

Kieling, John, NMENV

From: David McCoy <dave@radfreenm.org>
Sent: Thursday, October 25, 2012 12:44 PM
To: Martin, David, NMENV; Kieling, John, NMENV
Cc: Joni Arends; Robert H Gilkeson, registered geologist
Subject: Objection to Delay of Final Order Requirement for 5-year Review for MWL dump
Attachments: Objection to Delay 5year review for MWL dump.doc

10/25/2012

Dear Secretary Martin and Mr. Kieling,

Please see the attached objection for delay of the 5 year review requirement for the Mixed Waste Landfill dump from Citizen Action, Concerned Citizens for Nuclear Safety and Registered Geologist Robert Gilkeson.

Thank you.

Sincerely,

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October 24, 2012

**David Martin, Secretary
New Mexico Environment Department**

**John Kieling, Chief
New Mexico Environment Department
Hazardous Waste Bureau**

Re: Objection to Sandia National Laboratories' (SNL) Mixed Waste Landfill (MWL) Delay of the Five Year Review Required by the May 26, 2005 Final Order (Curry May 2005) and Class 3 Permit Modification for the MWL (NMED August 2005).

Dear Secretary Martin and Chief Kieling:

Citizen Action New Mexico, Concerned Citizens for Nuclear Safety and Registered Geologist Robert Gilkeson respectfully request that the New Mexico Environment Department (NMED) immediately enforce the 2005 Final Order condition #5 requirement that Sandia perform a 5-year review for 1) the feasibility of excavation of the MWL, 2) the effectiveness of the dirt cover for the dump's radioactive and hazardous wastes, 3) update of the fate and transport model for the site with current data, 4) re-evaluation of any likelihood of contaminants reaching groundwater, and 5) detail of all efforts to ensure any future releases or movement of contaminants are detected and addressed well before any effect on groundwater or increased risk to public health or the environment is determined.

1. We object to the use of the Long-Term Monitoring and Maintenance Plan (LTMMP) to modify and delay the 2005 Final Order requirement that Sandia perform the 5-year review. The LTMMP is not an appropriate vehicle for modification of the 2005 Final Order.
2. The requirement for producing the LTMMP arose from a Level 3 permit modification for corrective measures for the MWL provided for in the 2005 Final Order (Curry). The 2005 Final Order resulted after a multi-year process that included four days of public hearings in December 2004. Modification of the 5-year review requirement requires a level 3 modification of the permit.
3. Condition #5 of the 2005 Final Order stated as follows:

“Sandia shall prepare a report every 5 years, re-evaluating the feasibility of excavation and analyzing the continued effectiveness of the selected remedy. The report shall include a review of the documents, monitoring reports and any other pertinent data, and anything additional required by NMED. In each 5-year report, Sandia shall update the fate and transport model for the site with current data, and re-evaluate any likelihood of contaminants reaching groundwater. Additionally, the report shall detail all efforts to ensure any future releases or movement of contaminants are detected and addressed well before any effect on groundwater or increased risk to public health or the environment. Sandia shall make the report and supporting information

readily available to the public, before it is approved by NMED. NMED shall provide a process whereby members of the public may comment on the report and its conclusions, and shall respond to those comments in its final approval of the report.”

4. By allowing the possibility of a greater than 7-year delay in providing the first 5-year review report to the public, NMED is violating the requirements of the 2005 Final Order and 40 CFR 270.42 Appendix I for permit modifications and public notice and hearing requirements.
5. Nowhere in condition #5 or in the entire 2005 Final Order is there any language that would give legal justification or give the implication that the NMED or DOE/SNL can delay compliance with condition #5, i.e., that the first 5-year review report will not be provided before November 2017, as planned with the LTMMP, and more than 7 years later than the date of May 26, 2010 required by the 2005 Final Order.
6. Sandia failed to comply with the explicit and mandatory language of condition #5 of the 2005 Final Order. The language that says “Sandia shall prepare” places the duty squarely upon Sandia to prepare the 5-year evaluation in a timely fashion, by May 26, 2010. That is mandatory language without provision for delays.
7. The additional extension of 5 years, beyond the 7 years that have already passed since the 2005 Final Order, constitutes a modification of the general permit condition for reporting required in the 2005 Final Order. 270.42 Appendix I A.4.b.
8. The 7 year extension of time to provide the 5-year evaluation report is an impermissible modification of the 2005 Final Order for Corrective Action for the MWL dump. The Modification of Module IV of Sandia’s permit was accomplished by the 2005 Final Order. A change to the 2005 Final Order as a part of the SNL Permit requires a permit modification request from Sandia to NMED for modification of the 2005 Final Order. It would then be noticed for the public with opportunity for comment and a possible public hearing upon request. Extension of a final compliance date requires a Class 3 modification. 270.42 Appendix I A. 5.b
9. The DOE/SNL should have at least made a Level 2 modification request for an extension of the time period to provide the 5-year report to the NMED. No such modification request has been made.
10. NMED determined out of thin air and without regulatory basis that the first five-year period will begin upon NMED approval of the LTMMP (Kieling October 2011).
11. On May 9, 2012 Citizen Action made a public records request to NMED for the 5-year review extension as follows:

Provide all documents upon which the New Mexico Environment Department relies for its interpretation that the May 26 2005 Final Order provides for the Sandia National Laboratories (SNL) to perform a 5-year review of the MWL dump after approval of the Long-term Monitoring and Maintenance Plan.

Provide any requests by SNL for that interpretation of paragraph 5, p. 5 of the Final Order.

Provide any letter of approval furnished to SNL for that interpretation.

Provide any notice furnished to the public for that interpretation previous to NMED approval.

12. NMED response to the public records request was to state that there were no documents.

Conclusion

Citizen Action requests that NMED do the following:

- 1). Immediately enforce the 5-year review requirement of condition #5 of the Final Order;
- 2). Stay the LTMMP until such time as the 5-year review has been completed and the review has been made available to the public as provided for in Condition #5;
- 3). Order the LTMMP extension language for the five-year review be withdrawn from the LTMMP, and;
- 4). NMED strictly enforce Condition #5 at all times in the future.

Sincerely,

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