



Communities for Clean Water

June 5, 2017

Ms. Kathryn Hayden, Environmental Scientist
Ground Water Quality Bureau
P.O. Box 5469
Santa Fe, NM 87502-5469

By email to: Kathryn.Hayden@state.nm.us
cc: Michelle.Hunter@state.nm.us

RE: Comments and hearing request on DP-1132

Dear Ms. Hayden:

As you know, Communities for Clean Water (“CCW”) has been actively participating in the process of arriving at a valid and protective permit for the Radioactive Liquid Waste Treatment Facility (“RLWTF”) at the Los Alamos National Laboratory (“LANL”) since December 2013. *See* comment letters and requests for hearing provided in PDF along with this letter.¹ A description of each constituent organization of CCW has been provided in the initial comment letters, and that information is incorporated herein by reference.² Despite significant good faith participation in an attempt to arrive at a final permit that our constituent organizations and members are satisfied is adequate to assure public health, safety, and protection of the environment, a number of unresolved issues remain upon which a hearing is requested. In this regard, we refer you to the comments and hearing requests we have incorporated herein by reference which we also identify by attachment number and filing date in the list below. This list shows remaining issues along with our suggestion for potential resolution, which could obviate a hearing. Pursuant to 74-6-5(G) NMSA 1978 and 20.6.2.3108(K) NMAC, we request a public hearing on these issues:

1. CCW has contended since its initial comments that the RLWTF, as, in LANL's words, "a zero liquid discharge" facility, is not properly regulated under the New Mexico Water Quality Act and implementing regulations. *See Attachment 15*, CCW Letter to

¹ *See generally Attachments 1 to 15* which detail the resolved and continuing issues that CCW has with DP-1132.

² Membership in CCW’s constituent organizations totals approximately 4,000 people who live downwind and downstream of the emissions from operations at LANL.

NMED re DP-1132 (January 13, 2017); see also **Attachments 1, 2, and 14a**, Comments and Requests for Hearing Letter to NMED re DP-1132 (December 6, 2013); Comments and Requests for Hearing to NMED re DP-1132 (December 12, 2013);³ Cover letter, exhibit list, and petition to rescind NPDES permit for the RLWTF (June 17, 2016). CCW requests a hearing on this issue. CCW notes that it may not be necessary to hold a hearing if the Environment Department specifically stipulates in writing on the record that: (a) the RLWTF has not made any discharges since at least late 2011; (b) the RLWTF is a "zero liquid discharge" facility and no liquid discharges are anticipated from this facility; (c) the new RLWTF Low-Level Radioactive Waste Water ("RLW") Treatment System facility adjacent to the current RLWTF will likewise be a "zero liquid discharge facility"; and (d) once operating, no liquid discharges are anticipated to take place from the new RLWTF RLW facility.⁴

2. It is objectionable to have a permit apply to "subsequent replacement systems," which have not undergone the required public notice, comment and hearing under the Resource Conservation and Recovery Act ("RCRA") and the New Mexico Hazardous Waste Act ("NMHWA"). The new RLW facility, absent an exemption from RCRA/NMHWA, is subject to the NMED facility-wide hazardous waste permit for LANL. NMED notes that LANL constructs the building at its own risk. *See Attachment 16*, NMED letter to LANL (October 3, 2014). According to the letter, LANL submitted plans and specifications to NMED for review. NMED did not provide written approval. NMED made no comment regarding "the adequacy of the design, compliance with applicable State, Federal, local statute, code and requirements." Furthermore, there was no permit then in place for the new facility, nor would one be effective as there was not (and is no) discharge planned. Thus, NMED had no authority to review the "subsequent replacement systems" plans and specifications. DP-1132 Condition 3 requires "prior written approval by NMED" before implementing "any expansion, process modification, or alternation of a system or unit that could constitute a discharge permit modification (as defined in 20.6.2.7.P NMAC) of the intended function, design or capacity of any of the systems, units or components of the Facility's collection, treatment or disposal systems." Building a new facility would require a Class 3 permit modification under RCRA/NMHWA and requires advance public notice, comments and public hearing on request. A non-discharging facility that is not subject to a National Pollutant Discharge Elimination System ("NPDES") permit is covered under the RCRA/NMHWA permit.

³ Voluminous documents already in the possession of NMED that were referenced in the January 13, 2017 letter have been omitted from the attached PDF here.

⁴ DP-1132 strains to justify a discharge permit ("DP") for a non-discharging facility, incorporating, e.g., elastic "discharge" definition, false "findings" that the facility is discharging, needless "authorization to discharge." *See generally* the issue and documents referenced above.

3. During discussions of DP-1132, LANL committed to working with CCW members to produce multi-language signage warning people to keep out of areas downstream of the RLWTF, but LANL has had no subsequent communication with CCW regarding the signage, despite the fact that CCW submitted draft copies of such signs. *See Attachment 7* (copy of email with attached copies of proposed signage).

4. Based upon discussions of DP-1132, LANL needs to include representatives of potentially affected Pueblos in emergency incident planning and provide designated seats within the LANL Emergency Operations Center for Pueblo representatives during preparation drills and actual emergencies.

5. Despite CCW's provision of information concerning current standard industry practices for calibration and sensitivity of monitoring equipment, DP-1132 fails to require monitoring equipment accurate to current industry standards.

6. Despite discussions and provisions of ample documentation on this issue, DP-1132 allows groundwater monitoring to be conducted with defective shallow, intermediate and regional wells.

7. In the final version of DP-1132, at LANL's request, NMED unilaterally changed the time for posting its submittals to NMED to the LANL Electronic Public Reading Room from seven (7) days to thirty (30) days. LANL's change effectively eliminates public notice about the 30-day comment period. *See Condition 42 (Closure Plan Amendments and Modifications)*. Moreover, the DP allows public review and comment on proposed amendments to the closure plan "30 days after the submittal." This means the public will likely only learn of a comment opportunity after it expires. *See DP-1132 Condition 42*.

8. The DP-1132 Closure Plan fails to state that closure and post-closure care will take place under the NMED Hazardous Waste Permit for LANL. *See Sec. VII.A.2 of the 2016 NMED Consent Order for LANL (requiring this)*.

9. Even if closure would take place under the Consent Order, closure is deferred and there is no proposed schedule provided in the DP-1132 Closure Plan.

10. The DP-1132 Closure Plan is limited to the low-level radioactive liquid waste treatment facility. LANL omitted to provide closure plans for the transuranic treatment facilities, component systems and "replacement" facilities.

11. The DP-1132 Closure Plan provides no performance standards that LANL must meet in order for NMED to assess whether LANL has met the standards so as to warrant closure. For example, it appears that underground pipe sections may be left in

place, yet there is no justification provided for doing so, and no basis provided for assessing the safety of such a decision. *See* Attachment 14b (performance standards).

12. The DP-1132 Closure Plan provides limited provisions for ground water monitoring; significantly, there is continued reliance on defective wells for monitoring purposes as noted above in ¶ 6.

13. The DP-1132 Closure Plan does not include required continued monitoring, sampling and reporting of contaminants of concern, e.g., perchlorates and radionuclides.

The above listed issues include (1) violations of federal and state law; (2) matters of public health and safety in the operation and ultimate clean-up of the RLWTF and any new “replacement” facilities built to handle the functions of the RLWTF after closure; and (3) inadequate public notice likely violating due process through a denuded posting submittal requirement for the LANL’s Electronic Public Reading Room. Resolution of these issues is of substantial interest to the interested members of the public represented by Communities for Clean Water. For that reason, we request a public hearing on all of the above listed unresolved issues.

Sincerely,

Communities for Clean Water

Kathy Sanchez and Beata Tsosie-Peña
Tewa Women United
P.O. Box 397
Santa Cruz, NM 87532
Kathy@tewawomenunited.org and Beata@tewawomenunited.org

Marian Naranjo
Honor Our Pueblo Existence
627 Flower Road
Española, NM 87532
Mariann2@windstream.net

Joni Arends
Concerned Citizens for Nuclear Safety
P.O. Box 31147
Santa Fe, NM 87594-1147
jarends@nuclearactive.org

Rachel Conn
Amigos Bravos
P.O. Box 238
Taos, NM 87571
rconn@amigosbravos.org

Joan Brown and Marlene Perrotte
Partnership for Earth Spirituality
1004 Major Avenue NW
Albuquerque, NM 87107
marlenep@swcp.com
joankansas@swcp.com

cc: Jon Block, Staff Attorney
New Mexico Environmental Law Center
1405 Luisa Street, Ste. 5
Santa Fe, NM 87505
jblock@nmelc.org

Lindsay A. Lovejoy, Jr., Attorney
3600 Cerrillos Rd., Unit 1001 A
Santa Fe, NM 87507
(505) 983-1800
lindsay@lindsaylovejoy.com

LIST OF ATTACHMENTS

- Attachment 1 CCW-TWU-Comments & Hrg Request DP-1132 RLWTF 2013-12-06
- Attachment 2 DP1132 Comments Tewa Women and CCW 2013-12-12
- Attachment 3 CCW Gilkeson & Sanchez Response to LANL DP1132 Comments 2014-01-26
- Attachment 4 CCW RLWTF Comments 2014-10-24
- Attachment 5 Rev1 CCW RLWTF Comments 2014-10-27
- Attachment 6 CCW Gilkeson Sanchez Remaining Issues 2014-12-03
- Attachment 7 Email with attachments re signage 2014-12-08
- Attachment 8 CCW Ltr to NMED 2015-06-01
- Attachment 9 Email string CCW NMED LANL re delayed postings to EPRR 2015-06-08
- Attachment 10 Email plus CCW re 8-31- S Draft DP-1132 and LANL GW report 2015-09-14
- Attachment 11 CCW DP-1132 memo to NMED 2015-09-14
- Attachment 12 CCW DP-1132 comments 2015-11-23
- Attachment 13 CCW Comments DP-1132 draft 2016-08-29
- Attachment 14a CCNS Ltr to Region 6-Ex List-Petition to Rescind RLWTF NPDES 8-29-16
- Attachment 14b Ex. B to CCW 8-29 Comments - Closure Performance Standards 8-29-16
- Attachment 14c Ex. C to CCW 8-29 Comments-Mtg Note DP-1132 Closure Plan 2016-08-30
- Attachment 15 CCW Comments to NMED re DP-1132 2017-01-13
- Attachment 16 NMED Ltr LANL re RLWTF-Upgrade Plan Plans & Specs 2014-10-3