



Department of Energy
Albuquerque Operations
Los Alamos Area Office
Los Alamos, New Mexico 87544

November 14, 1984

Ms. Denise Fort, Director
Environmental Improvement Division
P.O. Box 968
Santa Fe, NM 87504-0968

RE: Notice of Violation (NOV) letter dated October 26, 1984

Dear Ms. Fort:

It is my pleasure to respond to your letter of October 26, 1984. As you are aware, all of the facilities, capital equipment, and real estate known as the Los Alamos National Laboratory are the property of the Department of Energy (DOE). The Laboratory is operated, under contract with DOE, by the University of California. In that context, and on the behalf of Dr. Donald M. Kerr, Director, Los Alamos National Laboratory, and the DOE, I wish to address the specific issues cited in your letter.

At the time of the June 20, 1983, Environmental Protection Agency (EPA) and Environmental Improvement Division (EID) inspection, it was explained that DOE understood that the Resource Conservation and Recovery Act (RCRA) specifically exempted Atomic Energy Act facilities such as the Laboratory from compliance with RCRA. This position was stated in the July 8, 1983, letter from Harold Valencia to Allyn M. Davis, EPA Director of the Air and Waste Management Division. A copy of this letter was forwarded to Raymond Sisneros, EID Health Program Manager, Hazardous Waste/Groundwater Bureau.

In that letter an offer was made to provide published geotechnical documents related to past or present exemption requests; some of that material already was in EPA files. As stated in the letter, all offers of partial submission within the then current DOE position were refused by the EPA employee at the inspection and we were informed that only complete submission would be considered adequate. During the inspection, the actual refusal to supply the information you have referred to was made by a representative of the Albuquerque Operations Office (ALO) of DOE and not by the University of California (UC) and was based on DOE's understanding that under RCRA, DOE was the responsible agency.

but previous
DOE corres-
pondence
had guaran-
teed lab
cooperation.
see (A)

all of RCRA uses the
language "owner or operator"



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what is the difference here? They were not ready because they were being "coordinated" with ... In fact the gwm waiver may not have existed, this since Stan Zigmund (sp) was retained this year to write it for the July 26 submittal. For text see (E)

The response to the November 7, 1983, EID request did not say that "the documents were not yet ready," but only that response was being coordinated with other interested DOE officials. This response again represented the DOE Headquarters position as outlined above. A later letter addressed to Raymond E. Sisneros, EID, regarding a similar request to Sandia National Laboratory, explained DOE Order 5480.2, which established a DOE program to control the disposal of hazardous waste.

wrong. Provided some of the requested material.

In response to the NOV dated June 22, 1984, following an EPA/EID inspection held on May 23 and 25, we provided the requested material within the 30 days that was stipulated. Subsequently, two meetings were held; one on September 11, and a follow-up meeting on September 26.

At the September 11 meeting the EID representative provided written comments regarding closure, post-closure, and the waste analysis plan. However, only oral comments were given on the groundwater monitoring waiver documentation, personnel training, and the Part A application.

Several charges were made regarding the May 23 inspection and the designation of storage areas (greater than 90 days) at the Laboratory. Due to the long-standing DOE position that facilities such as the Laboratory were exempt from RCRA, it was not until the July 26, 1984, submittal that we made a concerted effort to identify storage areas at the Laboratory in the specific context of RCRA Part A. However, we believe that we answered your inspectors' questions during the inspection and at subsequent meetings. The fact that we would prefer not to answer rather than provide an incomplete answer may have inadvertently created the false impression of non-cooperation. We are sorry if this is the case.

This is an admission of guilt, note.

Violation of 74-4-4.3

^{all?} You are correct that any storage areas, including those at TA-3-102 and TA-54-Area L, were not identified until the July 26 Part A submittal. The failure to designate the storage area at TA-50-1 was an oversight. However, we have never denied that storage ever took place in TA-50-1. In fact, Section 3.0 of the Closure Plan submitted on July 26 clearly identified 50-1 as a Container Storage and Chemical Treatment Area. In addition, during the May inspection your inspectors were shown the Batch Waste Treatment Area with its curbed area suitable for storage/spill containment that is housed in TA-50-1. Contingency spill containment ≠ storage of drummed wastes

wrong.

You are correct that the TA-50-1 contains office space for Laboratory employees. However, the building also contains the main radioactive waste treatment plant, a chemical waste batch treatment plant, a decontamination area, an analytical laboratory, and space for other activities. The revised RCRA Part A submitted on November 1 documented the storage area at TA-50-1.

Yes, the very ones, I believe, that "didn't know" that storage occurred there, which were also the ones in charge of that storage.

Ms. Denise Fort

Mr. McCorkle said that analyses had been done. They apparently do not understand what lying is.

Mr. McCorkle simply said that he'd rather not say where it went. He obviously knew where some of it was, and knew that he had to tell us.

You indicated that during the September 11 meeting that, "Mr. McCorkle alluded to analytical results in his possession concerning the waste sand from the waste HE areas," which he declined to reveal nor would he state the current disposition of the waste sand. The stated Laboratory position was that samples had been collected, but that the analytical work was not completed. The results would be shared with EID when they became available and the disposition of the waste sand would be discussed if it was determined that the waste sand was hazardous. At the September 26 meeting EID was informed that the sand met the EPA criteria for barium toxicity and it would take additional discussions with Laboratory management before the location of where the waste sand had been previously deposited could be discussed. The status of the waste HE sand and its disposition are discussed in the November 1 revision to the RCRA Part A. The November 1 submittal also states that the Area P site is scheduled for characterization starting in July 1985 and lasting through September 1986. This information should satisfy the requirements of section 74-4-10 NMSA.

74-4-10.3 requires disclosure

?? kinds late?

District Court

Your interpretation of discussions during the September 11 and 26 meetings regarding dynamic testing and penetrating munitions is not the same as ours. The two topics are in fact one: at times, dynamic testing involves penetrating munitions made from depleted uranium or other chemical constituents. Most dynamic testing is carried out in classified national security programs. We have previously explained to your staff that certain scrap pieces are declared as excess as part of dynamic testing procedures. We have classified these pieces as hazardous waste and reported them as reactive waste. The locations of some of the firing points and the burn areas are identified in the revised RCRA Part A submitted on November 1.

So what's the answer; does it generate HW or not?

Your statements that it has now been four months and you still do not know with certainty what the hazardous waste handling areas at the Laboratory are, and are worried about further fundamental shifts in the Laboratory position cause us some concern. Since the Laboratory is managed under contract to the DOE, it has acted as directed by the DOE. The DOE recently did agree to let EPA have responsibility for RCRA activities at its installations. Since then we have been working to provide appropriate information to EPA and EID. However, it must be recognized that the DOE program did not require identical documentation or approvals. Thus, the Laboratory did not have information available in the formats requested. In addition, part of the four months you refer to was taken up by EID review. The September 11 meeting was held at our insistence, and in fact was delayed for more than three weeks because EID staff was not ready to meet with us. Prior to the September 11 meeting, EID personnel would not disclose any information regarding our July 26 submittal. At the September 11 meeting,

No, Tennessee Judge Taylor did that.

we requested time to consider EID comments and proposed a time table to respond to those comments. A meeting was held on September 26 at which we agreed to respond to some of EID's requests by November 1 and to the remaining requests by December 1. We have provided the November 1 submission; the December submission is in progress. The DOE intends for the Laboratory to comply with the requirements of RCRA; however, classified information can only be revealed to cleared personnel.

The run-on situation brought to our attention during the June tour has been corrected. A temporary cover had been removed so that a concrete cap could be poured. Drainage controls around active shafts have been modified and will be documented in site standard operating procedures.

Under ACTIONS NEEDED, you listed five requirements. Each is addressed below.

- 1.a As part of the November 1 submittal, a waste characteristics and analysis plan was provided. The latest submittal was a major rewrite of the plan submitted on July 26.
- 1.b We still need to improve personnel training and to develop a training plan. A training director position in the Health, Safety, and Environment (HSE) Division office is currently funded, and recruitment to fill this position is underway. In addition, the HSE Associate Division Leader for Environment will coordinate RCRA-related training activities with the training director.
2. During the September meetings, we had discussed revising the RCRA Part A that had been submitted on July 26. The November 1 submittal included a RCRA Part A because that was our understanding of our agreements.
3. The Groundwater Monitoring Waiver Request for TA-54 was submitted on schedule on November 1. A copy of a handwritten note from Karl Souder is attached to this letter. His comments indicate that our vadose zone monitoring techniques sounded promising. He asked that we provide as much information as possible on construction, location, and supporting documentation. You will note that Peter or Gregg, of the EID staff, were to call M. L. McCorkle because the Laboratory staff was concerned that sufficient time did not exist between October 15, the date the note was received, and November 1, the date the submission was due. McCorkle initiated a phone call to Peter and was told he was busy and would call back. In the interim, we proceeded to meet Souder's request and the document was submitted on November 1.

Does this mean that the program is not in place yet? It sounds like it.

Their complaints may be justified. We are very busy.

Ms. Denise Fort

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Please note that DOE sites in other states have spent \$ on extensive monitoring. We trust LANL will be able to do the same.

The discussion regarding the "collection of long-term field data on infiltration and leachate production" or "install a number of monitoring wells" causes us some concern. At the September 26 meeting, we provided your staff with copies of 26 documents concerning our past efforts. A list of those reports was forwarded to you on October 25. If the information concerning long-term data is not adequate, we would prefer to conduct additional studies before installing monitoring wells. However, we believe that we have demonstrated that there is no potential to contaminate the aquifer below TA-54.

not evaluated yet.

4. and 5. We are modifying the closure and post-closure plans submitted to you on July 26. At present the modifications are being drafted on the assumption that the requested groundwater monitoring waiver will be granted. → probably, under interim status probably not, under permitted status

We have reviewed a copy of UCRL-53416 concerning the groundwater study being carried out at Livermore. As we understand the report, it is a 20-month effort to evaluate the hydrogeology and groundwater chemistry at Livermore's site 300. An understanding of the general geology, hydrology, and groundwater chemistry at Los Alamos presently exists, as documented in some of the reports provided at the September 26 meeting. However, we would expect an initial localized effort at TA-54 using techniques such as the neutron-probe access holes for monitoring as described in the groundwater monitoring waiver would result in an effort similar in the level of detail to that described in UCRL-53416.

You have noted our concern about the completeness of our RCRA Part B application. The extension to May 1, 1985, was granted because of complications caused by the inclusion of "mixed wastes" in the RCRA Part B call-in. The EPA letter granting the extension indicated that additional problems needed to be resolved. Our concern about completeness is with respect to additional regulations EPA intends to propose to define what a "mixed waste" is and how "mixed waste" would be regulated. If the regulations are not promulgated until, say, April, 1985, we would have difficulty in submitting a complete RCRA Part B on May 1, 1985. Perhaps you could provide further guidance.

Yes, assume the worst. Just administer everything as if it were clearly regulated under the more stringent regulations (of AEA and RCRA).

In addition, we are concerned with the fact that the EPA demonstration projects designed to demonstrate proper cover techniques have failed. These demonstration projects were to provide design criteria to operators such as the Laboratory so that proper cover design information could be included in the closure plans. Until satisfactory design criteria have been demonstrated, we are concerned that whatever we include in the RCRA Part B will be deemed inadequate. Again, you may be able to provide guidance.

no

The technology of adequate cover exists now. Perhaps they are not setting their economic costs high enough.

Ms. Denise Fort

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At the September 11 meeting, Richard Holland, Deputy Director of EID, agreed that before additional NOV's or other enforcement actions were instituted, the following steps would be taken:

1. Before any action was taken, the EID would notify the Department of Energy (DOE) local Area Office by phone with a list of issues. (i.e. violations)
2. The Area Office would arrange for a face-to-face meeting in an attempt to iron out the issues. → How do you iron out a violation?
3. If Steps 1 and 2 did not result in a resolution of the issues, EID would proceed with a written enforcement action.

We accepted these steps as a reasonable approach and have proceeded accordingly. We are dismayed at the apparent breakdown of this agreement, and would like to discuss this or any alternatives with you as soon as possible.

We are looking forward to meeting with you soon and assure you that we are prepared to meet our responsibilities under RCRA. If I can be of further service, please call me at 667-5105.

We haven't issued a CO, yet. I agree - I thought this agreement was for higher-level enforcement actions. They could be right, however.

Sincerely,


Harold E. Valencia
Area Manager

Att: a/s

cc:
C. S. Adams, Jr., ADTS, LANL, M.S. A120
Jesse Aragon, HSE-DO, LANL, M.S. P228