



**Department of Energy**  
Albuquerque Operations Office  
Los Alamos Area Office  
Los Alamos, New Mexico 87544



**MAY 29 1998**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**Robert S. (Stu) Dinwiddie, Ph.D., Manager**

RCRA Permits Management Program  
Hazardous and Radioactive Materials Bureau  
2044 Galisteo St., Bldg. A  
P. O. Box 26110  
Santa Fe, NM 87505

Dear Dr. Dinwiddie:

Subject: Response to Request for Supplemental Information - Los Alamos National Laboratory (LANL) Resource Conservation and Recovery Act (RCRA) General Part B Permit Application, EPA ID No. NM890010515-1

The enclosed information is the response by the Department of Energy (DOE) and the University of California (UC) to the Request for Supplemental Information (RSI) issued by the Hazardous and Radioactive Materials Bureau (HRMB) of the New Mexico Environment Department (NMED) on April 20, 1998, and received by DOE on April 30, 1998. The RSI was developed by NMED following initial review of the "General Part B Permit Application Information for Los Alamos National Laboratory," submitted in August 1996.

The RSI contains four comments in Attachment A. This response consists of answers to each of the italicized HRMB comments. These answers were previously discussed with members of the RCRA Permits Management Program (RPMP), HRMB, in the monthly LANL permit meeting of May 13, 1998.

Comments

*1. Department of Energy/Los Alamos National Laboratory (DOE/LANL) shall provide a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with 20 NMAC 4.1, Subpart X, §270.14(b)(15), §264.142, the requirements of §§ 264.115, and other applicable closure requirements.*

The New Mexico Administrative Code, Title 20, Chapter 4, Part 1, (20 NMAC 4.1), Subpart V (3-1-97), adopts the Code of Federal Regulations, Title 40 (40 CFR), Part 264 with the exception of §§ 264.149 and 150. 40 CFR, §264.140(c) stipulates that "States and the Federal government are exempt from the requirements of this subpart." The



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intent of this exemption was discussed by the U.S. Environmental Protection Agency in the preamble of the proposed regulation contained in the Federal Register (FR 45, 33198, May 19, 1980):

“...The Agency agrees that State and Federally-owned facilities will always have adequate resources to conduct closure and post-closure care activities properly. Therefore, an exemption for these facilities has been incorporated in a new ‘Applicability’ section...”

In addition, 40 CFR §270.14(a) states that:

“Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§270.14 through 270.29 applicable to the facility. The Part B information requirements presented in §§ 270.14 through 270.29 reflect the standards promulgated in 40 CFR Part 264. These information requirements are necessary in order for EPA to determine compliance with the Part 264 standards...”

Based on the text of the regulations and the published intent behind them, we believe that the need for and conditions of the Part 264 financial requirements are not applicable to state or federally owned facilities. Because of the 40 CFR §264.140(c) exemption, there is no necessity to determine compliance with the financial assurance standards contained in the rest of Part 264. As this is the stated purpose for the 40 CFR 270.14 informational requirements, the submittal of a closure cost estimate for the LANL Part B permit application is not necessary under these regulations.

The financial assurance requirements of 40 CFR §264.115 are referenced as under 40 CFR §264.143(i). As the applicability of that requirement is exempted by 40 CFR 264.140(c), the financial assurance condition contained in §264.115 should not apply.

*2. DOE/LANL shall provide Post Closure Cost Estimate in accordance with 20 NMAC 4.1, Subpart X, §.270.14(b)(16) as specified under the requirements of §264.144. Briefly, the owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile is required under §§ 264.228 and 264.258 to prepare a contingent closure and post-closure plan, and must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility.*

We believe that the financial assurance exemption discussion presented above for Comment 1 applies in a similar fashion for the information requirements of 40 CFR 270.14(b)(16). The post-closure cost estimate references at 40 CFR §§264.228 and 264.258 do not appear to be a direct requirement for a cost estimate but rather, stipulate conditions to be included in estimates calculated under 40 CFR §§264.142 and 264.144. As 40 CFR §264.140(c) exempts those requirements, the added conditions are not necessary.

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If the intent of the comment was to make a distinction of financial assurance requirements between an owner and an operator, please see the letter submittal from George E. Dials, Manager, DOE's Carlsbad Area Office, and Joseph L. Epstein, Westinghouse Waste Isolation Division, to Dr. Ed Kelley, NMED, on October 9, 1997.

3. Pursuant to 20 NMAC 4.1, Subpart X, §§ 270.60 through 270.66, DOE/LANL should include a paragraph stating that on a TA- or unit-specific basis, all other RCRA permits will be listed including but not limited to the following:

*Permit by Rule*

*Emergency*

*Hazardous Waste Incinerators*

*Land Treatment Demonstration*

*Interim Permit for UIC Wells*

*Research, Development and Demonstration*

*Boilers and Industrial Furnaces*

We have not identified a discussion requiring such notices for Part B permit applications in the regulations regarding special forms of RCRA permits contained at 20 NMAC 4.1, Subpart X, §§270.60 through 270.66, the general requirements for contents of Part B permit applications at 20 NMAC 4.1, Subpart X §270.14, or in the "Review Checklist for Part B General Requirement" distributed by the RPMP on March 3, 1998. However, we agree that this requirement can apply to the contents of Part A permit applications pursuant to 20 NMAC 4.1, Subpart X, §270.13(k)(9). The environmental permit table contained at Item X, "Other Environmental Permits," of the "Los Alamos National Laboratory, General Part A Permit Application," Revision 0.0, submitted to the HRMB in April 1998, includes this information as relevant to LANL at this time.

Because this requirement is covered for the general facility as a Part A permit application content requirement and because there is no clearly relevant section of the Part B permit application in which to place this information, we believe such a paragraph may not be appropriate for inclusion into the general Part B permit application being reviewed at present. However, future technical area specific permit applications submitted to the RPMP as part of the permit renewal process will list this information where relevant for the area.

4. If DOE/LANL chooses to take a proactive approach to hazardous waste and mixed waste reduction they should provide a paragraph stating that waste minimization and pollution prevention plans will be included in the TA- or unit-specific part B permit applications.

Waste minimization programs at LANL are authorized and implemented pursuant to DOE Orders and the present Module VIII of the LANL hazardous waste facility permit on a facility wide basis. All waste management organizations are therefore subject to the same requirements and policy. As was discussed in the meeting on May 13, 1998, we believe that waste minimization program requirement information can be included where appropriate and reviewed during the renewal process for Module VIII. Development and

Dr. Robert S. Dinwiddie

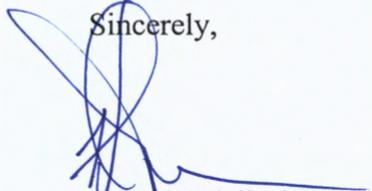
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submittal of the permit renewal application for that portion of the permit is currently anticipated in 1999 to meet the Module VIII expiration date of December 22, 1999.

I hope this response has addressed your concerns. If you should have any further questions or comments on these issues, please feel free to contact me at (505) 665-5042.

Sincerely,



H. L. "Jody" Plum  
Office of Environment

LAAME:6JP-069

cc:

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