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State of New Mexico
ENVIRONMENT DEPARTMENT



Office of the Secretary

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DAVE MARTIN
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BUTCH TONGATE
Acting Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 24, 2011

Kevin W. Smith, Manager
Los Alamos Site Office
Department of Energy
3747 W. Jemez Rd., MS-A316
Los Alamos, NM 87544

James C. Cantwell, Associate Director
Environment, Safety, Health, & Quality
Los Alamos National Security, LLC
Los Alamos Research Park
P.O. Box 1663, MS K491
Los Alamos, NM 87545

**RE: TA-63 TRANSURANIC WASTE FACILITY (TWF) PERMIT MODIFICATION
REQUEST
LOS ALAMOS NATIONAL LABORATORY
EPA ID# NM 0890010515
LANL-11-045**

Dear Messrs. Smith and Cantwell:

The New Mexico Environment Department (Department) has received the *Permit Modification Request for Technical Area 63, Transuranic Waste Facility, Hazardous Waste Container Storage Unit (Permit Modification Request)*, dated August 18, 2011, from the United States Department of Energy and Los Alamos National Security LLC (Permittees). The Permittees seek to modify the Hazardous Waste Facility Permit for Los Alamos National Laboratory (LANL) for the construction of a new Transuranic Waste Facility at Technical Area 63 (TA-63) to store mixed transuranic and hazardous waste. The Permittees request that the Department process the modification request as a Class 2 permit modification under the regulations at 40 CFR § 270.42(b). For the reasons explained below, I have determined that it is appropriate for the Department to process the modification request as a Class 3 permit modification under 40 CFR § 270.42(c).

In the cover letter transmitting the *Permit Modification Request*, the Permittees assert that the modification should be a Class 2 because the proposed new Transuranic Waste Facility would

34877



Messrs. Smith and Cantwell
October 24, 2011
Page 2

represent only a 15.6 percent increase in hazardous waste storage capacity for LANL. The Permittees correctly point out that under 40 CFR § 270.42, Appendix I, Section I.F.1.b, modification or addition of container storage units resulting in up to a 25 percent increase in the facility's container storage capacity is a Class 2 modification. However, this analysis is not determinative.

Under 40 CFR § 270.42(b)(6)(i)(C)(1), the Department Secretary may determine that the modification request must follow the procedures for a Class 3 modification because there is substantial public concern about the requested modification. There is a long history of substantial public concern regarding the management of hazardous waste at LANL. This concern was recently demonstrated during the renewal of the Hazardous Waste Facility Permit for LANL. During the public hearing for the Permit renewal, held over fifteen days in April and May of 2010, five citizen activist groups and two individual citizens participated as parties in the hearing and some one hundred and forty members of the public presented oral statements. In response to the Department's request for written public comment on the Permit renewal, approximately three hundred and forty citizens wrote to the Department and approximately two thousand citizens signed petitions. Substantial public concern has also been demonstrated with respect to the proposed new Transuranic Waste Facility at TA-63. On August 10, 2011, the Permittees held a public meeting on the proposed storage facility. Thirteen members of the public attended the meeting, and five submitted written comments for the record.

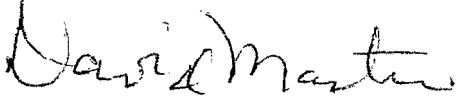
In addition, the requested permit modification involves complex issues that are more properly addressed as a Class 3 modification. Under 40 CFR § 270.42(b)(6)(i)(C)(2), the Department Secretary may determine that the modification request must be processed as a Class 3 modification because the complex nature of the changes require the more extensive Class 3 procedures. The requested modification would require complex changes to the facility and its operations. In addition, the Department will need to evaluate the seismic location standard under 40 CFR § 270.14(b)(11)(ii) in processing the modification request. The Department will also need to consider the plume of vapor-phase trichloroethylene contamination emanating from Material Disposal Area C, which may be migrating to soils at the proposed location of the Transuranic Waste Facility, and possibly requiring monitoring. And the modification will require additional measures to control stormwater run-off from the southern portion of the proposed facility.

I have therefore determined that the requested permit modification for the Transuranic Waste Facility at TA-63 will be processed as a Class 3 modification. Treating the permit modification as a Class 3 modification rather than a Class 2 modification should not delay construction of the Transuranic Waste Facility. According to the Permittees, construction of the facility is scheduled to begin in 2013. Even assuming that the Environment Department holds a public hearing on the modification, the Department will take final action on the modification request by the end of this federal fiscal year, if not sooner.

If you have any questions about this decision, please address them to John Kieling, Acting Chief of the Environment Department Hazardous Waste Bureau, at 476-6000 or john.kieling@state.nm.us.

Messrs. Smith and Cantwell
October 24, 2011
Page 3

Sincerely,

A handwritten signature in cursive script that reads "David Martin". The signature is written in black ink and is positioned below the word "Sincerely,".

David Martin
Cabinet Secretary

cc: James Davis, RPD, NMED
John Kieling, HWB, NMED
Steve Pullen, HWB, NMED
Laurie King, EPA 6PD-N
George Rael, NNSA LASO, MS A316
Pete Maggiore, NNSA LASO, MS A316
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Tony Grieggs, LANS, MS-K490
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