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PUBLIC NOTICE NO. 04-11

**NEW MEXICO ENVIRONMENT DEPARTMENT
HAZARDOUS WASTE BUREAU
SANTA FE, NM 87505
AUGUST 11, 2004**

**PUBLIC COMMENT PERIOD AND PUBLIC HEARING NOTICE ON A
REQUEST FOR A CLASS 3 PERMIT MODIFICATION FOR CORRECTIVE
MEASURES FOR THE MIXED WASTE LANDFILL
SANDIA NATIONAL LABORATORIES
BERNALILLO COUNTY, NEW MEXICO
EPA ID NO. NM5890110518**

The New Mexico Environment Department (NMED) proposes to modify the United States Department of Energy (DOE)/Sandia Corporation's Resource Conservation and Recovery Act (RCRA) Permit for Sandia National Laboratories (SNL) pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 et seq., and the New Mexico Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC. This modification would incorporate into the RCRA Permit requirements for corrective measures for the SNL Mixed Waste Landfill.

NMED announces the availability of the draft Permit and opportunity for the public to provide comment on the draft Permit. NMED is also providing notice of a public hearing for this permit modification prior to issuance of a final Permit. The Secretary has determined to hold a public hearing due to significant public interest. NMED has available a Fact Sheet that sets forth the basis for modification of the Permit.

SNL is owned by DOE and is co-operated by the DOE and Sandia Corporation. It is located on Kirtland Air Force Base, south of Albuquerque in Bernalillo County, New Mexico. In operation since 1945, SNL is engaged in research and development of conventional and nuclear weapons, alternative energy sources, and a wide variety of national security related research and development. The Permittees are located at the following addresses: SNL, 1515 Eubank SE, Albuquerque, New Mexico, 87123; and NNSA/DOE, Sandia Site Office, KAFB-East, Pennsylvania & H Street, Albuquerque, New Mexico 87116.

The Permittees' primary contact for the Permit modification is: Mr. John Gould, NNSA/Sandia Site Office, DOE, P.O. Box 5400, Albuquerque, New Mexico 87185.

RCRA, 42 U.S.C. §§ 6901 to 6992(k), provides for the regulation of hazardous waste. Congress waived the immunity of the United States for actions brought under state hazardous and solid waste laws as well as under RCRA. Pursuant to Section 3006 of RCRA, 42 U.S.C § 6926, the United States Environmental Protection Agency (EPA) delegated to NMED, on April 16, 1985, the authority to enforce the HWA and its implementing regulations, the HWMR, in lieu of EPA enforcement through RCRA. NMED has maintained its delegation from EPA over hazardous waste management in New Mexico and has amended its state program to conform to statutory or regulatory changes in RCRA.

NMED issued a RCRA Permit for storage of hazardous waste at SNL on August 6, 1992. On February 6, 2002, DOE/SNL applied to the NMED to renew their RCRA Permit. The 1992 Permit remains in effect until a final decision is made on the renewal request.

The HWMR requires corrective action at solid waste management units (SWMUs) where releases of hazardous waste or hazardous constituents have or may have occurred. The Mixed Waste Landfill (MWL) is classified as a SWMU (SWMU 76). DOE and Sandia Corporation must comply with the HWA, the HWMR and their RCRA Permit for this corrective action.

The HWMR at 20.4.1.900 NMAC, incorporating 40 CFR 270.42, allow a facility to request modification of a Permit. When a permit is modified, only the conditions subject to modification are reopened. Therefore, only corrective action at the MWL will be the subject of the public hearing that is to be held on the Permit modification at issue.

The MWL commenced operations as the “TA-3 low-level radioactive waste dump” in March 1959. In a DOE environmental survey report dated April 1988, the TA-3 low-level radioactive dump was labeled a “mixed waste site” and has since been referred to as the TA-3 “Mixed Waste Landfill”. The MWL accepted radioactive and mixed waste from SNL research facilities and off-site generators from March 1959 to December 1988. Mixed waste has both radioactive and hazardous components. Approximately 100,000 cubic feet of radioactive waste containing 6,300 curies (Ci) of activity (at the time of disposal) were disposed of at the MWL.

On October 11, 2001, the NMED directed the DOE/SNL to conduct a Corrective Measures Study (CMS) for the MWL. Subsequently, the CMS was carried out by the DOE/SNL to identify, develop, and evaluate corrective measures alternatives and to recommend the corrective measure(s) to be taken at the MWL. The results of the CMS were documented in a CMS Report following completion of the study; the report was transmitted to the NMED on May 21, 2003. The CMS Report was deemed complete by the NMED on January 5, 2004. On January 23, 2004, the DOE/SNL requested a Class 3 permit modification of their RCRA permit for the NMED to select a corrective measure for the MWL. A public notice regarding the permit modification was published in the Albuquerque Journal on January 30, 2004. The public notice included information regarding a subsequent February 26, 2004 public meeting. Comments

taken from the public during the 60-day comment period and the meeting have been considered by the NMED.

Four corrective measures alternatives were found suitable by the DOE/SNL for the MWL and evaluated in detail. These alternatives include three containment alternatives and one excavation alternative:

1. No Further Action (NFA) with Institutional Controls (Alternative I.a);
2. Vegetative Soil Cover (Alternative III.b);
3. Vegetative Soil Cover with Bio-Intrusion Barrier (Alternative III.c); and
4. Future Excavation (Alternative V.e).

The DOE/SNL have recommended Vegetative Soil Cover, Alternative III.b., as the preferred corrective measure for the MWL. Under this alternative, a vegetative soil cover would be constructed on the existing landfill surface.

The NMED proposes to select Vegetative Soil Cover with Bio-Intrusion Barrier, Alternative III.c, as the corrective measures for the MWL. Environmental investigations completed at the MWL indicate that past releases of contaminants from the landfill do not pose unacceptable risk to human health and the environment. Due to the relatively immobile nature of the majority of the wastes contained within the landfill, as based on the inventory, the NMED has concluded that any future releases of contaminants would be minimal and would not likely pose a significant risk to human health or the environment.

AVAILABILITY OF ADDITIONAL INFORMATION

The Administrative Record for this proposed action consists of a Fact Sheet, this Public Notice, the draft Permit, the CMS Report, Phase 1 and Phase 2 RCRA Facility Investigation (RFI) Reports, and other relevant correspondence and documents. The Administrative Record may be reviewed at the following locations:

New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone: (505) 428-2500
Monday - Friday from 8:00 a.m. to 5:00 p.m.

Government Information Department
Zimmerman Library
University of New Mexico
Albuquerque, New Mexico 87131-1466
(505) 277-5057

The Fact Sheet, Public Notice, draft Permit, and CMS report are also available on the NMED website at: <http://www.nmenv.state.nm.us/hwb/snlperm.html> under Mixed Waste Landfill. The Fact Sheet, Public Notice, draft Permit, CMS Report, and Phase 1 and Phase 2 RFI Reports may also be reviewed at the following location:

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New Mexico Environment Department - District 1 Office
Hazardous Waste Bureau
4131 Montgomery Blvd., NE
Albuquerque, New Mexico 87109
Phone: (505) 841-9450
Monday - Friday from 8:00 a.m. to 5:00 p.m.

To obtain a copy of the Administrative Record or a portion thereof, please contact Mr. William Moats at (505) 284-5086, or at the NMED address given above. NMED will provide copies, or portions thereof, of the Administrative Record at a charge of \$0.25 per page.

PUBLIC HEARING

NMED will conduct a public hearing on the draft Permit beginning **Thursday, December 2, 2004, 9:00 a.m.**, at the Radisson Hotel & Conference Center Albuquerque, 2500 Carlisle Boulevard NE, Albuquerque, New Mexico 87110.

The public hearing will provide interested persons a reasonable opportunity to present data, views, and arguments, as well as to examine witnesses. The hearing will continue daily with morning, afternoon, and evening sessions as appropriate, until all persons have been afforded an adequate opportunity to present comment. The hearing will be conducted in accordance with the Hazardous Waste Management Regulations, 20.4.1.901 NMAC, and the applicable portions of the Environment Department Permit Procedures, 20.1.4 NMAC.

PUBLIC COMMENT

A. WRITTEN PUBLIC COMMENT

NMED will accept written public comment through **December 2, 2004**. Written comments shall be based on all reasonably available information and include, to the extent practicable, all referenced factual materials. Written comment must be filed by **5:00 p.m., December 2, 2004** with the Hearing Clerk at the address below.

Hearing Clerk
New Mexico Environment Department
Room 2151N
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502

B. PUBLIC COMMENT DURING THE HEARING

At the public hearing, NMED will accept technical and non-technical oral or written comment. The Hearing Officer will set reasonable limits upon the time allowed for oral comment. Oral or written comment on the draft Permit shall be accepted at the public hearing as set forth below:

1. **Non-Technical:** Any person may present non-technical oral public comment at the hearing. The Hearing Officer will reserve time for non-technical oral comment during each day of the public hearing. Any person may file non-technical written comment in lieu of oral comment during the hearing with the Hearing Officer Clerk.
2. **Technical:** Any person, including the applicant, who wishes to present technical oral comment, shall file a *Notice of Intent to Present Technical Testimony* (“*Notice of Intent*”) on or before **November 1, 2004** with the Hearing Clerk at the address above. Technical testimony is scientific, engineering, economic, or other specialized testimony, and can be presented in writing or orally. Technical testimony does not include legal argument, general comments, or statements or policy concerning matters at issue in the hearing. To promote efficiency, fairness and avoid prejudice and surprise, technical oral comment will be restricted to points and factual information raised in comment with the exception of rebuttal, as appropriate. The *Notice of Intent* shall contain the following information:
 - A. **Person/Entity:** Identify the person or entity filing the *Notice of Intent*;
 - B. **Position:** State whether the person or entity filing the *Notice of Intent* supports or opposes the draft Permit;
 - C. **Witnesses:** Identify each witness, including name, address, affiliation(s), and educational and work background;
 - D. **Length of Testimony:** Estimate the length of the direct testimony of each witness;
 - E. **Exhibits:** Identify all exhibits; for all exhibits which are not part of the Record Proper, attach a copy (the Record Proper consists of the Administrative Record and all documents filed with the Hearing Clerk);
 - F. **Technical Materials:** Identify all technical materials relied upon by each witness in making a statement of technical fact or opinion contained in the direct testimony; make available any technical materials to any party upon request;
 - G. **Direct Testimony:** Attach a summary of direct testimony of each witness, stating any facts or opinion(s) to be offered by such witness and explaining the basis for such facts or opinion(s). Summaries of testimony shall be comprehensive, substantive and provide sufficient detail to avoid surprise, prejudice and allow for effective cross-examination.
3. The failure to file a timely *Notice of Intent* meeting the requirements above shall preclude a person from presenting technical oral or written comment at the hearing, but shall not preclude a person from presenting non-technical oral comment.

C. PARTY STATUS

1. Any person, including the applicants, who wishes to be a party for purposes of public participation at the public hearing shall file either a timely *Notice of Intent* or a timely *Entry of Appearance* on or before **November 1, 2004** with the Hearing Clerk at the address above. The *Entry of Appearance* shall include the following:

- A. Person: The person or entity filing the entry and their address;
- B. Position: State whether the person or entity supports or opposes the draft Permit; and
- C. Length of Testimony: Provide an estimate of the amount of time for oral comment, if any.

2. The failure to file a timely *Entry of Appearance* shall preclude a person from being a party in the proceeding, but shall not preclude a person from presenting non-technical oral public comment at the hearing.

As soon as practicable, but in no event later than two weeks prior to the hearing, the Hearing Officer shall make a hearing schedule available for public participants and mail it to each person who file an *Entry of Appearance* or *Notice of Intent*.

PROCEDURE OF ISSUANCE OF FINAL PERMIT DECISION

NMED will respond in writing to all significant public comments received during the public comment period and hearing, and will notify all persons providing comments on the final decision of the Secretary. The Secretary will issue a final permit decision and the response to comment. The response will specify which provisions, if any, of the draft Permit have been changed in the final permit decision, and the reasons for the change.

The Secretary will make the final permit decision publicly available and shall notify the Permittees by certified mail and all persons presenting written comment by mail. The Secretary's decision shall constitute a final agency decision and may be appealed as provided by the Hazardous Waste Act.

ARRANGEMENTS FOR PERSONS WITH DISABILITIES

Any person with a disability requiring assistance or auxiliary aid to participate in this process should contact Judy Bentley at the following address: New Mexico Environment Department, Room N-4030, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico 87502-6110, (505) 827-2844. TDD or TDY users please access Judy Bentley's number via the New Mexico Relay Network. Albuquerque users may access Ms. Bentley's number at (505) 275-7333.