



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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

FEB 11 1988

Mr. Michael Burkhart, Director
N. M. Environmental Improvement Division
P. O. Box 968
Santa Fe, New Mexico 87504-0968

*see binder for
add's*

Dear Mr. Burkhart:

NOTICE OF VIOLATION (NOV) DATED JANUARY 8, 1988

The enclosed information is the Department of Energy's (DOE) official response to the New Mexico Environmental Improvement Division's (EID) Notice of Violation (NOV) that was transmitted in a letter dated January 8, 1988 and received January 12, 1988. Although further discussion is required on specific deficiencies, DOE has attempted to respond as fully as possible.

The following delineates DOE's response:

DEFICIENCY 1: The Part A certification was not dated.

Response: The DOE's November 25, 1987 submittal of a revised Part B hazardous waste permit application to the EID's Hazardous Waste Program included an amended, dated Part A application.

It is unclear why Section 202.E. was also cited in this deficiency. EID's NOV cites a deficiency in DOE's Part A and does not cite deficiencies in the Notification Form requirements that are referenced in Section 202.E. However, a revised Notification Form has been prepared and included (see enclosure #1).

DEFICIENCY 2: Manifests for shipments of recyclable solvents and precious metals were not available for review.

Response: Enclosed are copies of various manifests for the shipping of recyclable metals and solvents (see enclosure #2a). Although some of these manifests are not the form specified in the regulations, they have served the purpose of tracking the recyclable material from generator to recycler for over ten years. We have since implemented administrative instruments to ensure the use of the required manifest form, Environmental Protection Agency (EPA) Form 8700-22, and if necessary, EPA Form 8700-22A (see enclosure #2b).



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DEFICIENCY 3: There is no ground-water monitoring at the Area P landfill, the surface impoundment at Area 16 or the solvent disposal area at Area 16-Building 340.

Response: The DOE has recently requested a ground-water monitoring waiver for the TA-16 Area P landfill and the TA-16 surface impoundment following the drilling of seventeen boreholes in the area (see enclosure #3a). Four of these holes were completed as Resource Conservation and Recovery Act (RCRA) ground-water monitoring wells at the limit of the landfill's waste management area, three downgradient and one upgradient. They have been screened partially in the alluvium above the tuff and partially in the tuff below to intercept any liquid which might travel along the interface between the two materials. Four additional holes were completed as wells to detect the presence and exchange of any perched ground water between the canyon creek and the landfill. Three boreholes were completed around the landfill as neutron moisture access holes, as was one at the TA-16 surface impoundment and one (200 ft. deep) towards the end of the mesa. To date, no free-flowing ground water has been observed in any of the boreholes. Gravimetric moisture data was collected from all the boreholes and also suggests the unlikely occurrence of free-flowing ground water in the subsurface (see enclosure #3b, "Site Geology and Hydrology of Technical Area 16 Area P"). The DOE has, therefore, based its waiver request on the absence of saturated flow within the upper 200 ft beneath TA-16 Area P landfill and TA-16 surface impoundment.

DOE is in receipt of the EID's December 22, 1987 letter deferring a decision regarding our ground-water monitoring waiver pending receipt and evaluation of additional information. The material that DOE agreed to provide by February 1988 is enclosed (see enclosure #3c) as well as analytical data from the surface water and sediment sampling performed in December 1987. The information hereby provided and that which was previously sent, along with supporting documentation from our waiver at TA-54, demonstrate the low potential for migration. The requirement to install additional ground-water monitoring wells in an area with no evidence of free-flowing ground water in the upper 200 ft. is inappropriate at this time. However, we will continue to inspect our existent monitoring wells for evidence of quantities of water sufficient to sample.

It is unclear exactly where EID considers a "solvent disposal area at Area 16-Building 340" to be located. However, following the November 19, 1987 meeting between EID, DOE, and the Los Alamos National Laboratory (LANL), and review of the EPA inspection checklist and transmittal letter dated October 13, 1987, DOE is interpreting this reference to indicate the National Pollutant Discharge Elimination System (NPDES) permitted outfall.

The outfall at TA-16-340 does not qualify as a RCRA disposal unit and would consequently not require ground-water monitoring. This outfall is currently regulated by the Federal Water Pollution Control Act (WPCA) under the DOE's NPDES permit. This permit (NM0028355) specified certain parameters which must meet particular concentration levels prior to discharge. These parameters and their respective concentrations are derived from sample results of a typical process discharge. The analytical results of the sample collected to represent a typical discharge from the manufacture of high explosives at LANL indicated the presence of solvents. In response to these solvents, the permit specifies a Chemical Oxygen Demand (COD) parameter and a corresponding permissible discharge concentration. The release of solvent from this discharge point is, therefore, a regulated activity under a federally issued NPDES permit.

Because the outfall is regulated by the NPDES permit, it does not fall under the jurisdiction of the RCRA statutory and regulatory authority. Specifically, the expressed intent of both the RCRA and the New Mexico Hazardous Waste Act (NMHWA) precludes the simultaneous regulation of an area by both the RCRA and the WPCA and requires that duplication of enforcement efforts be avoided (see RCRA Section 1006(a) and (b), and NMHWA Section 74-4-3.1). In support of this position, the regulations clearly exempt industrial wastewater point source discharges subject to Section 402 of the Clean Water Act (NPDES) from the definition of solid waste (see HWMR-3 Section and 201.A.4.a.(2)40CFR261.4(a)(1)) and thereby from the definition of hazardous waste. If the NPDES discharge is not a hazardous waste, it cannot be construed as a RCRA disposal unit.

DEFICIENCY 4: Containers of hazardous waste being accumulated at TA-33-39, TA-43, and TA-51 were not marked.

Response: We have ensured that all containers of hazardous waste being accumulated at TA-33-39, TA-43-1, and TA-51 are marked appropriately (see enclosure 4).

At TA-43-1, all hazardous waste is stored in a designated area and is either labeled with the container's contents or a hazardous waste sign as required by Section 204.B.3.a.(2). It should be noted that in EID's inspection checklist, the inspector (B. Hamilton) states "outdated products, not labeled as H. W. (hazardous waste) but name of compound is present." The labeling requirements for satellite storage allow either method of identification.

At TA-51, it is uncertain from EID's NOV what containers of hazardous waste are referenced. Activities at TA-51 do not generate hazardous waste. Several drums of a roofing material may have been stored at a nearby area (TA-51 West) at the time of the inspection and may not have been labeled. These drums contained a product and, therefore, would not have required hazardous waste labeling.

DEFICIENCY 5: Containers of hazardous waste being accumulated at TA-53 were not labeled.

Response: We have ensured that all containers of hazardous waste at TA-53 are labeled (see enclosure #5).

DEFICIENCY 6: The design capacity at TA-54 Area L had been exceeded.

Response: Over capacity at TA-54 Area L is partly the result of circumstances beyond DOE's control. Many of our efforts to ship hazardous waste to acceptable off-site commercial disposal facilities have been thwarted by several facilities' already overloaded conditions. We continue to aggressively work the off-site disposal problem.

As previously mentioned, our November 26, 1987 submittal of a revised Part B hazardous waste permit application to the EID's Hazardous Waste Program included an amended Part A application. As per discussion with EID Hazardous Waste Program staff on September 22, 1987, the Part A included an increase in storage capacity to address DOE's waste storage needs. Also included in the Part A are waste minimization efforts that would help alleviate the large volume of waste being stored at TA-54 Area L.

DEFICIENCY 7: Tanks being used to store hazardous waste at Area L for less than 90 days were not labeled.

Response: In response to this noted deficiency, DOE will address the tanks identified by Mr. Hamilton at the DOE, LANL, and EID meeting of November 19, 1987 as the tank truck and the rectangular tank on the concrete pad at TA-54 Area L. Please note that EID's inspection checklist specifically stated that the tank truck was labeled with a hazardous waste sticker. To ensure that hazardous waste labels are in place on any and all tanks that contain hazardous waste, inspections of these tanks are performed and inspection logs completed. Laboratory policy also reinforces the importance of proper labeling with upper management and employees directly handling the waste through the use of Administrative Requirements (AR) in the "Health and Safety Manual."

DEFICIENCY 8: Detailed chemical and physical analyses have not been obtained from waste streams at Area 16-Building 340, wastes awaiting laboratory results at Area L, equipment and material possibly HE contaminated at Area 16 prior to treatment, storage and/or disposal.

Response: Pursuant to DOE's EID approved waste analysis plan (see enclosure #8, EID's December 10, 1985 letter approving the waste analysis plan revised in response to EID's August 26, 1985 NOV and EID's letter dated November 4, 1985 - Violation 13), we utilize both prior knowledge of the waste

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generation process and typically perform chemical analyses to identify the contents of waste. This approach has also been acknowledged and determined to be acceptable by EPA inspectors on this and a previous inspection dated January 22, 1986. If there is no reason to believe that a change in process has occurred, analysis is only repeated periodically to ensure accuracy and currency. Hence, the waste is not being stored without prior knowledge necessary to handle it in accordance with the treatment, storage and disposal requirements of Section 206.B.3.a.

Drums noted during the inspection were awaiting confirmation analyses at TA-54 Area L prior to shipment off-site and treatment on-site. Off-site commercial disposal facilities and LANL internal policies mandate that LANL sample and analyze either every drum of waste or representative samples from drums batched with the same waste before treating or shipping.

DEFICIENCY 9: The Contingency Plan has not been updated to identify the primary emergency coordinator.

Response: The Part B Contingency Plan identifies the primary emergency coordinator in our Part B submittal dated November 25, 1987 (see enclosure #9).

DEFICIENCY 10: Waste analyses are not maintained in the operating record for wastes that have not previously been burned.

Response: The wastes indicated by the EID have previously been burned. DOE's Part B hazardous waste permit application describes the thermal treatment referred to in the NOV as a current practice so as to comply with Section 206.C.11.c. Also, in more than one instance, the EID inspector has been informed of this practice during previous site visits. Furthermore, as can be seen upon review of the operating record at TA-16, Building 200, Room 125, reference has been made regarding the nature of the waste being burned. Due to the volume of information comprising this operating record, it has not been included in this response.

In addition, the regulatory citation referenced in EID's noted deficiency does not require that waste analyses be maintained in the operating record. Section 203.C.2.c. does make this a requirement. In fact, the latter citation was used in EPA's transmittal letter summarizing the findings of last year's inspection (1/27, #28/86) citing the same violation. This EPA summary letter was transmitted to LANL on April 25, 1986. EID's letter stated that EPA's findings had been reviewed and no violations actually existed.

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DEFICIENCY 11: The following information was not available in the operating record for Area P:

- a. a map showing the location and dimensions of each cell
- b. the contents of each cell and location within the cell

Response: All available information noted in deficiency #11 can be found in the operating record and the closure plan. Due to the nature of the waste that was disposed of in the TA-16 Area P landfill and its associated safety concerns, no more information can be obtained. Every attempt was made to be as specific and accurate as possible.

DEFICIENCY 12: LANL has failed to prepare a ground-water monitoring assessment outline for those areas identified in #3 (TA-16-340, Area P landfill, TA-16 surface impoundment).

Response: DOE has amended its closure plan for TA-16 Area P landfill to include a more comprehensive ground-water monitoring program (see enclosure #12). Although a ground-water monitoring waiver has been requested by DOE, the above-noted program would be initiated in the event quantities of ground water are encountered sufficient for sample collection and analysis. This monitoring program contains collection and analysis. This monitoring program contains a ground-water assessment outline.

The TA-16 surface impoundment closure plan also contains a ground-water monitoring plan should free-flowing ground water be encountered. A commitment to evaluate and, if necessary, remediate any ground-water contamination has been included.

A ground-water assessment outline would not be required for the outfall at TA-16-340 because it is not subject to RCRA ground-water monitoring requirements (see "Response" to "DEFICIENCY 3").

DEFICIENCY 13: LANL has failed to develop a closure plan for the hazardous waste management unit at Area 16-Building 340.

Response: It is unclear where a hazardous waste management unit exists at TA-16-340. We are assuming, as in our response to DEFICIENCY 3, that EID is referring to the NPDES outfall. A closure plan would not be required for the outfall at TA-16-340 because it is not subject to RCRA regulation (see "Response" to "DEFICIENCY 3").

DEFICIENCY 14: LANL has managed hazardous waste at Area 16-Building 340, an area not specified on the Part A.

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Response: Inclusion of the permitted outfall at TA-16-340 on the Part A application is not necessary because it is not subject to the RCRA regulatory requirements (see "Response" to "DEFICIENCY 3").

DEFICIENCY 15: The Part A does not specifically identify what is being treated and/or stored and/or disposed of, but disposed of on-site.

Response: It is DOE's interpretation that the words "to be treated, stored, or disposed" in Section 302.A.4.a.(15), imply those wastes that could expect to be generated. This would include those wastes that DOE may generate in the future. For this reason, DOE has tried to be as inclusive as possible.

Again, it is unclear why Section 202.E. was cited in this deficiency. The deficiency cited is for suggested inadequacies in the Part A and does not cite inadequacies in the Notification Form requirements.

DEFICIENCY 16: The Part A does not identify all past, present, and/or future hazardous waste management activities, such as the hazardous waste management unit at Area 16-Building 340 and the surface impoundment at Area 16.

Response: In DOE's request to revise its Part A application dated August 17, 1987, the surface impoundment at TA-16 was included in an attempt to identify all past, present, and future hazardous waste management activities. This request was denied in EID's letter dated September 9, 1987. DOE has since provided additional information regarding the TA-16 surface impoundment in DOE's most recent Part A revision submittal (November 25, 1987). DOE feels this constitutes proper identification of the surface impoundment at TA-16.

The outfall at TA-16-340 does not constitute a hazardous waste management unit (see "Response" to DEFICIENCY #3) and therefore would not require inclusion in the Part A application.

DEFICIENCY 17: There are 10 drums of transformer oil at TA-53, MPF-14 for which a determination had not been made as to whether the oil is a hazardous waste.

Response: Adherence to the AR contained in LANL's "Health and Safety Manual" is required at LANL to ensure facility-wide control over the management of hazardous waste. Specifically, AR 10-3 (see enclosure #17a) requires Group Leaders to be knowledgeable of the waste his or her group generates and ensure that it is handled properly. The non-hazardous waste status of the drums of transformer oil was known by the user group at the time of the inspection; however, not by the inspection escorts. The transformer oil was not a waste but rather a product intended for use in another transformer. Enclosed (see enclosure #17b) is a certification by the group leader that this was indeed the situation.

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DEFICIENCY 18: A determination has not been made as to whether the 4 USMC tanks at Area L are being used to treat a hazardous waste.

Response: The 4 USMC tanks at TA-54 Area L have never been used to treat hazardous waste. The tanks were formerly used for storage of waste oil. DOE will, however, close them pursuant to interim status closure standards. Closure plans for the 4 USMC tanks, the tank truck, and the rectangular tank have been included for your review and subsequent approval (see enclosure #18).

DEFICIENCY 19: Inspection checklists were not available for the tanks at Area L.

Response: Enclosed for your review are inspection checklists for TA-54 Area L from several dates before the inspection (see enclosure #19). These checklists were available at TA-54 Area L and TA-59-03 at the time of the inspection. It should be noted, however, that the EPA inspector indicated that applicable inspections were being performed on his checklist.

Based on this submittal, DOE believes that all issues referenced in the NOV have been resolved. If you have any questions regarding this submittal, please contact Mr. James Phoenix (667-5288) of my staff.

Sincerely,


Harold E. Valencia
Area Manager

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Enclosures

cc w/Enclosures: A. Davis, Region VI, EPA, Dallas, Texas

LIST OF ENCLOSURES

1. Notification Form
- 2a. Various Manifests
- 2b. Administrative Instruments
- 3a. Request for Groundwater Monitoring Waiver
- 3b. "Site Geology and Hydrology of Technical Area 16 Area P"
- 3c. Surface Water and Sediment Sampling Results
- D. B. Stevens Report of Soil Hydraulic Properties
4. Photographs of TA-33-39 Containers and TA-43-1 Designated Storage Area
5. Photograph of TA-53 Containers
6. Refusal Letters
7. BLANK
8. December 10, 1985 and November 4, 1985 Letters from EID to DOE
9. Primary Emergency Coordinator
10. BLANK
11. BLANK
12. (date) Letter from DOE to EID Amending Area P Closure Plan
13. BLANK
14. BLANK
15. BLANK
16. BLANK
- 17a. Administrative Requirement 10-3
- 17b. Transformer Oil Certification
18. TA-54 Area L Tank Closure Plans
19. Inspection Record Form for TA-54 Area L