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April 28, 2005

BY HAND DELIVERY

Environmental Improvement Board  
Runnels Building  
1190 St. Francis Drive  
Santa Fe, NM 87502

Re: Notice of Appeal of two Open Burning Permits for  
Los Alamos National Laboratory under 20 NMAC 2.72.207F by  
Concerned Citizens for Nuclear Safety,  
Embudo Valley Environmental Monitoring Group and  
Tewa Women United

NSR Air Quality Permit No. 2195-J  
TA-11 Wood and Fuel Fire Test Site and TA-16 Flash Pad  
AIRS No. 35-0280001  
AI No. 856 PRN-20040002

NSR Air Quality Permit No. 2195-K  
DX-TA-36 Sled Track  
AIRS No. 35-028-0001  
AI No. 856 PRN-20040003

Dear Members of the Environmental Improvement Board:

Concerned Citizens for Nuclear Safety (CCNS), the Embudo Valley Environmental Monitoring Group (EVEMG) and Tewa Women United (TWU) appeal under 20 NMAC 2.72.207 F the two above-referenced open burning permits issued by the New Mexico Environment Department (NMED) Air Quality Bureau (AQB) to Los Alamos National Laboratory (LANL) on March 29, 2005.

Section F of 20 NMAC 2.72.207 allows that any person who participated in the permitting action and who will be adversely affected by such permitting action to appeal the decision of the AQB to the Environmental Improvement Board (EIB). We represent downwind communities from LANL who have been and will be adversely affected by the issuance of the two open burning permits. CCNS and EVEMG have participated in these permitting actions by reviewing the permit application and making comments, attending various meeting with the AQB and Applicants and communicating our issues with individuals and public health and environmental groups interested in commenting on the draft permits, including TWU.

Therefore, CCNS, EVEMG and TWU are requesting that the EIB rescind the two open burning permits and remand the decision of the AQB to hold a public hearing on the two draft permits. Some of the issues of concern include inadequate time to review the draft permits and comment before the final permits were issued and outstanding technical issues, including an inadequate review of alternatives to open burning; proposed legislation making such permitting illegal; and possible impacts on a Class I area at the Bandelier National Monument.

## **PARTIES**

CCNS is a Santa Fe based non-governmental organization that formed in 1988 because of citizen concerns about the transportation of nuclear waste from LANL to the Waste Isolation Pilot Plant (WIPP). The mission of CCNS is to protect all living beings and the environment from the effects of radioactive and other hazardous materials now and in the future. We represent 5,000 members in New Mexico. In 1994 CCNS filed a successful Clean Air Act citizens' suit against the Department of Energy (DOE) for violations of the radionuclide emissions standards at LANL.

The EVEMG is based in Dixon, New Mexico in the regional influence of the LANL windshed. Our primary focus is on air emissions generated by LANL activities and their relationship to human and environmental health and safety. We continue to investigate risks generated from the Cerro Grande fire and seek solutions to problems concerning health and safety specific to accidents involving LANL. In November 2004, we co-sponsored a public forum entitled, "Emergency Planning Forum, Ready for a LANL Emergency?" which over 100 concerned community members attended. We continue to discuss the open burning permit applications beyond the forum.

Community members have expressed interest in making comments when the draft permits were available.

TWU was established in 1989. TWU is an independent women-centered and Native women run non-profit organization located within the Northern Pueblos of New Mexico, downwind from LANL. It started as a gathering of women from the Northern New Mexico Pueblos who believed in the inherent power of Tewa women and who felt the need to enhance their strengths through a circle of trust, love, hope, forgiveness and sharing. One portion of its community mission is to promote and support activities which nurture and care for the well-being of our Mother Earth, including being free of all nuclear contamination. TWU received its non-profit status in September 2001. TWU holds an annual public "Gathering for Mother Earth" at the Pojoaque PowWow Grounds.

## **Background**

For over 30 years, LANL had been conducting open burning activities under a permitting process that did not require public participation. In 2003, the AQB presented to the EIB proposed changes to the open burning regulations. Prior to submittal to the EIB, CCNS worked with the AQB to ensure that their proposal included provisions so that the public would have an opportunity to review open burning permit applications and make comment on the draft permits on activities such as those at LANL which had previously been closed to the public.

As a result of the EIB's approval of the proposed changes to the regulations, LANL was required to submit two permit applications under the New Source Review provisions of the Air Quality Control Act (Act) and regulations adopted pursuant to the Act, including 20 NMAC 2.72, Construction Permits, Subpart II. In June 2004, LANL submitted their applications to the AQB requesting permits allowing a maximum of 383 open burning activities each year, containing 91,000 lbs. of wood, 3,717 lbs of high explosives, 1,584 lbs. of depleted uranium and 800 gallons of diesel fuel.

CCNS attempted to obtain copies of LANL's permit applications directly from LANL. We were met with resistance and delays. After reviewing the applications, we wrote a December 15, 2004 letter to AQB outlining some of our concerns, along with a request for a hearing.

We also requested a meeting to discuss our concerns. During this time, our technical experts were preparing to present testimony at a Nuclear Regulatory Commission hearing regarding the proposed uranium enrichment facility located near Eunice, New Mexico.

On February 1, 2005, the AQB facilitated a meeting between CCNS, EVEMG and our technical experts, along with representatives for the NMED Hazardous Waste Bureau

and LANL. During the meeting, LANL lower its emission factors for one constituent by 100 times, which resulted in new air modeling calculations being prepared. Further, in a hand-delivered letter from the AQB dated February 1, 2005, we understood that the AQB may renote the permit application due to the changes in permit application by LANL. As a result of these changes, CCNS and EVEMG needed more time to review the documents that were provided to us by AQB and LANL at our February 1, 2005 meeting.

## **PROCEDURAL ISSUES**

Given that the public had previously been denied the opportunity to review these open burning permits, we knew that there would be significant public interest in reviewing the draft permits. Therefore, in written comments dated December 15, 2004 to the AQB, CCNS requested a public hearing. Despite the AQB's knowledge that these permits were bound to be controversial, their recommendation to the Division Director was to deny the request for the public hearing.

Therefore, CCNS, EVEMG and TWU are requesting that the EIB rescind the two open burning permits and remand the decision of the AQB to hold a public hearing on the two draft permits. Some of the issues of concern include inadequate time to review the draft permits and comment before the final permits were issued and outstanding technical issues, including an inadequate review of alternatives to open burning; proposed legislation making such permitting illegal; and possible impacts on a Class I area at the Bandelier National Monument.

### **Opportunity to Review Draft Permits**

During our review of the permit applications, CCNS and EVEMG met with various individuals and environmental and public health groups who were interested in reviewing the draft permits and providing their own comments to the AQB, including TWU. We committed to preparing a fact sheet, based on our review of the draft permits, outlining our concerns and distributing it to those individuals and groups so that they could prepare their own comments. The AQB knew of our and other groups' interest, and despite that knowledge, AQB personnel recommended to their Division Director that a public hearing not be held.

Further, when the draft permits were finally released, we received three to five days to comment on the drafts. This time included the Easter weekend holiday. Specifically, the drafts were released during the middle and end of Holy Week with comments due on Easter Monday, March 28, 2005. Specifically, the AQB released the draft permit 2195-K (TA-36 Sled Track) for review in the late afternoon of Wednesday, March 23, 2005. The AQB released draft permit 2195-J (TA-11 and TA-16) after 1 p.m. on Good Friday, March 25, 2005.

Because of the sacredness of the Easter holiday in Northern New Mexico, we did not contact other individuals and community groups who expressed interest in the draft permits due to the Easter holiday weekend. However, despite the short turnaround time of less than five (5) days, which included the Easter holiday weekend, CCNS and EVEMG prepared comments and submitted them to the AQB on Monday, March 28, 2005. A few of our concerns were addressed in the final permits, which were issued on Tuesday, March 29, 2005. Regardless if this was a holiday weekend, five days to comment on the draft permits was unreasonably short for the amount of interest in them.

### **Outstanding Technical Issues**

1. We question whether the AQB has the legal and regulatory authority to issue permits for the burning of depleted uranium and high explosives. In a draft response to our March 28, 2005 comments, the AQB stated that it “does not have such authority, except regarding emissions of regulated air pollutants.” Draft AQB response to CCNS comments on LANL open burn permits (30 March 05).

2. We oppose the permitting of the open burning of depleted uranium, high explosives and diesel fuel. Neither the Applicant nor AQB has adequately addressed alternatives to the open burning of these materials. We understand that there are alternatives to open burning of these materials and LANL has so stated in the following documents:

a. August 1995 TA-36 Open Burning Permit Application:

“LANL has evaluated three other alternatives to dispose of potential [high explosive] contaminated wastes (i.e., reuse, incineration, and burial) but found them unsuitable.

“It is the Laboratory’s practice not to reuse wastes resulting from any process associated with HE for safety reasons. This policy prevents accidents which might occur during reuse as a result of imbedded HE fragments in the waste generated during testing.

“LANL has been studying the use of incineration and hydrothermal treatment as options for treatment of firing site waste. Unfortunately, many construction and regulatory issues must be resolved before this option is feasible.

“Landfilling this waste is potentially unsafe for operations personnel who are responsible for disposing this waste.”

3. In reviewing the administrative record after the release of the final permits, we found that there are outstanding issues with regard to what is being permitted to be burned. We are concerned that the permit application did not accurately reflect open

burning activities. We also question whether LANL continues to burn these toxic materials and whether these have been included in the final permits.

a. In a July 11, 1995 letter from Joseph C. Vozella, Assistant Area Manager for the Department of Energy to AQB it is stated that other hazardous materials were burned, including "nylon, polypropylene, polyethylene, cellulose acetate, PVC pipe, Lexan, Latex tubing, Mylar, Teflon, Tygon tubing, fiberglass, etc."

b. In LANL's TA-36 Open Burning Permit Application, dated August 1995, LANL stated that "[e]ach burn will consist of 150 to 300 cubic meters of loosely piled wood and 50 pounds of Lexan or Plexiglass." Under the old regulations, LANL was permitted to burn Lexan and Plexiglass at these sites.

c. In a hand-written December 20, 1995 AQB memo about observations of an open burn at TA-36, the following was noted: "Purpose: Observe HE contaminated debris burn which mostly consists of scrap wood such as pallets and pieces of plexiglass and Lexan."

4. Furthermore, in correspondence, including a February 28, 1995 letter from Steve C. Fong, DOE to AQB, the following request was made:

"Provided the information presented in this correspondence satisfactorily addresses your concerns, we again request that condition 5 of the open-burn permit for TA-16, 'No natural or synthetic rubber products or petroleum products shall be burned,' be removed and replaced with 'Only High Explosives (HE) contaminated material shall be burned.'" We believe that the requested change was made, thereby preventing the public from knowing the types of "contaminated material" that was burned and in what quantities.

In Enclosure A "Clarification of the TA-16 Open Burn Permit Application" for the Flashing Pad, the Applicant states, "[r]ubber products (i.e. gaskets, seals, hoses, etc.) as integral part of the flashed material or contaminated with HE is also burned."

5. Due to the changes in the regulations and our need to ensure that all open burning activities at LANL are permitted either under the Air Quality Act or the Hazardous Waste Act, or exemptions thereto, we have made several requests to the Applicant for information about all of the open burning activities at LANL. We have yet to receive a complete listing.

6. Beginning in 2004, LANL has disabled three of its AIRNET radiation monitoring stations at the firing sites. In 2004, LANL justified shutting off two of the stations because the third station, Station No. 77, had the highest readings of depleted uranium. Yet, in 2005, LANL shut off Station No. 77, thereby no longer providing monitoring data from the highest source of depleted uranium.

We remain concerned about the public and environmental health and safety impacts of the open burning of depleted uranium, especially in light of the new report by the Institute for Energy and Environmental Research (IEER) entitled, "Costs and Risk of Management and Disposal of Depleted Uranium from the National Enrichment Facility Proposed to be Built in Lea County New Mexico by LES," dated February 1, 2005. The most important finding in the report applicable to the open burning of depleted uranium is that it is three times more hazardous than transuranic waste. Transuranic waste is nuclear waste bound for disposal at the Waste Isolation Pilot Plant. Please see the AQB's administrative record or [www.ieer.org](http://www.ieer.org) for more information.

### **House Bill 984 – Providing for restrictions on the Adoption and Enforcement of Regulations Relating to Open Burning**

During the 2005 New Mexico Legislative Session, in response to changes in the open burning regulations, Representative Andy Nuñez introduced a bill that would have prevented the EIB from approving any regulation which prohibits open burning, "when burning occurs one-half mile or more from any occupied dwelling, workplace or place where people congregate on property owned by or under possessory control of another person." The bill would have prohibited any enforcement by NMED. House Energy and Natural Resources Committee Substitute for HB 984.

LANL's open burning occurs more than one-half mile from any buildings and on property owned by the Department of Energy (DOE). Therefore, if Representative Nuñez' bill had passed through the Legislature and been signed by the Governor, any permitting of LANL's open burning would have been illegal.

We understand that during the session, the AQB was negotiating with members of industry about the bill. However, we were not invited to participate. In the meantime, in order to protect public health and the environment, members of CCNS and EVEMG worked diligently to prevent the bill from moving forward. The bill eventually died in committee.

Nevertheless, we did not understand that the permitting process would be moving forward despite the legislative attempt to overturn the regulations.

### **Class I Area at Bandelier National Monument**

CCNS has raised the issue of impacts of LANL's emissions on Bandelier National Monument, a Class I Area under the Clean Air Act. The wind patterns across the Pajarito Plateau are complicated. The wind generally blows to the north, northeast. However, as demonstrated during the Cerro Grande fire, the wind can blow towards Santa Fe and across the Bandelier National Monument. We remain concerned about air

pollution impacts from the open burning activities that may reach and impact public lands.

In conclusion, we appreciate that the AQB incorporated some of our comments, including a requirement that only "clean" wood is allowed to be burned. We believe that there is significant public interest in the open burning activities at LANL and specifically about these permits. We request that the EIB grant a public hearing so that those concerns may be addressed. Thank you for your consideration of our request.

Sincerely,

Joni Arends, Executive Director  
Concerned Citizens for Nuclear Safety

Sheri Kotowski  
Embudo Valley Environmental Monitoring Group

Kathy Sanchez and Vickie Downey  
Tewa Women United

cc: New Mexico Environment Department, Air Quality Bureau - HAND DELIVERY