New Mexico Health and Environment Department

GARREY CARRUTHERS
Governor

DENNIS BOYD
Secretary

MICHAEL J. BURKHART
Deputy Secretary

RICHARD MITZELFELT
Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 11, 1989

Mr. Siegfried S. Hecker, Director
Los Alamos National Laboratory
P.O. Box 1663
MSK 490
Los Alamos, New Mexico 87554

RE: NOTICE OF VIOLATION
NM0890010515

Dear Mr. Anderson:

On August 7-11, 1989, the New Mexico Environmental Improvement Division (EID) conducted a joint EPA/EID hazardous waste inspection of your facility, Los Alamos National Laboratory (LANL). This letter is EID's notice that, based on our review of the information obtained, EID has determined that LANL has violated the New Mexico Hazardous Waste Management Regulations (HWMR-5, as amended 1989). The purpose of this letter is to delineate the violations in writing and to require LANL to comply with HWMR-5.

The violations are:

1. The operating record concerning storage at the TA-54 Area L container storage area is incomplete. This is a violation of HWMR-5, Part VI, 40 CFR section 265.73(b)(1). Specifically, the computer tracking system used at the facility does not maintain the dates when wastes are received. Generally, the dates entered are deleted when the wastes are shipped off-site. These dates are to be maintained in the operating record.

2. Open containers were observed at several of the satellite accumulation points, including TA-16-270, 304, and 340, TA-3-38, and TA-21-210. This is a violation of Pt. III, sec. 262.34(c)(1)(i). LANL must ensure that managing personnel at all satellite accumulation points understand the regulations and are trained accordingly.

3. Several unmarked containers were observed at satellite accumulation points, including TA-33-39, TA-21-210, and TA-43-1. This is a violation of Pt. III, sec. 262.34(c)(ii),

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which requires that containers be marked either with the words "Hazardous Waste" or with other words that identify the contents of the waste containers.

4. Although TA-43-1 is being managed as a satellite accumulation point, hazardous waste in excess of fifty-five gallons has accumulated at the site without compliance with applicable requirements. This is a violation of Pt. III, sec. 262.34(c)(2).

5. The TA-46 less than ninety-day storage tank, as noted in the facility inspection log, had at one point exceeded the ninety-day storage limit. This is a violation of Pt. III, sec. 262.34(b) and made the tank system subject to all applicable interim status requirements for that period of time.

6. Several manifests for shipments of hazardous waste from the PANAM group to Safety-Kleen Corp. were signed by a Safety-Kleen representative on the TSD facility section of the manifests prior to off-site shipment. This is a violation of Pt. III, sec. 262.20 manifest requirements.

7. At several of the satellite accumulation points, including TA-3-38, TA-53-25 and 44, and TA-46-31, personnel discard various solvent-contaminated rags and chem-wipes in general trash containers. A hazardous waste determination has not been performed for these discarded materials to see if they need to be managed as a hazardous waste. This is a violation of Pt. III, sec. 262.10(b).

8. At the TA-36 Minie site, a gas cylinder destruction area that is being operated as a thermal treatment unit is not covered in an existing closure plan. This is a violation of Pt. VI, sec. 265.112(b).

9. The Part A of the RCRA application does not include the required information concerning the gas cylinder destruction area mentioned above. This is a violation of Pt. IX, sec. 270.13(i)-(j).

10. Not all facility personnel have successfully completed a program of classroom or on-the-job training. This is a violation of Pt. VI, sec. 265.16(a)-(d). Specifically, personnel at the PANAM sites are not getting adequate training as evidenced by some of the above cited violations. The TA-16 training records are incomplete to the extent that

it could not be determined what training was provided. In some instances, documentation specified the time spent on training, but did not state the training subjects covered.

In accordance with Section 74-4-10 of the New Mexico Statutes Annotated (NMSA), 1978 (1989 Supp.), you have thirty (30) calendar days from the receipt of this notice to provide documentation that the aforementioned violations have been corrected. Within this thirty day period you may request a meeting to discuss the violations, the required corrective actions and/or a settlement agreement. Such a meeting must be held within this thirty day period and will not suspend the thirty day deadline for compliance or settlement.

If you fail to correct the violations cited in this Notice of Violation (NOV) within the specified time frame, you shall be subject to one or more of the following:

1. an order requiring compliance within a specified period, pursuant to Section 74-4-10 NMSA, 1978 (1989 Supp.), and/or an order assessing civil penalties of up to $10,000 per violation for each day of continued noncompliance, pursuant to Sections 74-4-10 and 74-4-12 NMSA, 1978 (1989 Supp.).

2. a civil action in district court for appropriate relief, including a temporary or permanent injunction, pursuant to Section 74-4-10 NMSA, 1978 (1989 Supp.), and/or the assessment of civil penalties of up to $10,000 per violation for each day of continued noncompliance, pursuant to Sections 74-4-10 and 74-4-12 NMSA, 1978 (1989 Supp.).

Any settlement reached shall be finalized upon the issuance of a written settlement agreement by the Director of EID. This issuance of a settlement agreement shall constitute a waiver on your part to request a hearing pursuant to this notice.

In addition to the above violations, several areas of concern were noted. The inventory list of the various types of hazardous waste sites existing at LANL which was provided to the EID and EPA inspectors was incomplete. Primarily, the satellite accumulation points listing does not encompass all existing areas in that more exist than were reported. A complete, thorough listing is encouraged in order to provide both LANL hazardous waste management personnel and inspectors with an accurate account of the extent of the hazardous waste management program. A second area of concern is incompatible waste storage. At the TA-21-003 (INC-4) satellite accumulation point, incompatible wastes were stored in containers adjacent to each other, which

poses a safety hazard. Facility hazardous waste managers should visit all waste management areas to ensure that incompatible wastes are not stored in close proximity to each other. The final area of concern relates to violation No. 9, regarding insufficient personnel training. Several of the violations mentioned seem to be caused by either negligence on the part of hazardous waste handlers and/or their managers, or a failure to provide adequate training. Assuming negligence is not the problem, then it must be that the training is not thorough enough or is not communicated effectively. An important step to take on a regular basis is to have the trainers follow up on the implementation of the training program to ensure that the employees continue to understand the proper procedures.

Regarding the land disposal restriction (LDR) requirements, EPA inspector Mike Michaud decided that the extent of apparent LDR problems necessitated a separate LDR inspection. As a result, an LDR inspection was conducted by EPA inspector Juan Corpion the following week. Therefore, LDR matters will not be addressed in this letter.

Compliance with the requirements of this NOV does not relieve LANL of its obligation to comply with HWMR-5 in other activities which it carries on, nor does it relieve LANL of its obligation to comply with any other applicable laws and regulations.

If you have any questions regarding this notice, please contact Mr. Coby Muckelroy at (505)827-2929 or at our address. Please also address to Mr. Muckelroy's attention the information you provide in response to this letter.

Sincerely,

Jack Ellvinger

Jack Ellvinger, Chief
Hazardous Waste Bureau

JE/cm

cc: Lynn Prince, U.S. EPA Region VI (6H-HS)
Michael Brown, District II Office

New Mexico Health and Environment Department

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October 5, 1989

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Re: In the Matter of Compliance Orders Docket No. 880801 and 880801-A, Hearing No. 89-01

Dear Ms. Laeser and Mr. Yesley:

This letter supplements the Environmental Improvement Division's (EID) Response to the Department of Energy's (DOE) and University of California's (the University) Rule 303 discovery request as made in a letter dated September 12, 1989 from Joyce Laeser to me. As mutually agreed, EID is this same date providing DOE and the University access to the requested records. Of the additionally provided records, the following documents or excerpts from documents within those files are being withheld from disclosure pursuant to the articulated privileges:

(1) LANL 1986 Blue (Enforcement) File:
   a. Memorandum dated May 2, 1986 from Jack Ellvinger, through Peter Pache, to Dick Young, re: Comments On the LANL Settlement Agreement withheld pursuant to attorney-client and/or executive privileges
   b. Memorandum dated May 9, 1986 from Jack Ellvinger, through Richard Holland, Ernest Rebuck and Peter Pache, to Denise Fort, re: Explanation of the current LANL situation. How we got here and where do we go from here, withheld pursuant to executive privilege
   c. Memorandum dated September 18, 1986 from Dick Young to Carol Oppenheimer, re: LANL Settlement Progress, withheld pursuant to attorney-client and/or executive privileges

— OFFICE OF GENERAL COUNSEL —
Harold Runnels Building
(505) 827-2990
1190 St. Francis Dr.
Santa Fe, New Mexico 87503

(2) LANL Yellow (Notification) File #1:
   a. From EID Buckslip to September 9, 1987 letter from Michael Burkhart to Harold E. Valencia, "Comments By Drafter Or Reviewer(s)" section only withheld pursuant to executive privilege
   b. From EID Buckslip to August 8, 1986 letter from Ernest Rebuck to Harold E. Valencia, "Comments By Drafter Or Reviewer(s)" section only withheld pursuant to executive privilege

(3) LANL 1988 Red (Permit) File #1:
   a. From EID Buckslip to March 26, 1988 letter from Michael Burkhart to Harold E. Valencia, "Comments By Drafter Or Reviewer(s)" section only withheld pursuant to executive privilege
   b. From EID Buckslip to April 20, 1988 letter from Jack Ellvinger to Harold E. Valencia, "Comments By Drafter Or Reviewer(s)" section only withheld pursuant to executive privilege

(4) LANL 1989 Red (Permit) File #1:
   a. Request For Legal Services dated February 17, 1989, withheld pursuant to attorney-client privilege

EID understands its continuing obligation to supplement such discovery requests.

Sincerely,

GINI NELSON
Assistant General Counsel

Enclosure

cc: Boyd Hamilton

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BEFORE THE DIRECTOR OF THE
ENVIRONMENTAL IMPROVEMENT DIVISION
OF THE NEW MEXICO HEALTH AND ENVIRONMENT DEPARTMENT

In the Matter of
Compliance Orders
Docket Nos. 880801 and 880801-A

DOCKET NO. 89-01

CERTIFICATE OF SERVICE

I hereby certify that copies of EID's Second Supplemental Response to the United States Department of Energy's and the University of California's Request for Documents Under Rule 303 were mailed by first class mail, via certified mail, return receipt requested, on this 5th day of October, 1989, to the following:

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