

2390

United States Government

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

# Memorandum

DATE: August 11, 1997  
COPY TO: H. L. "Jody" Plummer  
SUBJECT: TA-54, Area L, Asphalt Disposal Issues

RELEASE RESTRICTED TO  
MANAGERS OFFICE

TO: G. Thomas Todd

The purpose of this memorandum is to express my grave concerns that the DOE's M&O contractor, the University of California (UC), may not be operating in a manner acceptable to DOE. The seriousness of these concerns include the potential for the closure of TA-54 facilities in total or in part. In either case, the overall effect on operations could have severe impact on Los Alamos National Laboratory (LANL) operations and the ability to support of national defense programs. Contingency plans for management of waste generated may need to be considered. I must specifically cite programs involving LANL facilities TA-55, CMR, and all other operations supporting defense programs.

Additionally, DOE could once again be painted by the broad brush of distrust for actions it neither supports or condones, with all of the attendant negative publicity. Further, there is ample evidence concerning the potential for poor management decisions by UC which have lead to the potential release of contaminants to the environment. Due to the nature of the responses made by UC regarding these instances, it is reasonable to presume NMED's involving the New Mexico Attorney Generals Office, and the U. S. Environmental Protection Agency to further investigate these matters.

Lastly, due to the nature of the events and the refusal of UC management, Environmental Safety and Health staff, and UC Counsel to understand multiple requests by me, including my beseeching them on August 5 to provide all of the information available regarding the movement of asphalt at TA-54, including an earlier decision to dispose of approximately four roll off bins of the same or similar material adjacent to TA-54, Dome 215, in August, 1994, as hazardous waste, in a truthful and forthright manner, I am registering concerns with you that UC may not have followed the conditions of the contract currently held with DOE. If this is so, there may be grounds for DOE to deny any and all costs for all past and future actions required of UC to address this matter. Due, however, to the seriousness of this issue, a decision will need to be made by yourself and others on this matter. I have included a draft memorandum to Sieg Hecker on this matter for your consideration.

I would also like to point out that I did consider this matter serious enough to contact Hortense Haynes and Herman le Doux. On August 6, after discussing the matter with Hortense Haynes, Herman le Doux asked and requested UC management not to



submit the response as drafted. They did not comply with his request and the letter was hand delivered to NMED on August 6, the due date.

Potential areas of concern include as follows:

- State of New Mexico, Hazardous Waste Act
- State of New Mexico, Solid Waste Act
- State of New Mexico, Water Quality Act
- Federal, Resource Conservation and Recovery Act, Subtitle C and D
- Federal, Comprehensive Environmental, Compensation, and Liability Act (SUPEFUND)
- Federal, Clean Water Act

The facts that we know regarding the removal, use, and/or disposal of asphalt located in TA-54, Area L are as follows.

- In 1993 (my earliest recollection of this matter) LANL determined that a new dome structure needed to be constructed in TA-54, Area L to support mixed waste storage operations (TA-54, Area L, Dome 215). To do this, a permit modification was required to be submitted. This, I believe, was done in early 1994. One of the issues that needed to be resolved was disposal of waste asphalt generated during construction activities. This would more appropriately be stated as concern for New Mexico Environment Department (NMED) regulatory interpretation of what would allow under the Hazardous Waste Management Regulations (HWMR), regarding the removal and disposal of the asphalt covering the soil surface in the immediate area of proposed construction activities. The location of the new dome structure was immediately over Solid Waste Management Unit (SWMU) 54-006 (also known as PRS 54-006). The material in this SWMU contained and continues to contain hazardous constituents known to be off gassing in a vapor phase to the soil and possibly to the asphalt. It is the site of future cleanup activity with the ceasing of surface storage activities. The gaseous phase of these constituents is being contained beneath the asphalt covering of the TA-54, Area L, Hazardous Waste Storage Facility, apparently with limited or no release to the atmosphere. The NMED reviewed our submittal regarding the construction of Dome 215 and participated in several discussions of this matter in the early months of 1994; if I recall correctly the last discussion held with NMED prior to receiving a written decision was May, 1994.

- On July 22, 1994, NMED sent a "Conditional Approval" letter to Joe Vozella, DOE/LAO addressing construction of the mixed waste storage dome (Dome 215) in Area L. In this letter NMED/HRMB stated: "...that all waste asphalt removed from the pad must be treated and/or disposed of as a hazardous waste."

- (The following information was not obtained until July 29, 1997, and

confirmed on August 5, 1997)

During the months of July and August, 1994, maintenance activities in TA-54, Area L, required the removal of asphalt and dirt adjacent to and leading in a westerly direction from the proposed construction site during the upgrading of electrical service to the dome location; this required the digging of a trench through the asphalt and underlying soil some 18+ inches beneath the surface. A decision was made by persons involved in this activity to consider all the material removed to be hazardous waste. This asphalt and dirt was subsequently loaded into rolloff bins or end dump trucks and shipped offsite for disposal as hazardous waste. This is recorded information supported by hazardous waste manifests (per TA-54 staff); cost is believed to have been approximately \$.5M. The decision to call this material was apparently done on the basis of acceptable knowledge or process knowledge (knowledge of the source of the material) that the material could be a hazardous waste (no testing is known to have occurred).

- Discussions were held in August 1994 with NMED regarding their July 22, 1994 determination; NMED verbally authorized the reuse of the old asphalt as a base for the new Dome 215. As this was not "placement" they did not consider the material hazardous waste, i.e., it was being put back from where it was removed, a contaminated site.

- Construction of Dome 215 was delayed due to budget considerations until approximately May, 1995. On June 15, 1995, approximately 30 cu. yd. were removed from TA-54, Area L and transported to TA-54, Area G.

- UC notifies NMED on May 28, 1997 that material removed from TA-54, Area L during construction of Dome 215 had occurred.

- NMED responds to UC on July 7, 1997. NMED wants an "adequate response" within 30 days. It states "That any action taken by LANL to rectify the situation and attain compliance will be considered in any future enforcement action regarding this subject. If no action is taken voluntarily by LANL, NMED will consider enforcement action in this matter."

- On July 29, 1997, I am informed that material removed during trenching efforts in August, 1994 immediately adjacent to the Dome 215 location was disposed as hazardous waste.

- ON AUGUST 5, AFTER RECEIVING AND REVIEWING A COPY OF UC'S PROPOSED RESPONSE, I CONDUCTED A LENGTHY DISCUSSION WITH UC STAFF DRAFTING THE RESPONSE LETTER. THIS LASTED APPROXIMATELY 50 MINUTES. HORTENSE HAYNES, LAAO COUNSEL'S OFFICE WAS PRESENT. I STATED MY CONCERN THAT THE INFORMATION REGARDING THE TRENCHING THAT HAD OCCURRED AND THE DISPOSAL OF MATERIAL GENERATED AS HAZARDOUS WASTE WAS LACKING IN THEIR RESPONSE. I REQUESTED THAT IT BE INCLUDED. I ARGUED THAT A DECISION NOT TO INCLUDE THIS

INFORMATION WAS, I BELIEVED:

- AN INCOMPLETE AND INACCURATE RESPONSE AS THE MATERIAL WOULD BE CONSIDERED THE SAME AS THAT MOVED TO TA-54, AREA G AND TO TA-3 AT A LATER DATE;

- THAT TO STATE THAT THE MATERIAL REMOVED DURING THIS ACTIVITY COULD BE DISTINGUISHED FROM THE ASPHALT LATER REMOVED, THAT THIS MATERIAL WAS DETERMINED HAZARDOUS WASTE ERRONEOUSLY (EVEN THOUGH IT OCCURRED AFTER THE DATE OF NMED'S LETTER OF JULY 22, 1994), AND THAT THE NMED ERRED IN ITS DETERMINATION THAT THE MATERIAL WAS HAZARDOUS WASTE IF MOVED FROM THE SITE OF DISTURBANCE, WAS EXTREMELY QUESTIONABLE;

- THAT A REASONABLE MAN WOULD ALSO CONSIDER THE MATERIAL LATER REMOVED FOR THE CONSTRUCTION OF DOME 215, IMMEDIATELY ADJACENT TO THIS TRENCHING EFFORT, A HAZARDOUS WASTE IN THE ABSENCE OF TESTING TO CONFIRM OTHERWISE;

- THAT NMED WOULD IN ALL LIKELIHOOD CONSIDER THIS A REASONABLE PRESUMPTION;

- THAT TO NOT INCLUDE THIS INFORMATION WAS IMPROPER, MISLEADING, INAPPROPRIATE, AND NOT HONEST.

The conversation was ended when I was informed that a determination to leave this material out of the letter was a decision by UC legal and management staff.

- On the morning of August 6, I notified Herman le Doux of my concerns and suggested that he talk to Hortense Haynes. He did so. He then contacted UC and asked them not to send the letter until the issue of past disposal practice (trenching material) was resolved. He requested that UC talk to Hortense Haynes or to Jody Plum. They did not do so. UC hand delivered the letter on June 6, 1997.

- UC's response of August 6, 1997 was that of sample and study to determine if harm occurred. As of Friday, August 8, 1997, LAAO had not received a copy of the letter submitted by UC. I do not believe that the response will be considered adequate.

There are numerous possible avenues for the NMED to follow. Immediate action is possible under Water Quality Act, Hazardous Waste Act, and Solid waste Act.

Sir, it is my belief that we (DOE) have great exposure here, both corporately and personally. It is important that you know this. This could be a very costly exercise both in dollars and negative publicity. I have included a draft letter to Sieg Hecker on this matter for your consideration.

Please advise regarding what further action you would like me to take.

# memorandum

INTERNAL DRAFT

DRAFT

DATE:

REPLY TO:  
ATTN OF: G. Thomas Todd  
SUBJECT: TA-54, Disposal of Hazardous Waste Contaminated Asphalt

to: Siegfried Hecker

The purpose of this letter is to discuss two letters recently received from the New Mexico Environment Department (NMED) regarding the disposal of hazardous waste contaminated asphalt, and University of California's response of August 6, 1997. The first letter was sent to James L. White and Tony Stanford, of your staff on July 7, 1997. The second letter was addressed to you and dated July 10, 1997. For your convenience, I have attached copies of each letter. It is important to note that these letters were addressed to the UC, the co-permittee on the Hazardous Waste Permit for Los Alamos National Laboratory.

The need for NMED to submit such letters to LANL greatly concerns me. I have discussed the issue with my staff and have been informed that, yes, NMED did in fact address this matter in a letter dated July 22, 1994, also attached. As can be seen in the highlighted passage, NMED stated clearly that they did consider the asphalt disturbed during construction activities at TA-54, Area L hazardous waste.

It is my understanding that in May and June, 1994, discussions were held with NMED regarding the need to disturb the asphalt at TA-54, Area L to allow construction of a new dome facility for storage of waste materials. LANL did not believe the material to be disturbed hazardous. NMED maintained a stance that the material was hazardous due to the fact that it covered a hazardous waste containing Solid Waste Management Unit (SWMU). LANL argued that we did not believe this the case. NMED, however, made a written determination on July 22, 1997 that the asphalt was a hazardous waste.

NMED was approached to provide clarification and indicated that as long as the material was reused in the same location, where the material originated this was acceptable, the material was hazardous waste only if moved. NMED's statement in the July 22, 1994, letter that they did consider the material hazardous waste if moved was in no way altered, and they remained firm on this point.

When it was determined in approximately February, 1997 that operations at LANL had in fact moved the asphalt, and used or disposed of the asphalt in several locations within TA-54, Area G and the Rubble Pile operated in TA-3, it became

necessary to report to NMED LANL's failure to comply with permit conditions and specific direction received from NMED. When staff of University of California and DOE/LAAO could not agree to the contents of the letter to NMED on this matter, LANL was allowed to submit the letter of its choice to NMED on this matter on May 28, 1997 (please see the attached document).

NMED submitted to UC a response on July 7, 1997 requesting an "adequate response" to its notification. UC submitted a response on August 6, 1997.

DOE reviewed the UC response and believed it to be lacking and inaccurate. UC, however, chose not to address the issues raised by DOE and submitted the letter as drafted.

I am very concerned. NMED's perception that it must write letters of this caliber is not indicative of attentive stewardship of wastes generated by either DOE or its contractor and does not support the contention that LANL is operated as a premier scientific facility. This perception is further supported by UC's apparent lack of concern for regulatory requirements to protect human health and the environment, or an understanding of what they, NMED, has stated in writing and in discussions, as acceptable management practice. Further still, these issues, compounded with other operational concerns such as inadequate implementation of permit requirements from marking of containers, knowledge of waste generation, management of waste, abandoned waste (chemicals and gas cylinders) are similar to what has caused recent severe action to be taken at Brookhaven National Laboratory. DOE expects better performance from its operating contractors.

For these reasons I must notify you that any and all costs associated with the improper management and disposal of asphalt generated at TA-54, Area L are considered inappropriate and reimbursement is denied.

If you want to discuss this matter further, please contact me.