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**CERTIFIED MAIL
 RETURN RECEIPT REQUESTED**

May 20, 1996

Ms. Joni Arends
 P.O. Box 510
 South Royalton, VT 05068-0510

Dear Ms. Arends:

RE: Response to Comments on Los Alamos National Laboratory Class II Permit Modifications to the Controlled Air Incinerator

The New Mexico Environment Department (NMED) Hazardous and Radioactive Materials Bureau (HRMB) is in receipt of your letter dated April 22, 1996, containing comments regarding the Class II permit modifications proposed by Los Alamos National Laboratory (LANL) to their Hazardous Waste Management Facility permit for the Controlled Air Incinerator (CAI). HRMB's responses are as follows:

Item 1: "I am very concerned that the intention behind Los Alamos National Laboratory (LANL)'s request to the New Mexico Environment Department to grant a modification of the Controlled Air Incinerator (CAI) permit is to obtain a current permit and operate the CAI. I am particularly concerned that LANL will bring the CAI on-line and not take the facility off-line until DOE's transuranic waste incineration needs are met."

Response: In fact the CAI is a currently permitted unit, but has not operated since 1987. The perception that it is not currently permitted seems to be derived from the Department of Energy (DOE) Waste Management Draft Programmatic Environmental Impact Statement (WM DPEIS) which you reference beginning in paragraph 2 (two) of your letter. The WM DPEIS erroneously states that the RCRA Permit for the CAI has lapsed.

As to your concern that the CAI will be brought on-line, please be advised that HRMB is currently preparing the Public Notice for the closure plan for the CAI, which calls for closure and dismantling of the CAI. The closure process will begin as soon as HRMB approves the plan, which will be subsequent to the fulfillment of public



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participation activities. Please be assured that LANL is now fully committed and obligated to closing the unit.

Item 2: "this is completely unacceptable because (1) that is not the perception the public has of the "permit/closure" process; (2) that there are inherent dangers to the public and surrounding environment if the CAI is put into operation for the purposes of incinerating TRUW mixed wastes; and (3) LANL's inability to meet existing federal Clean Air Act standards (reference: recent lawsuit brought by citizen's groups)."

Response: (1) If what you mean is that the perception is that the CAI should/will not be brought on-line, then you are correct. If the opposite is true, then HRMB will strive to correct the perception through more properly worded notices, Fact Sheets, public service announcements, and responses to comments such as these. Public participation is a vital element of the Resource and Recovery Act (RCRA) process which HRMB takes very seriously.

(2) HRMB does not agree that there are "inherent dangers" in operation of the CAI. The Operating Permit includes provisions for efficiency of destruction of hazardous constituents by the unit, filtration of the gases introduced to the atmosphere, and monitoring of these same gases. These provisions and others were calculated and written specifically to make operation of the CAI protective of human health and the environment.

(3) You do not mention a specific legal action or if the CAI specifically has been named in any legal action regarding Clean Air Act standards. Of course if Clean Air Standards are violated it is a serious health issue, but one possible instance of failure does not necessarily brand any other particular unit as a violator.

Item 3a: "Again, I am very concerned that once the "first" part of the CAI permit is granted by the NMED, that DOE/LANL will forge ahead with the plan to incinerate transuranic waste pursuant to its plan described in the WM PEIS."

Response: Once again, please be assured that LANL is well on the path to closure of the unit. Also, remember that the CAI is currently part of LANL's Operating Permit. The modification process in this case was to clear the path to closure. Granted, the RCRA Permit process is quite involved and complicated, so if further clarification is needed, please do not hesitate to write or fax HRMB at (505) 827-1544, or call Mr. Michael Chacón at (505) 827-

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1561.

Item 3b: "In reality, the NMED should make the modification permit tied to the closure permit. The permit for modification should be for a short amount of time for the modifications **ONLY**."

Response: The perception that there are separate "modification permits" and "closure permits" is not quite correct, and seems to be an unnecessary point of concern. The CAI is included in LANL's overall RCRA Facility Operating Permit. The proposed modifications are not in fact a separate permit, but are simply changes to parts of the Permit specific to the CAI. Also, it is Attachment E.4 of the Operating Permit, and not a separate permit, that deals with closure of the unit, and LANL's proposed changes to that specific attachment is what NMED will **next** be public noticing for public participation. Both of these actions are with the intent of preparing for RCRA closure of the CAI.

Item 3c: "The current public perception that the CAI permit is two separate processes may allow LANL to begin operation of the CAI to meet the WM DPEIS mandates and assumptions under the cloak of a current permit."

Response: Once again, HRMB will strive to communicate permit activities to the public in a readily comprehensible form. However, even if that effort should not always be entirely successful, RCRA regulations are explicit to the extent of preventing **ANY** facility from manipulating public perception to the extent described.

Item 4a: "I am also concerned that your notice states that you will only consider comments that you receive prior to April 22, 1996."

Response: Actually the last sentence of paragraph 6 (six) of Public Notice No. 83 reads; "Only comments and/or requests received **by** (emphasis added) April 22, 1996, will be considered."

Item 4b: "Previously, the procedure has been that as long as the comments were postmarked by a certain date that they would be accepted."

Response: Public Notice No. 83 was written with previous Notices as a template. Several examples of previous notices with such wording can be provided upon request. However, it appears that within HRMB individual interpretation of the

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requirement has not been entirely consistent. Thank you for pointing this out; it will be clarified internally as soon as possible.

Item 4c: "It seems difficult to determine when one would have to put a letter into the U.S. Postal System for it to arrive by a certain date."

Response: Agreed. However, the obverse of that is just as true; how would the determination be made that all mail postmarked by a certain date had arrived? In order to proceed with RCRA activities in a timely manner, a definite deadline must be utilized.

Item 4d: "Is this a way to keep the comment period open for the statutory amount of time, but in reality to shorten it?"

Response: Absolutely not. As stated in the previous response, Public Notice No. 83 was worded as per existing HRMB Notices. There is no desire whatsoever on the part of the Bureau to shorten the public comment period. However, as stated in the response to Item 4c, it is impractical to try to guess if all mail postmarked by a certain date has been received. This matter will be addressed to reflect your concern and be made part of our Standard Operating Procedure.

Item 4e: "What are the reasons for this unprecedented shift in setting deadlines? It seems the needs of the public have been ignored with this new method. The uncertainty as to the "deadline" inhibits meaningful public participation."

Response: As stated in the response to Item 4b, this is not a shift in policy. It represents an unfortunate inconsistency in wording which will be rectified. HRMB realizes that such inconsistency is to be avoided, and will rectify the matter in order to promote the public participation process.

Item 5a: (1) The public perception is that the permit is two separate processes, the modification permit and the closure permit. NMED needs to make sure DOE/LANL does not slip in the operation of the CAI for the incineration of TRUW mixed waste in between these two processes."

Response: HRMB hopes it has clarified this perception. To reiterate, the modification process is not a permit in and of itself, it is the instrument by which the Operating Permit is changed. The closure plan is a part of the Operating Permit which is activated when the unit

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is to be closed. It signals the end of the possibility of hazardous waste operations of the unit.

Item 5b: (2) "There are inherent dangers to the public and surrounding environment if the CAI is put into operation for the purposes of incinerating TRUW mixed wastes. Proof is found in the recent decision of the federal District Court of LANL's inability to meet existing federal Clean Air Standards."

Response: Again, HRMB disagrees that there are inherent dangers in operation of the CAI.

Item 6: Various questions regarding the WM DPEIS.

Response: At this time HRMB cannot respond officially on specifics of the WM DPEIS. However, if you wish to pursue your questions further, HRMB can attempt to provide you with the proper DOE contact.

Thank you for your comments on the modifications to the RCRA Permit to the CAI. If you feel any questions or comments were not addressed or responded to sufficiently, please contact Mr. Michael Chacón of HRMB and we will attempt to address any remaining concerns.

Sincerely,



Barbara Hoditschek, RCRA Permits Program Manager
Hazardous and Radioactive Materials Bureau

cc: Benito J. Garcia, Chief, HRMB
David Neleigh, EPA (6PD-N)
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