LANL 2002 General

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*Date:* December 23, 2002
*Refer to:* DO-02-110(ER2002-0888)

DEC 2002
NMED Hazardous Waste Bureau

Mr. James P. Bearzi
Chief, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

**SUBJECT: RESPONSE TO NOTIFICATION OF VIOLATION FOR FAILURE TO SUBMIT PERMIT MODIFICATION REQUESTS PRIOR TO CONVEYANCES OR TRANSFERS OF PROPERTY UNDER PUBLIC LAW 105-119, SECTION 632, AT THE LOS ALAMOS NATIONAL LABORATORY (LANL) (EPA ID NM0890010515)**

Dear Mr. Bearzi:

This letter and the information attached are provided in response to the Notice of Violation (NOV) sent to the Department of Energy (DOE) and the University of California (UC) dated November 6, 2002 (*Notice of Violation for Failure to Submit Permit Modification Requests Prior to Conveyances or Transfers of Property Under Public Law 105-119, Section 632, at Los Alamos National Laboratory EPA ID: NM0890010515*). As addressed in Attachment 1, Permittees do not believe that a permit modification is necessary; however, to resolve the current dispute, Permittees request a Class 1 permit modification and provide the attached supporting information for NMED's review pursuant to 20.4.1 NMAC, Subpart IX, incorporating 40 CFR 270.42 (d).

On October 23, 2002, DOE transferred two parcels of land totaling approximately 2100 acres, to the U.S. Department of the Interior (DOI) in trust for the Pueblo of San Ildefonso. On October 29, 2002, DOE conveyed eight parcels of land, totaling approximately 105 acres, to Los Alamos County (the County). The transfers were made in accordance with Section 632 of Public Law 105-119 ("PL 105-119") that directed the Secretary of Energy to identify parcels of land at or in the vicinity of Los Alamos National Laboratory suitable for conveyance or transfer to DOI or the County. DOE determined that these parcels were suitable for transfer in compliance with LANL's permit obligations, including corrective action. With one exception, discussed below, the RCRA permit does not apply to the transferred parcels. None of these parcels contain RCRA regulated units or contamination that presents a risk to human health or the environment. Further, DOE notified NMED of the land transfers and submitted copies of relevant documents related to the transfers, including environmental baseline surveys and environmental assessments that substantiate DOE's decision that the parcels were suitable for transfer. DOE requested that NMED review the documents and submit any comments.

The NOV alleges that Permittees violated the Permit by failing to submit Class 3 permit modification requests prior to DOE's transfer of land. NMED orders Permittees, under threat of "formal enforcement" pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978 § 74-4-10 (1977), to submit permit modification requests for all transfers that have already occurred and all transfers currently scheduled, within fifteen days of receiving the NOV. Pursuant to discussions among DOE, UC, and NMED, NMED agreed to extend the deadline for responding to the NOV until December 24, 2002.

As described in more detail in Attachment 1 hereto, the Permittees believe that the transfers referenced in the NOV do not trigger a requirement for a permit modification. However, to resolve the current dispute, the Permittees agreed to submit this request for a Class 1 permit modification, as well as the attached information in support of our position for NMED's review. This permit modification request addresses the recently completed land transfers by the DOE to the County and DOI. This modification consists of minor revisions to the facility boundary map (Figure 2 in the original LANL hazardous waste facility permit). The most recent version of that map reviewed by NMED was submitted with the October 1998 LANL General Part B permit application, as Figure A-2. That figure has now been revised to include the recent property boundary changes, and is attached to this letter as Attachment 2. The revised figure will be attached to LANL's pending HWA/RCRA permit renewal application.

This request does not address future land transfers pursuant to PL 105-119. Permittees specifically reserve the right to challenge the applicability of the permit modification requirement for any land transfer other than the ten parcels addressed herein.

As required by the NOV, this submittal also includes information that addresses the legal and technical consequences and proposed remedy for the recently completed land transfers. This information is contained in Section III of Attachment 1.

DOE/UC will provide a notice of the modification to all persons on the facility mailing list in accordance with 20.4.1 NMAC, Subpart IX, incorporating 40 CFR 270.42(a)(ii). We request assistance from NMED in determining the correct list of such contacts. If you should have any questions or comments concerning this permit modification submittal, please contact Mr. Theodore Taylor , DOE, at (505) 665-7203 or Mr. Paul Schumann, UC, at (505) 667-5840.

Sincerely,

Kenneth M. Hargiscator

Beverly Ausmus Ramsey, Ph.D.
Director, Risk Reduction and Environmental Division
Los Alamos National Laboratory

Sincerely,

Joseph Vozella
Deputy Manager, Environment and Stewardship Projects
Los Alamos Site Office

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Enclosure: Certification

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# CERTIFICATION

## CERTIFICATION BY THE RISK REDUCTION AND ENVIRONMENTAL STEWARDSHIP TECHNICAL REPRESENTATIVES

Document Title: **Response to Notice of Violation for Failure to Submit Permit Modification Requests Prior to Conveyances or Transfers of Property Under Public Law 105-119, Section 632, at Los Alamos National Laboratory (LANL) (EPA ID: NM0890010515)**

I certify under penalty of law that these documents and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

Kenneth M. Hargis Date: 12/23/02

Beverly A. Ramsey, Division Leader
Risk Reduction and Environmental Stewardship Division
Los Alamos National Laboratory

Date: 12/23/02

Joseph Vozella,
Deputy Manager of
Environment and Projects
Department Of Energy/Office of Los Alamos Site Operations

## ATTACHMENT 1

**Response to Notice of Violation for Failure to Submit Permit Modification Requests Prior to Conveyances or Transfers of Property Under Public Law 105-119, Section 632, at Los Alamos National Laboratory (LANL) (EPA ID: NM0890010515), December 24, 2002**

### I. Overview of Permit Modification

The NOV alleges that Permittees violated the Permit by failing to submit Class 3 permit modification requests to NMED prior to DOE's transfer of land. NMED orders Permittees, under threat of "formal enforcement" pursuant the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978 § 74-4-10 (2002), to submit permit modification requests for all transfers that have already occurred and all transfers currently scheduled, within fifteen days of receiving the NOV. Pursuant to discussions among DOE, UC, and NMED, NMED agreed to extend the deadline for response until December 24, 2002.

The Permittees believe that the transfers referenced in the NOV do not trigger a requirement for a permit modification. However, to resolve the current dispute, the Permittees agreed to submit a Class 1 permit modification and this information for NMED's review. Based on this information, we request a determination that the transfer of the described parcels requires either no permit modification or is a Class 1 permit modification under 40 CFR §§270.41 and 270.42. Alternatively, we request a classification determination pursuant to 40 CFR §270.42(d). The permit modification request addresses the recently completed land transfers by the DOE to the County and DOI. This modification consists of minor revisions to the facility boundary map (Figure 2 in the original LANL hazardous waste facility permit). The most recent version of that map reviewed by NMED was submitted with the October 1998 LANL General Part B permit application, as Figure A-2. That figure has now been revised to include the recent property boundary changes, and is included as Attachment 2. DOE/UC will provide a notice of the modification to all persons on the facility mailing list in accordance with 20.4.1 NMAC, Subpart IX, incorporating 40 CFR §270.42(a)(ii).

This request does not address future land transfers pursuant to PL 105-119. Permittees specifically reserve the right to challenge the applicability of the permit modification requirement for any land transfer other than the ten parcels addressed herein. As required by the NOV, this submittal also includes information that addresses the legal and technical consequences and proposed remedy for the recently completed land transfers. This information is discussed in Section III below.

### II. Need for Permit Modification

NMED's NOV relies, in part, on a letter from Laurie King, EPA Region VI, to Ted Taylor of DOE, dated October 2, 2002, which states in part:

> *[f]or all tracts, there will need to be a RCRA permit modification to change the boundaries of the facility. For tracts which contain SWMUs in the RCRA permit, LANL will need to propose a remedy selection for each SWMU to NMED. In other words, each SWMU will require either: no further action, cleanup, monitoring, or combination thereof. Remedy selection is a Class 3 permit modification, which includes public participation.*

Ms. King does not explain her statement that a permit modification is required for change to a facility boundary. As discussed below, Permittees dispute this conclusion to the extent Ms. King equates "facility" boundary with "property" boundary. However, it is important to note that Ms. King made a clear distinction between tracts of land on which there are no Solid Waste Management Units (SWMUs) listed in the RCRA permit and those that do contain such SWMUs – she explicitly stated that it is *remedy selection* that triggers a need for a Class 3 modification. All requirements for remedy selection for the one SWMU contained in the transferred parcels, SWMU number 21-029, have been met. This one SWMU is the only SWMU subject to the conditions discussed in Ms. King's letter.

DOE is cognizant that property to be transferred must be remediated to the extent necessary before it is transferred. DOE has established a schedule for transferring property over the next ten years based on this consideration. There are several parcels of property that cannot be transferred until they have been further investigated. All areas of concern (AOCs) and the SWMU within the transferred property were fully remediated such that No Further Action recommendations were approved for each one prior to transfer. Permittees submitted a Class 3 permit modification to NMED to remove SWMU 21-029 from Module VIII of the HWA/RCRA permit prior to the land transfers, as part of the September 30, 2002 Class 3 permit modification request. We note that NMED approved the VCA Completion Report for this SWMU on January 30, 2002. The September 30, 2002 request for a Class 3 permit modification was triggered, however, not by the transfer of the land but by Permittees's request "to terminate the RFI/CMS process for a specific unit," in accordance with Section K.1. of Module VIII of the HWA/RCRA Permit.

Finally, NMED should note that, as discussed in Section III below, Permittees completed due diligence activities required prior to land transfer, which demonstrated either that there is no evidence that the transferred parcels contain any hazardous waste or constituents, or that all necessary remedial action was completed on transferred parcels that contained hazardous waste or constituents, as required by the provisions of Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

**A. No modification is required because there has been no alteration to the permitted facility.**

A modification of the HWA/RCRA Permit may be required by the agency for one of four specified causes (*see* 20.4.1.901.B.(1)-(2) NMAC; 40 CFR §270.41), including the following:

*Alterations*. There are material and substantial alterations to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

The definition of "facility" has evolved as EPA has implemented its corrective action program, and there are two distinct definitions of the term "facility." EPA's definition of "facility" is broken into two parts:

- one which defines the hazardous waste treatment, storage or disposal units and activities regulated pursuant to RCRA subtitle C, for which the owner must obtain a RCRA permit (hereinafter, the "subtitle C facility"); and

- one which functions merely for the purpose of identifying the area upon which an owner seeking a permit for a subtitle C facility must conduct corrective action.

EPA's RCRA regulations set forth this distinction, as follows:

> *Facility* means:
>
> 1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
>
> 2) For the purpose of implementing corrective action under § 264.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).

40 C.F.R. § 260.10.

**1. There have been no alterations to the permitted facility.**

The definition in subparagraph (2) was adopted in the 1990 Subpart S proposed rule (55 FR 30798, July 27,1990), and was finalized when the rule on corrective action management units and temporary units was promulgated (58 FR 8658, February 16, 1993). For the reasons discussed in the 1990 proposed rule, the term "facility" for corrective action purposes is separate and substantively different from the facility definition for other RCRA purposes. The first definition of "facility" includes the specific operations, activities, equipment, structures, or land units "used" for the treatment, storage or disposal of hazardous waste (i.e., the "subtitle C facility"). The latter, however, is a much broader definition, encompassing all contiguous property under the owner's control, *but only* for the single "purpose of implementing corrective action under

§ 264.101."[1] In proposing its Subpart S corrective action rule, EPA made clear that the latter, broader definition of "facility" did not subsume the narrower subtitle C definition of "facility" (*see* 55 Fed. Reg. 30798, 30808 (Jul. 27, 1990)). EPA further underscored that the agency intended to retain two distinct definitions of "facility" in its 1996 Subpart S preamble (*see* 61 Fed. Reg. 19431, 19442 (May 1, 1996)).

**a. There has been no alteration to the "Subtitle C facility."**

A conveyance or transfer of property that is part of the subtitle C "facility" (i.e., a treatment, disposal or storage unit, and all contiguous land used for the permitted hazardous waste activities) could result in an alteration of the facility. However, none of the parcels transferred or scheduled for transfer by DOE comprise part of the subtitle C facility or contain any units regulated as part of the subtitle C facility. As such, the minor changes to the property boundary of Los Alamos National Laboratory are irrelevant to the definition of the permitted subtitle C facility and have triggered no requirement for a permit modification.

**b. There has been no change to the "corrective action facility."**

There has been no alteration to the "corrective action facility" because, other than SWMU 21-029, for which a Class 3 modification has been submitted, *none of the transferred properties contain a SWMU listed in the permit and/or to which any permit condition applies*. The fact that there has been no alteration to the corrective action facility -- or indeed, to the HWA/RCRA facility no matter how it is defined -- becomes obvious when one considers what changes to the permit must be made as a result of the recent land transfers. Permit modifications must address proposed changes to the permit. Yet, the Permittees are unable to identify any changes to be made to LANL's permit conditions. No condition of the permit applies to any activity on the transferred land, inasmuch as no activity covered by the permit was conducted on that property. Thus, there is no language or condition in LANL's permit to be changed.

A requirement for a permit modification may be triggered by any act that seeks to modify or extinguish the corrective action obligation vis-à-vis that property, but not by the mere act of conveyance itself. EPA's discussion of whether and how conveyance of property may impact the conditions of an existing permit focuses on an entirely different situation: where the conveyance would extinguish or allow the owner to otherwise avoid its corrective action obligations vis-à-vis the conveyed property.[2] That does not apply here

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[1] The referenced regulation, Section 264.101, is the codification of RCRA Section 3004(u) and provides that the owner seeking a permit for a subtitle C facility "must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit." (40 C.F.R. § 264.101(a).)

[2] The 1990 Subpart S proposal first solicited comment on how to ensure the continuation of corrective action obligations upon conveyance of property containing SWMUs (*see* 55 Fed. Reg. 30798, 30846 (Jul. 27, 1990)). EPA renewed this solicitation of comments in 1996 and preserved these discussions in 1999, when it otherwise withdrew the Subpart S proposal (*see* 61 Fed. Reg. at 19463 (May 1, 1996); 64 Fed. Reg. 54604, 54605-06 (Oct. 7, 1999)).

because DOE has completed its RCRA corrective action obligations applicable to the conveyed property.[3]

It has affirmatively been determined that there is no contamination on the transferred land which presents a risk to human health or the environment. This has been determined through the RCRA Permit process, specifically under Section 3004(u) pursuant to which Permittees have investigated the entire facility to determine where releases of hazardous waste and constituents requiring corrective action occurred (see Section III below). In addition, PL 105-119 requires DOE to identify any environmental restoration and remediation that would be needed for each tract of land identified as suitable for transfer. In accordance with that requirement, a report presenting information regarding the environmental restoration or remediation required for the subject tracts (including estimated costs and cleanup durations), and the potential environmental impacts associated directly, indirectly, and cumulatively with conveyance and transfer of the subject tracts was submitted to Congress on January 24, 2000. This report makes recommendations for the conveyance or transfer of each of the subject tracts, either in whole or in part, with regard to the likelihood of DOE being able to meet the suitability criteria established in the Act. DOE also prepared an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act. The EIS compares the environmental impacts that could be expected to occur from continued use of the subject tracts of land as currently planned for the next 10 years with the direct consequences expected from conveying or transferring suitable tracts to the County or BIA, together with the indirect consequences expected from the subsequent development and use of the tracts by the receiving parties. A draft EIS was made available to the public for a 45-day comment period and several public hearings on the EIS were conducted.

**B. Assuming arguendo that a permit modification is required, it should be a Class 1 modification.**

There are three classes of permit modifications initiated by a permittee. Class 1 modifications cover routine changes, such as upgrading plans and records maintained at the facility. Class 2 modifications apply to common variations in the type or quantity of waste managed, a technical advancement, or a change necessary to comply with new regulations without substantial change to design specifications or management practices. Class 1 and 2 modifications that are requested by the permittee do not substantially alter existing permit conditions or the operation of the facility. Class 3 modifications requested by the permittee cover major changes that substantially alter the facility or its operations.

Examples of facility changes that would be classified as a Class 3 modification include the creation of a new landfill unit as part of closure (40 C.F.R. § 270.42, Appendix I, item no. D.2), addition of surface impoundments, incinerators and certain waste piles to be used temporarily for closure activities (App. I., item no. D.3.a-d), or modifications to

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[3] In addition, DOE retained all corrective action obligations with respect to the transferred property under CERCLA §120(h). Each transfer agreement or deed contains language covenanting that DOE will perform any necessary remedial action, and the party to whom the property was transferred covenants that it will allow access to the property to perform such remedial action.

container units that increase the facility's container storage capacity by greater than 25% (40 C.F.R. § 270.42, App. I, item no. F.1.a), etc.

The only changes identified in 40 C.F.R. § 270.42, Appendix I related to corrective action that are classified as a Class 3 modification include "[a]ddition of a corrective action program as required by §§ 264.99(i)2) and 264.100," or "[a]pproval of a corrective action management unit pursuant to § 264.552 [under the 'CAMU' rule]" (App. I, Item nos. C.8.a and N.1). While the list of activities and changes identified in 40 C.F.R. § 270.42, Appendix I is not exhaustive, it strongly supports the position that a change in a facility's property boundary does not by itself trigger a requirement for a Class 3 permit modification.

At the very most, such conveyances might be classified as a Class 1 permit modification. In general, "Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval." 40 C.F.R. § 270(d)(2)(i). Examples of similar Class 1 permit modifications include "[c]hanges in the ownership or operational control of a facility, provided the procedures of § 270.40(b) are followed" (App. I, Item no. A.7), and "[c]hanges in ground-water sampling or analysis procedures or monitoring schedule, with prior approval of the Director" (40 C.F.R. § 270.42 App. I, Item C.2). As applied here, LANL's changes to its property boundary is, at most, a minor change that does not substantively impact or alter any identifiable permit conditions.

## III. Due Diligence Was Followed Prior to Transfer.

As required by the NOV, this submittal also includes information that addresses the legal and technical consequences of the recently completed land transfers, and proposed remedy, "...in accordance with Section 270.42." All information necessary for the property recipients to consider all the legal and technical consequences of the recently completed land transfers is contained in the Environmental Baseline Survey (EBS) documentation prepared by DOE for each parcel prior to transfer, to support its due diligence in accordance with Sections 107 and 120 of CERCLA. The EBS provides a complete assessment of the parcel by reporting on the presence and current status of both inactive, historical contaminated sites at LANL and new or ongoing operations which are controlled by environmental permits, regulations, and DOE Orders.

### A. Historical Determination of Contaminated vs. Uncontaminated Lands

The initial step in LANL's due diligence came from its compliance responsibilities for the facility. Radiologically contaminated sites on current and former LANL property were identified and cleaned up under the auspices of several Atomic Energy Commission and DOE programs in the 1960s and 1970s. During the 1980s and early 1990s, comprehensive efforts were made to identify all sites on LANL property potentially contaminated with hazardous constituents as well as radionuclides. Several campaigns were conducted, beginning with the Comprehensive Environmental Assessment and

Response Program and the Formerly Utilized Sites Remedial Action Program in the 1980s.

The list of potentially contaminated sites requiring corrective action in the 1990 RCRA permit was based on the 1987 RCRA Facility Assessment (RFA), and on a report issued by LANL in September 1989 listing potential Solid Waste Management Units at LANL (the "1990 SWMU Report"). EPA Region 6 in May 1990 issued Module VIII as a modification to the LANL operating permit based on the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA, which provided for corrective action authority for EPA. Module VIII initially listed 603 SWMUs, and required as initial actions the submittal of 24 Operable Unit Work Plans to address corrective action at these SWMUs, as well as an Installation Work Plan (which also addresses corrective action at the AOCs not regulated by NMED). Based on a second SWMU report completed in 1990 and review of the Operable Unit Work Plans, in April 1994, EPA modified Module VIII to add 480 SWMUs. Thus, over the span of several decades, EPA, UC and DOE have conducted investigations to comprehensively identify the contaminated sites on LANL property.

In 1990, with the issuance of the RCRA facility permit and other key environmental permits and approvals, a sharp distinction was made between historical, inactive contaminated sites at LANL and new or ongoing operations that might potentially release contaminants to air, water, or soils in areas considered uncontaminated. Contaminant releases from new or ongoing operations were controlled by operating permits and regulatory requirements of the Clean Air and Clean Water Acts, Toxic Substances Control Act, Solid Waste Disposal Act, RCRA, numerous state regulations, and DOE Orders.

### B. Environmental Baseline Survey Methodology

DOE's "*Cross-Cut Guidance on Environmental Requirements for DOE Real Property Transfers*" (DOE/EH-413/9712) provides guidance on types of information to be collected in a DOE EBS in order to support real property transfers. Information such as presence of floodplains and wetlands; critical habitats; historic properties; and hazardous substances must be gathered and provided to potential recipients of any federal property. Each EBS document provides relevant environmental information as outlined in the *Cross-Cut Guidance* and provides references for more detailed information.

The methodology used to prepare each EBS report was to:

1. Conduct an Environmental Site Assessment consistent with American Society of Testing and Materials' (ASTM's) "*Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process*" (ASTM E 1527-00),
2. Review historical and current information and documents pertinent to each parcel,
3. Perform a physical examination of each parcel, and
4. Consult with both University of California and DOE staff to confirm existing information or develop additional information.

Historical and current information for each parcel was reviewed, and the site was physically visited and surveyed. After determining the nature and quality of available information, UC and DOE staff were consulted to confirm existing information or develop new information as needed. Collectively, this survey addressed air quality, water quality (surface and groundwater), soil and sediment contamination, and any structures, waste sites, natural resources or other environmental concerns present at the site.

Meetings were held with responsible personnel at LANL to discuss parcel-specific environmental and occupational health and safety (EH&S) issues:

- RRES/SWRC PCB Database Manager;
- HSR Asbestos Program Manager
- HSR Asbestos Management Program personnel
- RRES/SWRC HSTD Database Manager;
- RRES/WQH SPCC and SWPPP Plans;
- HAZMAT Spills Database Manager;
- RRES-R Environmental Restoration, Potential Release Sites Team Leader; and
- RRES/MAQ Air Quality Program Manager.

Site visits were made to gather more detailed information concerning possible on-site contamination, and to determine the compliance status of the parcel. Before, during and immediately after the first site visit, staff interviewed site personnel about past and present site operations, raw materials and waste management practices, and significant environmental liability problems, if any. Staff also observed actual site conditions in an attempt to identify and assess the status of potential liabilities such as past disposal areas, waste management units and systems, and sites of environmental releases.

In addition, LANL reviewed ES&H-related files, correspondence, and other documents supplied by LANL, as well as visited the Los Alamos County Archives office in Los Alamos, NM to review photographs of the area and to collect information on site use prior to the Manhattan Project. LANL performed a walk-by and drive-by survey of the immediate neighboring properties from publicly accessible areas for obvious signs of environmental concerns and how those concerns may have environmentally degraded the property under study, and to assess the proximity of the subject property to sensitive ecological areas (e.g., wetlands).

Finally, LANL reviewed a search of the following computerized environmental databases to determine if hazardous sites or serious local environmental problems may exist on or immediately adjacent to the facility (see radius specifications):

*Federal ASTM Records*
-Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) (Subject site and 0.5-mile radius)
-National Priority List (NPL) and proposed NPL (subject site and 1-mile. radius);
-RCRA Corrective Action Sites (CORRACTS) list (subject site and 1-mile radius);

-Resource Conservation and Recovery Information System (RCRIS) (subject site and 0.25-mile radius for generators and 0.5-mile radius for treatment, storage, and disposal facilities); and
-CERCLIS-No Further Remedial Action Planned (CERCLIS-NFRAP) (subject site and 0.25-mile radius).

*Additional Federal Records*
-Biennial Reporting System (subject site only);
-PCB Activity Database System (subject site only);
-RCRA Administrative Action Tracking System (RAATS) list (subject site only);
-Toxic Release Inventory System (subject site only);
-Facility Index Data Base System (FINDs) (subject site only);
-Consolidated Docket Enforcement System (subject site and company name only);
-Hazardous Materials Incident Reporting System (subject site only);
-Delisted NPL Sites (subject site and 1-mile radius);
-Federal Superfund Liens (subject site only);
-Superfund Consent Decrees (subject site and 1-mile radius);
-Toxic Substances Control Act data base (subject site only);
-Materials License Tracking System (subject site only);
-Mines Master Index File (subject site and 0.25-mile radius);
-Records of Decision data base (subject site and 1-mile radius); and
-FIFRA/TSCA Tracking System (FFTS) (subject site only).

*State ASTM Records*
-New Mexico State underground storage tank (UST) database list (subject site and 0.5-mile radius);
-New Mexico State permitted solid waste facilities/landfill sites (subject site and 0.5-mile radius); and
-New Mexico State registered USTs (subject site and 0.25-mile radius).

*Additional State Records*
-New Mexico State Aboveground Storage Tanks (subject site only).

LANL reviewed historical aerial photographs to establish past land uses of several of the subject properties and the surrounding areas consistent with the requirements of ASTM Practice E 1527-00. Aerial photographs dated from 1946 to the present were available from the Environmental Restoration and Los Alamos County photographic archives.

LANL located and reviewed abstracts of available historical city directories to establish past uses of several of the subject properties and the surrounding areas consistent with the requirements of ASTM Practice E 1527-00. A search of the county archives in Los Alamos yielded no historical or current city directories for Los Alamos that gave addresses for the subject sites. In most cases, older city directories listed names and phone numbers without the benefit of the listing address.

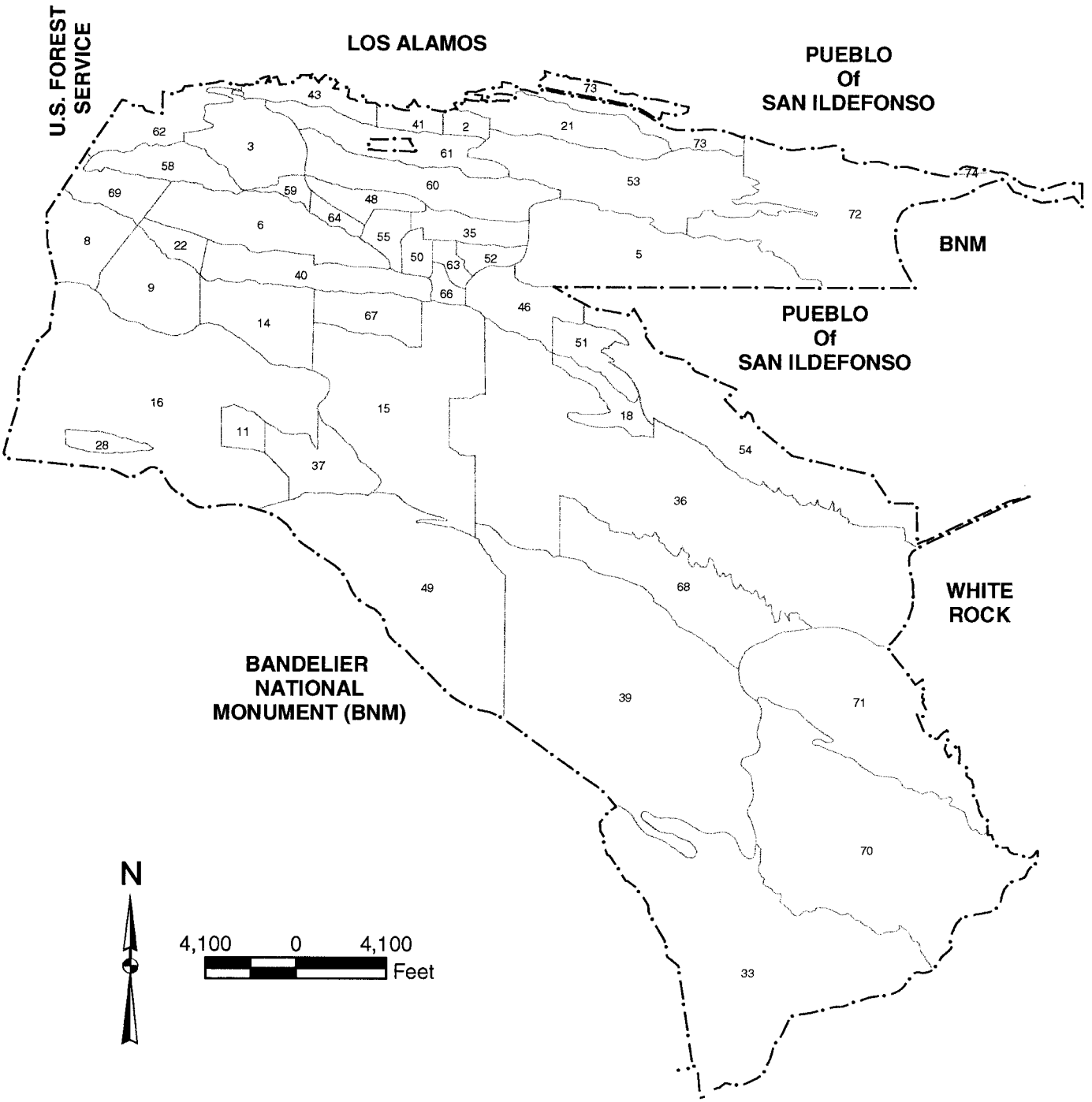
LANL assessed possible issues of current or future environmental liability. This assessment evaluated operations, both past and present, with respect to: air pollution control (including, but not limited to, applicable requirements of the 1990 Clean Air Act Amendments); asbestos management; water supply and pollution control, including stormwater management; nonhazardous solid waste management; hazardous solid waste management; USTs; materials, products, and pesticide storage and handling practices (including Superfund Amendments and Reauthorization Act (SARA) Title III programs); polychlorinated biphenyls (PCBs) inventory management; past on-site or off-site waste disposal practices; and occupational safety and health (including hazards communication).

LANL completed an assessment of the facility's potentially significant liabilities under the Superfund statute and related state statutes pertaining to potential on-site contamination and related to the off-site disposal of wastes. In accordance with CERCLA requirements, no soil, groundwater, surface water, air, building material, or other environmental sampling and analysis were performed as part of this environmental assessment. LANL did, however, review environmental surveillance, monitoring, and sampling results that have been collected over time and that were relevant to the parcel.

### C. Conclusion

LANL's due diligence activities demonstrated for each parcel either that there is no evidence that it contains any hazardous waste or constituents; or (for each parcel that contained hazardous waste or constituents) that all necessary remedial action was completed prior to transfer, as required by the provisions of Section 120(h) of CERCLA. The EBSs, therefore, address the consequences, legal and technical, of the transfer of each parcel, as well as completed (not merely proposed) remedies effected for all SWMUs and AOCs on the transferred parcels. These EBSs were provided to NMED and EPA for review well in advance of the October 2002 transfers. LANL received and reviewed comments from both agencies. Therefore, Permittees have completed all due diligence activities required of a federal facility prior to land transfer.

# Attachment 2




Map Reference # 02 0360_WRH_RRES-ECO_122302