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LANL Permit
RANT Class 2 PMR
TA-54 West

Cobrain, Dave, NMENV

TA-54-38

From: Kieling, John, NMENV
Sent: Thursday, May 23, 2013 2:46 PM
To: Haagenstad, Mark P
Cc: Maggiore, Peter; Brandt, Michael T; Turner, Gene E; Dodge, Bob; Dorries, Alison M; Grieggs, Tony; George, Victoria A; Cobrain, Dave, NMENV; Hall, Timothy, NMENV; jmousseau@lanl.gov
Subject: RE: RANT PMR Public Meeting.

Mark:

Thanks for the e-mail notifying NMED that the Permittees continued with the meeting last evening regarding the permit modification for the RANT facility.

I want to point out the regulatory procedures for public participation below, including the timing of the actions taken to date.

The Permittees submitted the Class 2 Permit Modification Request (PMR) to NMED on May 2, 2013, in accordance with 40 CFR 270.42(b). Section 270.42(b)(2) requires the Permittees to "send a notice of the modification request to all persons on the facility mailing list" and "publish this notice in a major local newspaper of general circulation...within 7 days before or after the date of submission of the modification request." The Permittees are also required to provide NMED evidence of the mailing and publication. Section 270.42(b)(2)(ii) further requires the notice include the "date, time, and place for a public meeting." Based on these regulations, the Permittees were required to public notice the PMR no later than May 9, 2013.

During its review of the PMR, NMED noticed that the public notice attached to the PMR did not include the time of the public meeting. LANL staff informed NMED that the notice was published in a newspaper on May 5, 2013, that it was unclear whether the time of the meeting was included in that notice, and that a second notice was being published on May 19, 2013. LANL staff also informed NMED by email on May 17, 2013, that the notice was mailed to the facility mailing list on May 15, 2013. The Permittees missed the deadline for sending the notice to the mailing list by at least six days. Also, the missed the deadline for publishing the notice of May 5th did not include the time of the meeting.

The Permittees have proposed as a solution that they extend the public comment period to allow the public more time to review the PMR. While this seems like a reasonable solution, there are no provisions in Section 270.42(b) for extending a public comment period when the requirements of 270.42(b)(2) are not met.

40 CFR 270.42(b)(7) states: "The Director may deny or change the terms of a Class 2 permit modification request...for the following reasons: (i) The modification request is incomplete; (ii) the requested modification does not comply with the appropriate requirements of 40 CFR part 264 or other applicable requirements; or (iii) The conditions of the modification fail to protect human health and the environment." Because the Permittees did not comply with the applicable procedural requirements in 270.42(b)(2), NMED would be justified in denying the PMR under 270.42(b)(7)(ii), and not doing so could create issues for NMED if stakeholders questioned it.

As I discussed with Jeff Mousseau yesterday afternoon after the NNM CAB meeting, the withdrawal of the permit modification and resubmittal following the public notice process is the solution to avoid any further delays. It is best to do this sooner rather than later as more time will be lost in the process.

If you would like to discuss further please contact me or Dave Cobrain. I will be out of the office Friday and this coming Tuesday.

Thanks,



John Kieling

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From: Haagenstad, Mark P [<mailto:mph@lanl.gov>]
Sent: Wednesday, May 22, 2013 4:44 PM
To: Kieling, John, NMENV; Cobrain, Dave, NMENV; Hall, Timothy, NMENV
Cc: Maggiore, Peter; Brandt, Michael T; Turner, Gene E; Dodge, Bob; Dorries, Alison M; Grieggs, Tony; George, Victoria A
Subject: RANT PMR Public Meeting.

Hello John, Dave, and Tim:

The intention of this email is to inform you that the Permittees will hold a public meeting on the TA-54-38 RANT Permit Modification Request (PMR) as scheduled tonight (May 22, 2013) from 5:30 p.m. to 7:30 p.m. at Fuller Lodge, Los Alamos.

The Permittees are aware that the New Mexico Environment Department Hazardous Waste Bureau (NMED-HWB) verbally requested on May 21, 2013 that the Laboratory withdraw the PMR based on the Permittees inadvertent, late (5 days) submittal of the mailing list notification.

The Permittees reasons for moving forward with the public meeting have in part to do with being responsive to the public. NMED-HWB's request for the Permittees to withdraw the TA-54-38 RANT PMR was received too late to properly notify the public. At the least, the meeting may provide additional input from the public on the PMR.

We hope to discuss options for a path forward in resolving any issues with the PMR in the near future. This PMR is very important to 3706 Campaign Work-off efforts.

Please contact me if additional information would be helpful.

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