



Solid Waste Regulatory Compliance
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Date: June 20, 2003
Refer To: SWRC:03-030

Mr. Carl Will
RCRA Permits Management Program
Hazardous & Radioactive Materials Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Dear Mr. Will,

Subject: Professional Engineer Certifications

The purpose of this letter is to respond to the new permit application requirement you proposed on June 16, 2003 during our phone conversation. I wanted to provide a more focused and coherent argument for not implementing the proposal than I was able to provide at that time. Specifically, you had suggested that LANL provide professional engineer certifications or signed seals for all the design drawings included in the Resource Conservation and Recovery Act Part B permit applications currently being revised for submittal to the New Mexico Environment Department. There are several reasons that suggest this requirement is unnecessary. These involve the policy interpretation of the relevant regulation, the nature of the resources needed to implement the proposal (with consequences for the renewal of the Los Alamos National Laboratory hazardous waste facility permit), and the perceived permitting need for this requirement.

The regulation cited as the basis for this requirement is 20.4.1.900 NMAC, incorporating 40 CFR §270.14(a), which states that "...Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer..." This broad statement is subject to different interpretations and we do not believe that the requirement is intended to cover all drawings submitted with the permit application. The sentence is included in the general introduction to the permit application content requirements; subsequent sections list specific criteria for permit application contents or information requirements for specific types of hazardous waste management units. In the subsequent sections where specific requirements for drawings and engineering studies are identified, the regulation generally supplies the criteria for making the engineering determination (Please see 20.4.1.900 NMAC, incorporating 40 CFR §270.14(b)(11)(iv)(A) and (B), §270.16(a), §270.17(b), §270.17(d), §270.18(b) and (c), §270.21(b)). Our interpretation of the sentence in the introduction is that it provides notification of an information requirement for permit applications that is subsequently detailed in the relevant specific regulations; it does not state a general requirement. If there is a general requirement in the sentence, it appears to focus on the need for a professional engineer to certify rather than on when a certification is necessary.



We reviewed U.S. Environmental Protection Agency (EPA) guidance for the regulations to determine federal policy regarding this requirement. Two relevant Office of Solid Waste documents were found. On May 1, 1983, EPA responded to a query for guidance on what technical data in a permit application must be certified. The response (Faxback 12111) indicated that the regulation does not require a professional engineer to certify the entire permit application. The response went on to say that certifications could be required to demonstrate to the permit writer that certain technical data is true and accurate and that particular facility structures and equipment will perform in compliance with the regulations. The response also indicated that the permit applicant should contact the permit writer to determine whether specific technical information requires certification. On February 1, 1983, EPA further indicated that no technical data must be certified for container storage and that only units such as tanks required certification (Faxback 12094). Both responses support the interpretation that the federal requirement for professional engineer certification is only necessary in certain circumstances (i.e., as called out in the specific information requirement regulations) where a technical need exists to demonstrate compliance with explicit requirements.

The permit applications were originally prepared in response to HWB guidance obtained in March, 1998. At this point in the permit application review process we are incorporating the results of the technical and editorial changes resulting from the past information requests and LANL responses rather than adding to the present status of the documents. Our review of the effort and resources necessary to provide professional engineer certifications for all the design drawings contained in the permit applications indicates that this procedure will substantially lengthen the timeframe before the applications can be submitted to your office. Present LANL policy for engineer certifications is derived from the New Mexico Engineering and Surveying Practice Act and the New Mexico Architectural Act. These include requirements that such documents "...shall bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work issued." Responsible charge is routinely defined as direct work and decision responsibility for the project including final review. In order to obtain engineer seals, it is likely that extensive review of the as-built waste management facilities will be necessary. Such a project would involve procuring an outside contractor, assessing existing structures, creating new drawings, and reviewing for certification.

Finally, it is unclear whether there is any value to this process where the regulations do not specify the need for detailed assessments of the unit's operating capabilities. Most of the hazardous waste management units included in the Technical Area 16, 50, and 54 portions of the permit applications being reviewed for renewal have been in existence and operating since either the 1989 permit or under interim status since 1991. They have been repeatedly inspected for adequate compliance with the waste management regulations. Professional engineer certifications for new units have been included in permit modifications or applications as specified by the regulations.

We have provided certifications where there is a technical need to demonstrate the ability of the hazardous waste management units to perform the waste storage or treatment function safely. This discussion is limited to whether the need exists to apply the requirement across the board, as it would require extensive resources and time and I do not fully understand the underlying rationale for the proposal. To that end, we would like to suggest meeting to discuss the technical basis for HWB's position with respect to specific drawings in the permit renewal application. LANL could provide the appropriate facility management personnel familiar with these units at that time. Please do not hesitate to contact me to arrange this option or for further questions regarding this issue at (505) 667-1579.

Mr. Carl Will
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June 20, 2002

Sincerely,



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RRES-SWRC

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