



SOUTHWEST RESEARCH AND INFORMATION CENTER
P.O. Box 4524 Albuquerque, NM 87196 505-262-1862 FAX: 505-262-1864 www.sric.org



October 23, 2007

John Kieling
NMED-HWB
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

RE: Class 3 Permit Modification for the Transuranic Waste Facility at Los Alamos National Laboratory (LANL)

Dear John,

Southwest Research and Information Center (SRIC) requests that NMED deny the requested permit modification, because it is substantially incomplete, the activities proposed do not protect human health and the environment, and many provisions of the request are not consistent with the Hazardous Waste Act, federal and state regulations, and the Waste Isolation Pilot Plant (WIPP) permit issued by NMED.

Regulations under the New Mexico Hazardous Waste Act (20 NMAC 4.1.900, incorporating 40 CFR 270.42(c)(6)) provide that NMED may deny Class 3 modifications. SRIC requests that NMED deny the requested modification.

Alternatively, NMED should issue a Notice of Deficiency (NOD) and include the Transuranic Waste Facility (TWF) in the draft Hazardous Waste (HW) Permit for LANL.

If NMED does not deny the permit modification request, or include the TWF in the draft LANL HW permit, SRIC requests a public hearing on the requested modification.. SRIC also requests an extension of the public comment on the TWF modification request so that its relationship to the draft LANL HW permit can be more fully examined by the public and NMED.

The modification request does not protect human health and the environment and must be denied.

The New Mexico Hazardous Waste Act (HWA) requires that all permits, including the LANL permit, must "protect public health and the environment." Section 74-4-4.2.C. NMSA. 20 NMAC 4.1.500 (incorporating 40 CFR 264) requires that the permit for LANL, as a treatment, storage, and disposal facility, must protect human health and the environment. Despite those legal and regulatory requirements, the modification request does not demonstrate that the TWF would protect human health and the environment.

A few of the many problems with the modification request, include:

1. The Facility is not solely a Transuranic Waste Facility.

According to the modification request and the NMED public notice, the facility is mis-named as it is not exclusively for transuranic (TRU) waste, as the name indicates. The facility will be used for non-TRU wastes, including “other types of mixed or non-mixed hazardous waste.” at 2-1, F-3. Thus, the facility could treat and store hazardous waste, and mixed low-level waste. At a minimum, the facility should be called a “Waste Treatment and Storage Facility.”

2. The Facility is not just for LANL waste, but could receive waste from other sites.

The modification request clearly would allow waste from other facilities. at B-35. SRIC strongly objects to LANL accepting TRU or other wastes from other sites, so long as it has large volumes of wastes from its own activities that pose extreme risk to public health and the environment. SRIC does not support a permit that would allow wastes from other sites to come to the facility.

3. The Facility could handle extremely large amounts of waste for several decades and become a de facto permanent TRU waste facility.

The modification request states: “TRU waste streams will be shipped to and disposed of at the Waste Isolation Pilot Plant (WIPP).” at 1-1. The request does not discuss any other TRU waste disposal facility.

However, the modification request also states that the facility could operate until “the year 2045.” at F-4. The only disposal site for TRU waste is WIPP, which, pursuant to the NMED HW permit, ceases operations by September of 2030. WIPP permit Table I-1. Thus, the facility would operate for 15 years after WIPP closes, which means that the TRU waste would likely remain at the facility in perpetuity. The modification request describes no disposal facility for the TRU waste other than WIPP, and the Department of Energy (DOE) has made no plans for any other TRU repository. SRIC objects to NMED issuing any permit for LANL TRU wastes that would be generated or stored at any time after WIPP ceases to accept TRU waste, unless there is another permitted, operating disposal facility for such waste.

In addition, the modification request would allow waste “not currently destined for disposition at WIPP.” at B-35. SRIC objects to NMED permitting any TRU waste at LANL that does not have a clear disposition path to a permitted facility, since such a permit would de facto allow the waste to stay at LANL in perpetuity.

4. The facility would handle unknown, but very large amounts of waste.

The permit modification is either very poorly written or requests approval for large amounts of waste beyond the facility’s capacity. The permit modification states:

“The estimated volumes for the maximum inventory of wastes managed *at any one time* and the total wastes inventory over the estimated lifespan for the individual storage unit associated with the TRUWF are proposed to be 3,176,250.” at F-3 to F-4, *emphasis added.*

There is no showing that the facility could safely handle more than 3 million gallons of waste at any one time, but that is the request. The modification request also states that the facility “will be capable of storing 105,875 gallons of waste.” at G-2. Thus, the request would allow the facility at any one time to have 30 times the amount of waste that it is capable of storing. Clearly, such a situation is not protective of public health and the environment and is contrary to the HWA and state and federal regulations.

5. The facility would continue to store waste for decades after it ceases operations.

As noted in #3 above, the modification request states that the facility would operate until 2045. The request also states that the facility might not be closed until 2100. at F-4. Thus, the facility would apparently store wastes for more than five decades after it ceases operations. There is no justification for such a practice in the request, and it would not be protective of public health and the environment.

6. The facility would handle remote-handled (RH) waste, which is not appropriate.

Table 2-2 and other parts of the modification request includes RH waste. However, there is more RH waste in existence than WIPP’s capacity, so any new RH waste that LANL generates does not have a disposal site. Unless LANL makes a showing that there would be disposal capacity at WIPP, SRIC objects to NMED permitting any new generation of RH waste at LANL

Further, the modification request does not describe the extensive hot cell facilities that would be necessary to treat RH waste. Thus, the request does not provide an adequate technical basis for allowing RH waste that would be protective of public health and the environment.

7. The facility should be included in the draft LANL HW permit.

The draft LANL HW permit, noticed on August 27, 2007, states:

“This Permit authorizes DOE and LANS (the Permittees) to manage, store, and treat hazardous waste at LANL, and establishes the general and specific standards for these activities, pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 to 74-4-14, and the New Mexico Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC. This Permit also establishes standards for closure and post-closure care of permitted units at LANL pursuant to the HWA and HWMR.” Module 1.2.

The waste treatment and storage facility is clearly described as an essential facility for LANL’s waste, and therefore, must be part of the LANL permit. At the time that the existing LANL permit has been administratively extended and a new draft HW permit is available for public comment, it is totally inappropriate to consider a treatment and storage facility outside of the public process for the draft HW permit. SRIC strongly objects to the process that requires that the public comment simultaneously on a major new facility through a permit modification process at the same time that it has to review and comment on a new permit.

Additional confusion comes from the modification request stating that the wastes generated are those described in the 2003 permit application. at A-2, B-2. So, the permittees are not seeking a modification of the existing permit, but a modification based on an application. SRIC knows of no legal basis for approval of such a request, which is contrary to state and federal regulations.

Furthermore, the permit modification is clearly based on the permit application and the new LANL permit, so it is inappropriate to consider it in a separate proceeding. Moreover, several of the references cited in the modification request are not readily available. All references should be made publicly available in electronic form.

Because the facility should be included in the draft LANL permit, SRIC also requests that these comments be considered as public comment on the draft LANL permit.

For the many inadequacies noted, the class 3 permit modification should be denied.

Thank you for your careful consideration of all of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

Don Hancock