

TONEY ANAYA
GOVERNOR



STATE OF NEW MEXICO

ENVIRONMENTAL IMPROVEMENT DIVISION
P.O. Box 968, Santa Fe, New Mexico 87504-0968
(505) 984-0020
DENISE FORT, DIRECTOR

October 26, 1984

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Harold Valencia, Manager
U.S. Department of Energy
Los Alamos Area Office
Los Alamos, NM 87544

Dr. Donald Kerr, Laboratory Director
The University of California
Los Alamos National Laboratory
Los Alamos, NM 87544

Dear Messrs. Valencia and Kerr:

This letter is to bring both of you, along with your respective staffs, up to date on the progress of the Environment Improvement Division's (EID's) hazardous waste enforcement action against Los Alamos National Laboratory (LANL). It also expands, by the addition of three new violations, the outstanding Notice of Violation (NOV) issued to LANL on June 22, 1984. Finally, it summarizes the content of two recent (Sept. 11 and 26) meetings EID has held with Department of Energy (DOE) and LANL representatives, along with their consultants, and formalizes dates of document submission agreed to by all parties at those meetings.

THE RECENT HISTORY OF LANL'S COMPLIANCE WITH HAZARDOUS WASTE LAW

On June 20, 1983, LANL was inspected by Environmental Protection Agency (EPA) and EID personnel. EID's inspection report shows nine violations; presumably these violations, or a closely-related set of violations, were described to LANL by the inspectors. At this inspection, LANL refused to furnish ground-water monitoring waiver documentation. EPA wrote requesting this documentation on July 1, and LANL again declined to furnish this information, saying that the Federal hazardous waste law did not apply to LANL. EPA issued no enforcement action.

On November 7, 1983, the EID wrote LANL, requesting closure, post-closure, and ground-water monitoring plans. LANL again declined to furnish the requested information, this time saying these documents were not yet ready. No enforcement action was taken.

On May 22 and 25, 1984, the EID and the EPA (the latter present on May 22 only) conducted a second hazardous waste compliance inspection of LANL. Thirteen points of violation were found, and LANL was notified of these violations, both orally at the conclusion of the inspection, and in a formal NOV dated June 22, 1984. This NOV also made four inquiries concerning hazardous waste practices at LANL, and required submittals demonstrating compliance within 30 days of receipt.

LANL's response was received on July 26, 1984, and demonstrated compliance in the case of seven of the original thirteen violations. In addition to the three new violations listed in this letter, LANL remains, to the present date, in violation of the



16426

Messrs. Valencia and Kerr
October 26, 1984
Page -2-

following six provisions of the New Mexico Hazardous Waste Management Regulations (HWMR-2):

1. The requirement to have a closure plan committing LANL to specific activities at closure (see sections 206.C.2.a. through f., 206.C.5.e., 206.C.6.f., and 206.C.9.d.);
2. The requirement to have a post-closure plan committing LANL to specific actions after closure of its hazardous waste facilities (see sections 206.C.2.g. through j., 206.C.6.f., and 206.C.9.d., as well as 301.A. and the applicable post-closure requirements of 206.D.);
3. The requirement to have ground-water monitoring in place by Jan 26, 1983, or else to possess documentation meeting certain requirements (see section 206.C.1.);
4. The requirement to have an adequate waste analysis plan (see section 206.B.3.b.);
5. The requirement to train waste-handling and management personnel adequately (see section 206.B.6.); and
6. The requirement to submit an accurate and complete Part A application (see sections 301.A. and 302.C.1.).

In its July 26 response, LANL answered three of the four inquiries posed by the EID. The unanswered question was: Is the waste sand from the high-explosive (HE) burning areas a hazardous waste?

At the Sept. 11 meeting, the EID presented its comments on LANL's July 26 response. Written comments were given concerning closure, post-closure, and the waste analysis plan; detailed oral comments were given on the ground-water monitoring waiver documentation, the personnel training record/commitment, and the Part A application. All of these comments can be found in Attachment 1, along with subsequent revisions and additions.

Also at the Sept. 11 meeting, the EID learned that greater-than-ninety-day storage of hazardous waste occurs at Building TA-50-1, a fact which had been denied both during the May 22 inspection and implicitly denied in all of LANL's Part A applications, including the July 26 version signed by both of you. The EID elected to grant interim status to this storage area, as it had to the previously-unpermitted but long-standing storage of hazardous waste at Area L (never included on any Part A) and at TA-3-102 (never included on any Part A until July 26).

Also at this Sept. 11 meeting, Mr. McCorkle alluded to analytical results in his possession concerning the waste sand from the waste HE burning areas, but would neither release these results nor tell EID representatives what the current disposition of this waste sand was.

Messrs. Valencia and Kerr
October 26, 1984
Page -3-

The EID posed two further inquiries at the Sept. 11 meeting. These, in brief, were: Do 1) dynamic testing and 2) penetrating munitions testing involve the disposal of hazardous waste? LANL representatives, with EID concurrence, agreed to defer the answers to these questions until the Sept. 26 meeting.

The Sept. 26 meeting was set up to further discuss compliance issues. At this meeting, LANL offered no further documentation of correction of the violations noted in May. The inquiry, first posed during the May inspection, concerning the hazardous nature of the waste sand from the HE burning areas, was finally answered in the affirmative, but questions asked again concerning the disposition of this sand were again refused answers. Likewise, the question concerning the dynamic testing was also temporarily refused an answer, with LANL citing national security concerns. LANL representatives felt the testing of penetrating munitions made from depleted uranium did not involve the generation or disposal of hazardous waste.

Other conclusions and agreements made at the Sept. 26 meeting are documented in Attachment 1. In summary, LANL agreed to submit new evidence of compliance on Nov. 1, 1984 (the waste analysis plan, the personnel training commitment, an accurate Part A, and the ground-water monitoring waiver documentation), and on Dec. 1, 1984 (the closure and post-closure plans). However, the forthcoming closure plan will not actually commit LANL to closure actions beyond those described in the July 26 submittal. The EID concurred in this schedule, but noted that a closure plan of this type would not bring LANL into compliance.

At this point--over four months since the May inspection--the EID does not know, with certainty, what the hazardous waste handling areas at LANL are. Neither do we know, with accuracy, what wastes LANL handles. The possibility of further fundamental shifts in LANL's position vis-a-vis the hazardous waste laws cannot, at the present time, be ruled out. It is in the interest of both of you, as signatories on LANL's Part A, to be sure that the information on that application, as well as the information given to inspectors by your employees, is both accurate and complete, within the limitations of legitimate national security concerns.

As the period of non-compliance under the June 22 enforcement action lengthens, LANL is increasing its exposure to possible legal action by both State and Federal enforcement agencies. Any Federal action would carry substantial administrative penalties, due to the number of Class I violations present, and would probably be taken against the University of California. The State will not initiate legal action until it has reviewed LANL's November and December submittals, along with any other submittals LANL may make in response to this letter. At that time the State may take any of the enforcement options that were listed in the EID's June 22 NOV.

VIOLATIONS AT LANL DISCOVERED SINCE MAY 25, 1984

1. Section 206.C.9.b.(1) reads:

(1) The owner or operator must design, construct, and maintain a run-on

Messrs. Valencia and Kerr
October 26, 1984
Page -4-

control system capable of preventing flow onto the active portions of the landfill during peak discharge from at least a 25-year storm.

During a tour being given to EID and EPA personnel in the month of June, 1984, EID personnel noticed that run-on from thunderstorms had entered an active shaft at Area L. The run-on had been of sufficient volume to have eroded a channel several inches deep in the lip of the shaft. LANL representatives were notified of this violation at the time it was noticed.

2. Section 302.C.1. reads:

1. Qualifying for interim status.

a. Any person who owns or operates an "existing HWM facility" shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

(1) Complied with the requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity;

(2) Complied with the requirements of 302.A.1.b. and c. governing submission of Part A applications; and

b. When the EID determines, on examination or reexamination of a Part A application, that it fails to meet the standards of these regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to EID enforcement for operating without a permit.

Section 74-4-4.3 NMSA reads, in part:

A. Any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall, upon request, furnish information relating to such wastes...

Section 74-4-11 NMSA reads, in part:

Any person who knowingly transports any hazardous waste to a facility which does not have a permit under Section 74-4-4 NMSA 1978; knowingly treats, stores or disposes of any hazardous waste identified or listed pursuant to the Hazardous Waste Act (this article) without having obtained a permit under Section 74-4-4 NMSA 1978; or knowingly makes any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the Hazardous Waste Act is guilty of a misdemeanor and shall be punished by a fine

Messrs. Valencia and Kerr
October 26, 1984
Page -5-

of not more than ten thousand dollars (\$10,000) or by imprisonment for a definite term less than one year or both. ...

On May 22, 1984, LANL representatives told EID inspectors that the only container storage areas storing wastes for longer than 90 days at LANL, that they were aware of, were at the Area L landfill and at Building TA-3-102. These LANL representatives said that there "may" be other such areas, but they (HSE-7) "are not aware of them." On September 26, 1984, these same LANL representatives told EID inspectors that container storage also took place in Building TA-50-1. It is EID's understanding that Building TA-50-1 is the building where these HSE-7 employees have their offices. No container storage in Building TA-50-1 has ever been shown on any of LANL's Part A applications. The failure to accurately answer EID inspectors' inquiries and the failure to accurately complete a Part A application constitute violations of Section 3.2.C.1. of the HWMR-2 as well as of Section 74-4-4.3 and Section 74-4-11 NMSA.

The EID has agreed to grant interim status to the storage of hazardous waste in Building TA-50-1; the reception of a revised Part A reflecting this storage will bring LANL into compliance with Section 302.C.1. of the HWMR-2 and with Section 74-4-4.3 NMSA. LANL's violation of Section 74-4-11 will remain outstanding.

3. LANL representatives told EID personnel on Sept. 26 that the waste sand resulting from maintenance of the high-explosive waste burning areas at S-site met the characteristic of EP-toxicity for barium. However, LANL representatives would not disclose the location(s) where this sand was now or where past sand disposal had taken place.

LANL's failure to furnish information related to hazardous waste disposal constitutes a violation of Section 74-4-4.3 NMSA, cited above. It may also constitute a violation of Section 74-4-11 NMSA, also cited above, depending on where disposal of the waste sand has taken place.

In accordance with Section 74-4-10 NMSA, you have 30 days from receipt of this notice to submit to the EID documentation demonstrating that the violations noted above--with the exception of the violation of 74-4-11, which cannot be remedied--have been corrected. If you do not provide this information to the EID in writing, certified by a person duly authorized to sign for LANL, you shall be subject to one or more of the actions enumerated in EID's June 22 NOV.

ACTION NEEDED

First, LANL must prepare an adequate and binding waste analysis plan and must commit itself to legally-required standards in its personnel training, by Nov. 1, 1984. Both of these requirements are relatively straightforward and involve only a modest expense. My staff has provided you (on Sept. 26) with a draft guidance manual on waste analysis plans.

Second, LANL must prepare an accurate and complete Part A, by Nov. 1, 1984. This involves essentially no expense to LANL. Our joint efforts in meeting regulatory

Messrs. Valencia and Kerr
October 26, 1984
Page -6-

requirements will always be on an uncertain footing until an accurate Part A is completed.

Third, LANL must satisfactorily demonstrate that there is a "low potential for migration of hazardous waste or hazardous waste constituents" from its disposal areas (where all of these areas are remains uncertain) to water supply wells or surface water. This demonstration is due by Nov. 1, 1984.

My staff feels that, based on LANL's previous submittal, an essential part of a successful demonstration is the collection of long-term field data on infiltration and leachate production; detailed comments on these matters can be found in Attachment 1. Until this data has been collected, analyzed, reviewed, and found to be satisfactory, LANL will remain in violation of the ground-water monitoring requirements of the HWMR-2. If LANL cannot make the required demonstration, LANL must install a number of monitoring wells.

Note that the monitoring waiver criterion under the 206.D. standards (which applies to fully permitted operation) is more strict than that quoted above for interim status facilities. LANL would do well to design, from the outset, a monitoring program that satisfies both the interim status and the fully-permitted operating requirements.

Fourth, LANL must develop a closure plan that meets regulatory requirements and which binds LANL to specific actions at closure, by Dec. 1, 1984. Considerable scientific and engineering work will be required to satisfactorily complete this task. Like the issue of groundwater monitoring, LANL is advised to consider the permitting standards when doing this work, to avoid repetition of expense.

Fifth, LANL must commit to a program of post-closure care that meets regulatory requirements, by Dec. 1, 1984. This task intimately intermeshes with the design of LANL's land disposal units, with the monitoring done at the disposal sites during operation, and with the procedures used to close the units.

The issues of monitoring, closure, and post-closure care (items 3 through 5 above) can only be satisfactorily resolved by a concerted effort on the part of LANL. An adequate vadose zone and perched water monitoring network, research on and a commitment to the technology that will satisfy regulatory requirements in landfill cover systems, and a commitment to adequate post-closure care are all expensive. One of the purposes of this letter is to alert LANL management that significant amounts of money will need to be spent on hazardous waste compliance, money which may or may not be available within existing program budgets. For an example of the magnitude of the commitment involved, you may want to peruse a recent report from Lawrence Livermore entitled An Evaluation of the Hydrogeology and Ground-Water Chemistry Associated with Landfills at LLNL's Site 300 (UCRL 53416).

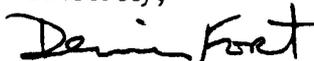
On May 1, 1985, LANL's Part B application for its hazardous waste permit falls due. LANL has already indicated that its Part B application--which has been given a 9-month extension in due date--may not meet regulatory requirements when it is

Messrs. Valencia and Kerr
October 26, 1984
Page -7-

submitted. It will be to LANL's advantage to submit a complete and adequate Part B on the above date. LANL may wish to hire a (second) contractor to review its Part B prior to submission, as some New Mexico industries have done, or to submit it to the EID for informal review, in, say, January. Like the failure to have a complete and adequate Part A, the failure to have a complete and adequate Part B is grounds for the termination of interim status.

I would like to get together with both of you, at a mutually convenient time, to discuss hazardous waste matters. Just call me and we will find and set a time to do this. In addition, you or any of your staff members should feel free to call me or any of my staff if we can help you in any way. Mr. Karl Souder (ext. 291) is handling issues related to groundwater monitoring; Mr. Greg Mello (ext. 340) is handling the other compliance issues. Mr. Peter H. Pache (ext. 340) is the Program Manager in the Hazardous Waste Section; questions concerning regulatory policy, submission dates, etc. should be referred to him.

Sincerely,



Denise Fort,
Director

Attachment 1: Technical comments
Attachment 2: Certification forms

cc: Mr. William Taylor, EPA
Ms. Susan Stark, EPA
Ms. Joyce Stubblefield, EPA
Mr. Neil Weber, EID

Mr. Duff Westbrook, EID
Mr. Melvin McCorkle, HSE-8, LANL
Mr. Wayne Hansen HSE-8, LANL
Mr. Bill Crismon, DOE

ATTACHMENT I

This Attachment contains comments on LANL's closure plan, post-closure plan, waste analysis plan, annual personnel training review, ground-water monitoring waiver documentation, and revised Part A, as well as inquiries made subsequent to June 22, 1984.