

October 31, 2006

Mr. John E. Keiling  
Program Manager  
New Mexico Environment Department  
Hazardous Waste Bureau  
2905 Rodeo Park Dr. East, Bldg. 1  
Santa Fe, New Mexico 87505  
[john.kieling@state.nm.us](mailto:john.kieling@state.nm.us)

Letter sent by email and FAX 505 428-2567

**RE: PUBLIC NOTICE NO. 06-15**

**CITIZEN ACTION NEW MEXICO OPPOSITION TO  
NEW MEXICO ENVIRONMENT DEPARTMENT'S (NMED) NOTICE OF  
PUBLIC COMMENT PERIOD AND INTENT TO APPROVE A PERMIT CLASS  
3 PERMIT MODIFICATION TO THE RESOURCE CONSERVATION AND  
RECOVERY ACT (RCRA) PERMIT FOR KIRTLAND AIR FORCE BASE  
(KAFB).**

Dear Mr. Kieling,

The New Mexico Environment Department is proposing to issue a Class 3 modification that would grant no further action status for sixteen (16) solid waste management units (SWMUs) under Table A, Module IV of Kirtland Air Force Base's Resource Conservation and Recovery Act (RCRA). Whether the hazardous waste and/or radioactive contaminants at these units no longer pose an unacceptable level of risk for projected land use is at issue.

Citizen Action New Mexico has been actively involved in monitoring radioactive and hazardous waste for groundwater and air releases at Sandia National Laboratories located at KAFB. Citizen Action questions whether the Class 3 Modification for the 22 units at issue were listed on any Part A RCRA application and whether the units have provided the information required under 40 CFR 270.42 (c) (iv) which would include furnishing information regarding protection of groundwater.

Citizen Action New Mexico considers that, for the reasons stated below, the public notice does not comply with RCRA public meeting requirements for the proposed Class 3 modification. The public notice needs to be revised and reissued to include a public meeting in accordance with RCRA provisions.

NMED is required to comply with the requirements of 40 CFR 271.14 (u) for the modification of permits under 40 CFR 124.5 (c). 40 CFR 124.5 (c) provides for the modification of RCRA permits under a State program as set forth in 40 C.F.R. 270.42 (c)

where, as here, the Director “tentatively decides” to modify a permit. (The notice states that NMED has “...the intent to approve a proposed Class 3 modification...”)

The Notice is defective in that it fails to provide for the date, time and place of the public meeting in compliance with part 270.42 (c) (2) (i). For Class 3 Modifications, where the permittee submits a modification request to the Director, the notice must include “(ii) Announcement of the date, time, and place for a public meeting on the modification request...” 40 CFR 270.42 (c) (2) (i). “The meeting must be held to the extent practicable in the vicinity of the permitted facility.” 40 CFR 40 C.F.R. 270.42 (c) (4).

The notice demands that “Written comments must be based on the administrative record.” The notice fails to provide the location where the Administrative Record (AR) may be reviewed. Rather than providing a location where the public can review the AR, the notice states the name of Pam Allen with a phone number and sets forth an appointment requirement. (Notice, p. 2). 40 CFR 270.42 (c)(2)(v).

A telephone call to Pam Allen on 10/31/06 resulted in being directed further to the NMED website to make a records request for the AR or to contact Will Moats in Albuquerque. Supporting documents, such as the AR, must be placed “in a location accessible to the public in the vicinity of the permitted facility.” 40 CFR 270.42 (c)(2)(5). It is not clear at this time whether the AR is available in Albuquerque, but if the AR is only available in Santa Fe that would seem to be an excessive distance from the KAFB.

The notice lists the Government Information Department at Zimmerman Library, University of New Mexico, for providing the KFAB Modification Request, the Fact Sheet/Statement of Basis. By a telephone call on 10/30/06 to that library department, Citizen Action learned that the department has no knowledge of those documents being at the library.

The contact persons in the notice and the Fact Sheet/Statement of Basis are at variance.

The notice is required to include the following mandatory statement: “The permittee’s compliance history during the life of the permit being modified is available from the Agency contact person.” CFR 270.42 (c)(2)(vi). The statement is missing from the notice.

Curiously, at the NMED website referred to by the notice of October 26, 2006, the Citizen Letter is Public Notice 06-15. See, NFA (10-26-2006). However the Fact Sheet/Statement of Basis as of October 30, 2006, appears to be for a “Notice of Intent to Approve a Permit Modification for No Further Action to Remove Twenty Three Solid Waste Management Units (SWMUs) from RCRA Permit No. NM0890010515 U.S. Department of Energy/Los Alamos National Laboratory Los Alamos, New Mexico.”

The KAFB Fact Sheet/Statement of Basis is not with the Citizen Letter on the NMED website address in the October 26, 2006 notice. There appears to be a KAFB Fact

Sheet/Statement of Basis in a different location on the website. The dates listed in the Public Participation Section are very different from the dates of the October 26, 2006 Notice:

**“F. Public Participation**

Kirtland AFB issued a Public Notice on October 7, 2005 informing the public that a petition has been submitted to NMED requesting NFA status for 22 SWMUs and administrative removal of Landfill LF-268 from Table A of the Permit. The Public Notice specified that Kirtland AFB will accept comments on the petition during the 60-day comment period, ending December 7, 2005. The Notice also stated that information on each of the 22 SWMUs proposed for NFA would be presented in a public meeting on October 24, 2005.

NMED issued a public notice on **March 20, 2006**, to announce the beginning of a 60-day comment period that will end at **5:00 p.m., May 19, 2006**. Any person who wishes to comment on this action or request a public hearing should submit written or electronic mail (e-mail) comment(s) along with their name and address to the following address. Only comments and/or requests received on or before **5:00 p.m., May 19, 2006**, will be considered.”

With these dates it would appear that the comment period ended before the notice issued. The public can only be confused by the NMED juxtaposition of the KAFB Fact Sheet/Statement of Basis with the LANL Fact Sheet/Statement of Basis and the apparent mix up in dates. Given the confusion, a corrected notice should issue.

**Conclusion**

- Citizen Action hereby requests that a notice for a public meeting be reissued in corrected form for the above Class 3 Permit Modification.
- The notice must have the time, date and location for the public meeting in the vicinity of the KAFB.
- The notice must give a location in the vicinity of the KAFB for the Administrative Record where the public may view it and obtain copies.
- The notice must contain the mandatory statement regarding the compliance history for the life of the permit.
- The website location for the Fact Sheet/Statement of Basis needs to be relocated and corrected as to the dates for notice, comment period and request for public hearing.

Please place Citizen Action on the mailing list for further notices regarding the Class 3 Permit Modification at KAFB. Thank you.

Respectfully submitted,

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