief, Federal Facilities, U.S EPA, Region 6	Page 8; Section C.2.(a): This section mentions the term “operating units”. Are operating units the same as hazardous waste units? Please clarify this issue.	
A	5	Not dated	Ms. Laurie King, Section Chief, Federal Facilities, U.S EPA, Region 6	Page 10; Section C.5: The permit mentions that the Secretary will initiate a Permit Modification to remove the SWMU from the Corrective Action Complete List. What Class will the modification be 1, 2, or 3, or subject to the Secretary’s discretion?	
A	6	Not dated	Ms. Laurie King, Section Chief, Federal Facilities, U.S EPA, Region 6	Page 46; Section E.2d.: The commenter stated that a more accurate description for this requirement would be the continuation of the existing information repository and reading room.	
A	7	Not dated	Ms. Laurie King, Section Chief, Federal Facilities, U.S EPA, Region 6	Page 47; Section E.2g.: This requirement needs to be further clarified to explain what Technical progress means. Also, for permit consistency, Administrative Authority needs to be changed to Secretary.	
A	8	Not dated	Ms. Laurie King, Section Chief, Federal Facilities,	Page 47; Section E.2.h.: The commenter stated that this provision needs further clarification on what release means. What	

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			U.S EPA, Region 6	standards are considered for a release? MCL's, exceedances above NMED screening numbers, concentrations above background, etc.	
B	1	April 3, 2006	Ms. Joni Arends, Executive Director, Concerned Citizens for Nuclear Safety, (CCNS)	The commenter generally supports the proposed draft permit modifications. The commenter notes that the Compliance Order is a legally enforceable document, and with the new findings of chromium VI in the regional aquifer and PCBs in Rio Grande fish tissue, that LANL is likely the source for both, the commenter supports strong enforcement of the Compliance Order.	
B	2	April 3, 2006	Ms. Joni Arends, Executive Director, Concerned Citizens for Nuclear Safety, (CCNS)	The commenter indicates that with respect to the draft permit modification, the commenter appreciates the continued inclusion of the Community Relations Plan. The commenter believes that the Plan should be labeled "D." and not "E." The commenter requests that an additional requirement be included in the Plan, which requires LANL to spell out its procedures for public access to documents. Specifically, the Plan should explain how a member of the public requests documents or accesses a database; whether there is a charge for documents; and how many copies of a specific document the public may request. If meetings are required to be held, the Plan should include how the public will be notified about the meetings.	
B	3	April 3, 2006	Ms. Joni Arends, Executive Director, Concerned Citizens for Nuclear Safety (CCNS)	The commenter states that for consistency, in Section E.2.g. the "Administrative Authority" must be changed to "Secretary."	

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B	4	April 3, 2006	Ms. Joni Arends, Executive Director, Concerned Citizens for Nuclear Safety (CCNS)	The commenter suggests that the Table of Contents include the list of Required Plans.	
C	1	April 3, 2006	Ms. Kathy Sanchez, Tewa Women United	The commenter supports the comments provided by CCNS, and provided the same comments. Ms. Sanchez indicated that Tewa Women United is concerned about the health and safety of their people and the children. As native people they are concerned for all life givers who are without voices but live in these lands. They would like to be informed about any proposed changes regarding this matter.	
D	1	April 3, 2006	Ms. Sheri Kotowski, Embudo Valley Environmental Monitoring Group (EVEM)	The commenter supports the comments provided by CCNS, and provided the same comments to the New Mexico Environment Department.	
E	1	August 26, 2005	Robin G. Wakeland, Citizen	The commenter formally requests a hearing on the Los Alamos National Laboratory Hazardous Waste Class III Permit Modification.	
F	1	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National	The comment is regarding the text on page 6, Section C.1 which states: "Therefore the terms of the Consent Order will not be enforceable as terms of this Permit, except as provided in Sections VIII.C.2 and 3 of this Permit." The commenter states that the proposed draft permit condition conflicts with the Consent Order, is ambiguous and unnecessary. Section W.3 of the Consent Order requires the permit modification to provide that "the terms of this Consent Order are not enforceable as terms of the	

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			Laboratory (LANL)	<p>Permit, <u>except as provided under Section III.W.1</u>". Section II.W.1 expressly provides that activities conducted under the Order are not subject to the Permit, with four exceptions also enumerated under Section VIII. C.2 of the Permit.</p> <p>The draft permit condition, on the other hand, conflicts with this requirement by authorizing exceptions under the Permit (Sections VIII.C.2 and 3) and not Section III.W.1 as required and negotiated under the Consent Order. The draft permit condition allows the HWB to make changes to these exceptions through the permit process, not the Consent Order. Further, the clause is ambiguous and unnecessary insofar as no exceptions apply to either Section VIII.C.2 or Section C.3. Section VIII.C.2 expressly provides that corrective action in four circumstances is subject to the Permit, not the Consent Order. Section VIII.C.3, as proposed by HWB is unclear (see comment below, Section C.3), and further, does not provide an exception. Instead, this section provides a process in which the Secretary may allow corrective action activities for closure and post-closure operating units to be conducted under the Consent Order. Closure and Post-closure requirements, however, remain subject to and enforceable under the Permit. For these reasons, this clause should be deleted and replaced with language pursuant to Section III.W.3.a. of the Consent Order. The commenter provides proposed changes to the draft permit in the comment.</p>	
F	2	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and,	The comment is regarding the text on page 6, Section C.2 which states: "In accordance with section III.W.1 of the Consent Order corrective action in the following four circumstances is subject to the terms of this Permit, unless otherwise approved by the	

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			Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	Secretary". The commenter states that the draft permit condition conflicts with Section III.W.1 and Section III.J.1 of the Consent Order. Section III.W.1 identifies four "exceptions" to the Consent Order that are required to be addressed in the Permit and not in the Consent Order. Section III.J.1 addresses the process for modifying the Consent Order, and requires written agreement by all Parties. The Secretary has no authority to approve circumstances that differ from the four exceptions identified under Section III.W.1. Further, Section III.J.1 requires written consent by all Parties to modify the Consent Order. The commenter provides proposed changes to the draft permit.	
F	3	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	<p>The comment is regarding the text on page 7, Section C.2.d which states: "The Secretary will include more detailed corrective action requirements for those circumstances set forth in this Paragraph in the next permit renewal." The commenter indicates that LANL did not request approval for this draft permit condition, and HWB provided no explanation supporting this condition.</p> <p>The draft permit condition requires the Secretary to include future detailed corrective action in the next permit renewal for items currently not subject to corrective action. The Secretary's authority to impose corrective action under New Mexico Hazardous Waste Act (HWA) and regulations does not extend to future circumstances that have not occurred, and may not occur, during the term of the permit or at permit renewal. This permit condition is therefore not appropriate. The commenter proposes that the condition be deleted.</p>	

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F	4	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	<p>The comment is regarding the text on page 7, Section C.3, which states: "For each of the circumstances set forth in Paragraph 2 above, the Permittee shall conduct corrective action in accordance with 3000(u) and (v) of RCRA." The commenter states that LANL did not request approval for this draft permit condition, and HWB provided no explanation supporting this condition.</p> <p>The draft permit condition requires LANL to conduct corrective action for "<i>each of the circumstances in Paragraph 2</i>". To the extent that this condition applies to each of the four circumstances identified in paragraph 2, it conflicts with Section W of the Consent Order, the HWA and its regulations. Section W.1 expressly excludes these circumstances from corrective action requirements under the Order. Further, the HWA and the regulations do not provide the Secretary authority to require corrective action for "each" of these identified circumstances.</p> <p>Of the four circumstances that may be appropriate to coordinate under the Consent Order is Section C.2.b, closure and post-closure care requirements at operating units. The commenter provides additional rationale for their determination. In addition, the commenter provides proposed changes to the draft permit.</p>	
F	5	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory	The comment is regarding the text on page 7, Section C.3 which states: "Any corrective action under this Permit shall be coordinated with corrective action conducted under the Consent Order." The commenter states that the proposed permit condition does not contain a process to coordinate corrective action activities with the Consent Order. Further, the process for shifting an operating unit to corrective	

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			Compliance, Los Alamos National Laboratory (LANL)	action for closure or post-closure should be identified. LANL suggests that this section provide a process for coordinating activities, including written notice. LANL provides proposed language changes to the modification.	
F	6	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	<p>The comment is regarding the text on page 7, Section C.3, which states: "Corrective action for releases from operating units that commingle with releases originating from other sources shall be conducted under the Consent Order". The commenter states that the use of "shall" makes the sentence conflict with Section III.W.1 of the Consent Order which specifies that operating units will be closed under the Permit. Further, the proposed condition does not track the regulatory standard at 40 CFR 264.111(c) or 264.110(d) for determining whether closure/post-closure care requirements for releases from an operating unit that commingle with releases from an AOC or SWMU can be replaced by the requirements under the Consent Order. (See comment above for Section C.3.)</p> <p>The commenter provides changes to the language in the draft permit, that removes the wording "that commingle with releases originating".</p>	
F	7	April 3, 2006 April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National	The comment is regarding the Required Plans, under Sections E.1, 2, and 3. The commenter indicates that LANL deleted three required plans from the Permit under Task II, RFI Workplan Requirements. The draft permit, however, did not incorporate this deletion. Instead, NMED imposed a new permit condition requiring these as "Facility" plans. NMED provides no explanation in the record to support this decision.	

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			Laboratory (LANL)	<p>The commenter future states that the draft permit condition is not only unsupportable in the record, but directly conflicts with Section W.3 of the Consent Order, which requires a permit modification to "remove all corrective action requirements of the Permit for releases of hazardous waste or hazardous constituents at the Facility, with the exception of the four items specifically identified in Section III.W.1."</p> <p>LANL deleted these required tasks because they are corrective action requirements under the Permit, and were required to be removed pursuant to NMED's determination in Section III.W.1 of the Consent Order. The Consent Order does not direct the Parties to retain these required plans as part of the Permit. Further, there is no regulatory basis to require a Facility Data Management Plan, Health and Safety Plan, or a Communication Plan. The commenter asks that Section E be deleted in its entirety.</p>	
F	8	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	<p>The comment is regarding Table A, pages 12 and 18. The commenter indicates that in the modification request, that SWMUs 03-009(d) and 59-009 were pending removal from Table A based on NMED's September 4, 2002 letter concurring that these sites are appropriate for removal from the permit. In addition, NMED issued a Certification of Completion for these sites on September 30, 2005. LANL requests that these two sites be removed from Table A and placed in Table C.</p>	
F	9	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and,	<p>The comment is regarding Table A, page 16. The commenter states that in the modification request, LANL indicated that SWMUs 21-013(d), 21-013(e) and 21-013 (e) (<i>please note: in the comment the last SWMU number is mentioned twice</i>) were pending</p>	

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			Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	removal from Table A. LANL previously requested that these sites be removed from the Permit and NMED issued a Certification of Completion for these sites on September 30, 2005. The draft permit modification retains these sites in Table A. LANL requests that these sites be removed from Table A. and placed in Table C.	
F	10	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	The comment is regarding Table A, pages 12 and 17. The commenter indicates that SWMUs 03-013(i), 36-008 and 39-010 were discovered after Module VIII was last issued in 1994. These sites are identified as newly discovered SWMUs and were reported to NMED in June 2004, August 2000, and July 2001, respectively. LANL requests that these sites be added to Table A.	
F	11	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	The comment is regarding Table A, pages 13 and 14. The commenter states that AOC 09-008(a) and AOC 16-008(b) were listed in Table B of Module VIII, but not Table A. The commenter believes that listing these in Table B but not Table A appears to be an error since Table B is a subset of Table A. LANL request that these two sites be removed from Table A.	
F	12	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and,	The comment is regarding Table A, pages 13-17. The commenter indicates that Table A of the draft permit modification contains several sites that are treatment, storage and disposal (TSD) units regulated under the New Mexico Hazardous Waste Act (HWA)	

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			Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	and RCRA. Some of the sites are active units that will be closed under HWA, while others have already been closed. On December 8, 2005 LANL provided a cross-walk that identified all active units and closed TSD units that are identified as corrective action units. Pursuant to Section III.W of the Consent Order. LANL request that these various sites be removed from Table A.	
F	13	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	The comment is regarding Table A, pages 13-16. The commenter indicates that Table A contains several units that were listed in Table B of the existing Module VIII with outdated numbers. The sites were originally identified in the 1988 SWMU Report under one numbering designation, and then renumbered in the 1990 SWMU Report. When Module VIII was last issued in 1994, these sites appeared in Table B with the 1988 designation. For this reason, LANL did not include the sites in Table A of the permit modification. LANL provides in the comment a list of the 1988 site numbers which should be deleted since the sites are already listed under the current SWMU designations.	
F	14	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	The comment is regarding Table A, page 14. The commenter stated that SWMU 16-016 is listed only on Table B but not in Table A. The listing on Table B appears to be in error since SWMU 16-016 does not exist in either the 1988 or 1990 SWMU reports. SWMUS 16-016 (a, b, c, d, e, and g) do exist and are listed in Table A. The commenter indicated that SWMU 16-016 does not exist, and that the site number should be removed from Table A.	

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F	15	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	The comment is regarding Table A, page 18. The commenter states that several SWMUs at TA-54 consist of corrective action units that are collocated with similar RCRA TSD units. LANL's permit modification request included notes after the listings of these sites in Table A to clarify which units were RCRA units and therefore excluded from corrective action requirements under the Consent Order. These notes were similar to the notes associated with SWMU 54-004 (MDA H) in the current Module VIII. The draft permit modification did not include these notes. LANL requests that the notes be added to Table A. The comment provides the specific notes to be added, including the SWMU designation.	
F	16	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, Los Alamos National Laboratory (LANL)	The comment is regarding Table A, page 18. The commenter suggests retaining the total SWMU items from the original Table A. The commenter states that not including this feature is inconsistent with retention of the SWMU subtotals for each technical area, and that including the total may provide assistance in the future tracking of the SWMUs with the permit modification or the Consent Order.	
F	17	April 3, 2006	Mr. Gene Turner, Los Alamos Site Office, U. S. Department of Energy and, Mr. Jack Ellvinger, Solid Waste Regulatory Compliance, (LANL)	The comment is regarding Table C, page 20. The commenter states that Table C incorrectly lists May 2, 2001 as the date for approval of the corrective action complete without controls for SWMU 14-004(b). The correct date is December 23, 1998. The commenter provides a copy of the approval letter from NMED.	

