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BUTCH TONGATE
Cabinet Secretary

J.C. BORREGO
Deputy Secretary

MEMORANDUM

TO: Butch Tongate, Cabinet Secretary, NMED

THROUGH: J.C. Borrego, Deputy Secretary, NMED *JCB*
Jennifer Hower, General Counsel, NMED *JH*

FROM: John E. Kieling, Bureau Chief, Hazardous Waste Bureau *JK*
Neelam Dhawan, LANL Group Leader, Hazardous Waste Bureau *ND*

SUBJECT: LOS ALAMOS NATIONAL LABORATORY CLASS 2 PERMIT
MODIFICATION REQUEST

DATE: April 19, 2017

On January 31, 2017, the NMED Hazardous Waste Bureau (HWB) received a Class 2 Permit Modification Request (PMR) for the Los Alamos National Laboratory Hazardous Waste Facility Permit (Permit) from the U.S. Department of Energy (DOE) and Los Alamos National Security (LANS) (collectively the Permittees). The modification requests the addition of three hazardous waste storage units (TA-55-0355 Pad, Room B13 and Room G12) at Technical Area (TA)-55 to the Permit. The addition of three storage units would result in an approximate increase of 94,545 gallons of storage capacity at TA-55, as the storage capacity would increase from 177,600 gallons to 272,145 gallons. This would result in a 1.84% increase in the overall container storage capacity for the LANL facility, as defined by the permit, which is currently 5,135,465 gallons.

The Permittees state that this additional storage capacity is necessary due to the limitations for off-site shipment of the Los Alamos National Laboratory (LANL) waste stockpile to the Waste Isolation Pilot Plant (WIPP). Transuranic (TRU) waste shipments from LANL are not expected to resume until September 2017 due to the incident at WIPP in February of 2014. Due to the changes at WIPP, the projected shipment estimates are much less than historical practices. Therefore, the number of shipments to WIPP available to LANL will not meet projected generation rates. A subset of the TRU waste inventory at TA-55 includes Pipe Overpack Containers (POCs) containing combustibles that are not being accepted at WIPP due to changes in WIPP's waste acceptance criteria. The Transuranic Waste Facility (TWF) at TA-63 is currently not operational and approximately half of the containers currently stored at TA-55 are not WIPP compliant and cannot be stored at TWF even when it becomes operational until they are repackaged and certified. This waste will

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need to be stored at TA-55 until the waste can be treated at the Waste Characterization, Reduction, and Repackaging Facility (WCRFF) to become WIPP-compliant. Currently WCRFF is not operational or available.

In addition to limitations on off-site shipment of current waste to WIPP, TA-55-4 operations restarted in August 2015 and full activities started on August 18, 2016. TA-55 is part of LANL's strategic role in nuclear defense and research programs for DOE. LANL is planning to continue long term operations at TA-55. With the return of full operations at TA-55-4, LANL is anticipating an increase in generation of MTRU (mixed TRU) and TRU wastes. To meet the current and future mission needs, LANL is expecting to modernize the facility, which will result in removal of dated gloveboxes and other large equipment that will require storage at the outdoor storage unit, which would limit storage capacity of operations generated waste at TA-55.

During the 60-day public comment period related to the permit modification request, HWB received requests from four commenters that the PMR be reclassified from a Class 2 modification to a Class 3 modification. The requests indicated an approximate 53% increase in storage capacity at TA-55. The permit, which was issued to LANL in 2010, allowed LANL to store 5,024,630 gallons of waste, out of which 4,346,590 gallons is for storage at Area G at TA-54. Three major changes to storage capacity of waste have been approved since 2010. On September 24, 2013, NMED approved an increase in storage capacity at RANT at TA-54 West of 35,860 gallons. The increased capacity at RANT was accomplished through a Class 2 modification to the permit. On December 23, 2013, NMED approved a Class 3 PMR to add TWF to the permit, which resulted in an increase of storage capacity of 105,875 gallons at LANL. However, the Class 3 was not based upon the capacity increase, but that TWF was an entirely new component and of the complex changes of being added to the permitted facility. On January 29, 2016, NMED approved removal of Structure TA-55-185, which resulted in a decrease of 30,000 gallons of waste storage capacity at TA-55.

In the current PMR, the Permittees cite 40 C.F.R. 270.42 Appendix I Item F.1.b, which identifies a change resulting up to a 25% increase in the facility's container storage capacity as being a Class 2 modification. The regulations also identify a change in capacity larger than 25% increase as a Class 3 modification, as cited in 40 C.F.R. 270.42 Appendix I Item F.1.a. The percent increase is not calculated cumulatively over time.

The commenters contend that RCRA regulations must be interpreted that a change of more than a 25% increase in storage capacity at any Technical Area at LANL, not at the entire LANL facility, should require a Class 3 modification to the permit.

The term "Facility" is defined in 40 C.F.R. 260.10 as "All contiguous land, and structures or other appurtenances, and improvements on the land, used for treatment, storing, or disposing of hazardous waste or for managing hazardous secondary materials prior to reclamations. A facility may consist of several treatments, storage or disposal operating units (e.g., one or more landfills, surface impoundments or combinations of them)."

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This definition is consistent with the definition in Section 1.8 of the LANL Permit that states, "Facility means the Los Alamos National Laboratory site comprised of approximately 40 square miles, located on the Pajarito Plateau in Los Alamos County in north central New Mexico, approximately 60 miles north-northeast of Albuquerque and 25 miles northwest of Santa Fe, and owned by the United States Department of Energy."

Based on the regulatory definition of facility in the LANL Permit and in the federal RCRA regulations, the HWB recommends that the requests to reclassify the PMR to a Class 3 be denied, as the Permittees appropriately requested the Class 2 modification for a less than 2% increase in the storage capacity at LANL. In addition, TA-55 is already permitted to store containerized hazardous waste and the increase in storage capacity would not result in significant programmatic changes to TA-55 or its overall environmental footprint. Two storage units will be in the basement of an existing building (TA-55-4) and an existing High Efficiency Neutron Counter Pad will be converted into a hazardous waste outdoor storage pad. The Permittees have provided sufficient justification for the need of additional storage at TA-55. Continuation of DOE required defense and research programs at LANL generates waste that needs storage at LANL until it can be properly disposed.

Pursuant to 40 CFR 270.42(b)(6)(i), for a Class 2 PMR, NMED must make a decision on the PMR within 90 days of receiving the modification request; such a decision could be an approval with or without changes, denial of the request, a change from a Class 2 PMR to a Class 3 PMR, approval of a request for Temporary Authorization for up to 180 days, or notification to the Permittee that a final decision will be made within the next 30 days. Unless a 30-day notification is sent to the Permittees, the decision on this PMR is due by May 1, 2017. If NMED fails to make one of the decisions mentioned above by the 120th day, the Permittee is automatically authorized to conduct the activities described in the PMR for up to 180 days without formal NMED action.

The HWB would like to notify the Permittee that a decision on this PMR will be provided after an additional 30 days for consideration, as provided under 40 CFR 270.42(b)(6)(i)(E). This additional time is necessary to address comments that were submitted, with approval by HWB, approximately a week after the comment period ended. The informal extension was to accommodate two commenters who were not aware that a specific attachment to the PMR had been provided by the Permittees on their electronic information repository.

Should you need any further information or clarification please let us know.

Thank you for your consideration of these requests.

Request for Reclassification of Permit Modification Request to Class 3 is Hereby:

Approved.

Butch Tongate
Secretary
New Mexico Environment Department

Date

Denied.

Butch Tongate

Butch Tongate
Secretary
New Mexico Environment Department

4/27/17

Date

40 CFR 270.42(b)(6) Request for Additional 30 Days for Consideration is Hereby:

Approved:

Butch Tongate

Butch Tongate
Secretary
New Mexico Environment Department

4/27/17

Date

Denied:

Butch Tongate
Secretary
New Mexico Environment Department

Date