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By Mail and E-mail

David Cobrain, Program Manager
Hazardous Waste Bureau – New Mexico Environment Department
2905 Rodeo Park Drive East, Building. 1
Santa Fe, New Mexico 87505-6303

Re: **Draft Closure Plan for Technical Area 16**
Open Burn Area 399 (Burn Tray)
EPA Identification Number: NM08910515

Dear Mr. Cobrain:

The New Mexico Environment Department, Hazardous Waste Bureau (hereinafter “Department”) on November 19, 2013 publicly noticed its intent to grant approval for a Draft Closure Plan for Interim Status Open Burn Unit 399, located at Technical Area 16 located at the west end of the Pajarito Plateau near the foothills of the Jemez Mountains, in Los Alamos County, New Mexico, the Los Alamos National Laboratory (hereinafter “LANL”). There are two open burn units at TA that were granted approval by the Department some time ago, pursuant to Title 40 Code of Regulations §265.382, **Open burning; waste explosives** for the purpose of incinerating and detonating of high explosive hazardous waste materials, including waste explosives and military propellants, associated with development of conventional and atomic weapons for the US Department of Defense. The Department intends to grant approval in this Notice to close the one referenced above. Interim status for open burning, as the name implies is open not contained burning, of hazardous waste is prohibited except for the kind of activity conducted at two subject open burn areas cited in the Department’s 4 page Fact Sheet and Public Notice. In **2.3 Treatment Method** of the Fact Sheet, the method of open burning is described. In addition, and more importantly the Department in the **2.2 Description of Wastes Treated at the Unit** of Fact Sheet describes the constituents of the “waste stream.” that was openly burned at the unit. All of the wastes including Octahydrate 1,3, 5, 7, -tetranitro-1,3,5,7 tetrazocine (HMX); 2,4,6-trinitrotoluene (TNT) and triamino trinitrobenzene (TATB) and “mixtures of explosives as ammonium nitrate-fuel oil (ANFO), Composition B, Cyclotol, IMX-101, PBX 9404; PBX 9407; PBX950; PBX 9502; PBX 9601; X0233; X0533, XTX 8003; XTX 8004; LX- 02; LX-07, LX-10 and



LX-14, are hazardous wastes listed in EPA's Hazardous Waste List. The Permittee claims that although there are records for open burn activities and effects for the period from **1980 to 2012**, there are no similar records for the prior period from **1951 to 1980**, when admittedly considerable efforts were undertaken to develop atomic weapons and high explosives were widely used as detonators for them.

Apparently the Department has in its Fact Sheet and Draft Closure Plan accepted the fact that no records exist for open burn activities at the subject unit. At best, and with little explanation as to how the Department intends to address this matter, it states in the Fact Sheet on page 2 thereof, that in view of such fact: **NMED proposes expanding the analytical suite since the Permittees were unable to provide documentation of waste treatment for the life of the Unit.** It seems to be a step in the right direction but there is no explicit statement in the Fact Sheet to reflect the way the SAP will address this void in the record. Will there be any attempt to segregate the hazardous wastes of concern generated in the earlier period for which purportedly no records exist from those generated in the period when records of the open burns were in fact maintained by Permittees and provided in accordance with the permit to the Department? Will the Permittees be able to allege that they are not responsible to remediate and clean-up wastes generated in the non-record period? These questions should be answered in the responsiveness summary or discussed at a Public Hearing on the closure application before the Draft Closure Plan is approved by the Department.

Finally, and probably most importantly, my review of the documents and further review of the Department's website, specifically its Administrative Record for LANL from 2007 back to April 1965, a copy of which is annexed hereto as Exhibit A, revealed for the period from 1980 to 1951 some curious entries regarding TA 16, although not specifically identifying Open Burn Unit TA 16- 399. For example, one entry states for **"12/16/1976 LANL/Baytos Analysis for Residual Explosives from Drainage Ditches at Sump Effluent Outlets 5860 TA 16"**; or another states for **8/1/1972; 8/1/1972 LANL/Baytos Analysis for Residual Explosives in Drainage Ditch Soil at Sump Effluent Outlets 5859 TA 16** **12/9/1971 LANL/Baytos LANL/H.E. Ballance Memo: Analysis of Soil Samples for Residual Explosives from Drainage Ditches at Sump Effluent Outlets 5858 TA 16** **8/20/1971 LANL/Turner Environmental Studies at S-Site: Water and Soil Analyses for RDX - HMX, Barium, TNT, & Boron 5857 TA 16**, where some of the same hazardous wastes that were sampled and studied then are proposed to be sampled now which are listed in **Table 2, Hazardous Waste Constituents of Concern at the TA-16-399 Open Burning Unit in Draft Closure Plan**; and the oldest record which is no more specific than **3/3/1970 LANL/Courtright Russo Memo: Contamination Survey: Buildings and Structures, TA 16 5856 TA 16**. Whether these are relevant to the open burn activities at the site of closure or not at least the Department should be willingly to review these entries especially with the plethora of data for the earlier period, and after such review of their own records expand the Fact Sheet to reflect their findings, if it finds data relevant to this matter.

Finally, I would like to state that from my experience as a former attorney with the US Environmental Protection Agency and an author of a number of publications on Superfund and the

Resource Conservation and Recovery Act of 1976, I would like to recognize the extensive work and effort the Department has to this point undertaken to assure as much as possible given the circumstances of this intended closure of a vital activity for the Nation's defense to protect the public health and welfare, and only request that a greater effort be undertaken to address some of the points I have made in this comment before the Department approves the Permittees application.

Yours truly,

Richard M. Weinstein

Enc/rmw

Los Alamos National Laboratory Administrative Record of TA 16 Including Open Burn Activities

8/24/2007 8/24/2007 LANL/DOE NMED/Bearzi Request for Extension on Requirement to Include Additional Recommendations for Screen/Well Rehabilitation and New Well Installation in the Upcoming CME Report, Due August 31, 2007

Of TA 16

8/22/2007 8/22/2007 LANL/DOE NMED/Bearzi Submittal: July 2007 Monthly Progress Report CMS 16-021(c)-99 TA 16

Of

8/17/2007 NMED/Bearzi LANL/DOE Notice of Approval: CMI Plan for 16-021(c)-99, Revision 1 TA 16

8/15/2007 NMED/Bearzi LANL/DOE NOD: Evaluation of the Suitability of Wells Near TA 16 for Monitoring Contaminant Releases from 16-021(c)-99 TA 16

3/29/2007 3/30/2007 DOE/Turner NMED/Kieling Transmittal: Protocol for Air Dispersion Modeling at TA 16 and Alternatives Analysis for Open Burning 6679 TA 16

10/17/2003 NMED/Kieling File Notice of Public Comment Period and Opportunity to Request a Public Hearing on Closure of two Open Burn Units 6448 TA 16

3/29/2007 3/30/2007 DOE/Turner NMED/Kieling Transmittal: Protocol for Air Dispersion Modeling at TA 16 and Alternatives Analysis for Open Burning 6679 TA 16

12/16/1976 LANL/Baytos LANL/H.E. Ballance Memo: Analysis of Soil Samples for Residual Explosives from Drainage Ditches at Sump Effluent Outlets 5860 TA 16

8/1/1972 LANL/Baytos Analysis for Residual Explosives in Drainage Ditch Soil at Sump Effluent Outlets 5859 TA 16

12/9/1971 LANL/Baytos LANL/H.E. Ballance Memo: Analysis of Soil Samples for Residual Explosives from Drainage Ditches at Sump Effluent Outlets 5858 TA 16

8/20/1971 LANL/Turner Environmental Studies at S-Site: Water and Soil Analyses for RDX - HMX, Barium, TNT, & Boron 5857 TA 16

3/3/1970 LANL/Courtright Russo Memo: Contamination Survey: Buildings and Structures, TA 16 5856 TA 16

The 4/16/1965 Eng 3- Routing Slip: Area "P" 5852 TA 16 3/8/1964 LASL/Group Eng 3
LASL/Group Eng 3 Request for Survey Service 5851 TA 16

Exhibit A