Permit

Office of Governor
Martin Aguilar

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JAN 11 2008

SI08-DECP-398

January 11, 2008

John E. Kieling, Program Manager
NMED Hazardous Waste Bureau
2905 Rodeo Park Drive West, Building 1
Santa Fe, NM 87505

Dear Mr. Kieling:

The Pueblo de San Ildefonso (Pueblo) Department of Environmental and Cultural Protection (DECP) has completed a review of the Draft Los Alamos National Laboratory (LANL) RCRA permit. Comments are included below.

In general, DECP is greatly concerned that there are still RCRA hazardous waste units at LANL which will remain unpermitted. It is now almost twenty years since LANL's RCRA permit was first approved, and almost 10 years since it was due to be renewed; it is irresponsible to allow unpermitted, Interim Status units to remain at LANL. The Hazardous Waste Bureau will use the rationalization that these units must meet Interim Status requirements, which may be as stringent as permitted unit requirements. We have two objections to this argument:

1. Interim Status excludes stakeholders from participating in the decision-making process. We are not allowed a forum for expressing our concerns.
2. Interim Status allows hazardous waste units to operate without the regulatory scrutiny that units being permitted receive. An example of this would be TA-16, which has been open burning solvents under Interim Status, even though this is prohibited under RCRA.

We have several other concerns and comments which we provide below.

Thank you for providing the opportunity to address our concerns.

31341

Sincerely,

Neil S. Weber, Director
Department of Environmental and
Cultural Preservation
Pueblo de San Ildefonso

Enclosures

DECP COMMENTS ON LANL DRAFT RCRA PERMIT

GENERAL COMMENT 1: The Pueblo has concerns with the effect of both Open Burning and legacy contamination at TA-16 and their effects on the elk herd there. Elk are used traditionally and culturally by the people of San Ildefonso. If these elk also travel to Tribal lands they may constitute a non-typical pathway to receptors. Are the movements of the elk herd tracked? What steps are taken to keep the elk out of the Open Burning area? Are the meat and bones of these elk sampled and analyzed?

GENERAL COMMENT 2: Allowing hazardous waste units at LANL to remain in Interim Status cuts the public out of the comment process. All RCRA operating units should be permitted and thus put under public and proper regulatory scrutiny.

GENERAL COMMENT 3: Several sections of the draft permit reference the "General Part B". HWB must clarify what the "General Part B" is.

GENERAL COMMENT 4: As per OSWER Directive No. 9523.00-18; "Non-military waste explosives can be open burned/open detonated **if the waste has the potential to detonate as stated in Section 265.382. If the waste explosives, including wastes consisting of part solvent, do not have the potential to detonate, the waste cannot be destroyed in OB/OD units** (emphasis added). Solvents contaminated with explosives **to the extent that they have the potential to detonate** (emphasis added) may be open burned provided that the unit qualifies under either 264, Subpart X or 265, Subpart Q". According to this Directive, LANL is illegally open-burning wastes at TA-16 which do not have the ability to detonate, including solvent-contaminated waste that does not have the ability to detonate. This activity must not be permitted until LANL demonstrates that only wastes which have the ability to detonate are being treated.

GENERAL COMMENT 5: As per the October 15, 1992 letter from EPA OSWER to Lewis D. Walker, "Section 3005(c)(2)(C) of RCRA provides a deadline of November 8, 1988, for treatment and storage facilities (other than incinerators) and/or units that were in interim status on November 8, 1984 to submit their Part B permit applications. Section 3005(c)(2)(C) of RCRA provides a deadline of November 8, 1988, for treatment and storage facilities (other than incinerators) and/or units that were in interim status on November 8, 1984 to submit their Part B permit applications. We also believe that this section of RCRA provides that if any of these interim status facilities, or units, did not submit their Part B applications by the 1988 date, they would lose interim status on November 8, 1992 unless a permit determination is made prior to that date." The Pueblo requests evidence that LANL submitted a Part B application for the OB units at TA-16 by the specified deadline, or other evidence to prove that these units still qualify for Interim Status.

SPECIFIC COMMENTS BY SECTION

EXTERNALLANLPERMITPARTS1-16FORDISTRIBUTION

PART 1: GENERAL PERMIT CONDITIONS

1.4.1 Effect of this Permit on Interim Status Units

COMMENT –See General Comment 2.

2.5 SECURITY

2.5.1 Warning Signs

COMMENT – The Pueblo commends the use of Tewa in signs which border the Pueblo.

ATTACHMENT A GENERAL AND TA-SPECIFIC FACILITY DESCRIPTIONS

A.3 LOCATION INFORMATION

A.3.1 Seismic Standard [20.4.1 NMAC § 270.14(b)(11)]

COMMENT – Please clarify why LANL is exempt under 270.14(b)(11) here, but TA-50 is not.

TA-50 ATTACHMENT A FACILITY DESCRIPTION

A.1 TA-50 GENERAL DESCRIPTION [20.4.1 NMAC, SUBPART IX, 270.14(B)(1)]

A.1.1 Meteorology and Hydrology

COMMENT – Please see General Comment 3.

A.3 LOCATION INFORMATION [20.4.1 NMAC, SUBPART IX, 270.14(B)(11)]

A.3.1 Geology

COMMENT – Please clarify why LANL is exempt under 270.14(b)(11), but TA-50 is not.

TA-54 ATTACHMENT A FACILITY DESCRIPTION

A.1 TA-54 GENERAL DESCRIPTION [20.4.1 NMAC § 270.14(B)(1)]

COMMENT – No mention is made of the border with the Pueblo de San Ildefonso, which has a recognized government-to-government relationship with LANL and DOE.

A.5 GROUNDWATER MONITORING [20.4.1 NMAC § 270.14(C) AND 20.4.1 NMAC § 264.90(A)]

COMMENT – Please see General Comment 3.

TA-55 ATTACHMENT A FACILITY DESCRIPTION

A.3 LOCATION INFORMATION [20.4.1 NMAC §270.14(B)(11)]

A.3.1 Seismic Standard [20.4.1 NMAC § 270.14(b)(11)(i and ii) and 20.4.1 NMAC § 264.18(a)]
COMMENT – Please see General Comment 3.

A.5 GROUNDWATER MONITORING [20.4.1 NMAC § 270.14(C) AND 20.4.1 NMAC § 264.90(A)]

COMMENT – Please see General Comment 3.

ATTACHMENT C WASTE ANALYSIS PLAN

C.1.3.2 HE Waste and HE-Contaminated Waste Treated by Open Burning

HE-Contaminated Water
This waste stream consists of HE-contaminated water that may contain trace ***solvents*** (emphasis added) and/or regulated hazardous metals. It is generated primarily by laboratory analysis; HE processing; ER, R&D, and D&D activities; drilling activities; and maintenance activities.

HE-Contaminated Solvent Waste
This waste stream consists of HE-contaminated solvents. It is generated primarily by laboratory analysis; R&D, ER, and D&D activities; HE production; spills; and the dissolving of HE and polymers.

HE-Contaminated Used Oil
This waste stream consists of HE-contaminated used oil, which is generated primarily from hydraulic presses and lubrication systems associated with HE-processing operations and ER and D&D activities.

HE-Contaminated Solid Waste

HE-Contaminated Equipment

HE-Contaminated Liquid Acids, Bases, and/or Inorganic Salt Solutions

COMMENT – DECP believes the evidence demonstrates that the wastes listed above are not eligible for Open Burning. See General Comment 4.

C.3 CHARACTERIZATION PROCEDURES [20.4.1 NMAC §§ 264.13(a)(1) and 264.13(b)(2), and 20.4.1 NMAC § 270.14(b)(2)]

C.3.1 Hazardous and Mixed Low-Level Waste Characterization

COMMENT – DECP believes the evidence demonstrates that the solvent wastes discussed in this section are not eligible for Open Burning. See General Comment 4.

ATTACHMENT E INSPECTION PLAN

COMMENT – This attachment mentions "technical area (TA)-specific permit applications". This appears to be a remnant from an earlier draft of the application as there are no "technical area (TA)-specific permit applications" in this draft permit. This language should be deleted.

ATTACHMENT G CONTAINER MANAGEMENT

TA-54 CONTAINER MANAGEMENT

G.2.4.2 Storage Shafts CSU

COMMENT – This section states; "Weekly inspections are conducted at this CSU, as described in Section E.2 of the Inspection Plan in Appendix E. This satisfies the requirements of 20.4.1 NMAC § 264.174." DECP believes that these shafts are not inspectable as per RCRA container storage requirements, and thus cannot be permitted as container storage. Please clarify if LANL has received approval to use robotics, video cameras and/or release detection equipment in place of direct involvement by workers to ensure the integrity of containers in storage. Further, please clarify if the waste in these units has not already exceeded the time limit for RCRA container storage, making these units, in fact, waste disposal units.

G.3 AREA G CONTAINER STORAGE UNITS [20.4.1 NMAC, Subpart V, Part 264, Subpart I]

G.3.1 Security and Access Control [20.4.1 NMAC §§ 270.14(b)(4) and 270.14(b)(19)(viii); 20.4.1 NMAC § 264.14]

COMMENT – Since this unit borders a Tewa-speaking community, it would be proper to place warning signs in Tewa also.

ATTACHMENT I OPEN BURNING UNITS MANAGEMENT

TA-16 OPEN BURNING UNITS MANAGEMENT

I.1 TA-16 OPEN BURNING UNITS

COMMENT – This section describes the burning of "highly hazardous volatile solvents". See General Comment 4.

I.2 OPERATIONAL AND WASTE MANAGEMENT PRACTICES

I.2.3 Waste Management Practices

COMMENT – This section states in part; "Burning will treat a number of waste constituents (e.g., HE, solvents)..." See General Comment 4.

ATTACHMENT R COST ESTIMATES FOR FINANCIAL ASSURANCE

COMMENT – No Financial Assurance instrument is presented. Please clarify when an actual Financial Assurance instrument will be in place.

PPC 9528.1992(01)

REGULATORY INTERPRETATION OF LOSS OF INTERIM STATUS PROVISIONS AS IT APPLIES TO OB/OD FACILITIES

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

October 15, 1992

Lewis D. Walker
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA (I,L and E)
Department of Army
Office of the Assistant Secretary
Washington, D.C. 20310-0110

Dear Mr. Walker:

The purpose of this letter is to follow up our June 30th meeting by providing you, as you requested, with a written regulatory interpretation of the loss of interim status provisions in the Resource Conservation and Recovery Act (RCRA) that affect your open burning/open detonation facilities.

It is the Agency's interpretation that Section 3005(c)(2)(C) of RCRA provides a deadline of November 8, 1988, for treatment and storage facilities (other than incinerators) and/or units that were in interim status on November 8, 1984 to submit their Part B permit applications. We also believe that this section of RCRA provides that if any of these interim status facilities, or units, did not submit their Part B applications by the 1988 date, they would lose interim status on November 8, 1992 unless a permit determination is made prior to that date.

As discussed during the meeting, our interpretation of RCRA divides your facilities that were in operation before November 8, 1984 into two groups: those that submitted applications on time and those that did not. For those units submitting applications on time, interim status will continue after November 8, 1992. In relation to this interpretation on continued operation, we stated that we do not believe there will be any legal challenge to deprive

the Agency of its discretionary authority to process permits after November 8, 1992.

Facilities that did not submit applications by November 8, 1988 will lose interim status on November 8, 1992 (unless final permit determinations are made by that date). This relates to all units that were in existence prior to November 1984, including units that properly notified the Agency of their activities and units that should have notified but did not. However, note that a unit handling temporarily excluded interim status facility after that date through a change in interim status, is not subject to the 1988 application deadline.

We will continue to discuss with your staff our efforts to minimize the impact from the loss of interim status. If you have any further questions, please contact Chester Oszman at (202) 260-4499.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste

cc: Tina Kaneen, OGC
Jim Michael, OSW
Christine Dibble, OSW
Ken Gigliello, OWPE
Lee Tyner, OGC
Chester Oszman, OSW
Subpart X Permit Writers' Workgroup

OSWER Directive No. 9523.00-18

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAR 14 1989

MEMORANDUM

SUBJECT: Summary of Assistance Branch Permitting Comments

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste (OS-300)

TO: Regional Waste Management Division Directors
Regions I-X

Attached is the fifth in a series of periodic reports which summarize major issues that Assistance Branch staff have addressed in their reviews of specific Part B applications, permits, closure plans and in their responses to site-specific situations 1. These reports cover issues that are of generic national interest rather than strictly site-specific interest. The attached report includes reviews conducted by the Disposal and Remediation Section and the Alternative Technology and Support Section during April and May, 1988. To ensure that the report reflects current EPA policy and guidance, we obtained review comments and concurrences from within OSW, from the Office of Waste Programs Enforcement, and from the Office of General Counsel.

We hope that the recommendations provided in this document will be helpful for permit writers encountering similar situations at other RCRA facilities. By sharing the Assistance Branch's suggestions from a few sites, we hope that permit decision-making will be somewhat easier and faster at many more sites nationally. We encourage you to distribute this report to your staff and State permit writers. To make the distribution easier, I have attached multiple copies of the report.

1 (These reports were formerly entitled "PAT Summary Reports": previous reports were issued on March 14, 1986 (OSWER Policy Directive No. 9523.00-14), March 30, 1987 (OSWER Policy Directive No. 9523.00-12), march 30, 1988 (OSWER Policy Directive No. 9523.00-15), and September 2, 1988 (OSWER Policy Directive No. 9523.00-17)

Attached A to the report lists the facility names, Regions, review coordinators, and dates for the reviews summarized in this report. Attachment B provides a list of guidance documents and directives used in preparing the reviews.

If you have any questions, comments, or suggestions on the Summary of Assistance Branch Permitting Comments, please contact Jim Michael, Chief, Disposal and Remediation Section, OSW at FTS 382-2231.

Attachments

cc: RCRA Branch Chiefs
Regions I-X
Permit Section Chiefs
Regions I-X
Jon Cannon
Jeff Denit
Jim O'Leary
Joe Carra
Matt Hale
Ken Schuster
Suzanne Rudzinski
Elizabeth Cotsworth
Alex Wolfe
Jim Michael

DRS Staff
ATSS Staff
Art Day
Les Otte
Ken Skahn
Susan Bromm
Steve Heare
Scott Parrish
Lisa Friedman
Tina Kaneen
Fred Chanania
Bob Dellinger
Tom Kennedy (ASTSWMO)

Summary of Assistance Branch Permitting Comments

Table of Contents

Topic	Page
Issue Resolution	1
Popping Furnaces	1
Subpart X - Miscellaneous Units	2
Closure	5
RCRA Corrective Action	7
Recommendations	10
Popping Furnaces	10
Liner Requirements	11
Hazardous Waste Stabilization	13
Permit Issuance	13
Staff Reviews Included in This Summary	Attachment A
List of Guidances Used in This Summary	Attachment B

SUMMARY OF ASSISTANCE BRANCH PERMITTING COMMENTS

April 1988 - May 1988

This report is the fifth in a series of documents summarizing some of the comments provided to Regional permit writers by OSW's Assistance Branch. The report is organized into two sections. The first section, Issue Resolution, provides examples of issues that have been raised at one or more facilities. This section covers special situations where regulations or policy decisions were applied in actual circumstances. The second section, Recommendations, addresses comments routinely made to answer questions on items often overlooked or poorly understood, and to convey technical information. This section should be generally helpful to the permit writer. A contact person has been listed for each item to answer additional questions.

ISSUE RESOLUTION

Popping Furnaces

1) Automatic Waste Feed Shut-off

The Army is in the process of applying for permits for their munitions deactivation (popping) furnaces that are located at about a dozen Army facilities around the nation. These "popping furnaces" are hazardous incinerators where the waste material is obsolete munitions that must be exploded in the incineration chamber during the incineration process. The explosive nature of the waste poses specific problems unique to these units in meeting Subpart O requirements.

Section 264.345(e) requires that "an incinerator must be operated with a function system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits...". Explosive wastes in the "hot zone" near the furnace cannot be safely stopped before the incinerator chamber due to risk of explosion outside the unit. A design was proposed at an Army facility that meets the requirement for an automatic waste feed cut-off without compromising safety. The proposed design consists of two conveyors. The first conveyor feeds waste munitions onto a second conveyor which, in turn, feeds the munitions in the "hot zone" into the feed chute. The automatic control would stop the first system in the event of deviations from permit operating conditions, while the waste in the "hot zone" would continue safely into the unit.

The Assistance Branch reviewed the proposed waste feed system and concurs that this system meets the regulatory requirements under Section 264.345(e) for an automatic waste feed cut-off.

Contact: Sonya Stelmack 202 or FTS-382-4500

2) Fugitive Emissions

Fugitive emissions are characteristic of popping furnaces during the explosion of the munitions waste in the incinerator chamber. Section 264.345(d) requires that fugitive emissions from the combustion zone be controlled by keeping the combustion zone totally sealed; or by maintaining a combustion zone pressure lower than atmospheric pressure; or by an alternate method which can be demonstrated to provide fugitive emissions control equivalent to the maintenance of combustion zone pressure lower than atmospheric.

An Army facility proposed to maintain lower than atmospheric pressure in their combustion zone; however, they could not do so continuously. They requested that the permit be worded so that a specific number of positive pressure excursions would be allowed. The Assistance Branch concluded that allowing positive pressure excursions would not meet the regulatory requirement for fugitive emission control. The Assistance Branch informed the Army that their other proposed option of providing a totally enclosed system where the collected fugitive emissions would then be returned to the incinerator with the air intake would be acceptable. A more recent Army proposal to enclose the furnace retort in a negative-pressure shroud rather than totally enclosing the system will also be considered, provided the Army submits adequate supporting data.

Contact: Sonya Stelmack 202 or FTS-382-4500

Subpart X - Miscellaneous Units

1) Units Regulated under Subpart X

A facility has ten units that the owner/operator maintains are miscellaneous units which should be regulated under Subpart X. The owner/operator describes these units as pits. Wastewater containing reactive waste enters the unlined pits. The liquid is first allowed to evaporate or percolate out of the units. The owner/operator then ignites the remaining residue after the liquid is removed.

The Region contends that these units are surface impoundments and should be regulated under Subpart K The Assistance Branch was asked to evaluate the nature of these units and identify the applicable regulations.

Surface impoundments may be used to store, dispose or treat hazardous waste. The process occurring in these units is the treatment of wastewater (which does not have the potential to detonate) by dewatering with the subsequent open burning of the residue. Additionally, Section 260.10 specifically includes pits as an example of surface impoundments. Therefore, all requirements applicable to surface impoundments, including land disposal restrictions, November 8, 1988 retrofit deadlines, and minimum technology requirements, apply to these units. Subpart X is intended to cover units not regulated elsewhere and will not replace or supercede any restrictions or requirements contained in another Subpart. Units that are containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, boilers, industrial furnaces and injection wells are specifically excluded from Subpart X.

If the Regional Administrator feels that the Subpart K standards do not provide adequate protection during the burning phase of the treatment process, additional permit conditions may be based upon the HSWA omnibus provisions in Section 3005(c) in order to protect soil and air.

Contact: Chet Oszman 202 or FTS-382-4499

2) Open Burning/Open Detonation (OB/OD) Unit Requirements

Non-military waste explosives can be open burned/open detonated if the waste has the potential to detonate as stated in Section 265.382. If the waste explosives, including wastes consisting of part solvent, do not have the potential to detonate, the waste cannot be destroyed in OB/OD units. Solvents contaminated with explosives to the extent that they have the potential to detonate may be open burned provided that the unit qualifies under either 264, Subpart X or 265, Subpart Q. The open burning and detonation of waste explosives is considered to be a treatment process rather than waste disposal, and therefore the land disposal deadlines and restrictions do not apply. Treatment residues, however, may be subject to such restrictions.

Contact: Chet Oszman 202 or FTS-382-4499

3) Permit Requirements for Waste Explosives

The Assistance Branch was asked to clarify the circumstances under which the disposal of explosives would require a permit and to define the point at which unused explosives become a waste.

A Subpart X permit or interim status is necessary for the non-emergency open burning/open detonation of waste explosives. The immediate response provisions of Sections 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) allow an exception to the permit requirement to be made in situations where the threat of explosion (i.e., the discharge or threat of discharge of a hazardous waste) presents an emergency situation. If immediate action is not required, but the threat to human health and the environment persists, the Director may issue an emergency permit under Section 270.61(a), bring an imminent hazard action under RCRA Section 7003, or perform a removal action pursuant to CERCLA Section 104.

When explosives are fulfilling their normal use pattern and there is no intent to discard them, they are not hazardous waste nor are they subject to Subpart X. However, damaged or leaking explosives or other undetonated explosives that, for safety reasons, cannot be used (such as expired shelf life) are waste, and can be hazardous waste.

Contact: Chet Oszman 202 or FTS-382-4499

4) Applicability of Subpart X Permits to Fire Training Exercises

Fire fighters routinely train by extinguishing blazes set as part of a training exercise. Often various types of fuel are used to ignite the training structure. The Assistance Branch was asked to determine if these exercises and training areas require Subpart X permits.

The burning of commercial fuel in fire training exercises is within the normal use of that fuel product. However, verification must first be made to establish that the material to be burned is actually commercial fuel. Once the material is verified as commercial fuel, burning in fire fighter training exercises does not constitute a RCRA regulated activity. If the material to be burned is not a commercial fuel but any other ignitable hazardous waste such as used oil or spent solvents, this type of open burning is prohibited.