



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

JUL 22 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED



Robert S. Dinwiddie, Ph. D.  
 Manager, RCRA Permits Management Program  
 Hazardous and Radioactive Materials Bureau  
 New Mexico Environment Department  
 2044 Galisteo Street, Building A  
 P. O. Box 26110  
 Santa Fe, NM 87505

Dear Dr. Dinwiddie:

Subject: Response - New Mexico Environment Department (NMED) June 17, 1998  
 Request for Supplemental Information (RSI) for the Los Alamos National  
 Laboratory (LANL) Part B Permit Application for Technical Area (TA) 16

The purpose of this letter is to respond to your June 17, 1998 RSI regarding the Part B Permit Application for TA-16. In this RSI, you requested that LANL submit additional information regarding the TA-16 High Explosives Wastewater Treatment Facility (HEWTF) in order to complete LANL's Part A and Part B permit applications for TA-16. Your letter indicated that this information should either include "applicable and required" Part A and Part B information for the HEWTF, or evidence that the HEWTF does not receive "RCRA-hazardous solids." It is our belief that LANL has previously provided you with the relevant information necessary for all treatment, storage and disposal facilities at TA-16 in our original Part A and Part B applications, as the wastewater treatment units present at the HEWTF are exempted from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

LANL recognizes that all hazardous waste Treatment, Storage and Disposal Facilities (TSDF) are subject to Parts 264 and 265 of RCRA. Certain specific activities, however, are excluded from Parts 264 and 265 requirements and, thereby, not subject to regulation under RCRA. Since Part 264, Part 265, and Part 270 work in tandem to regulate TSDFs, the same exemptions can be found at the beginning of each of these Sections - under Part 264/265, Subpart A, and in 40 CFR 270.1. These parts were adopted by reference in the New Mexico Hazardous Waste Regulations (20 NMAC 4.1) and incorporated as Subpart V, Subpart VI and Subpart IX of these regulations, respectively. Additionally, the New Mexico Hazardous Waste Act limits its application to any activity or substance which is subject to the Federal Water Pollution Control Act (a.k.a. the Clean Water Act),



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as amended, except to the extent that such application or regulation is not inconsistent with the requirements of this Act (74-4-3.1 NMSA 1978). The RCRA exemptions, 20 NMAC, and the New Mexico Hazardous Waste Act are all intended to avoid dual Clean Water Act (CWA)/RCRA regulation of wastewater treatment facilities subject to regulation under the CWA.

On November 17, 1980, the Environmental Protection Agency (EPA) promulgated regulatory amendments to Subtitle C of RCRA that suspended the applicability of the previously adopted hazardous waste regulations to owners and operators of wastewater treatment units and elementary neutralization units. "Wastewater treatment units" were defined for the purposes of this exemption as tanks or tank systems which are a part of a facility subject to the provisions of the CWA (40 CFR 264.1(g) or 40 CFR 265.1(c)). In order for the exemption to be applicable to a wastewater treatment unit, certain conditions as listed in the definition of a wastewater treatment unit under 40 CFR 260.10 must be met. These include:

1. The unit must be part of a wastewater treatment facility which is subject to regulation under either Section 402 or Section 307 (b) of the CWA;
2. The unit receives and treats or stores a wastewater which is a hazardous waste as defined in Section 261.3, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in Section 261.3; and
3. The unit meets the definition of a tank found in Section 261.10.

EPA also maintained that meeting the definition of a "wastewater treatment facility" as used in Section 260.10 was the primary factor regarding the applicability of the exemption to a specific treatment unit. Although there was some ambiguity in the use of this terminology when it was first adopted, EPA clarified its intended meaning in a September 2, 1988 Federal Register Notice (Volume 53, No. 171). In this Notice EPA stated that based on its property boundary interpretation of the term "facility" and the purpose of the wastewater treatment unit exemption (exclusion of tank systems subject to regulation under the CWA), it was the agency's position that in order for a wastewater treatment unit to be covered by the exemption it must be part of an on-site wastewater treatment facility. Accordingly, any hazardous waste tank system that is used to store or treat the wastewater that is managed at an on-site wastewater treatment facility with a NPDES permit, or that discharges to a Publicly Owned Treatment Works (POTW), is exempt from the RCRA regulations. EPA further clarified that whether the wastewater is conveyed from the tank system directly to the treatment unit or indirectly by means of intermediate sumps, tanks, or holding ponds does not affect the exemption. EPA also indicated in the September 2, 1988 Notice that the means of conveyance of waste between storage and treatment units also has no effect on the applicability of this exemption. Thus, EPA draws no distinction regardless of whether the wastewater is piped, trucked, or otherwise conveyed to the wastewater treatment facility within the boundaries of the facility which generates the wastewater. Likewise, any tank system at a

facility with a NPDES permitted wastewater treatment facility that is used to store or treat wastewater that is brought on site from another facility, is covered by the exemption.

EPA has not defined wastewater for the purposes of the wastewater treatment unit exemption or the Subtitle C regulations. The New Mexico Hazardous Waste Regulations (20 NMAC 4.1) and the New Mexico Hazardous Waste Act are also silent on this terminology and no reference on its interpretation or applicable NMED policy can be found in the NMED Hazardous and Radioactive Materials Bureau Standard Operating Procedures Manual. Typically, EPA has used a very broad definition of this term in its other regulatory programs (e.g., the Effluent Guidelines Division's Development Document for Electroplating Pretreatment Standards defines wastewater as "any water that has been released from the purpose for which it was intended to be used"). Although the EPA has defined wastewater under the Land Disposal Restrictions (LDR) program for the purpose of establishing BDAT treatability groups, EPA applies this definition only in Section 268.2 of the LDRs. The definition is not applicable to the treatment unit exemption or any other part of the RCRA regulations, and written guidance available from the EPA Office of Solid Waste indicates that the definition was specifically intended to apply solely for the purposes of the LDRs. This was confirmed in a recent communication with the EPA RCRA Hotline on July 2, 1998.

The exemption in 261.4 applies to "industrial wastewater discharges that are point source discharges subject to regulation under Section 402 (National Pollutant Discharge Elimination System) of the CWA, as amended." A point source discharge is defined for the purposes of Section 402 as any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. The NPDES permit program further defines a pollutant as "dredged spoil, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water." Thus, the exemption applies to all point sources from which pollutants are discharged and these pollutants can clearly include a broad range of wastes including solids.

The New Mexico Hazardous Waste Act also excludes from its definition of a "solid waste" any solid or dissolved materials in domestic sewage, irrigation return flows or industrial discharges which are point sources subject to NPDES permits. Since all point source discharges subject to Section 402 of the CWA are exempted from Subtitle C of RCRA and the New Mexico Hazardous Waste Act, all pollutants contained in an exempted point source discharge are also exempted.

In consideration of the above referenced definitions relevant to this issue and the lack of an applicable RCRA definition for wastewater, and in light of the condition contained in the exemption in 40 CFR 261.4(g)(6) that a wastewater treatment unit must receive and treat or store a wastewater which is "hazardous," LANL believes that it has addressed

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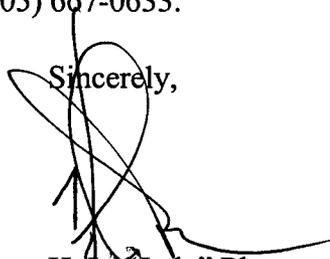
NMED's assertion that the presence of "RCRA-hazardous solids" somehow disqualifies the HEWTF from the permitting exemptions found at 40 CFR 261.3, 40 CFR 261.4, and 20 NMAC 4.1 Subpart II. In fact, it is clear in the regulations that a wastewater treatment unit must receive a RCRA hazardous waste in order for the exemptions to have any relevance.

In summary, we believe that if a wastewater treatment facility has an NPDES permit and is composed of tanks or tank systems used to store or treat hazardous wastewater, these units are exempted from RCRA permitting requirements (40 CFR 270.1). Additionally, the industrial wastewater discharge exclusion contained at 40 CFR 261.4 (a)(2) and adopted by reference in 20 NMAC 4.1, Subpart II, exempts all point source discharges of pollutants subject to regulation under Section 402 of the CWA.

The HEWTF at TA-16 is a point source discharge subject to regulation under Section 402 of the CWA and contains wastewater treatment units meeting the definition of a tank or tank system specified in 40 CFR 260.1. Therefore, we believe that the point source discharge of treated effluent from the HEWTF and the on-site wastewater treatment units which compose the HEWTF, are exempted from regulation under RCRA and the New Mexico Hazardous Waste Regulations. However, we recognize that the identity of any wastewater treatment sludge produced at HEWTF treatment units is independent of the permitting status of these units for the purposes of hazardous waste characteristics and listings, and may be RCRA waste. Accordingly, the treatment, storage and disposal of sludge produced at the HEWTF will be managed as addressed in our original Part A and Part B applications.

If you have any questions regarding this matter, please feel free to contact me at (505) 665-5042 or Jack Ellvinger at (505) 667-0633.

Sincerely,

A handwritten signature in black ink, appearing to read "H. L. 'Jody' Plum". The signature is stylized and somewhat cursive, with a large loop at the top.

H. L. "Jody" Plum  
Office of Environment

LAAME:6JP-086

cc:  
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