Cobrain, Dave, NMENV

From:	Hall, Timothy, NMENV
Sent:	Tuesday, August 21, 2012 10:31 AM
To:	Cobrain, Dave, NMENV; Kieling, John, NMENV; Briley, Siona, NMENV; De Saillan, Charles, NMENV
Subject:	LANL temporary authorization

Good morning,

Here is the follow-up email that I promised regarding LANL's proposal to request a temporary authorization (TA) that would allow them to create a short-term container storage and treatment unit at TA-55 in Room 432. They have a "window of opportunity" to conduct treatment and/or repackaging of STP-covered mixed TRU waste currently in storage at TA-55 that does not meet the WIPP WAC. This window of opportunity started in July 2012 and ends in early 2013. In a meeting on June 21, 2012, the Permittees informed NMED that the "waste work-off campaign will be completed in less than 180 days." See the attachments for details of the proposal.

In a meeting with the Permittees on August 20, 2012, the Permittees stated that they may not be able to complete the work during the 180-day term of the TA, and that they may at some future date request another TA to complete these activities and/or work off additional problematic waste.

What the regulations say:

40 CFR 270.42(e)(1) states, "Temporary authorizations must have a term of not more than 180 days."

40 CFR 270.42(e)(4) states, "A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and: (i) The reissued temporary authorization constitutes the Director's decision on a Class 2 permit modification in accordance with paragraph (b)(6)(i)(D) or (ii)(D) of this section."

53 Fed. Reg. 37919 states, "It is expected that temporary authorizations will be useful in the following two situations: (1) To address a one-time or short-term activity at a facility for which the full permit modification process is inappropriate; or (2) to allow a facility to initiate a necessary activity while its permit modification request is undergoing the Class 2 or 3 review process."

I found no EPA guidance on whether facilities can request multiple TA's over time for the same unit, process, or activity.

Interpretation and recommendation:

Based on the language above, requesting a TA without requesting a permit modification is appropriate if the Permittees will complete the treatment/repackaging activities within the 180-day term of the TA. If the Permittees do not request a permit modification at the time they request a TA, the TA may not be extended; in other words, they must complete the activity within the 180-day term of the TA, and I believe it is implied that they may not request a TA for the same activity at a future date.

The Permittees seem reluctant to submit a PMR, stating it will be problematic (from a RCRA perspective) to change the configuration of Room 432 if it is permitted. For example, they will be using a glove bag for the initial campaign, but will remove the glove bag after they finish that campaign and go back to packaging newly generated waste. As far as I can tell, there is no reason for this concern, and therefore, I recommend the Permittees submit a Class 2 PMR. They can request a TA at the same time, and if the information they submit meets the requirements in 40 CFR 270.42(e), they

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should be able to conduct at least some of the work they are proposing within the timeframe they have proposed. If the PMR is approved, they will have a permitted unit in the future when they need it.

Let me know if you want to discuss this further.

Tim Hall
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