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EID JULY 18, 1989 STATEMENT RESPONDING TO PARTICULAR CONCERNS
EXPRESSED BY MEMBERS OF THE PUBLIC REGARDING THE LANL MIXED WASTE
INCINERATOR

EID has received many comments from the public concerning this draft permit. Regrettably, the laws and regulations that govern a facility as large as LANL are very complex. Several of the comments received by EID reflect that complexity. As important, the comments reflect concerns some members of the public have regarding operation of the mixed waste incinerator. In order to better inform the public of the applicable laws and regulations and to better address the public's concerns, EID has developed a statement to explain what this draft permit can and cannot do regarding the mixed waste incinerator.

THIS DRAFT PERMIT CAN ONLY REGULATE CHEMICAL WASTE
IT CANNOT REGULATE RADIOACTIVE WASTE

The federal Atomic Energy Act of 1954 (AEA), authorized the United States Department of Energy ("DOE") to develop and effectuate its own regulations controlling DOE's management of its own radioactive wastes. Other statutes may impose additional requirements on radioactive material handling. This permit action is under the State Hazardous Waste Act. The State Hazardous Waste Act does not regulate radioactive waste in any way. The Hazardous Waste Act only applies to wastes that meet the legal definition of "hazardous waste," and these are basically chemical wastes. The Hazardous Waste Act cannot be applied to source, special nuclear or byproduct radioactive wastes. Thus, EID does not have the authority through its Hazardous Waste Program, and through this or any other hazardous waste management permit, to regulate radioactive waste. This draft permit is a permit that only regulates chemical hazardous waste. It does not and can not regulate radioactive waste.

"MIXED WASTE" REGULATION

When a waste has both chemical and radioactive components, it is called a "mixed waste." Because of the chemical component of mixed waste, the Hazardous Waste Act does apply to mixed waste. It only applies to the chemical part of mixed waste, however. The Hazardous Waste Act does not apply to the radioactive part. DOE regulates the radioactive part, pursuant to the Atomic Energy Act.

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STATE AUTHORITY TO ENFORCE THE FEDERAL STATUTE, RCRA

This draft permit is a hazardous waste management permit administered by EID's Hazardous Waste Bureau. EID's legal authority to issue this permit under State law is the Hazardous Waste Act. Ultimately, however, EID's legal authority to issue this permit comes from the federal hazardous waste management statute, named the Resource Conservation and Recovery Act ("RCRA"). Under RCRA, the federal government, through the United States Environmental Protection Agency ("EPA"), gives specific authorizations to a state to enforce certain parts of RCRA. The state then enforces those parts of RCRA in the state instead of EPA.

New Mexico is an "authorized state," that is, New Mexico is authorized by EPA to enforce certain parts of RCRA in New Mexico instead of EPA. This draft permit is a RCRA permit, prepared by EID's Hazardous Waste Program staff to address only those specific parts of RCRA that EPA has authorized New Mexico to enforce. Because Congress has added requirements to RCRA in stages through amendments, EPA is requiring states to submit their requests for authorization in stages. Thus, New Mexico is authorized by EPA to enforce some RCRA provisions, but not other RCRA provisions.

NEW MEXICO DOES NOT HAVE RCRA AUTHORIZATION TO REGULATE THE CHEMICAL PART OF MIXED WASTE

New Mexico is not yet authorized by EPA to regulated the chemical part of mixed waste through its RCRA hazardous waste management program. New Mexico is in the process of applying to EPA for authorization, however.

THIS DRAFT PERMIT IS A RCRA PERMIT

Because New Mexico is not authorized by EPA to regulated the chemical part of mixed waste through its RCRA program, this draft RCRA permit does not authorize LANL to incinerate the chemical part of mixed waste. This draft permit only authorizes the incineration of purely chemical waste in the incinerator.

In order to get a RCRA permit to incinerate mixed waste, LANL will need to develop a mixed waste permit application, and submit it to EID. EID expects LANL to submit this application in the late fall of 1989. The EID Hazardous Waste Program staff will review the

application. After EID has been authorized by EPA to regulate the chemical part of mixed waste under the RCRA hazardous waste program, EID will draft a proposed RCRA permit based on the LANL application, and submit it to the public for public comment, just as this draft permit has been submitted to the public for public comment.

RCRA "INTERIM STATUS"

"Interim status" gives temporary authorization to certain facilities to continue their hazardous waste management activities until their applications for final permits can be acted on. RCRA gave this interim status to facilities that were in existence on a certain date and which complied with certain notification requirements. Operations under interim status are regulated by regulations designed for this interim status.

THE LANL INCINERATOR HAS RCRA "INTERIM STATUS"

The LANL incinerator has RCRA "interim status" and is thus authorized to burn chemical waste without a final hazardous waste RCRA permit. This is true for both purely chemical waste and for mixed waste. The temporary permission to burn purely chemical waste will end when EID takes final action on this draft RCRA permit. Then, burning of purely chemical waste will be allowed only pursuant to the permit. The temporary permission to burn the chemical part of mixed waste will end when EID takes final action on a RCRA permit addressing that waste, which EID will not do until after EPA authorizes EID to do so. Then, burning of the chemical part of mixed waste will be allowed only pursuant to that permit.

SUMMARY

Thus, this draft permit does not authorize LANL to incinerate mixed waste, that is, chemically hazardous waste that is mixed with radioactive waste. The draft permit only proposes to authorize the incineration of strictly chemical hazardous waste, and then only under the permit's specified conditions. EID will at a later date propose a draft hazardous waste permit to regulate the incineration of the chemical part of mixed waste. No RCRA hazardous waste permit can regulate radioactive waste.

INTERIM STATUS FACILITIES

EID has two sources of authority under the Hazardous Waste Act. First, EID is authorized to enforce whatever portions of RCRA that EPA has expressly authorized the State to enforce. Second, EID is authorized to enforce all provisions of the Hazardous Waste Act, even if some particular provision has not yet been approved by EPA as part of RCRA authorization. In this second case, EID is acting on solely state authority; it is not acting pursuant to its federal RCRA authority. EID has used this state authority in the past, to deny LANL's request to begin construction of a new mixed waste incinerator until after review and approval of the construction phase.

Interim Status Regulations

Under the Hazardous Waste Act, the incinerator, in so far as it burns mixed waste, has "interim status." It has interim status under both the State's federal RCRA program, and the independent state authority. That means that it has a temporary permit to operate until a final permit, such as this one presently under consideration for purely chemical waste, is considered. In the interim, it is regulated under the regulations designed for the interim period, and not under the regulations designed for final permits.

There are no specific regulations applicable to interim status under either state or federal law addressing the chemical part of mixed waste. EPA intends at this time to regulate all chemical wastes under the same set of regulations.

EID's Hazardous Waste Bureau did not develop any interim regulations independent of those required for the federal RCRA program. EID did not develop interim regulations specifically governing the chemical part of mixed waste under its state authority for several reasons. First, the Hazardous Waste Act prohibits the State from regulating hazardous waste more strictly than RCRA does. EID could not develop regulations covering the chemical part of mixed waste until RCRA covered the chemical part of mixed waste. EPA did not clearly add the chemical part of mixed waste to its RCRA program until July 3, 1986. EID could not have begun the process of promulgating such regulations until after that date.

Second, the process of promulgating regulations is very resource intensive, and EID's Hazardous Waste Program has extremely limited resources. EPA funds 75% of the program and requires that those

monies go only into RCRA-related activities. The remaining 25% is paid out of state monies that are the State's required "match" for getting the EPA grant monies. Thus, the Hazardous Waste Program's budget is restricted to federally-authorized RCRA activities. The program has developed other, extensive regulatory, and statutory, changes in the interim in order to maintain current, and seek new, RCRA authorization. In addition to regulation development, the program must meet inspection, enforcement, and permit commitments to EPA for purposes of maintaining RCRA authorization. There simply have not been enough resources to do everything that EID would like to do, and it chose not to develop interim regulations applying to the chemical part of mixed waste. An important goal of RCRA and the Hazardous Waste Act is to get facilities operating pursuant to permits instead of under interim status. Therefore, developing regulations governing interim status facilities uses the Hazardous Waste Bureau's limited resources less well than developing regulations applying to final permits.

Final Permit Regulations

EPA has indicated that it does not intend to promulgate any final permit regulations specific to the chemical part of mixed waste. EPA has apparently determined that the present regulations governing permits are sufficient to protect the public health and the environment from the chemical part of mixed waste. The State has adopted these regulations.

Thus, EPA will not require EID to develop any additional regulations governing permits specific to the chemical part of mixed waste in order for EID to get and maintain RCRA authorization for the chemical part of mixed waste.

EID is authorized by the Hazardous Waste Act to develop additional regulations applicable to permits dealing with the chemical part of mixed waste. However, under the Hazardous Waste Act prohibition, such regulations could not be stricter than whatever RCRA requires through permits dealing with the chemical part of mixed waste. EID is not presently considering developing any such regulations, but welcomes the public's input on whether EID should.

AIR QUALITY REGULATIONS

Some members of the public have expressed their concern that State or federal air quality requirements may not adequately regulate the incineration of the radioactive part of mixed waste. As previously stated, this draft RCRA permit does not cover any mixed waste

incineration; it is limited to purely chemical waste incineration. Further, no RCRA permit could regulate the radioactive part of mixed waste. The incinerator has interim status that allows it to operate without a final RCRA permit. Operation of the incinerator must also comply with any other applicable laws and regulations, however. Thus, the incinerator will not be allowed to operate if it has failed to satisfy the legal requirements of other relevant state and/or federal programs.

Regarding Air Quality Regulation

EID's Air Quality Bureau reviewed the operation of this incinerator in 1988 and determined that a state air quality permit is not required, because the predicted emissions were below thresholds that require a permit. Under new State toxic air pollutant requirements, effective December, 31, 1988, this incinerator is an "existing source" and therefore is not subject to the new air regulations. Data concerning the incinerator are being collected, however.

EID has the authority under the State Air Quality Control Act to regulate the radioactive emissions from this incinerator, but does not have any implementing regulations to do so at this time. EPA enforces other air quality programs in the State. The radionuclide emissions from this incinerator have been reviewed by EPA Region VI for compliance with the regulations that govern (40 CFR Part 61, Subpart H) radionuclide emissions from DOE facilities, under the federal Clean Air Act. EPA reviewed the emissions from the existing incinerator in November 1988, as part of reviewing LANL's application for a new proposed mixed waste incinerator.

EID expects to develop new air quality regulations for incineration, that will include radionuclide emission limits at the stack as opposed to the fence line. Under EID's current schedule for the development of such regulations, a public hearing on the proposed regulations is expected next spring. In the interim, the Air Quality Bureau will be developing and taking to hearing regulations governing municipal and medical waste incineration.