

DEC 12 2013

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Date: DEC 12 2013
Symbol: ENV-DO-13-0326
LAUR: 13-29209

Mr. Jerry Schoeppner, Chief
Ground Water Quality Bureau
New Mexico Environment Department
Harold Runnels Building, Room N2261
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, NM 87502

Dear Mr. Schoeppner:

SUBJECT: REVIEW COMMENTS, DRAFT DISCHARGE PERMIT, DP-1132, RADIOACTIVE LIQUID WASTE TREATMENT FACILITY (RLWTF)

On September 13, 2013, the New Mexico Environment Department (NMED) gave notice that the U.S. Department of Energy and Los Alamos National Security, LLC's (DOE/LANS) application for the above-referenced Ground Water Discharge Permit for the Radioactive Liquid Waste Treatment Facility (RLWTF) had been issued for public comment, and that the draft permit will be available for a 90-day comment period. Enclosure 1 contains the NMED's public notice 2 for Ground Water Discharge Permit DP-1132.

DOE/LANS have reviewed the draft Ground Water Discharge Permit and prepared the enclosed written comments for your consideration.

- Enclosure 2: A master table listing all comments by DOE/LANS on the draft Discharge Permit
- Enclosure 3: General Comments on the draft Discharge Permit
- Enclosure 4: Table A-1, NMED Risk Assessment Guidance for Site Investigations and Remediation
- Enclosure 5: A redline-strikeout of the draft Discharge Permit showing all DOE/LANS comments

The Permittees believe these comments help to clarify the draft Ground Water Discharge Permit, and that proposed alternative text will facilitate final permit issuance. To address significant and outstanding issues stated in the comments, however, the Permittees request that a hearing be scheduled pursuant to NMAC 20.6.2.3108.K. The Permittees are hopeful that their concerns may be resolved in advance of a public hearing, and, if successful, will immediately withdraw the hearing request.

Please contact Robert S. Beers by telephone at (505) 667-7969 or by email at bbeers@lanl.gov if you have questions regarding the enclosed comments.

Sincerely,



Alison M. Dorries
Division Leader
Environmental Protection Division
Los Alamos National Security, LLC

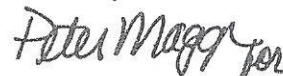
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Enclosures:

1. Enclosure 1, NMED's public notice 2 for Ground Water Discharge Permit DP-1132
2. Enclosure 2, a master table listing all comments by DOE/LANS on the draft Discharge Permit
3. Enclosure 3, General Comments on the draft Discharge Permit
4. Enclosure 4, Table A-1 of the NMED Risk Assessment Guidance
5. Enclosure 5, a redline-strikeout of the draft Discharge Permit showing all DOE/LANS comments

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Sincerely,



Gene E. Turner
Environmental Permitting Manager
Environmental Projects Office
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ENCLOSURE 3

General Comments on the draft Discharge Permit

ENV-DO-13-0326

LAUR-13-29209

U1302039

Date: DEC 12 2013

General Comment No. 1. Permit Condition II.V, Page 6 (Definition of Secondary Containment)

This permit condition defines "secondary containment" by incorporating (verbatim) the definition of "secondary containment" as that term is used under the New Mexico Hazardous Waste Regulations (NMAC 20.4.2.1 *et seq.*) and EPA rules under the Resource Conservation and Recovery Act of 1976 ("RCRA", 42 U.S.C. § 6901 *et seq.*) at 40 C.F.R. § 264.193. This proposed condition is inappropriate for at least four reasons. First, the RLWTF is a wastewater treatment unit which is exempt from the requirements of 40 C.F.R. § 264.193 and 20.4.2.1 NMAC. Second, neither the Water Quality Act, NMSA 1978 §§ 74-6-1 to -17 (the "WQA"), nor its implementing regulations authorize imposition of this condition. Third, there is no evidence that the proposed condition satisfies the WQA's mandate that any proposed condition be both reasonable and necessary to ensure compliance with the WQA and applicable regulations considering site-specific conditions. Fourth, the proposed condition is infeasible and economically impractical to the extent that it would require retrofitting an existing facility. The proposed condition should be revised to recognize the existing leak prevention and detection provisions described in the permit application and which conform with NMED's regulations.

First, the proposed condition is inappropriate because the RLWTF is a wastewater treatment unit as defined by 40 C.F.R. § 264.1(g)(6) and is thus exempt from RCRA requirements, including RCRA's definition of "secondary containment." NMED's attempt to impose inapplicable RCRA requirements is not appropriate. To qualify as an exempt wastewater treatment unit, a facility must (1) be a wastewater treatment facility subject to regulation under Clean Water Act (CWA) §§ 402 or 307(b), (2) receive and treat or store an influent wastewater which is hazardous waste as defined in 40 C.F.R. § 261.3, and (3) meet the definition of a "tank" or "tank system" in 40 C.F.R. § 260.10. The RLWTF satisfies each of those conditions. The RLWTF is regulated under CWA § 402 by EPA pursuant to NPDES Permit No. NM0028355, receives and treats a small amount of hazardous wastewater, and constitutes a "tank system" as defined in 40 C.F.R. § 260.10. The NPDES permit for the RLWTF contains water quality standards that are more stringent than drinking water standards under the federal Safe Drinking Water Act. NMED also issued a Section 401 State Certification for that NPDES permit to ensure that the effluent meets state water quality standards. Further, industrial wastewater discharges that are point sources regulated under § 402 of the CWA are excluded from RCRA's definition of "solid waste" under 40 C.F.R. § 261.4(a)(2). EPA exempted wastewater treatment facilities that met RCRA's waste water treatment unit exemption, like RLWTF, to avoid dual regulation of wastewater units regulated under § 402 of the CWA. See Faxback No. 13526 (1993).

Although the RLWTF is exempt from RCRA's secondary containment requirements, the draft permit defines "secondary containment" by incorporating verbatim RCRA rules for "secondary containment" at 40 C.F.R. § 264.193. RCRA contains very prescriptive requirements, which NMED-GWQB is attempting to inject in the draft permit definition, to determine if tank and tank systems meet "secondary containment" requirements. For example, the RCRA secondary containment requirements mandate that "tanks" and "tank systems" are "sloped or designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation within a 24-hour time period; designed to be free of cracks, gaps, or fissures; or designed, constructed and maintained to surround the primary unit completely." Because it

is an exempt wastewater treatment unit, the existing RLWTF was not constructed to meet the RCRA requirements. The facility nonetheless has multiple design features to prevent leaks and to detect and collect releases if they should occur. For instance, RLWTF secondary containments are designed to collect and hold accumulated liquids until the collected liquids can be removed but are not sloped to drain and remove liquids within 24 hours.

NMED's attempt to impose the stringent RCRA standards on an existing, exempt facility ignores that RCRA rules themselves which allow EPA and States to vary these requirements for existing facilities by use of alternative design and operating practices so long as an applicant can demonstrate that secondary containment prevents the migration of hazardous waste or hazardous constituents into the ground water or surface water (See 40 C.F.R. § 264.193(g)). The existing design features of the RLWTF and those described in the discharge permit application adequately ensure that the RLWTF's tanks and tank systems will not leak and are capable of detecting and collecting releases of wastewater and accumulated liquids to prevent migration of constituents to ground or surface water. Accordingly, because the RLWTF is exempt from the RCRA requirements, and because the containment features described in the permit application provide adequate protection, there is no basis for NMED to seek to impose RCRA requirements on the RLWTF under the guise of a different regulatory program.

Second, the WQA and its implementing regulations do not authorize NMED's attempt to engraft RCRA regulatory requirements onto a discharge permit. The NMED-GWQB does not provide a citation to support the incorporation of RCRA's definition of "secondary containment." Instead, the NMED-GWB cites to the more generic provisions of 20.6.2.3106.C and 20.6.2.3107.A which simply authorize conditions addressing "procedures for detecting failure of the discharge system" and "contingency plans to cope with failure of the discharge permit or system." NMED's rules at 20.6.2.3106.C NMAC or 20.6.2.3107.A NMAC do not provide any authority or require that wastewater treatment facilities or any facility regulated under ground water rules (*e.g.*, mining, dairy, industrial wastewater treatment facilities) meet RCRA "secondary containment" with "leak detection systems" as described in RLWTF's draft permit. Instead, those regulations require that tanks and tank systems are water tight, and that a permittee undertake inspection, routine maintenance, and installation of alarm systems to minimize the risk of leaks. These kinds of measures are already incorporated into the design of the RLWTF.

Third, the proposed condition would still need to be revised or eliminated because NMED-GWQB has not, and cannot, satisfy its burden to show that the proposed condition is both reasonable and necessary considering site-specific conditions. Under Section 74-6-5.D of the Water Quality Act, the agency "has the burden of showing that each condition is reasonable and necessary to ensure compliance with the WQA and applicable regulations, considering site-specific conditions." The agency has failed to make such a showing here.

And fourth, the proposed condition is unreasonable given that, as described in the permit application, the existing RLWTF tanks and tank systems are designed to ensure that they are water tight and are equipped with secondary containment-like features that include, among other things, collection systems with double-walled pipes; concrete floors and vaults, with sumps and leak detection sensors; and concrete tanks with liners that are equipped with alarms. The following describes these systems (Supplemental Information, Discharge Permit Application DP-1132, August 2012, Enclosure 3, Table 2.0):

Collection system: Collection system piping is essentially an underground pipeline within a pipeline. Primary piping is six- or eight-inch-diameter polyethylene encased within 10- or 12-inch polyethylene secondary piping. The primary piping transitions to stainless steel in each of the 62 underground vaults, then back to polyethylene. Underground vaults are equipped with leak detection sensors that are linked electronically to the RLWTF control room.

Building 1: The concrete floor at TA-50-001 serves as secondary containment for all of the treatment units, vessels, and process equipment located within the main RLWTF.

WMRM: The Waste Management and Risk Mitigation (WMRM) facility (Building 50-250) houses six influent storage tanks with a capacity of 50,000 gallons each. Influent is received at WMRM by an underground, double-walled pipe. The concrete basement houses the six tanks and acts as secondary containment. A sump located in the floor of the basement is outfitted with a leak detection sensor that is linked electronically to the RLWTF control room.

SET: The Solar Evaporative Tanks (SET) at TA-52 have concrete walls and a double synthetic liner with leak detection sensors located between the primary and secondary liners.

MES: The Mechanical Evaporator System (MES) is located on an asphalt pad outside of TA-50-001. Secondary containment is provided by a hypalon liner over asphalt.

For all these reasons, DOE/LANS do not believe that it is appropriate or technically supportable to include in the final discharge permit language that has been taken directly from the RCRA rules and that are not applicable to RLWTF. DOE/LANS understand that the intent of the proposed language is to ensure that RLWTF's tanks and tank systems will not leak, and are capable of detecting and collecting releases of waste water and accumulated liquids until the collected material can be removed. To address this issue, DOE/LANS have suggested revised language that meets this intent:

II. V. Secondary containment- a constructed unit, independent of the (primary) unit or system designed to convey, store, treat, or dispose of liquids or semi-liquids, that is designed, constructed and operated to prevent any migration of wastewater out of the unit or system to the soil, ground water, or surface water at any time. Secondary containment can include, but is not limited to, double-walled pipes, concrete and floors equipped with sumps and alarms systems to detect potential leaks. must be:

- ~~• designed, constructed and maintained to surround the primary unit completely;~~
- ~~• free of cracks, gaps, or fissures;~~
- ~~• constructed of, or lined with, materials that are compatible with the waste streams to be in contact with the unit or system;~~
- ~~• placed on a foundation or base capable of withstanding pressure gradients, settling or uplift which may cause failure of the unit or system;~~
- ~~• equipped with a leak detection system that is designed and operated so that it will detect the failure of the primary containment structure;~~
- ~~• sloped or designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation within a 24 hour time period; and~~
- ~~• capable of detecting and collecting releases and accumulated liquids until the collected material can be removed.~~

General Comment No. 2. Permit Condition V.B, Page 9 (Authorization to Discharge)

Permit condition V.B states that “[p]ermittees are authorized to receive and treat up to 40,000 gallons per day (gpd) of low-level and transuranic radioactive industrial waste water” As drafted, the permit condition purports to limit the ability of RLWTF to receive and treat wastewater to the same volume it will discharge (e.g., 40,000 gpd). For the reasons stated below, DOE/LANS request that the terms “receive and treat” be deleted and revised to state that “[p]ermittees are authorized to discharge up to 40,000 gpd....” (See also specific comment no. 7 related to a volume limitation under permit condition III, Intro., fifth paragraph).

The discharge permit application submitted by DOE/LANS and NMED’s standard application form does not request or require any information regarding the volume of water to be received or treated at RLWTF or a wastewater treatment facility. Indeed, NMED’s ground water quality rules and the discharge permit application only require the applicant to provide an “*estimated volume of the discharge*” (See 20.6.2.103.A.1 and Part A, page 2 of the application). That is because NMED rules for discharge permits regulate the “discharge” of wastewater and do not regulate the volume received or treated at a wastewater treatment facility. As stated in the discharge permit application, RLWTF is a batch treatment facility and seeks “to discharge” an estimated volume of up to 40,000 gpd of treated effluent.

RLWTF, including the new WMRM tanks, is designed to receive more wastewater than 40,000 gpd. In fact, the six WRWM tanks each hold 50,000 gallons of wastewater and were designed and installed to receive wastewater from emergencies (e.g., fire suppression water). Further, the draft permit application’s discharge limitation of 40,000 gpd does not reflect the amount of liquid waste it will treat. As a batch treatment facility, it may be necessary for RLWTF to treat more than 40,000 gpd in a 24-hour period. For these reasons, a volume limitation on receipt and treatment of wastewater will substantially and adversely impact operations and is not authorized by applicable NMED regulations.

DOE/LANS request the following change:

III. Authorization to Discharge.

B. The Permittees are authorized to discharge ~~receive and treat~~ up to 40,000 gpd of low-level and transuranic radioactive industrial waste water using a series of treatment processes as described in Section V(D) of this Discharge Permit in accordance with the Conditions set forth in Section VI of this Discharge Permit.

General Comment No. 3. Permit Condition VI. A.1 (Electronic Posting)

This condition imposes a requirement to post on LANL's Electronic Public Reading room a multitude of documents (approximately 43) as enforceable permit conditions. As an initial matter, NMED has no authority under either the WQA or its implementing regulations to impose such a permit condition. Even if the WQA provided authority to impose such a condition, the condition is unreasonable because, among other reasons, it could subject the permittee to significant fines and penalties (up to \$15,000 per day under Section 74-6-10.C of the WQA, and permit condition No. 52) for failure to post (or timely post) a single document. DOE/LANS also recognize that such a permit requirement is unprecedented under the New Mexico Ground Water Regulations. Although DOE/LANS support public involvement, it cannot agree to undertake new requirements without careful review and consideration of existing resources, cost, and practicality.

DOE/LANS have carefully reviewed the type of documents and assessed existing staff level and functions to determine whether this additional work can be implemented. Some categories of documents require significant resources (in cost and human resources) to post and at this time would be unduly burdensome and difficult to post. It is costly and resource-intensive to ensure correct posting of documents; maintain the electronic reading room, and assure proper oversight of this task. For these reasons, DOE/LANS cannot agree to post all of the documents to the Electronic Public Reading Room. As summarized below, DOE/LANS can agree to voluntarily post those documents on the Electronic Public Reading Room web site that would not impose significant financial burden and cost to implement. Further, DOE/LANS could only agree to post certain documents identified below on the explicit condition that the requirement is voluntary and not subject to civil fines and enforcement at \$15,000 per day for non-compliance.

DOE/LANS also believe it is important and will facilitate implementation and compliance to explicitly identify the specific documents to be produced in one permit condition. For this reason, and as discussed below, DOE/LANS have identified these documents under Section IV.A.1. Further, DOE/LANS will require transitional time to meet internal requirements associated with such a change. For these reasons, DOE/LANS would propose the following new permit condition:

E. 49. PUBLIC INVOLEMENT - Within six (6) months after the effective date of the Permit, the Permittees shall post the following information on LANL's Electronic Public Reading Room located at <http://eprr.lanl.gov/oppie/service> (or as updated), where information on the Discharge Permit will be made available: (a) the Annual Update (VI.A.1); (b) Notices of Changes (VI.A.2); (c) Water Tightness Testing (VI.A.8); (d) Summary Report for Settled Solids (VI.A.9); (e) Freeboard Proposal and Responses (VI.A.12); (f) Emergency Plan (VI.A.16); (g) Installation of Flow Meters (VI.A.17); (h) Quarterly Monitoring Reports (VI.B.20); (i) Soil Moisture Monitoring System for the SET (VI.B.26); (j) Ground Water Flow (VI.B.27); (k) Final Closure (VI.D.44); (l) Post-Closure (VI.D.45); and (m) Termination of the Discharge Plan (VI.D.46). The Permittees agree to voluntarily provide the above-information, and as such, this permit condition is not subject to civil or criminal fines and penalties associated with permit requirements under Permit Sections 52 and 53.

All posting requirements in the draft discharge permit not listed above shall be removed.

General Comment No. 4. Permit Condition VI. A.16, Page 21 (Emergency Plan)

The proposed condition requires DOE/LANS to submit an "Emergency Plan" that addresses "actions" to be taken to respond to fires, explosions or any unplanned or non-sudden release of a water contaminant from the Facility to the environment. In addition, the emergency plan must include a "spill prevention and response plan" to address all authorized releases to the environment" and a host of other requirements. As authority, NMED-GWQB cites 20.6.2.3109.C NMAC. The "Emergency Plan," however, appears to have been lifted directly from RCRA requirements at 40 CFR §264.52, which applies to "Contingency Plans."

DOE/LANS do not believe that NMED-GWQB can appropriately rely on 20.6.2.3109.C to impose RCRA requirements for "Contingency Plans" to a new requirement for an "Emergency Plan." NMED's ground water rules address contingency plan requirements, which the draft Discharge Plan includes: there are numerous and comprehensive permit requirements to address potential contingencies including corrective actions to respond to any unplanned or non-sudden release of a water contaminant from the Facility. These requirements, found in Permit Section C, Contingency Plan, are supported under 20.6.2.3107.C NMAC which provides NMED-GWQB the authority to include in the Discharge Plan "contingency plans to cope with failure of the discharge permit or system." The Emergency Plan, on the other hand, conflicts with and potentially duplicates many of these actions. For these reasons, and as discussed below, DOE/LANS object to the inclusion of this permit condition.

The draft permit at Permit Section C, *Contingency Plan*, contains ten (10) permit conditions related to contingency plan requirements that address corrective actions, corrective action reports, and spills and unauthorized releases from RLWTF. In addition, the draft permit contains permit condition 39, regarding "spills and unauthorized releases," and any failure in the discharge plan not otherwise provided. These requirements are also found in other discharge plans and are supported by NMED's ground water rules at 20.6.2.3109.C NMAC.

NMED's ground water rules, however, do not require a facility seeking a discharge permit to prepare an "Emergency Plan" as described in this permit condition. NMED's rules do not require that an "Emergency Plan" be prepared, distributed within 30-days or distributed to the numerous governmental agencies. DOE/LANS are unaware of another instance where NMED-GWQB has imposed this type of requirement in any other ground water discharge permits.

Further, the Emergency Plan potentially conflicts with or duplicates several permit requirements. For example, the Emergency Plan must address the actions to be taken in response to fires, explosions or any unplanned sudden or non-sudden releases of water contaminates. Permit condition 39, on the other hand, already addresses requirements for "spills and unauthorized releases," which can include "sudden or non-sudden" releases.

For the above reasons, DOE/LANS believe that the Contingency Plan is sufficient, and that this requirement should be deleted in its entirety.

General Comment No. 5. Permit Condition VI. C.34, Page 34 (Effluent Exceedance)

NMED's proposed condition requiring permittees to "cease discharges to the system" within 24 hours of becoming aware of a "confirmed [effluent] exceedance" is unsupported by NMED rules and an unprecedented measure for a single effluent sample exceedance alone. Cessation of discharge by the RLWTF is not commensurate with, or supported by, significant potential for harm to human health and the environment. The proposed condition appears to be based on the misplaced assumption that an effluent sample exceedance automatically equates to a ground water sample exceedance (See 20.6.2.3109.E NMAC). Other discharge permits, however, have not required cessation of operations even based on evidence that a ground water sample exceeded effluent limitations and state ground water quality standards.

Permittees do not believe it is appropriate to impose conditions requiring cessation of operations at RLWTF based on an effluent exceedance. The SET and MES have secondary containment systems designed to prevent the possibility that a potential release enters the environment. These units are required to be inspected and kept in good condition; no wastewater will be discharged to the environment (other than the potential for solar evaporation). For effluent discharged to Outfall 051, ground water monitoring is conducted at three down gradient wells to ensure that ground water standards are met. This is consistent with other facilities and discharge permits.

DOE/LANS propose the following changes:

34. EFFLUENT EXCEEDANCE-In the event that analytical result of an effluent sample indicate an exceedance for any of the effluent limits set forth by this Discharge Permit, the Permittees shall collect and analyze a subsequent sample for the particular analyte that was in exceedance within 24 hours following receipt of analytical results indicating the exceedance. In the event the analytical results of the subsequent sample confirm that the maximum limitation has been exceeded (i.e., confirmed exceedance), the Permittees shall take the following actions:

Within 24 hours of becoming aware of a confirmed exceedance, the Permittees shall:

- a. ~~cease discharges to the system that limits have been exceeded with the exception of the MES to which a confirmed exceedance shall not require immediate cessation;~~*
- b. notify the NMED Ground Water Quality Bureau that an effluent limit set forth in this Discharge Permit has been confirmed to be in exceedance; and*
- c. increase the frequency of effluent sampling to adequately establish quality of all discharges by batch.*

General Comment No. 6. Permit Condition VI. D.41, Page 40 (Cessation of Operation of Specific Units)

The draft discharge Permit requires that, within 60 days of the effective date of the permit, the permittees shall permanently cease operation of the listed units (a-e).

Ceasing operation of the listed units is a phased process consisting of the following steps:

- Management decision to stop using the vessels
- Efforts (proposal development, meetings, funding request) to obtain LANS and DOE concurrence for the project
- Design of facility and process changes. (For example, the need to plug all floor drains, the need to re-plumb sinks in the chemical laboratories, the need to pipe tank overflows to tanks other than the 75K)
- Procurement and installation of modifications (For example, the need to procure and install a microfilter that will replace the gravity filter)
- Implementation of process changes

The effort began in mid-2012. DOE/LANS have reached the final phase of the project, implementation of process changes (last in the bulleted list above). The implementation of process changes is itself a major undertaking, for it requires changing a process that has been used for 50 years, from 1963 to the present. The process will be changed in four increments:

1. Startup of the new microfilter: This treatment step has been designed to replace the filtration presently accomplished by the gravity filter and the pressure filters. Startup activities included the development of operating procedures, operator training, a readiness assessment, closure of findings made by the readiness team, and initial activities (as outlined in a formal Startup Plan).
2. Startup of the WMRM Facility, wherein two of the six influent storage tanks will be used for the daily receipt of LANL radioactive liquid wastes. (The remaining four WMRM influent tanks will be held for emergency use.) Similar startup activities are required: procedures, training, readiness assessment, and startup plan and activities. The goal of this phased step is to shake down procedures and equipment associated with first-ever use of the WMRM Facility.
3. Startup of reaction tanks: Two existing tanks have been converted to chemical reaction tanks for the treatment of low-level influent. These tanks will replace the two clarifiers that have been in service since 1963. This is, perhaps, the most significant of the process changes.
4. Coordinated use of new process equipment: This final step place the low-treatment operation in the full configuration described in the Discharge Permit DP-1132 Application supplement of August 2012. Influent will be received at the WMRM Facility (instead of at the 75K tank), chemical treatment will take place in the two reaction tanks (instead of in the clarifiers), and filtration be accomplished using the microfilter (instead of the gravity filter).

Each step listed above is dependent upon successful conclusion of the previous step. LANL has recently completed the first of the four process changes, and is prepared to startup the WMRM Facility, pending receipt temporary permission from the NMED. The currently drafted deadline of 60 days is not adequate to complete this process; therefore a 180 day deadline is suggested. This time period should start upon NMED's approval of the request by DOE/LANS for temporary permission to operate WMRM.

General Comment No. 7. Permit Condition VI. D.43, Page 41 (Final Closure Plan)

DOE/LANS object to this proposed condition because it imposes requirements that exceed the NMED's statutory authority and that are not reasonable or necessary to ensure compliance with the WQA, considering site-specific conditions.

As an administrative agency, the NMED-GWQB is limited to the power and authority granted by statute. The WQA only authorizes the NMED-GWQB to issue a permit "for the discharge of any water contaminant" with conditions that are both "reasonable and necessary to ensure compliance with the WQA and applicable regulations, considering site-specific conditions." Proposed conditions 43.h and 43.i are beyond the NMED-GWQB's limited authority under the WQA because those conditions purport to regulate DOE/LANS's methods of waste characterization and methods to "remove, transport, recycle or dispose of" wastes generated during closure. Those activities do not pertain to an intention to discharge a contaminant to water and are thus outside the scope of regulation authorized by the WQA. Conditions 43.h and 43.i should be deleted.

Even if proposed conditions 43.h and 43.i were not beyond the NMED-GWQB's statutory authority, those conditions are neither reasonable nor necessary to ensure compliance with the WQA. Requiring the Permittee to describe the methods to be used "to characterize wastes" generated during closure and the methods to be used to "remove, transport, recycle or dispose of" such wastes do not pertain to regulation of water discharges, the sole concern of the WQA.

Similarly, many of the other proposed conditions in VI.A.43 also are unreasonable and are not necessary to ensure compliance with the WQA. Both the 180-day time frame prescribed in the condition for development and submission of the final closure plan and the high level of detail required by the proposed condition are unreasonable and are inconsistent with other discharge permits the agency has issued. In many other discharge permits, the closure plan requirements simply direct that, upon closure, the facility shall (1) remove or plug lines leading to the treatment system so that a discharge can no longer occur, (2) drain and/or evaporate all liquids from all treatment units and dispose of sludge or residue in accordance with all local, state and federal regulations, (3) remove or demolish tanks and re-grade area with clean fill to blend with surface topography and prevent ponding, (4) continue ground water monitoring for two years after closure, and (5) following notification that post-closure monitoring may cease, plug and abandon monitoring wells in accordance with NMED standard conditions. NMED-GWQB has not demonstrated why the substantially more onerous and detailed closure plan requirements proposed in this permit are reasonable and necessary to ensure compliance with the WQA considering site specific conditions. DOE/LANS propose the following Final Closure Plan:

FINAL CLOSURE PLAN**Permanent Facility Closure Conditions**

1. RLWTF: Within 120 days after permanent cessation of discharge to the RLWTF and its collection system (excluding the SET and Outfall 051), the Permittees shall:
 - a) Remove or plug and abandon in place the lines discharging into the RLWTF collection system so that a discharge can no longer occur;

- b) Drain wastewater from the RLWTF collection system and dispose of that wastewater in accordance with applicable local, state, and federal laws; and
- c) Remove solids and sludge from the RLWTF collection system and contain, transport, and/or dispose of that material in accordance with applicable local, state, and federal laws.

Within [insert appropriate number] days after permanent cessation of discharge to the RLWTF and its collection system, the Permittees shall:

- d) Remove, or permanently plug and abandon in place, all collection system lines leading to the RLWTF;
 - e) Drain or evaporate any remaining wastewater from the RLWTF, including storage tanks and all other components, and dispose of any drained wastewater in accordance with applicable local, state, and federal laws;
 - f) Remove solids and sludge from the RLWTF tanks and components and contain, transport, and/or dispose of such material in accordance with applicable local, state, and federal laws; and
 - g) Remove or demolish all RLWTF components, and re-grade the area with suitable fill to blend with surface topography, promote positive drainage, and prevent ponding.
2. SET: Within [insert appropriate number] days after permanent cessation of discharge to the SET, the line leading to the SET shall be plugged so that a discharge can no longer occur and wastewater shall be drained or evaporated from the SET and shall be disposed of in accordance with applicable local, state, and federal laws.

Within [insert appropriate number] days after permanent cessation of discharge to the SET, the Permittees shall submit a solids removal and disposal plan to NMED for approval describing how solids will be removed and disposed of in compliance with applicable local, state, and federal laws. Within [insert appropriate number] days of NMED approval of the solids removal and disposal plan, the Permittees shall begin implementation of that plan.

Within one year after completion of the solids removal and disposal plan requirements, the Permittees shall:

- a) Remove, or permanently plug and abandon in place, all lines leading to and from the SET;
 - b) Remove the SET's concrete floor, walls, and liners;
 - c) Re-grade the site with suitable fill to blend with surface topography, promote positive drainage and, prevent ponding; and
 - d) Submit a closure report to NMED describing the decommissioning and the closure activities, including photographic documentation.
3. NPDES Outfall 051: Within [insert appropriate number] days after permanent cessation of the operation of NPDES Outfall 051, the Permittees shall:
- a) Remove or plug all lines leading to the NPDES Outfall so that a discharge can no longer occur; and
 - b) Submit a closure report to NMED describing the NPDES Outfall decommissioning and closure activities, including photographic documentation.

When all closure and post-closure requirements have been completed, the Permittees may submit to NMED a written request for termination of the Discharge Permit.