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**Environment and Waste Programs**

EWP-25-009  
March 24, 2025

Sasha Lucas-Gerhard  
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**Subject: Supplemental Comments from Triad National Security, LLC, Managing and Operating Contractor of the Los Alamos National Laboratory, on Proposed Rule: Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives, 89 Fed. Reg. 19952 (March 20, 2024), Docket ID No. EPA-HQ-OLEM-2021-0397; RIN 2050-AH24**

Dear Ms. Lucas-Gerhard and Mr. Diss:

Triad National Security, LLC (Triad), the managing and operating contractor of the Los Alamos National Laboratory (Laboratory), and an expert in explosives and their safe and environmentally protective treatment and disposal, submits the enclosed *supplemental*<sup>1</sup> comments on the Environmental Protection Agency's (EPA) Proposed Rule: Revisions to Standards for Open Burning (OB)/Open Detonation (OD) of Waste Explosives. Triad recognizes that the comment period on the proposed rule has closed. However, the Unified Agenda at present does not contemplate any final rule until October 2025, and the supplemental comments are based on legal authority and the clean closure of a thermal treatment unit arising *after* the close of the comment period. More particularly, the supplemental comments:

- (1) Raise additional questions regarding the legal authority for EPA's proposed rule; and
- (2) Demonstrate that a thermal treatment unit can be clean closed in a manner protective of human health and the environment.

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<sup>1</sup> Triad submitted within the comment period: (1) Comments from Triad National Security, LLC, Managing and Operating Contractor of the Los Alamos National Laboratory, on EPA Proposed Rule: Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives (June 19, 2024) (Triad Comments); and (2) Comment *References* from Triad National Security, LLC, Managing and Operating Contractor of the Los Alamos National Laboratory, on EPA Proposed Rule: Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives (June 19, 2024) (Triad Comment References).

The supplemental comments will aid EPA in evaluating the OB/OD regulatory standards, and Triad respectfully requests that the supplemental comments be considered and addressed.

Sincerely,

JEANNETTE  
HYATT (Affiliate)

Digitally signed by JEANNETTE  
HYATT (Affiliate)  
Date: 2025.03.24 18:47:00  
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Jeannette (Jnette) Hyatt  
EWP Senior Director

Attachment(s):

1. *Supplemental* Comments from Triad National Security, LLC, Managing and Operating Contractor of the Los Alamos National Laboratory, on EPA Proposed Rule: Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives (LA-UR-25-22797)
2. Approval Los Alamos National Laboratory Closure Certification Report for Open Burning Treatment Unit Technical Area 16-399 Burn Tray, Revision 1 (Nov. 21, 2014)

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***Supplemental* Comments from Triad National Security, LLC, Managing  
and Operating Contractor of the Los Alamos National Laboratory, on  
EPA Proposed Rule: Revisions to Standards for the Open  
Burning/Open Detonation of Waste Explosives**

**ATTACHMENT 1**

**Submitted March 24, 2025.**

**Docket ID No. EPA-HQ-OLEM-2021-0397; RIN 2050-AH24**

**89 Fed. Reg. 19952 (March 20, 2024)  
LA-UR-25-22797**

## INTRODUCTION

Triad National Security, LLC (Triad) manages and operates the Los Alamos National Laboratory on behalf of the United States Department of Energy (DOE), National Nuclear Security Administration (NNSA). The Los Alamos National Laboratory (Laboratory or LANL) is a Federally Funded Research and Development Center (FFRDC) and National Security Laboratory that executes work across numerous missions, including national security, science, and energy.

The Los Alamos National Laboratory has unique expertise in the research, development, testing, evaluation, and post-manufacture of explosives (RDT&E), and in the safe and environmentally protective thermal treatment of the specialized explosives waste generated in the Laboratory's RDT&E explosives work.<sup>2</sup> The Laboratory safely and compliantly treats its specialized explosives waste in a manner protective of human health and the environment. The Laboratory's thermal treatment operations are highly controlled, efficient, completely combust or consume the explosives waste, produce no secondary hazardous waste stream, and effectively produce no byproducts, residuals, or emissions.<sup>3</sup> The Laboratory's thermal treatment operations are more protective of human health and the environment than currently available alternative treatment technologies.<sup>4</sup> Site studies confirm no environmental impact from the Laboratory's thermal treatment operations.<sup>5</sup> The Laboratory has also successfully clean closed a thermal treatment unit, rendering it safe under residential, industrial, and construction worker land use scenarios.<sup>6</sup>

Triad submitted within the comment period comprehensive comments<sup>7</sup> and supporting evidence<sup>8</sup> demonstrating, among other things, that:

- (1) The current regulatory regime allows for the OB/OD of waste explosives that have the potential to detonate where the treatment does not threaten human health or the environment<sup>9</sup>;
- (2) The proposed rule fundamentally alters the regulatory standards governing the OB/OD of waste explosives and exceeds the scope of agency authority<sup>10</sup>;
- (3) The proposed rule's fundamental alteration of the regulatory standards governing the OB/OD of waste explosives would jeopardize national security and defense missions<sup>11</sup>;

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<sup>2</sup> See e.g. Triad Comments pp. 1, 19-21.

<sup>3</sup> See e.g. Triad Comments pp. 1, 5-8.

<sup>4</sup> See e.g. Triad Comments pp. 27, 36, 47-49, 52-54.

<sup>5</sup> See e.g. Triad Comments pp. 1, 5, 33; Triad Comment References.

<sup>6</sup> New Mexico Environment Department, Approval Los Alamos National Laboratory Closure Certification Report for Open Burning Treatment Unit Technical Area 16-399 Burn Tray, Revision 1 (ESHID-603861) (Nov. 21, 2014).

<sup>7</sup> See Comments from Triad National Security, LLC, Managing and Operating Contractor of the Los Alamos National Laboratory, on EPA Proposed Rule: Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives (June 19, 2024) (Triad Comments).

<sup>8</sup> See Comment *References* from Triad National Security, LLC, Managing and Operating Contractor of the Los Alamos National Laboratory, on EPA Proposed Rule: Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives (June 19, 2024) (Triad Comment References).

<sup>9</sup> See e.g. Triad Comments § II.

<sup>10</sup> See e.g. Triad Comments §§ III, IV.

<sup>11</sup> See e.g. Triad Comments § VII.

- (4) The proposed rule risks forcing the adoption of alternative treatment technologies that are *less* safe and *less* protective of human health and the environment than certain thermal treatment operations<sup>12</sup>; and
- (5) Reasonable revisions to the OB/OD regulatory standards exist that facilitate *both* more healthful and environmentally protective outcomes *and* national security and defense missions.<sup>13</sup>

The Laboratory's supplemental comments: (1) raise additional questions regarding the legal authority for the proposed rule; and (2) demonstrate that a thermal treatment unit can be clean closed in a manner that does not pose an unacceptable risk to human health or the environment.

**I. EPA must evaluate its authority for the proposed rule under *Loper Bright*, recognizing that there must be clear statutory authority for its actions.**

In its comments, Triad demonstrated that the proposed rule: (1) implemented a standard having no basis in law; and (2) could effect an outcome contrary to the Resource, Conservation, and Recovery Act's (RCRA) essential requirement that actions be protective of human health and the environment.<sup>14</sup> Provisions of the proposed rule, moreover, deviate significantly from the authority contemplated in 42 U.S.C. § 6924(n), EPA's asserted statutory basis for the proposed rule.<sup>15</sup> 42 U.S.C. § 6924(n) provides for the promulgation of "regulations for the *monitoring and control of air emissions* at hazardous waste treatment, storage, and disposal facilities...as may be *necessary to protect human health and the environment*." Nowhere does 42 U.S.C. § 6924(n) contemplate, for instance: (1) the imposition of alternative treatment technologies that are simply safe and available; (2) the conduct of an alternative treatment technology evaluation; (3) monitoring requirements for soil, sediment, or groundwater; or (4) supplanting the authority and expertise of safety experts and safety regulators in making safety determinations concerning explosives. The proposed rule exceeds EPA's statutory authority and is contrary to RCRA's essential requirement that actions be protective of human health and the environment.

After the closure of the proposed rule's comment period, the United States Supreme Court issued its decision in *Loper Bright Enterprises v. Raimondo*.<sup>16</sup> Given the absence of statutory authority supporting the proposed rule and its provisions, EPA must explain how its proposed rule and its provisions are the best statutory reading and within the boundaries of its delegated authority, and not simply some permissible interpretation or discretionary means of effecting an end somehow in an ambiguity of 42 U.S.C. § 6924(n).

- ***EPA must demonstrate that it has clear statutory authority for its proposed rule and its provisions.***
- ***EPA must evaluate the proposed rule and its provisions considering *Loper Bright* and the need for EPA's authority to be based on the best statutory reading.***

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<sup>12</sup> See e.g. Triad Comments § VIII.

<sup>13</sup> See e.g. Triad Comments § VIII.

<sup>14</sup> See e.g. Triad Comments § IV.

<sup>15</sup> See e.g. Triad Comments § IV.

<sup>16</sup> *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S.Ct. 2244, 219 L.Ed.2d. 832 (June 28, 2024).

**II. Thermal treatment units can be clean closed in a manner protective of human health and the environment.**

EPA's proposed rule makes broad and unsupported statements regarding the environmental impact of OB/OD.<sup>17</sup> Triad, in its comments, demonstrated that the Los Alamos National Laboratory's thermal treatment processes do not pose a threat to human health and the environment, and, in fact, are more protective of human health and the environment than alternative treatment technologies.<sup>18</sup>

After the closure of the proposed rule's comment period, the Laboratory successfully clean closed a thermal treatment unit. The Laboratory clean closed Solid Waste Management Unit (SWMU) 16-0010(d), a former thermal treatment unit that treated explosives waste from the 1950s through 2012. Addressing the Laboratory's clean closure of the thermal treatment unit, the New Mexico Environment Department (NMED) concluded that "the site does not pose an unacceptable risk to the environment or to human health under the residential, industrial, and construction worker land use scenarios," and "NMED...finds that the site meets the clean closure standards outlined in the closure plan."<sup>19</sup>

- ***Thermal treatment units can be closed in a manner protective of human health and the environment.***

**CONCLUSION**

Thermal treatment can be conducted, and thermal treatment units closed, in a manner protective of human health and the environment. The proposed rule, however, fundamentally alters the regulatory standards governing, and permitting, the open burning or open detonation of waste explosives, impairing or foreclosing the Laboratory's ability to thermally treat its specialized explosives waste and jeopardizing national security and defense missions. The proposed rule may also force the adoption of alternative treatment technologies less protective of human health and the environment. It is outside the scope of EPA's authority to effect such results.

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<sup>17</sup> See e.g. Triad Comments § V(C).

<sup>18</sup> See e.g. Triad Comments §§ I(C)-(D); IX(A)

<sup>19</sup> Approval Los Alamos National Laboratory Closure Certification Report for Open Burning Treatment Unit Technical Area 16-399 Burn Tray, Revision 1 (ESHID-603861) (Nov. 21, 2014).

## **REFERENCES**

New Mexico Environment Department, Approval Los Alamos National Laboratory Closure Certification Report for Open Burning Treatment Unit Technical Area 16-399 Burn Tray, Revision 1 (ESHID-603861) (Nov. 21, 2014).

Copy available at: [<https://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ESHID-603848>]

**Approval Los Alamos National Laboratory Closure Certification  
Report for Open Burning Treatment Unit Technical Area 16-399 Burn  
Tray, Revision 1 (Nov. 21, 2014)**

**ATTACHMENT 2**





MICHELLE LUJAN GRISHAM  
GOVERNOR

JAMES C. KENNEY  
CABINET SECRETARY

**MAIL CERTIFIED**

November 21, 2024

Robert Gallegos, Program Manager  
Department of Energy-NNSA  
Los Alamos Field Office  
3747 West Jemez Rd, MS A316  
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Steven Story, Division Leader  
Environmental Protection and Compliance  
Triad National Security, L.L.C.  
P.O. Box 1663, MS K491  
Los Alamos, NM 87545

**RE: APPROVAL  
LOS ALAMOS NATIONAL LABORATORY CLOSURE CERTIFICATION REPORT FOR OPEN  
BURNING TREATMENT UNIT TECHNICAL AREA 16-399 BURN TRAY, REVISION 1  
LOS ALAMOS NATIONAL LABORATORY  
EPA ID#NM0890010515  
HWB-LANL-24-043**

Dear Robert Gallegos and Steven Story:

On August 23, 2024, the New Mexico Environment Department (NMED) received the United States Department of Energy (DOE), Triad National Security (Triad), LLC, and Newport News Nuclear BWXT-Los Alamos, LLC (N3B) (collectively referred to as the Permittees) *Los Alamos National Laboratory Closure Certification Report for Open Burning Treatment Unit Technical Area 16-399 Burn Tray, Revision 1* (Closure Report) referenced by EPC-DO-24-223/LA-UR-24-28822.

Regulatory History

The TA-16-399 Burn Tray, Solid Waste Management Unit (SWMU) 16-010(d), was initially sampled in 2010-2013 as part of early closure activities. Additional sampling was conducted from February 2019, through September 2019, in accordance with the original Closure Plan issued on January 17, 2019. On February 20, 2020, the Permittees submitted the *Los Alamos National Laboratory Closure Certification Report for Open Burning Treatment Unit Technical Area 16-399 Burn Tray*. On November 18, 2020, NMED issued a *Disapproval Closure Certification Report for Technical Area 16-399 Open Burn Unit Los Alamos National Laboratory*, which required revisions to the risk calculations to include earlier sampling results for polychlorinated biphenyls (PCBs).

The risk assessments were revised to incorporate NMED disapproval comments in the DOE *Response to the Disapproval Closure Certification Report for Technical Area 16-399 Open Burn Unit*. NMED issued a second disapproval letter that discussed the need to decrease the risk to meet the required screening levels for residential use scenario for a clean closure. It was determined that further soil removal and sampling was needed to achieve clean closure and on

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www.env.nm.gov

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July 21, 2021, the Permittees submitted the *Response to Second Notice of Disapproval Closure Certification Report and Proposed Actions for Technical Area 16-399 Open Burn Unit, Los Alamos National Laboratory*.

On June 7, 2022, the Permittees requested a Class 2 permit modification to amend the Closure Plan in accordance with 40 Code of Federal Regulation (CFR) § 270.42 Appendix I, Item D.1.e. A public meeting was held on July 12, 2022, and following a 60-day public comment period, NMED issued an approval with modification on September 6, 2022. NMED approved and modified the amended Closure Plan to address public concerns and comments regarding perfluoroalkyl compounds (PFAS). Between March 2023 and February 2024, the Permittees requested and received three (3) extensions of time to complete clean closure of this unit.

### **Background Information**

**SWMU 16-010(d)** was a former open burn (OB) tray that was used for the thermal treatment of high explosive (HE) wastes. The unit was an interim status unit, following the provisions in the 40 CFR Part 265, Subpart P. The unit was used for the thermal treatment of bulk explosives waste stream to destroy the characteristic of reactivity from the 1950s through 2012. The TA-16-399 Burn Tray was comprised of a 4-foot wide by 16-foot long steel tray supported by 1.5-foot high legs and was lined with firebricks. The maximum treatment capacity of the TA-16-399 Burn Tray was 1,000 pounds (lbs.) of waste per burn, however, records from 1980-2012 indicate that the maximum volume of HE-contaminated waste treated per treatment event was 350 lbs. Due to the lack of treatment records from 1951-1980, the total maximum volume of waste treated is not known but the Permittees estimate that the unit thermally treated 255,685 lbs. of HE-contaminated waste.

The Permittees began closure activities in 2019 by removing the burn tray, fire brick, and concrete pad from the TA-16-399 Burn Tray. High explosives spot tests were used to determine if the material was not explosives-contaminated before releasing the material for disposition. Prior to shipment for offsite disposal, the materials required treatment for explosives contamination at the nearby TA-16-388 Flash Pad. From 2019 to 2023, the Permittees excavated and removed approximately 17,500 cubic feet of contaminated soil.

Based on the information provided for SWMU 16-010(d), the site does not pose an unacceptable risk to the environment or to human health under the residential, industrial, and construction worker land use scenarios. The proposed future land use is industrial, and the site is located near interim status open burning unit, TA-16-388, which remains in active operation. The site is located within the access restricted, fenced portion of the laboratory due to active facility operations at TA-16.

**NMED hereby approves the Closure Certification Report for Open Burning Treatment Unit Technical Area 16-399 Burn Tray, also known as SWMU 16-010(d), and finds that the site meets the clean closure standards outlined in the closure plan.**

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This closure certification does not take into consideration the potential for future contamination of the site resulting from operations at nearby interim status open burning unit, TA-16-388. NMED may require additional investigations and/or corrective actions if new information becomes available that indicates SWMU 16-010(d) may pose an unacceptable risk to human health or the environment.

If you have any questions regarding this letter, please contact Siona Briley of my staff at (505) 690-5160 or via email at [Siona.Briley@env.nm.gov](mailto:Siona.Briley@env.nm.gov) .

Sincerely,

JohnDavid Nance  Digitally signed by JohnDavid Nance  
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JohnDavid Nance  
Chief, Hazardous Waste Bureau  
New Mexico Environment Department

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LANL-24-043

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Good afternoon,  
Please see attachment.

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