



ENV. ED FFCO

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 8, 2008

Mr. Albert Dye Site Treatment Plan Project Manager Water Quality & RCRA Group Los Alamos National Security, LLC PO Box 1663, Mail Stop K490 Los Alamos, NM 87545

Mr. Dave D. Stewart Interim Waste Management Program Manager Department of Energy 528 35th Street Mail Stop A316 Los Alamos, NM 87544

RE: NOTICE OF DISAPPROVAL OF SITE TREATMENT PLAN (STP) FISCAL YEAR 2007 (FY07) UPDATE AND REVISION 18.0 PROPOSAL LOS ALAMOS NATIONAL LABORATORY (LANL) FEDERAL FACILITY COMPLIANCE ORDER (FFCO) SUBMITTED ON MAY 2, 2008 EPA ID NO. NM08990010515

Dear Messrs. Dye and Stewart:

The New Mexico Environment Department (NMED) has received the Site Treatment Plan (STP) Fiscal Year 2007 (FY07) Update and Revision 18.0 Proposal (referenced by ENV-RCRA-08-087) (Update) and its modified pages (referenced by ENV-RCRA-08-141) submitted by Los Alamos National Security, L.L.C. (LANS) and the U.S. Department of Energy (DOE) (Respondents). NMED has reviewed the Update and hereby issues this Notice of Disapproval (NOD) which identifies the following inadequacies.

NOD Comment #1

Waste treatability group LA-W933 (lab packs) in Table 2.1-2 (page 4) of the Background Volume (BV) indicates that two shipments were made to Perma-Fix on May 21, 2007. According to the June 26, 2007 "Notice of Completion of Off-Site Waste Shipment Activities" (referenced by ENV-RCRA: 07-161) and associated manifests, only one shipment of labpacks was sent to Perma-Fix; the other was shipped to Diversified Scientific Services, Inc. (DSSI) in Kingston, TN. Revise the text in Table 2.1-2 to state



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that one of the shipments was sent to DSSI and not Perma-Fix.

**NOD Comment #2**

Waste treatability group LA-W925 (mercury wastes) specifies an administrative adjustment of 0.3398 cubic meters ( $m^3$ ). Reported administrative adjustments in past STP Updates have typically consisted of relatively insignificant volumes (i.e., 0.0001  $m^3$  or 0.0004  $m^3$ ). The Respondents must provide justification in Section 3.6 (Administrative Adjustments and Corrections) of the BV for an administrative adjustment that resulted in a volume of nearly two 55-gallon drum equivalents.

**NOD Comment #3**

Waste treatability group LA-W935 (10-100 nCi/g waste) in Table 2.1-2 indicates that 16.656  $m^3$ , 51.4254  $m^3$ , and 4.372  $m^3$  were shipped to Materials & Energy Corporation (M&EC) on September 25, 2007, September 27, 2007, and June 20, 2007, respectively. According to the November 5, 2007 "Notice of Completion of Off-Site Waste Shipment Activities" (referenced by ENV-RCRA-07-254) and associated manifests and the July 25, 2007 "Notice of Completion of Off-Site Waste Shipment Activities" (referenced by ENV-RCRA: 07-177) and associated manifests, the Respondents indicate that the waste shipped was high activity waste which is assigned the Mixed Waste Inventory Record (MWIR) identification code LA-W934, *not* LA-W935. Revise the text in Table 2.1-2 to reflect that the shipments of 16.656  $m^3$ , 51.4254  $m^3$ , and 4.372  $m^3$  were coded LA-W934 and not LA-W935. The Respondents must also amend the correct total volumes in the "FY07 Annual Update ( $m^3$ )" column in Table 2.1-2 for the two respective waste treatability groups. The Respondents must revise all other appropriate Tables and Sections that reflect this change. This includes, but is not limited to, Table 3.6-1 (Administrative Adjustments and Corrections) on page 19 of the BV and pages 26 and 35 in Attachment C of the Compliance Plan Volume (CPV).

**NOD Comment #4**

Waste treatability group LA-W935 (10-100 nCi/g waste) in Table 2.1-2 indicates that 51.4254  $m^3$  was shipped to Materials & Energy Corporation (M&EC) on September 27, 2007. According to the above-referenced Notice of Completion and its associated manifests, the Respondents notified NMED that this waste shipment was sent to Perma-Fix in Florida, *not* M&EC on the 27<sup>th</sup> of September. Also, the total net volume in Table 2.1-2 states the volume shipped on September 27, 2007 was 51.4254  $m^3$  while the total identified in the Notice of Completion is 51.6336  $m^3$ . Revise the text in Table 2.1-2 to reflect the accurate volume of waste shipped as well as the correct destination.

**NOD Comment #5**

Table X.C.2.a.-7 (Proposed Extensions of Milestone Activity Compliance Dates) on page 4 of Attachment C in the CPV states the Revision 17.0 compliance date for milestone activity 3.1.5(A) (waste treatability group LA-W922, non-combustible debris) as "08/25/2003." The Respondents, however, proposed in the STP FY06 Update Revision 17.0 Proposal (ENV-RCRA: 07-043) a compliance date of "12/31/08" for this treatability group. This date was approved by NMED and thus made effective June 24, 2008 (*see*

NMED letter to the Respondents dated June 24, 2008). Revise the column entitled "Revision 17 Compliance Date" in Table X.C.2.a.-7 in Revision 18.0 to indicate the date of 12/31/08, not 08/25/2003.

**NOD Comment #6**

Table X.C.2.a.-7 on page 4 of Attachment C in the CPV states the Revision 17.0 compliance dates for milestone activities 3.1.8(A) (waste treatability group LA-W917, compressed gases requiring scrubbing) and 3.1.9(A) (waste treatability group LA-W918, compressed gases requiring oxidation) as "08/09/2008." The Respondents, however, proposed in the STP FY06 Update Revision 17.0 (ENV-RCRA: 07-043) the compliance date of "08/28/08" for this treatability group. August 28, 2008 was the date approved by NMED on June 24, 2008 and is therefore the effective date. Revise the column entitled "Revision 17 Compliance Date" in Table X.C.2.a.-7 in Revision 18 to read 08/28/08, not 08/09/2008. (See the tables in Section 3.1.8 on page 19 and Section 3.1.9 on page 20 which reflect the correct dates.)

**NOD Comment #7**

Table 2.1-2 ("FY07 MLLW Inventory Detailed Update by Treatability Group") on page 3 of the BV indicates a net volume of 0.0602 m<sup>3</sup> for waste treatability group LA-W918 (compressed gases requiring oxidation). However, page 19 in Attachment C states the net volume is 0.0758 m<sup>3</sup>. The Respondents must amend page 19 so that it correctly reports the net volume shown in Table 2.1-2.

**NOD Comment #8**

The Respondents propose an extension of one year for the compliance date for Activity 3.1.5(A) in Attachment C. According to Section X(C)(2)(a-d) of the Federal Facilities Compliance Order (FFCO), "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..."

In order for NMED to consider the proposed milestone compliance activity date change, 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).”

Revise the Update providing the rationale and justification for the additional one year extension of the milestone activity compliance date.

**NOD Comment #9**

The Respondents submitted the STP FY07 Update Revision 18.0 Proposal on May 1, 2008. However, the Respondents’ submittal did not include NMED’s modifications (*see* NMED Public Notice No. 08-05 dated May 21, 2008). NMED received the Respondents’ Revision 18.0 modified pages submittal (referenced by ENV-RCRA-08-141) on July 8, 2008. Revise the Update to include this submittal in Table 1.1 A (FY07 FFCO and STP Milestones) of Attachment B (page 2) in the CPV.

**NOD Comment #10**

The STP FY06 Update Revision 17.0 was approved with modifications by NMED and thus became effective June 24, 2008 (*see* NMED letter to the Respondents dated June 24, 2008). The Respondents must correct cell “Rev 17.0” in Table A-1 (Summary of Changes to the CPV and the FFCO) in the CPV (page 41) to list the date as “6/24/2008” not “6/26/2008.”

**NOD Comment #11**

The following letters’ identification numbers in Table 2.1 B (FY07 Correspondence) in Attachment B (page 3) in the CPV are not applicable to correspondence between the Respondents and NMED for the FY07 STP Update Revision 18.0:

- a. ENV-RCRA: 07-032 dated 2/23/2007;
- b. ENV-RCRA: 07-043 dated 3/13/2007;
- c. ENV-RCRA: 07-235 dated 10/2/2007;
- d. ENV-RCRA: 07-256 dated 11/13/2007; and
- e. ENV-RCRA: 07-273 dated 12/11/2007.

Delete from the Table the references to these letters which are associated with FY06 STP Update Revision 17.0.

**NOD Comment #12**

The Respondents have not adequately listed in Table 2.1 B all appropriate letters of correspondence sent from the Respondents to NMED during FY07 for Revision 18.0. The Respondents must revise the Table to cite all appropriate correspondence. This includes but is not limited to:

- a. ENV-RCRA: 08-062 dated 3/20/2008;
- b. ENV-RCRA: 07-063 dated 4/12/2007;
- c. ENV-RCRA: 08-063 dated 3/20/2008;
- d. ENV-RCRA: 08-061 dated 3/20/2008;
- e. ENV-RCRA-08-091 dated 5/08/2008;

- f. ENV-RCRA-08-055 dated 3/11/2008;
- g. ENV-RCRA-08-079 dated 4/21/2008; and
- h. Email dated 4/1/08 from A. Dye to R. Kay "Subject: Re. Clarification for the Administrative Record.

**NOD Comment #13**

Waste treatability group LA-W922 (Noncombustible Debris) in Table 2.1-2 on page 3 of the BV indicates in the column entitled "FY06 Annul Update (m<sup>3</sup>)" a total volume of 0.00 m<sup>3</sup>; this volume is incorrect. The Respondents must revise the Table to accurately list the volume in the FY06 column as 0.0015 m<sup>3</sup> (*see* STP FY06 Update Revision 17.0 final volume for LA-W922).

**NOD Comment #14**

As a reminder, when notices of completion of milestone activities are met, (*i.e.*, when the Respondents complete shipping of existing wastes to an off-site treatment facility, submit documentation assigning waste items to applicable treatability groups, complete assaying, or complete a parallel option (*see e.g.*, Activities 3.1.8(A) and (B) in the CPV)), the Respondents must fulfill all relevant reporting requirements in the FFCO. Section XX(C)(1) states "Respondents shall as expeditiously as possible, but in no event more than ten (10) days after a compliance date, provide notice in writing to NMED of the completion of the activity required to be completed by that compliance date." The Respondents have in the past fulfilled the FFCO milestone activity completion reporting requirement, though not consistently (*see* the table in NMED's letter dated May 1, 2008 for examples of non-compliance.)

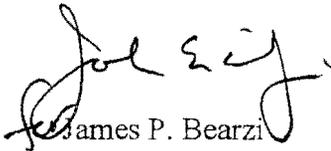
Section VI of the FFCO also states "Respondents shall carry out all activities in accordance with the schedules and requirements set forth in the CPV of the STP and this Order" and "[t]he Compliance Plan Volume of the STP provides overall schedules...based on compliance dates as defined in Section IV (Definitions)." Section IV(B) defines a compliance date as "a fixed, firm, and enforceable date on or before which a task must be completed in accordance with the provisions of the STP." The Respondents must submit notices of completion of milestone activities as they are met in accordance with Section VI of the FFCO. Failure to provide a "Notice of Completion of Milestone Activity" letter for the completion of all milestone activities to NMED may result in enforcement action.

Messrs. Dye & Watkins  
August 8, 2008  
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The deficiencies in the STP FY07 Update and Revision 18.0 Proposal, as identified in this NOD, must be revised and adequately addressed before NMED can approve the Update. All revisions must be submitted in the form of two paper copies and an electronic version in redline-strikeout format, showing all changes to the Update. The Respondents must also submit an electronic copy of the revised Update in Microsoft Word. The revisions must be submitted to NMED no later than September 5, 2008.

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](mailto:rebecca.kay@state.nm.us).

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

cc: R. Kay, NMED-HWB  
J. Kieling, NMED-HWB  
S. Zappe, NMED-HWB  
D. Cobrain, NMED-HWB  
K. Roberts, NMED-HWB  
L. King, EPA 6PD-N  
J. Ellvinger, ENV-RCRA, LANL-LASO, MS K490  
T. Grieggs, ENV-RCRA, LANL-LASO, MS K490  
G. Turner, DOE-LANS, MS A316  
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