

10. Public Comment is Necessary for the LANL Plans and Reports and for the NAS Final Report.

The NAS committee recognizes that the “LANL reports typically fall in the area of non-peer-reviewed literature.” p. 103. The NAS committee encourages the LANL scientists to increase the practice of publishing articles in peer-reviewed journals and in seeking review of important work that is not amenable to journal publication by a group such as the Espanola Basin Technical Advisory Group.

There is a more fundamental problem with the poor quality of the groundwater protection activities by the LANL scientists, the DOE managers, and the NMED regulators that cannot be recognized and corrected by the journal peer-review process or by an organization such as the Espanola Basin Technical Advisory Group. Instead, there is an immediate need for an independent company to do a detailed study of all aspects of the LANL groundwater protection activities since operations began in 1943.

The need to review all activities is best demonstrated by the fact that the most recent annual LANL Environmental Surveillance Report presents the water quality data from the old LANL test wells as valid for knowledge of the LANL contaminants. In fact, the old LANL test wells have never produced valid water quality data for groundwater contamination by the LANL nuclear weapons research and manufacture of plutonium pits.

This independent company would examine all of the LANL characterization wells for future use as monitoring wells. The company would provide oversight on the activities to install the many monitoring wells that are needed across the LANL site and on the property of the Pueblo de San Ildefonso. The company would participate in the design and performance of the tracer tests, pumping tests, and other field and laboratory investigations that are necessary to gain knowledge of the hydrologic and geochemical properties of the aquifer strata.

The company would participate in the study to identify the LANL characterization wells that warrant an attempt for rehabilitation. This study is needed for all of the wells including the single-screen wells. The study would include well location, placement of screened intervals, length of well screens, and the effect of the new mineralogy produced by the drilling fluids on the chemistry of water samples. Long-term pumping tests with collection of time-series water samples for a suite of analytes are necessary to determine that the screened intervals produce valid water quality data for the LANL contaminants.

The company would conduct a detailed study of all of the water quality data in the LANL database. It is necessary to purge and separate the great amount of unreliable data collected from the LANL characterization wells and the old LANL test wells. This unreliable data would be stored in a separate database.

The company would conduct a detailed study of the water samples collected from the drinking water wells for Los Alamos County and the City of Santa Fe to address the large number of radionuclide contaminants reported in the data tables in the 1999 and 2006 LANL SWEIS reports compared to the claim by the LANL scientists that the contamination is not present in the drinking water wells. There is an urgent need for the careful study of all of the historical data because of the recent detection of plutonium-238 in a water sample collected from Well No. 1 in the Santa Fe Buckman well field. Well No. 1 is closest to the Rio Grande and the LANL site of all of the 13 Buckman wells. There is an urgent need for the independent company to design and conduct a detailed sampling program of the drinking water wells for Los Alamos County and the City of Santa Fe.

The history of the LANL *Well Screen Analysis Reports* (WSAR) is a prime example of the need for oversight by an independent company that is trusted by the stakeholders. Both the EPA and the NAS committee described the failure of the WSAR reports to be credible for the assessment of the ability of the LANL characterization wells to produce valid water quality data. Regardless of the findings by both the EPA and the NAS committee, the NMED recently approved the second revision of the WSAR. The WSAR-2 does not correct the problems identified by EPA or the NAS committee.

An additional issue is the need for a formal public comment on the draft prepublication of the NAS report about *Plans and Practices for Groundwater Protection at the Los Alamos National Laboratory*, or any revision thereto. RCRA requires public input into the decision-making processes, including site characterization. RCRA provides for public opportunity for comment and response by state RCRA authorities. 63 FR 56720. The rule encourages “early, open and continuous involvement of the public when alternate authorities are used at a facility in lieu of post-closure permits, similar to the public involvement provided by the permitting process.” [Emphasis Added.] *Id.* Inevitably, the NAS report will be used in decision making under the RCRA NMED/LANL Consent Order.

Under RCRA, the NMED/LANL Consent Order is both an “alternate authority” and an “enforceable document.” The LANL Consent Order preserves the procedural rights of the public to participate and provide comments about the documents that have an influence on actions taken under the Consent Order. From the Order:

III.W.5 Preservation of Procedural Rights

[T]his Consent Order hereby incorporates all rights, procedures and other protections afforded the Respondents and the public pursuant to the regulations at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42) and 20.4.1.901 NMAC, including, but not limited to, opportunities for public participation, including public notice and comment [emphasis added], administrative hearings, and

judicial appeals concerning, for example, remedy selection decisions of the Department. p. 31. .

[T]his Consent Order is an enforceable document. If the Respondents violate any requirements of this Consent Order, the State's sole remedy for such noncompliance shall be to enforce those requirements pursuant to applicable law, subject, however, to the provisions of Section III.G.7, which apply where the State has sought stipulated penalties pursuant to this Consent Order. p. 28.

[T]he Department has determined that setting forth corrective action requirements in this Consent Order in lieu of the Permit fully complies with the requirements of section 3004 of RCRA, 42 U.S.C. § 6924, and section 74-4-4.2(B) of the HWA. p. 29.

In fact, under RCRA, both EPA and the NMED/LANL Consent Order require public notice and comment about both the proposed remedy and the assumptions upon which it is based, including site characterization. "EPA proposed to require public involvement during the remedy selection process. EPA is retaining this requirement in the final rule. EPA has, however, made the requirement more specific by requiring public notice and comment on both the proposed remedy and the assumptions upon which it is based, including site characterization and land use." [Emphasis Added.] 63 FR 56720.

In summary, the NAS prepublication copy of the *Plans and Practices for Groundwater Protection at the Los Alamos National Laboratory*, or any revision thereto, is an important document for site characterization. The Federal Rule and the NMED/LANL Consent Order require an opportunity for public comment before the NAS Final Report is issued. 63 FR 56720. Please widely inform the public about next steps to provide comment to a revision of the prepublication copy or any other version of the report.