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Sent: Friday, February 08, 2013 4:59 PM

To: Kieling, John, NMENV

Cc: Janet Greenwald/CARD; Eric Nuttall; Robert Dinwiddie; Robert H Gilkeson, registered geologist; Joni Arends

Subject: LTMMP Comment Extension Request

Dear Mr. Kieling

Please see the enclosed request for an extended comment period for the LTMMP.

Thank you for your consideration

David B. McCoy, Esq.

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February 8, 2013
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Dear Mr. Kieling,

Thank you for the prior extension of the comment period for the Long-Term Monitoring and Maintenance Plan (LTMMP). This letter is to respectfully request an additional 120 day extension for reasons below. We also request that that the New Mexico Environment Department (NMED) order Sandia National Laboratories (SNL) to retract the Long-Term Monitoring and Maintenance Plan (LTMMP) for the Mixed Waste Landfill (MWL) at SNL and/or issue a Notice of Disapproval. The reasons for these requests are as follow:

1. The LTMMP should be retracted by SNL because of the defective groundwater monitoring network currently in place as additionally described below.
2. Information provided at a February 6, 2013 public forum provided by the ABQ Water Utility Authority/Water Protection Advisory Board involved several new areas necessary for distribution and consideration:

- a. Testimony of former NMED RCRA Permits Management Program Manager Robert S. (Stu) Dinwiddie, Ph.D., that the MWL has never received an operating permit for the MWL. SNL did not file a timely Part A RCRA application for hazardous waste and did not file a Part A application for mixed waste by the statutorily required dates. The MWL thus lost interim status and was required to submit a closure plan/post closure permit application. Dr. Dinwiddie further testified that the MWL is a regulated unit and closure is required under 40 CFR 264 -- not 40 CFR 265 -- because of the loss of interim status.

A legal conclusion to be drawn from Dr. Dinwiddie's testimony is that the LTMMP cannot serve as a closure plan/post closure permit application because it does not meet the standards of 40 CFR 264. A closure/post closure plan has not been included in the SNL Hazardous Waste Permit for the MWL as a regulated unit.

- b. Dr. Eric Nuttall, Ph.D. who served on the first WERC committee investigation, testified that the levels of tritium have not reduced by half as stated by SNL (Bruce Thompson) but are now ten times higher than earlier reported levels due to breakdown of containers disposed of in the MWL. Dr. Nuttall further stated that the contamination of the aquifer from MWL wastes is "assured" and "imminent." Dr. Nutall also testified that the wastes in the MWL can be excavated at the current time without danger to the public and workers.

The testimony makes the need for the 5-year review of the Final Order feasibility of excavation review a reasonable requirement. The 5-year review must occur before any issuance of the LTMMP. The Final Order issued by Secretary Curry on May 26, 2005

required the first 5-year review to be provided to the public by May 26, 2010. The review is more than 2 ½ years late.

c. Paul Robinson, Southwest Research and Information Center (SRIC) testified that the vadose zone has not been adequately monitored at MWL. Mr. Robinson stated: “The increased TCE concentrations in soil vapor at depth demonstrates the type of contaminant plume that can develop without effective soil vapor monitoring to establish the full depth of contamination. The example of significantly increased levels of TCE in the 400 – 500 depth at the TA-V site, provides a basis for expanded soil vapor monitoring at other SNL environmental restoration sites that lack soil vapor sampling for the full depth of the soil column, most notably the Mixed Waste Landfill and the TAG site. At the Mixed Waste Landfill, soil vapor investigation have failed to sample soil vapor more than 50 feet below ground surface, though contaminant concentrations well above background levels were detected in the deepest samples.”

Similar matters were addressed by Registered Geologist Robert Gilkeson and Citizen Action in December 5, 2008 comments on the *NMED September 26, 2008 Approval: INVESTIGATION REPORT ON THE SOIL-VAPOR VOLATILE ORGANIC COMPOUNDS, TRITIUM, AND RADON SAMPLING AT THE MIXED WASTE LANDFILL, AUGUST 2008 - (the Soil Vapor Report)*. These issues have not been resolved nor addressed by NMED.

d. Testimony by Registered Geologist Robert H. Gilkeson demonstrated that the 2011 SNL groundwater map presented that if the groundwater flow pathway at the MWL is to the northwest as Sandia asserts in the flow map there is no groundwater monitoring to the area north of the MWL that would also include the classified area.

Mr. Gilkeson stated that the 2011 SNL groundwater map does not provide the flow at the water table in the fine grained strata at the MWL and that is determined to be to the south-southwest as indicated in numerous documents written by EPA, NMED and DOE scientists. Given that flow direction, there is no groundwater monitoring provided for the southern portion of the MWL. That is particularly troublesome due to the existence of an acid pit in the southeast portion of the MWL. Mr. Gilkeson testified that the MWL groundwater monitoring wells MWL-MW7, MW8 and MW9 have improperly located screens across differing Ksat strata, that the screens are too long according to EPA requirements, and that the monitoring wells have too little water in the wells to do proper monitoring and purge to dry methods are still defeating proper sampling procedures.

e. Joseph Wexler, a Civil Engineer with 50 years experience stated that the 2011 SNL groundwater map is not a competent engineering document.

f. Citizen Action is acquiring numerous documents from the US EPA Office of Inspector General (OIG) and the EPA Region 6 as the result of settlement of a FOIA lawsuit. Numerous redactions are being challenged. Additional time is necessary to analyze the records in relation to what NMED was informed in 2007 by EPA Region 6 about the defective groundwater monitoring network. An EPA Region 6 report stamped “confidential” has been furnished to Citizen Action and must be compared with earlier drafts written by EPA Region 6 staff.

Preliminarily, these “draft” EPA Region 6 reports indicate that the deficiencies of the MWL groundwater monitoring network, as it stands today, in 2007 and in earlier Notices of Deficiencies by EPA, NMED and the Oversight Bureau from the 1990s, and pointed out by Citizen Action and Mr. Gilkeson were not corrected.

The monitoring well deficiencies identified by EPA in its “Confidential” Oversight Review encompass:

- Lack of a background monitoring well
- improper sampling methodology,
- improperly located wells and well screens,
- corroded well screens,
- a foot long hole in a PVC casing,
- large amount of grout in a screened interval,
- wells too distant from the MWL boundary,
- low water levels in wells,
- wells cross gradient or upgradient that could not detect contamination,
- use of drilling muds that hide evidence of contamination,
- well screens that are contaminating cross strata,
- detection wells not at the point of compliance
- need for use of the Low Level Electrolytic Enrichment (LLEE) method for tritium detection,
- “Question on Lack of Knowledge on Speed of Groundwater in Two Aquifers [AF and ARG]: Need an answer for this!”
- rejection of SNL calculated horizontal groundwater flow speed of 0.17 ft/day.

EPA “did not conduct a technical review of the [Moats] report (November 2006) due to other issues/factors associated with the groundwater monitoring system which made the review of the report not pertinent.”

The known length of time that these MWL monitoring well deficiencies existed demonstrates the more than decade long presentation of incorrect groundwater monitoring data by SNL to be used for the remedy decision of the dirt cover. The data and viability of past testing is equally unreliable and fraudulent for the corrective action complete objective of the LTMMP.

The groundwater monitoring network proposed for the MWL by the LTMMP falls far short of anything that would qualify as protective of public health and the environment under RCRA. Emails contained in the FOIA documents being provided demonstrate that NMED was in contact with the EPA Region 6 regarding the MWL monitoring network deficiencies.

The OIG found that “one Oversight Review team member felt the team was pushed to agree with NMED’s position regarding the MWL monitoring wells.” This bad faith process is described in an EPA OIG interview with a member of the EPA Region 6 team that was furnished in response to this lawsuit as Procedures Interviews (B.4.PS at p.10):

“(b)(6) [name deleted] stated that he did not have any prior connection with the site. In fact he does not report to (b)(6). He also stated that Region 6 had its results preconceived. Region 6 management did not want to [sic] NMED doing anything wrong. Therefore, management created a structure to ensure the appropriate outcome would result. Furthermore [sic], as the writing and draft

comments progressed to a final letter, the team was pushed more and more to agree with NMED's position. He also stated that the team's initial evaluation would have changed the solution at Sandia MWL. NMED pushed extremely hard for EPA Region 6 not to even question the past results or the viability of past test results. Finally he stated that CANM got short changed by Region 6."

Additionally, the record of deficiencies for the MWL groundwater monitoring network have never been corrected as required by RCRA. It is a violation of RCRA to allow the record to remain incorrect whether by furnishing incorrect data or omitting data that would provide substantially different information or outcome. NMED has been remiss in not ordering correction of the groundwater monitoring record with regard to the fact that substantial defects were noted early in the 1990s and Sandia Labs' was allowed to ignore those defects in fate and transport modeling, furnishing data to the WERC committee and the hearing officer at the December 2004 public hearing for the MWL.

3. The issuance of the Sandia RCRA Part B Hazardous Waste permit and the Kirtland Air Force Base Permit concurrently with the LTMMP places too short a timeframe for review and comment for three lengthy documents. Reviewing all three documents is an especially unacceptable burden on the public and because of lack of availability of, incomplete references and the size of the documents.
4. The 5-year review report for the MWL has not been completed as required by the May 26, 2005 Final Order (Curry). (See Attachment A -- October 24, 2012 letter re: Objection to Delay of 5-year review period). Information generated by the 5-year review report should be made available before approval of the LTMMP. The insertion of the delay of the 5-year Final Order review requirement requires a Class 3 permit modification of the Final Order.
5. The LTMMP monitoring network is defective because groundwater monitoring wells MWL-MW8 and -MW9 have water levels that are less than 4 ft for sampling and are not providing reliable and representative groundwater samples. LTMMP Table 3.5.1-1 shows depth to water for October 2011 that would have declined by another ½ ft by 2012. The two monitoring wells are no longer suitable for their purpose and require abandonment and replacement as required by the Compliance Order on Consent, p. 63:
"In the event of a well or piezometer failure, or if a well or piezometer is any way no longer usable for its intended purpose, it must be replaced with an equivalent well or piezometer."
6. The LTMMP groundwater monitoring network is defective because the Ancient Rio Grande (ARG) strata has no groundwater monitoring wells placed in the productive strata for drinking water defined as the "uppermost aquifer" by RCRA. Table 3.5.1-1 shows that monitoring wells MWL-BW2, -MW7, -MW8 and -MW9 are installed in the alluvial fan which is composed of fine grained sediments and are not located in the Ancient Rio Grande (ARG) strata that is the uppermost aquifer as defined by RCRA.
7. The LTMMP does not comply with the 2004 Consent Order for monitoring groundwater beneath the MWL dump. No monitoring wells are installed beneath the dump in the groundwater as defined by the Consent Order. The Consent Order

defines groundwater as follows: “Groundwater means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.” (Consent Order definitions, p.15). However, the LTMMP does not install any monitoring wells in the saturated formation which produces a sufficient amount of groundwater to be utilized as a water supply. Instead, all the wells in the LTMMP are in the poorly productive, fine-grained alluvial fan sediments that do not produce water in the quantity as required by the Consent Order for monitoring. The LTMMP monitoring network is additionally defective because there is no background monitoring well placed in the ARG strata.

8. The LTMMP monitoring network is defective because the direction of flow of the groundwater at the MWL is west/southwest (Bearzi 2007) and there are no monitoring wells placed in the (ARG) strata and the fine grained sediments at the water table at the southern boundary of the MWL.
9. The LTMMP presents false information to the public regarding the historic reliability and representativeness of groundwater monitoring for the MWL dump. The LTMMP also makes the false assertion that there currently exists a reliable network of groundwater monitoring wells. The LTMMP should be retracted by SNL for presenting false information.
10. The LTMMP is dishonest as it cites the Report of the Mixed Waste Landfill Phase 2 RCRA Facility Investigation (RFI) (SNL/NM September 1996) of the Mixed Waste Landfill for characterization of the groundwater at the MWL. The LTMMP fails to include in its references the issues raised by the following documents:
 - A. The Environmental Protection Agency (EPA) Region 6 issued a Notice of Deficiency (NOD) Report on September 22, 1994 (EPA, 1994) for the March 1993 DOE/Sandia Phase 2 RCRA Facility Investigation (RFI) Work Plan for the Sandia MWL dump.

Despite the EPA 1994 NOD Report, DOE/Sandia described the defective and unreliable monitoring well network at the Sandia MWL dump as a reliable network of monitoring wells in the 1996 Phase 2 RCRA Facility Investigation (RFI) Report. DOE/Sandia continued to describe the defective and unreliable monitoring well network at the Sandia MWL dump as a reliable network of monitoring wells in the 1996 Phase 2 RCRA Facility Investigation (RFI) Report. DOE/Sandia ignored the conclusion in the EPA 1994 NOD Report that *“contaminants emanating from the MWL may not be detected in the monitoring wells.”* DOE/Sandia issued a Phase 2 RCRA RFI Report in 1996 (DOE/Sandia, 1996) that described the defective monitoring well network with only one downgradient monitoring well as reliable and sufficient to detect groundwater contamination from the wastes buried in the MWL dump.

The monitoring well network that was presented as a reliable and sufficient network in the Phase 2 RCRA Facility Investigation (RFI) Report (DOE/Sandia, 1996) was the same network that was described as not in compliance with RCRA in the **1991 LANL report (Rea, 1991)** as “inadequate” in the **1993 NMED Report (Moats and Winn, 1993)** and as unreliable to detect contamination in the 1994 EPA Notice of Deficiency Report.

In addition, the DOE/Sandia 1996 Phase 2 RFI Report presented the incorrect conclusion that there was no groundwater contamination from the Sandia MWL dump. However, the water quality data presented in the 1996 Phase 2 RFI Report provided evidence that the RCRA wastes buried in the unlined trenches and pits had contaminated the groundwater below the MWL dump with cadmium, chromium, nickel and nitrate.

B. In 1998 the NMED HWB issued a Notice of Deficiency (NOD) Report for the 1996 DOE/Sandia Phase 2 RCRA Facility Investigation (RFI) Report. (See attached pdf file.) The NMED 1998 NOD Report described the overall failure of DOE/Sandia to install a reliable network of monitoring wells at the Sandia MWL dump. The NMED 1998 NOD Report (Garcia, 1998) identified the following five deficiencies with the 1996 Phase 2 RCRA Facility Investigation (RFI) Report for groundwater protection at the MWL dump:

#1 deficiency. Well MWL-MW3 was the only downgradient monitoring well.

#2 deficiency. The upper screen in the onsite monitoring well MWL-MW4 was installed too deep below the water table for the well to measure the elevation of the water table or detect groundwater contamination at the water table.

#3 deficiency. The NMED 1998 NOD Report required DOE/Sandia to prove on a technical basis that the high nickel concentrations measured in the groundwater samples collected from monitoring wells MWL-MW1 and -MW3 were only from the corrosion of the stainless steel well screens.

#4 deficiency. The NMED 1998 NOD Report recognized that the data collected from pumping tests were unreliable and not usable to calculate the speed of groundwater travel below the MWL dump.

#5 deficiency. The NMED 1998 NOD Report required a risk assessment of the potential impacts of the Sandia MWL dump on local and regional groundwater quality. The risk assessment required by the NMED 1998 NOD Report was not performed.

None of the deficiencies in the NMED 1998 NOD Report (or in the EPA 1994 NOD Report) were resolved. A public hearing was held in December 2004 for the NMED recommendation to leave the toxic wastes buried in unlined trenches and pits at the Sandia MWL dump below a dirt cover (Pruett, 2005). The unreliable water quality data from the defective monitoring well network in the DOE/Sandia Phase 2 RCRA Facility Investigation (RFI) Report were an important part of the NMED recommendation to leave the wastes below a dirt cover. The Phase 2 RFI was not accurate for the selection of a remedy.

11. The new monitoring wells MWL-BW2, MWL-MW7, -MW8, and -MW9 that were ordered for installation at the MWL dump required a Class 2 and Class 3 permit modification before the monitoring wells could be installed and made a part of the LTMMP. 40 CFR 270.1 Appendix I, C.1.a, C.4. and C.5.a. The public has not received its right to review and comment on the wells that were ordered for the MWL. Those groundwater monitoring wells constitute a significant portion of the long-term monitoring plan for the MWL. Changes for the network of groundwater monitoring wells required notice and opportunity for comment previous to the issuance of the LTMMP. The LTMMP is being presented out of sequence with the requirements of the RCRA for Class 2 and 3 modifications to the permit. The public is entitled to notice, review, comment and public hearing request for the new groundwater monitoring wells and the change in indicator parameters, hazardous constituents, or concentration limits prior to the presentation of the LTMMP. By

putting the LTMMP out for review at the present time, the public procedural rights are violated.

12. The LTMMP is incomplete because it lacks the required number of groundwater monitoring wells in both the Fine grained sediments at the water table and the ARG strata. The public cannot make informed comment regarding the LTMMP until a reliable groundwater monitoring network is installed, sampled for 8 quarters with analytical results reported.
13. Vadose zone monitoring is not provided for beneath the dump. The vadose zone monitoring in the LTMMP is located outside the footprint of the soil cover and is too distant from the dump for early detection of contamination. The unlined pits and trenches require a RCRA 40 CFR 264 Subpart F monitoring system installed immediately below the discrete pits and trenches in lieu of the leak detection systems required in landfills.
14. The regulatory criteria for the Mixed Waste dump are misstated by the LTMMP. The MWL dump received hazardous waste after July 26, 1982 and is by legal definition a “regulated unit.” The dump is subject to the closure requirements and post-closure requirements of 40 CFR 264 Subpart F and G for well monitoring networks for regulated units. (See 63 Federal Register 56710 et seq.). The MWL has never had a well monitoring network that complied with the minimum requirements for at least one upgradient and three down-gradient monitoring wells for detection or a network that met requirements for long term monitoring.
15. The *Evaluation of the Representativeness and Reliability of Groundwater Monitoring Well Data, Mixed Waste Landfill, Sandia National Laboratories, (“Evaluation”)* New Mexico Environment Department/Hazardous Waste Bureau By: William P. Moats, David L. Mayerson¹, and Brian L. Salem (November 2006) has not been scientifically peer reviewed nor set for public review and comment prior to its use as a major document (listed on the NMED website) for the reliability of the monitoring network at the MWL.
16. The LTMMP should not be put out for review by the public until the same public review process has been provided for the Moat’s *Evaluation* prior to the LTMMP presentation to the public. NMED claimed that it “welcomes the review by EPA” in a July 17, 2007 letter, but has not requested the review from EPA. Citizen Action and the public need the EPA review of the Moats *Evaluation* to properly review the LTMMP.
17. The issues raised by the January 31, 2006 TechLaw Inc., reports were not included for consideration. Why isn’t the 2006 TechLaw, Inc. document posted on the NMED website? Technical Review of the [Sandia] Probabilistic Performance Assessment Modeling of the Mixed Waste Landfill at the Sandia National Laboratories, of the Mixed Waste Landfill Corrective Measures Implementation Plan, Dated November 2005. The 2006 TechLaw, Inc. report indicates numerous defects for Sandia’s computer modeling, the dirt cover and the long term monitoring provisions for the dirt cover. The LTMMP should not be sent out for public comment until the issues raised by the TechLaw, Inc. reports have been resolved.
 - a. The existing dirt cover installed over the wastes buried in the MWL dump is defective because it is not the required design and does not have the required instrumentation to recognize the travel of water through the dirt cover and into the buried wastes (TechLaw, 2006).

- b. The existing soil moisture probe holes below the MWL dump are inadequate because they only monitor below a small number of the unlined pits and trenches, they do not monitor continuously and they do not monitor the breakthrough of moisture at the base of the dirt cover. (TechLaw, 2006).
 - c. The design of the MWL dirt cover is not sufficiently maintenance free for the 1000 year period of time required.
18. The *Probabilistic Fate and Transport Modeling of the Mixed Waste Landfill* (Ho et al. January 2007) is a major document that was not presented to the public for review and comment. Ho et al fail to incorporate the knowledge that the MWL dump groundwater monitoring network was defective. Ho et al use the unreliable and unrepresentative groundwater monitoring data for the conclusions contained in their fate and transport modeling.
19. The LTMMP does not address the concerns for monitoring the high levels of contamination within and beneath the dump. NMED requested DOE/SNL to identify locations for monitoring wells inside the dump where high levels of tritium and PCE were discovered in the RCRA Facility Investigation. Nevertheless, DOE/SNL did not propose any monitoring wells inside the dump at the high levels of contamination. These wells are necessary for long-term monitoring and validation of the Fate and Transport Model.
20. The closure of similar Department of Energy landfills with regard to similar sized mixed waste landfills and wastes is by excavation or complete encapsulation with liners, leachate detection and active vapor extraction. The Mixed Waste Landfill should be consistent with the protective measures for closure of other DOE mixed waste landfills in New Mexico and provide for the equivalent type of leak detection beneath the MWL that would be provided as if the MWL were an engineered RCRA landfill.
21. We request inclusion of this request for retraction and/or extension of the comment period for the LTMMP as preliminary comments in the administrative record for the LTMMP.
22. The MWL must be included within the Sandia Hazardous Waste Permit as are the other Solid Waste Management Units. The MWL must be listed as a regulated unit and the closure/postclosure plan must be adopted. The LTMMP is not such a document.

Thank you for your consideration of our comments, request for a 120 day extension of time and for NMED to order SNL to retract the LTMMP as required by the items described above.

Sincerely,

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Attachment A
October 24, 2012

David Martin, Secretary
New Mexico Environment Department

John Kieling, Chief
New Mexico Environment Department
Hazardous Waste Bureau

Re: Objection to Sandia National Laboratories' (SNL) Mixed Waste Landfill (MWL) Delay of the Five Year Review Required by the May 26, 2005 Final Order (Curry May 2005) and Class 3 Permit Modification for the MWL (NMED August 2005).

Dear Secretary Martin and Chief Kieling:

Citizen Action New Mexico, Concerned Citizens for Nuclear Safety and Registered Geologist Robert Gilkeson respectfully request that the New Mexico Environment Department (NMED) immediately enforce the 2005 Final Order condition #5 requirement that Sandia perform a 5-year review for 1) the feasibility of excavation of the MWL, 2) the effectiveness of the dirt cover for the dump's radioactive and hazardous wastes, 3) update of the fate and transport model for the site with current data, 4) re-evaluation of any likelihood of contaminants reaching groundwater, and 5) detail of all efforts to ensure any future releases or movement of contaminants are detected and addressed well before any effect on groundwater or increased risk to public health or the environment is determined.

1. We object to the use of the Long-Term Monitoring and Maintenance Plan (LTMMP) to modify and delay the 2005 Final Order requirement that Sandia perform the 5-year review. The LTMMP is not an appropriate vehicle for modification of the 2005 Final Order.
2. The requirement for producing the LTMMP arose from a Level 3 permit modification for corrective measures for the MWL provided for in the 2005 Final Order (Curry). The 2005 Final Order resulted after a multi-year process that included four days of public hearings in December 2004. Modification of the 5-year review requirement requires a level 3 modification of the permit.
3. Condition #5 of the 2005 Final Order stated as follows:

“Sandia shall prepare a report every 5 years, re-evaluating the feasibility of excavation and analyzing the continued effectiveness of the selected remedy. The report shall include a review of the documents, monitoring reports and any other pertinent data, and anything additional required by NMED. In each 5-year report, Sandia shall update the fate and transport model for the site with current data, and re-evaluate any likelihood of contaminants reaching groundwater. Additionally, the report shall detail all efforts to ensure any future releases or movement of contaminants are detected and addressed

well before any effect on groundwater or increased risk to public health or the environment. Sandia shall make the report and supporting information readily available to the public, before it is approved by NMED. NMED shall provide a process whereby members of the public may comment on the report and its conclusions, and shall respond to those comments in its final approval of the report.”

4. By allowing the possibility of a greater than 7-year delay in providing the first 5-year review report to the public, NMED is violating the requirements of the 2005 Final Order and 40 CFR 270.42 Appendix I for permit modifications and public notice and hearing requirements.
5. Nowhere in condition #5 or in the entire 2005 Final Order is there any language that would give legal justification or give the implication that the NMED or DOE/SNL can delay compliance with condition #5, i.e., that the first 5-year review report will not be provided before November 2017, as planned with the LTMMP, and more than 7 years later than the date of May 26, 2010 required by the 2005 Final Order.
6. Sandia failed to comply with the explicit and mandatory language of condition #5 of the 2005 Final Order. The language that says “Sandia shall prepare” places the duty squarely upon Sandia to prepare the 5-year evaluation in a timely fashion, by May 26, 2010. That is mandatory language without provision for delays.
7. The additional extension of 5 years, beyond the 7 years that have already passed since the 2005 Final Order, constitutes a modification of the general permit condition for reporting required in the 2005 Final Order. 270.42 Appendix I A.4.b.
8. The 7 year extension of time to provide the 5-year evaluation report is an impermissible modification of the 2005 Final Order for Corrective Action for the MWL dump. The Modification of Module IV of Sandia’s permit was accomplished by the 2005 Final Order. A change to the 2005 Final Order as a part of the SNL Permit requires a permit modification request from Sandia to NMED for modification of the 2005 Final Order. It would then be noticed for the public with opportunity for comment and a possible public hearing upon request. Extension of a final compliance date requires a Class 3 modification. 270.42 Appendix I A. 5.b
9. The DOE/SNL should have at least made a Level 2 modification request for an extension of the time period to provide the 5-year report to the NMED. No such modification request has been made.
10. NMED determined out of thin air and without regulatory basis that the first five-year period will begin upon NMED approval of the LTMMP (Kieling October 2011).
11. On May 9, 2012 Citizen Action made a public records request to NMED for the 5-year review extension as follows:

Provide all documents upon which the New Mexico Environment Department relies for its interpretation that the May 26 2005 Final Order provides for the Sandia National Laboratories (SNL) to perform a 5-year review of the MWL dump after approval of the Long-term Monitoring and Maintenance Plan.

Provide any requests by SNL for that interpretation of paragraph 5, p. 5 of the Final Order.

Provide any letter of approval furnished to SNL for that interpretation.

Provide any notice furnished to the public for that interpretation previous to NMED approval.

12. NMED response to the public records request was to state that there were no documents.

Conclusion

Citizen Action requests that NMED do the following:

- 1). Immediately enforce the 5-year review requirement of condition #5 of the Final Order;
- 2). Stay the LTMMP until such time as the 5-year review has been completed and the review has been made available to the public as provided for in Condition #5;
- 3). Order the LTMMP extension language for the five-year review be withdrawn from the LTMMP, and;
- 4). NMED strictly enforce Condition #5 at all times in the future.

Sincerely,

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