

FFCO

NEW MEXICO
ENVIRONMENT DEPARTMENT

ENTERED



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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 2, 2008

Donald L. Winchell, Jr., Manager
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Richard S. Watkins, Associate Director
Environment, Safety, Health, & Quality
Los Alamos National Security, LLC
Los Alamos Research Park
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Los Alamos, NM 87545

**RE: MILESTONE ACTIVITY COMPLIANCE DATES, SITE TREATMENT
PLAN (STP), FEDERAL FACILITY COMPLIANCE ORDER (FFCO)
EPA ID NO. NM08990010515**

Dear Messrs. Winchell and Watkins:

The New Mexico Environment Department (NMED) has received the Los Alamos National Security's (LANS) and the U.S. Department of Energy's (the Respondents) letter dated April 10, 2008 entitled, "Response to NMED's Letter Dated March 13, 2008" (the Response) referenced by document number ENV-RCRA-08-074.

When the Respondents submit a proposed revision that contains the information called for by Section X.C.2. of the Federal Facilities Compliance Order (FFCO), NMED publishes a Notice of Availability under Section X.C.3 at which time a 30-day public comment period follows. Under Section X.C.4, NMED will then approve with modifications or disapprove the proposed revision and provide the Respondents with advance notice of its determination at which point the Respondents have 30 more days to respond in writing to the notice or propose discussing the determination with NMED. If a disagreement persists, dispute resolution may be invoked or an informal resolution process may be initiated according to Sections XVII.(A-C).

However, this proposed STP update revision process never reached the first step. Section X.C.2 of the FFCO defines the content of an STP Update revision as including a:

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“ . . . written proposal which includes:

- a. A detailed description of the proposed revision;
- b. The rationale for the proposed revision;
- c. The anticipated length of any delay in performance that would result from the proposed revision, including all compliance dates that would be affected; and
- d. If the proposed revision would result in a delay in performance, a plan for implementing all reasonable measures to address the cause of the delay, to avoid or minimize the delay, and to avoid such delays in the future, and a schedule for implementing such plan.” (Section X.C.2.)

The Respondents first proposed the compliance date for waste treatability groups LA-W917 and LA-W918 be extended by a year, from 2007 to 2008 in the FY06 STP Update Revision 17.0 received by NMED March 15, 2007. The dates the Respondents proposed in Attachment D, Sections 3.1.8(A) and 3.1.9(A) of the Compliance Plan Volume (CPV) (pp.19-20) were in conflict with the dates proposed in Attachment D, Table A-1 (pp. 39-40) of the same document. NMED's Notice of Disapproval (NOD), dated October 5, 2007, identified this inconsistency (NMED Comment #6) and instructed the Respondents to “revise all compliance dates to reflect actual changed dates in Sections 3.1.5, 3.1.8, 3.1.9, and 3.2.” NMED requested the detailed supporting data required by the FFCO in subsequent letters dated November 16, 2007 and March 13, 2008. The Respondents submitted instead general statements about unavailability of treatment facilities and drafts calling for additional postponements.

In a separate letter, the Respondents then requested an extension of an additional year (till 2009) of the milestone activity compliance dates (received by NMED October 12, 2007) for the two waste groups, LA-W917 and LA-W918 (LANL letter referenced by ENV-RCRA-07-235) while the March 15, 2007 Revision was still under NMED review. On a side note, according to the proposed STP Update, the total volume of stored mixed waste in these two treatability groups is 0.0838 m³, not 0.07 m³ as the October 12, 2007 letter indicates. The Respondents must reconcile their records and notify NMED by May 9, 2008 in order to rectify the discrepancy.

NMED denied the Respondents' extension request in a letter dated November 16, 2007. NMED's letter stated “NMED does not believe the Respondents have sufficiently explained the rationale for requesting the aforementioned extension. In order for the Department to consider such a request, the Respondents must provide, at a minimum, the following information:

1. A description of gases in the two previously mentioned treatability groups;
2. A list of the EPA hazardous waste numbers associated with those gases;
3. A description of the treatment processes required for the two treatability groups;
4. Accurate volumes comparable to the CPV, Revision 17.0 for the two treatability groups;
5. A full list of all commercial facilities the Respondents contacted requesting treatment and acceptance of the two treatability groups;

6. All correspondence, formal or otherwise, between the commercial facilities identified in items above including the reasons for their denial of acceptance and treatment of the two treatability groups; and
7. All correspondence, formal or otherwise, between Lawrence Livermore National Laboratory and the Respondents regarding possible treatment and acceptance of these two treatability groups.”

The Respondents submitted their “Response to the October 5, 2007 NOD of FY06 STP” (referenced by ENV-RCRA-07-256) in November 2007, which included revised pages for STP Sections 3.1.8 and 3.1.9 and Table A-1 with the date of August 28, 2009. NMED has not approved this date.

NMED’s STP Addendum dated November 16, 2007 re-addressed the issue of compliance date extensions (NMED comment #7). NMED reiterated its position that the Respondents did not provide a sufficient rationale for requesting an extension of compliance dates for milestone activities 3.1.8(A), 3.1.9(A), and 3.2(J). The NOD comment stated that “in order for the Department to consider such a request, the Respondents must provide, at a minimum, the following information:

1. A description of the waste in the treatability group(s);
2. A list of the EPA hazardous waste numbers associated with those wastes;
3. A description of the treatment processes required for the treatability group(s);
4. A full list of all the commercial facilities the Respondents contacted requesting treatment and acceptance of the treatability group(s); and
5. All correspondence, formal or otherwise, between the commercial facilities, identified in item 4 above, including reasons for their denial of acceptance and treatment of the treatability group(s).”

Aside from item two in the list above, the Respondents have not provided the information required.

NMED agrees that Section X(A) of the FFCO states that the Respondents may propose a revision in the STP “...at such other times which the Respondents deem necessary.” However, the first sentence in this Section states, “[a] revision is an amendment to the Compliance Plan Volume of the STP that is either required by NMED, or proposed by the Respondents *and* approved by NMED (emphasis added) ...” NMED has stated in the letters dated November 16, 2007 and March 13, 2008 that the proposed August 28, 2009 and December 31, 2010 dates for milestone activities 3.1.8(A), 3.1.9(A), and 3.2(J) are not acceptable. The Respondents have not fulfilled the requirements in Section X(C)(2)(a-d) which states “when the Respondents propose a revision, they shall provide NMED a written proposal which includes:

- (a) a detailed description of the proposed revision;
- (b) the rationale for the proposed revision;

- (c) the anticipated length of any delay in performance...; and
- (d) ...a plan for implementing all reasonable measures to address the cause of the delay..."

The Respondents also state in their response (referenced by ENV-RCRA-08-009) that "LANL will continue to propose extensions to milestone dates as provided in the FFCO in each annual STP Update *and will provide information to justify the extensions (emphasis added).*" NMED has requested that the Respondents submit additional information in order for an extension of a milestone completion date to be considered for approval. The Respondents have failed to provide any additional information that may allow NMED an opportunity to make an accurate determination on an extension approval for milestone activities 3.1.8(A), 3.1.9(A), and 3.2(J). Because no response was received by the Respondents concerning NMED's November 16, 2007 extension denial letter, the milestone activity deadlines of August 28, 2008 and December 31, 2008, as stated in NMED's letter dated March 13, 2008, remain unchanged. See the table below for further clarification.

Table 1. NMED Approved Compliance Dates for Milestone Activities 3.1.8(A), 3.1.9(A), and 3.2(J)

STP Milestone Activity	MWIR Identifier	Treatability Group	Compliance Date
3.1.8(A)	LA-W917	Compressed gases requiring scrubbing	8/28/08
3.1.9(A)	LA-W918	Compressed gases requiring oxidation	8/28/08
3.2(J)	LA-W924 LA-W925 LA-W934	Lead Wastes Mercury Wastes High Activity Wastes	12/31/08

Should the Respondents wish to request an extension of the milestone activities for FY07, they may propose it in the STP Update Revision 18.0 due July 7, 2008. In order for NMED to consider the request, the Respondents must be sure to provide in Revision 18.0 the information previously requested by NMED (bullets 1-7 and 1-5 on pp. 2-3 of this letter).

Note that for the current FY06 STP Update Revision 17.0, NMED is not obligated to publish a Notice of Availability and to allow 30 days for public comment when it has not received a complete written proposal called for by the FFCO. A draft STP with a new date does not constitute a proposed revision nor does it create this obligation. Also, where the supporting information is not furnished, NMED is not obligated to consider the factors enumerated in Section X.E., or to consult with the entities referred to in Section X.D. Finally, in the absence of the required information, NMED is not obligated to give "advanced written notice of a determination to approve with modification or disapprove a proposed revision," and allow an additional 30 days for the Respondents to provide information or discuss the requested revision.

The STP Update will be public noticed identifying the modification in Table 1.

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NMED is disappointed that the communication that began with the Respondents' submission of the proposed FY06 STP Update Revision 17.0 has not led to resolution concerning the completeness of the Respondents' proposed STP Update. Should the Respondents desire to contest this approval with modification, they must initiate dispute resolution in accordance with Section XVII of the FFCO which calls for submission of a written Statement of Position within 14 days of the date of this letter.

If you have any questions or comments regarding this letter, please contact Rebecca Kay of my staff at (505) 476-6040 or by email at rebecca.kay@state.nm.us.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: J. Kieling, NMED-HWB
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