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

OCT - 1 1996



TA-50

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Benito J. Garcia, Bureau Chief
Hazardous and Radioactive Materials Bureau
2044 Galisteo St., Bldg. A
P. O. Box 26110
Santa Fe, New Mexico 87505

Dear Mr. Garcia:

Subject: Los Alamos National Laboratory (LANL) Response to Notice of Determination - Proposed Hazardous Waste Facility Permit Modification for Technical Area 50, Buildings 1 and 69, Technical Area 54 West, Building 38 Mixed Waste Container Storage Areas, EPA ID No. NM890010515-1

The purpose of this letter is to submit the response by the Department of Energy (DOE) and the University of California (UC) to the Notice of Determination (NODET) issued by the Hazardous and Radioactive Materials Bureau (HRMB) of the New Mexico Environment Department (NMED) on July 31, 1996, and received by DOE on August 6, 1996. The NODET was developed by NMED following the review of the LANL Proposed Hazardous Waste Facility Permit Modification, Technical Area 50, Building 1; Rooms 35, 36, and 38/38A Container Storage Areas, Building 69; Indoor and Outdoor Container Storage Areas, Technical Area 54 West Building 38; High Bay, Low Bay, Loading Dock, and Outdoor Container Storage Areas, submitted December 22, 1995.

The NODET contains three general comments, a technical comment (Attachment A), an administrative deficiency comment (Attachment B), and a permit fee worksheet. This NODET Response consists of responses to each of the comments and enclosed revised text pages to the original permit revision text as described in the comment responses. The permit application review fee requested by the NODET is also discussed and included in this response.

General Comments

1. Review of the appropriate waste analysis plan is withheld by NMED until DOE/LANL has submitted a response to the WAP Notice of Deficiency which is due to NMED by the end of June, 1996.

DOE/UC submitted the Transuranic Mixed Waste Analysis Plan (WAP) Notice of Deficiency Response to NMED on July 12, 1996, an extension approved by HRMB by letter on July 9, 1996.



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2. All references to the Batch Waste Treatment Unit which was closed under RCRA will be removed from the Permit Module III.

A Class 1 Permit Modification including an item to remove Batch Waste Treatment Unit references from the text of the LANL Hazardous Waste Facility Permit was originally proposed and submitted to NMED on December 13, 1994. Subsequent LANL permit text revision submittals have contained the original references pending final approval of the modification by NMED. Once this modification is approved, it is assumed that NMED will strike all such references in Permit Module III and that LANL will delete such references from future permit modification or application submittals.

3. Module III Page 3 Section III.B.3 Paragraph 1 Line 4. Reference is made to New Mexico Administrative Code. 20 NMAC 4.1 is not New Mexico Administrative Code but New Mexico Annotated Code.

The use of the reference to the New Mexico Administrative Code is based on the discussion in the *New Mexico Register*, Vol. VI, No. 12, June 30, 1995, regarding New Mexico Commission of Public Records amended rule filing requirements. Section 7, "Definitions," Item 7.11, states "NMAC means the New Mexico Administrative Code which is the organizing structure for rules filed by New Mexico State agencies. The NMAC is also the body of filed rules and the published versions thereof. The NMAC is structured by Title, Chapter, and Part."

Attachment A. Technical Comments

Sections E.10.3.3, E.11.3.3, E.12.3.3, Decontamination Verification. With reference to the criteria for which successful decontamination is defined, the following sentence within the closure plan should be revised: "Detectable hazardous waste or constituent concentrations from the container storage activities do not significantly decrease after several washdowns". If after several washdowns, the concentrations of hazardous waste do not decrease, then appropriate disposal options should be considered. The conclusion that successful decontamination has occurred is technically inappropriate. This section should be clarified to provide for the above condition.

The specific washdown decontamination verification criteria referenced by this comment is consistent with the policy established by the U.S. Environmental Protection Agency (EPA). Clean closure that allows hazardous constituents to remain in place is allowable in accordance with and subject to provisions under current Federal and New Mexico regulations. As found in the final rule for "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities", Federal Register(FR), 52 FR 8704, March 19, 1987, EPA set "forth its interpretation of the regulatory requirements applying to closure of storage facilities regulated under both permits and interim status" (52 FR 8704). While the type of storage unit addressed by this final rule is surface impoundments, EPA's language clearly demonstrates that EPA intended the discussion to more broadly express general policy.

As part of its discussion regarding the interpretation of the "remove and decontaminate" clean closure standard language in RCRA Parts 264 and 265, EPA stated that it "recognizes that at certain sites limited quantities of hazardous constituents might remain

in the subsoil and yet present only insignificant risks to human health and the environment” (52 FR 8706). EPA reiterated this position throughout that preamble and in numerous other documents including, but not limited to, the closure by removal and risk from residuals in soil (52 FR 8713) discussion sections of the Proposed Amendments for Landfill, Surface Impoundment, and Waste Pile Closures, 52 FR 8712, March 19, 1987; in the Office of Solid Waste and Emergency Response (OSWER) Policy Directive #9476.00-18 “Guidance on Demonstrating Equivalence of Part 265 Clean Closure with Part 264 Requirements,” May 12, 1989; and in the OSWER Directive #9476.00-16, “Effective Dates for Characteristic and Listed Wastes per March 19, 1987 Clean Closure Regulation,” April 1, 1988. Subsequent to the publication of these documents, EPA established that post-closure care was unnecessary if no hazardous waste or waste residue remains at the site (53 FR 9944). Waste residue was defined to be hazardous constituents present in the environment at or above levels of human health or environmental concern. For the purposes of this discussion, it follows that if what is defined as waste residue no longer remains, then clean closure has been achieved even though hazardous constituents may continue to be present.

As previously mentioned, EPA’s policy discussion was focused on the technical clean closure requirements of surface impoundments. While the requirements focused on land based waste management units that presumably may have had waste in direct contact with the soil and thereby create a potential threat to the environment, clean closure of container storage units represents a situation less likely to present such a threat because waste is normally managed in contained packages. The conservative application of these standards to a container storage area represents an adequate and sufficient if not more protective approach.

The March 19, 1987 closure discussion states that “To provide the necessary level of assurance, the Agency will require owners or operators to remove all waste and contaminated liners and to demonstrate that any hazardous constituents left in the subsoils will not cause unacceptable risks to human health or the environment” (52 FR 8706). Further guidance on criteria for such a closure demonstration is then presented including proposing provisions for documentation that unremoved contaminants will not impact environmental media, determining that direct exposure through predictable pathways will not result in a threat to human health or the environment, and submitting data for regulatory agency review where formally recommended exposure limits are not available.

The validity of this decontamination criteria has been discussed with HRMB and DOE Oversight Bureau staff. The last such meeting was held on May 21, 1996, during which EPA preamble and policy directives were provided by LANL representatives. Based on the outcome of that discussion, the NODET comment is interpreted to mean that further detail regarding the provisional nature of the particular decontamination criteria at issue will provide the necessary degree of technically appropriate clarification. Therefore, the following language (bold text) has been added to the decontamination criteria item in Sections E.10.3.3, E.11.3.3, and E.12.3.3 of the revised permit text submittal:

- “Detectable hazardous waste or constituent concentrations from container storage activities do not significantly decrease after several washdowns. **In such an event, hazardous constituents will be allowed to remain that pose an acceptable risk as mutually agreed upon with NMED.**”

Attachment B, Administrative Deficiencies

1. Reference is made to TA-50 Building 1 Room 102 and 103. NMED does not have a record of these rooms being permitted or in the January 1991 Part A to obtain Interim Status for Mixed Waste. NMED has interpreted the references in the text to be an inadvertent omission from the application. DOE/LANL must address this omission in their response to this NOD. Should these two rooms be added to the permit modification being processed complete documentation is required within the time allowed for response to this NOD.

The reference to Rooms 102 and 103 contained in the revised text to Module III of the proposed permit modification is for the rooms that make up the Indoor Container Storage Area at Building 69 and does not constitute a request for additional storage areas. As shown in Figure 12 of the December 22, 1995 permit text revision submittal, the proposed storage area consists of the two rooms in an L shaped configuration. The designation of the two rooms is based on a difference in the time of construction rather than on a physical distinction such as a partition or wall between them. Rooms 103 and the vehicle airlock entrance room identified in Figure 12 were added to the existing building in 1985 according to facility representatives. The 1985 expansion was to provide physical room for the management of standard waste boxes in front of the existing glovebox unit in Building 69.

The container storage capacity for the combined rooms has not been increased from the January 25, 1991 Part A (1,500 gallons). The extension of the described storage area into Room 102 is to provide container staging areas associated with the glovebox waste characterization operations as described in Section 4 of the "RCRA Permit Modification Request", Final Draft, September 29, 1995, provided to HRMB by DOE/UC.

The following language (bold text) has been added to Module III, Section A.3.b to clarify this relationship:

"b. Containers not containing free liquids may be stored on pallets, dollies, or otherwise elevated in Building 50-69, **Indoor Container Storage Area (Rooms 102 and 103)**, and at the Building 50-69 Outdoor Container Storage Area(CSA)."

This will align the language with the comments presently contained in other parts of the revised permit text and clarify this relationship. Examples of other references are:

Module III, Section III.C.3.h. "No more than 1,500 gallons of waste shall be stored at the Building 50-69 Indoor CSA (Rooms 102 and 103)..."

Attachment E, Section E.11, page 1, paragraph 2. "The WCRRF Indoor CSA consists of Rooms 102 and 103."

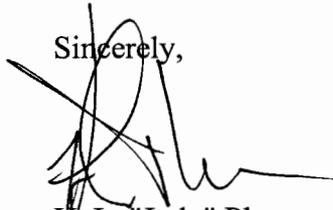
Attachment F, Section F.2.1. Specific Storage Areas "...the TA-50-69 indoor and outdoor storage units (two total)..."

Attachment F, Section F.2.1.7 TA-50-69 Indoor and Outdoor Container Storage Areas "

As a related issue, the two calculated permit fee items for Operating Unit 4 "TA-50 Building 69 Room 102" and Operating Unit 5 "TA-50 Building 69 Room 103" are redundant with the calculated fee for Operating Unit 6 "TA-50 Building 69, Indoor Storage Unit" as listed in Attachment C, Permit Fee Worksheet of the NODET. Therefore, the required permit fee included with this response has been adjusted as discussed with HRMB representatives during the monthly scheduled permit issues meeting that occurred on August 21, 1996, and as confirmed by telephone conversation on August 28, 1996. The enclosed fee is \$46,500 (the previous fee of \$50,000 minus \$3,500 for the redundant units). The revised permit fee is being submitted at this point to facilitate the time frame for review of the permit modification and to meet the requirements of the NODET. If this fee amount is not approved by NMED, please contact this office as soon as possible for resolution of this issue so that the project schedule is not affected.

A certification statement is provided for the revisions presented in this submittal. Electronic copies of the revised sections of the permit text modification submittal have also been included. I hope this response has addressed your concerns. If you should have any questions, please feel free to contact me at (505) 665-5042.

Sincerely,



H. L. "Jody" Plum
Office of Environment and Projects

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Enclosures