



January 22, 2002

Mr. John Young
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East
Building 1
Santa Fe, NM 87505-6303

VIA FACSIMILE (505) 428-2567 and U.S. Mail

Dear Mr. Young,

Nuclear Watch of New Mexico (NWNM) submits the following comments to the New Mexico Environment Department (NMED) on **Public Notice No. 01-10 Los Alamos National Laboratory Installation Work Plan Schedule 2001-2005**.

We strongly urge that the NMED not only consider all comments received from the public, but also provide written response to those comments. In our experience, public comment periods have a beneficial impact upon the proposed work and therefore agencies should do their utmost to encourage such participation. Furthermore, NWNM believes that Revision 8 of the Installation Work Plan (IWP) constitutes a major modification to Module VIII of the Los Alamos National Laboratory (LANL) Hazardous and Solid Waste Act (HSWA) Permit and is therefore subject to the rules and regulations promulgated under 40 CFR §270.42 and 20.4.1.900 NMAC.

NWNM would like to compliment NMED on its forward thinking in its proposed list of deliverables from LANL up to FY 05 in its draft Work Schedule. This foresight is conspicuously lacking on LANL's part. Nevertheless, NWNM finds that NMED's description of those deliverables and scheduled dates are often vague or completely lacking. This is of particular concern as there is a substantial lack of supporting data and documentation for the deliverables NMED requests from LANL. Both LANL and NMED are responsible for this, and this oversight seriously impedes educated public participation.

The NMED has denied access to draft corrective action plans, and despite a number of requests NMED has failed to publicly release a list of known Resource Conservation and Recovery Act (RCRA) violations at LANL. Furthermore, LANL has closed much of its Environmental Restoration web site's virtual library.¹ This library was the only electronic source for documents such as RCRA Facility Investigations (RFIs) and Canyon Reach Reports, all of which have direct relevance to the IWP and LANL RCRA permit renewal process. NWNM requests both NMED and LANL to expedite the release (or re-release) of these documents to the public. NWNM also requests that NMED provide a more detailed description to its "Key Components to Investigation" in its draft Work Schedule, including but not limited to justification for requesting those key components. Without such a justification, it is unclear why NMED has prioritized its requested deliverables in the manner that it does. NMED has requested public comment on its IWP Work Schedule. Yet that proposed

Work Schedule will likely be largely superceded by NMED's corrective action plans, which have not been released to the public. As a result, public comment on NMED's LANL IWP schedule is rendered nearly meaningless.

NWNM is concerned that the deliverables in NMED's Work Schedule are only "process" requests in that they request much data but mandate little (if any) actual cleanup. Process requests are, without doubt, valuable in identifying the nature and volume of contaminants located at LANL facilities. NMED, however, must by now have substantive data to support real environmental restoration at a number of LANL facilities. NMED, however, should have had, beginning decades ago, enough substantive data to support mandating real environmental restoration. It is under NMED's jurisdiction to order cleanup at LANL facilities, and such orders should be included in the NMED Work Schedule list of deliverables. Anything short of this would be negligent on the part of NMED, particularly when, for example, the National Nuclear Security Agency admits that there is a "Future potential risk due to proximity to [the] local water supply well field" at Los Alamos.ⁱⁱ Furthermore, declining Department of Energy cleanup budgets jeopardize efforts that will address such "potential risk[s]." All of this is amplified by the residual effects of the Cerro Grande Fire. NMED bears the responsibility to prioritize cleanup efforts at LANL, mandate cleanup programs, and enforce those mandates if necessary. An aggressively mandated cleanup schedule, backed by NMED's authority to enforce, will force the Department of Energy to allocate more funds for LANL cleanup.

In a letter to NMED, LANL asserts that "budget uncertainties made it impossible to provide realistic drilling targets last spring" for the test wells drilled in support of the Hydrogeologic Workplan (HWP).ⁱⁱⁱ The letter goes on to state that "budget uncertainties still persist."^{iv} NMED has failed to mandate an aggressive drilling schedule for the test wells that support the HWP. NMED must do so, and if LANL is not capable of meeting the NMED drilling schedule, it is within NMED's authority to enforce that schedule. In a word, LANL's claim that "budget uncertainties" dictate the rate of drilling is ridiculous. Because of NMED's jurisdiction over this process, NMED can directly influence monetary appropriations to LANL for this project by issuing compliance orders to LANL to complete this project by the target date. At the current rate of drilling, LANL will fail to meet the target date. Again, NMED would be negligent if it allowed LANL to fail. NMED demonstrates too much leniency in its Work Plan when it fails to mandate dates certain for Well Completion Reports. NMED must specify due dates for these Well Completion Reports, and thereby provide LANL with a mandated prioritized schedule for the completion of those test wells 4 months prior to the release of the Well Completion Reports. NMED must also be prepared to enforce that schedule if LANL does not comply.

NMED has failed to vigorously mandate the completion of RFIs for LANL. This seriously compromises both NMED's ability to prioritize cleanup efforts at LANL as well as LANL's ability to adequately mitigate contaminants at its facilities. In LANL's own words, "the scope of the RCRA corrective action process include[s] performing a RCRA facility investigation (RFI), followed by a corrective measures study (CMS), if applicable, and a corrective measures implementation (CMI)."^v NMED must mandate a rigorous plan to complete the remaining RFIs, and be prepared to take action to enforce that plan if LANL does not maintain it. If past history is any indication, there is a good probability of LANL failure to formulate RFIs in a timely manner. This failure will block real cleanup at LANL.

The Work Plan is also deficient because it does not mandate closure plans for material disposal areas (MDAs) G and L at Technical Area 54. As NMED is aware, closure plans are required for MDAs when no active RCRA permit exists. Such is currently the case with LANL. NMED must demand closure plans for these MDAs, and be prepared to enforce such a request if LANL does not expedite the development of those plans. Closure plans are particularly important in light of statements made by LANL that “MDA G will be operated as an active waste management site under institutional control. Eventually, institutional control will be transferred to Bandelier National Monument.”^{vi} Without doubt, mitigation of MDA G will be extensive as the site contains “reactor control rods and PCB soil.”^{vii} This confirmed contamination only heightens the need to create closure plans for a facility that will at some point become public land. Furthermore, because MDAs G and L have not had an active permit since 1985, they are required to close under 40 CFR §§ 265.112(d)(3) and 265.113(b).

The Defense Nuclear Facilities Safety Board (DNFSB) recently released a report citing construction flaws and structural integrity uncertainties regarding the Pajarito Dam. As of yet, LANL has not completed a reach report for Pajarito Canyon. In its Work Schedule, NMED must request that that study be completed so that a clear understanding of the environmental risks posed by contaminants in the Pajarito Canyon Reach system pose is understood. That reach report should now include analysis of the status of the dam. Following the completion of that reach report, NMED must be prepared to order LANL to begin mitigation of those contaminants.

There has been recent evidence that perchlorates may have found their way into springs and stream systems leading to the Rio Grande. NMED must mandate LANL to expeditiously identify possible sources and do the necessary remediation to eliminate potential contamination. Furthermore, NWNM feels that TA-21, the 260 Outfall, and Mortandad Canyon all require special attention and rigorous investigations in the near future, leading to substantial cleanup.

Respectfully submitted,

Colin King
Research Director

ⁱ <http://erproject.lanl.gov/documents/virtualhome.html>.

ⁱⁱ Challenges/Vulnerabilities, LER-5, Office of Environmental Operations and Services, NNSA, September 5, 2001.

ⁱⁱⁱ Communication to Mr. John Young from Charles Nylander, Groundwater Characterization Program, LANL. Subject: Schedule of Groundwater Characterization program Activities for FY 2001 and FY 2002, September 20, 2001.

^{iv} *Ibid.*

^v Draft Installation Work Plan for Environmental Restoration Project, Revision 8, Los Alamos National Laboratory, LA-UR-00-1336, p. 1-3.

^{vi} RFI Work Plan for Operable Unit 1148, Chapter 5, Section 5.4.1.2.3, p. 208, May 1992.

^{vii} *Ibid.*, (Pit 25 through 37) not paginated.