



Communities For Clean Water

June 15, 2015

By email to: steve.huddleson@state.nm.us

Steve Huddleson, Environmental Scientist
Ground Water Quality Bureau
New Mexico Environment Department
P. O. Box 5469
Santa Fe, NM 87502-5469

Re: CCW Comments about May 28, 2015 draft DP-1793 for
Los Alamos National Laboratory Groundwater Projects

Dear Mr. Huddleson:

The Communities for Clean Water ("CCW") submit the following request for a public hearing and specific comments about the above referenced draft Discharge Permit DP-1793 for Los Alamos National Laboratory ("LANL") Groundwater Projects. We incorporate by reference our March 2, 2015 and April 29, 2015 comments into these comments.

CCW provides these comments in good faith. We question the bases for the permit under the New Mexico Ground Water Quality Act and its implementing regulations. NMSA 1978, Section 74-6-1 *et seq.* CCW believes the Resource Conservation and Recovery Act ("RCRA") may apply to the proposed activities. We, therefore, reserve our right to raise issues under RCRA.

CCW Request for Public Hearing

CCW restates our request for a public hearing about the draft permit. There is substantial public interest in this permit by the CCW member groups and our individual constituencies. A public hearing should be held because the permit is too broad and as a result, violates our procedural due process rights.

1. Permit is Too Broad. The draft permit allows for discharge/land application across 55 sections at LANL with no specificity. The details are provided in the

Condition 3 workplans. The public process for the workplans is limited. Condition 3 does not provide formal public notice. It provides a limited opportunity for review and comment, but it does not provide opportunity to request a public hearing – an important right to address a new method for utilizing treated groundwater.

The term “workplan” is not defined in 20.6.2 NMAC. As a result, it is vague and ambiguous.

A workplan is a “discharge permit modification” because each workplan could change “the location of the discharge,” and/or could allow “a significant increase in the quantity of the discharge.” 20.6.2.7.P NMAC. Under the draft permit, no one specifically knows the location and the proposed quantity of the discharge. *Id.* The discharge quality is provided in the fifth paragraph in the Introduction of the draft permit. The increase in quantity could be more than the NMED guideline of 10 percent; in fact, in some cases it could be 100% because previously the discharge/land application had not been allowed.

A discharge permit modification allows for formal public notice, opportunity for review and comment, and opportunity to request a public hearing. 20.6.2.3108 NMAC – Public Notice and Participation. The draft permit provides for a minimal, non-mandatory public notice through the Applicants’ Electronic Public Reading Room (EPRR) and no opportunity to request a public hearing. This is unacceptable and violates our procedural due process rights.

Further, Condition 13 provides that the

permittee may be required to abate water pollution pursuant to Sections 20.6.2.4000 through 20.6.2.4115 NMAC [Prevention and Abatement of Water Pollution], should the corrective action plan not result in compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC [Abatement Standards and Requirements] within 180 days of confirmed ground water contamination.” [Subsection A of 20.6.2.3107 NMAC, Subsection E of 20.6.2.3109 NMAC]

Within the abatement regulations, Section 20.6.2.4108 – Public Notice and Participation – allows for public notice, review and comment, and opportunity to request a public hearing. Section 20.6.2.4114 – Appeals from Secretary’s Decisions – provides for appeals to the Water Quality Control Commission by a person who participated in the “action before the secretary and who is adversely affected by the decision.”

But, there are exemptions within the abatement regulations. Section 20.6.2.4105 – Exemptions from Abatement Plan Requirements – exempts:

a person who is abating water pollution

(6) under the authority of a ground-water discharge plan approved by the secretary, provided that such abatement is consistent with the requirements and provisions of Section 20.6.2.4101, 20.6.2.4103, Subsections C and E of Section 20.6.2.4106 [Abatement Plan Proposal], Section 20.6.2.4107 [Other Requirements] and 20.6.2.4112 NMAC [Completion and Termination];

A workplan may serve as a groundwater discharge plan; but we don't know because "workplan" is not defined. In a worst case scenario, CCW and our constituents would be excluded from public notice, public review and comment and opportunity to request a public hearing on the abatement. Our public participation opportunities to prevent the need for abatement are found in 20.6.2.3108 NMAC – Public Notice and Participation – regulations. *Please see* our analysis in our April 29, 2015 comments about the nature of the public notice and participation requirements.

The workplans are discharge permit modifications and the public should be provided with a formal public notice, public review and comment and opportunity to request a public hearing. The final permit should not attempt to shortcut our 20.6.2.3108 NMAC procedural due process rights.

2. Electronic Public Reading Room (EPRR) postings. Condition 12. CCW objects that all documents required to be submitted by the Permittees to the NMED, and the NMED responses, are not required to be posted promptly to the EPRR.

Nothing in the Ground Water Quality regulations prevent NMED from requiring the Applicants/Permittees to post in a timely manner their deliverables/documents and the NMED responses to the EPRR.

3. Amount of Discharge. The draft permit does not accurately reflect the amount of the discharge. The draft permit allows for a maximum daily discharge of 350,000 gallons per day (gpd). Section III - Authorization to Discharge. Operations are limited to daylight hours and for a maximum of 10 hours per day. Condition 4. The discharge is limited to 250 gallons per minute (gpm). Our calculations find that the maximum daily discharge should be 150,000 gpd and not 350,000 gpd.

$$250 \text{ gpm} \times 60 \text{ min/hr} = 15,000 \text{ gallons per hour} \times 10 \text{ hrs} = 150,000 \text{ gpd}$$

The final permit should limit the daily discharge to 150,000 gpd.

4. No Certification Process for Plans and Specification Approval. The draft permit does not require a licensed New Mexico professional engineer to approve plans and specifications required by the permit. Condition 20(d). The proposed language is incomplete in that it does not require a professional to approve the plans and

specification. There is no requirement that the Applicants have to certify that the facility record drawings “comply with all applicable statutes, regulations and codes including applicable DOE and LANL Engineering Standards.”

Nothing in the Ground Water Quality regulations prevent NMED from requiring approval by a licensed New Mexico professional engineer.

Recent history of errors at LANL clearly shows that more oversight of the nuclear weapons facility is needed. This is the facility that took shortcuts to get waste to the Waste Isolation Pilot Plant (WIPP) and as a result shut down waste disposal operations for an indeterminate period of time at a cost of at least a half a billion dollars. Requiring the certification of a NM licensed professional engineer should be required in order to add another layer of protection of the waters and public health and safety.

5. No Public Comment about Closure and Post-Closure Activities. Condition 19 does not require a public comment period about the closure and post-closure activities under the draft permit. And in fact, the condition allows the Permittees to apply for a variance. It is unclear if the variance would be under the Ground Water Quality regulations or the Resource Conservation and Recovery Act (RCRA) 2005 NMED Order on Consent for LANL. More information should be required in the permit.

Specific Comments

1. Limit discharges to times when the ground is not frozen as discussed at the April 15, 2015 meeting. See Applicants’ February 25, 2014 (or 2015?) Comment No. 14, which stated discharges/land applications would be done from March 16th to December 15th. Section III Authorization to Discharge.
2. Require full public notice, review and comment and opportunity for a public hearing as required by 20.6.2.3109 NMAC for the Condition 3 workplans.
3. Condition 3. Require pre- and post soil sampling in the area used for discharge/land application.
4. Condition 3. Require notification about whether the proposed area for land application has been used before or is being used concurrently for another project.
5. Condition 4. It is not clearly stated that NMED approves the discharge/land application “off LANL property.”
6. Condition 6 states that the “most recent edition” will be used. However (a) states that the “18th, 19th or current” version may be used. Please clarify.
7. Condition 6(e) - RCRA is the Resource Conservation and Recovery Act.
8. The *NMED Risk Assessment Guidance for Site Investigations and Remediation*, December 2014 should be listed in Condition 6.
9. Condition 9. Require soil sampling, if required by NMED (Condition 8), to be included in the annual monitoring report.

10. Condition 9. Require influent and effluent concentrations be included in the annual monitoring report.
11. Condition 9. Require annual reporting for areas where land application was done more than once during the reporting period and the cumulative use over the permit term.
12. Condition 10. Add, "approved" in "(most recent *approved* version).
13. Condition 12. Under protest, CCW submits the following:
 - A. Mandatory Postings: NMED stated that they would copy CCW on all correspondence between the Department and the Permittees. We do not find such language in the draft permit.
 1. Condition 3 - submittal of workplan for individual discharge to NMED and NMED's responses;
 2. Condition 8 - discharge (workplan completion) report to NMED and NMED's responses;
 3. Condition 13 - notification of groundwater exceedance and submittal of Corrective Action Plan to NMED and NMED responses;
 4. Condition 14 - notification of soil sampling exceedance workplan and NMED responses;
 5. Condition 15 - improperly constructed groundwater well notification and NMED responses;
 6. Condition 16 - groundwater well not hydrologically downgradient notification and NMED responses;
 7. Condition 17 - release ("spill") notification, corrective action report/plan and any abatement proposal and NMED responses;
 8. Condition 18 - notification of failure of discharge plan and NMED responses;
 9. Condition 19 - closure and post-closure activities - all documents submitted to NMED by Permittees under this condition and NMED responses;
 10. Condition 23 - modification and/or amendments - all documents submitted to NMED by Permittees under this condition and NMED responses;
 11. Condition 24 - plans and specifications - all documents submitted to NMED by Permittees under this condition and NMED responses; and
 12. Condition 29 - transfer of discharge permit - all documents submitted to NMED by Permittees under this condition and NMED responses.
 - B. Voluntary postings:
 1. Condition 9 - annual monitoring report - due March 1 - and NMED responses; and
 2. Condition 28 - right to appeal - all documents submitted to the Water Quality Control Commissions by the Permittees and NMED under this condition;

14. Condition 19. Provide regulatory cite for new variance language in the last paragraph. Are there public notice and participation requirements associated with applying for a variance?
15. Condition 20. We object to the deletion of the requirement for the signature and seal of a licensed New Mexico professional engineer.

Thank you for your careful consideration of our comments. Please contact us with any questions, comments or concerns. We look forward to next steps.

Sincerely,

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