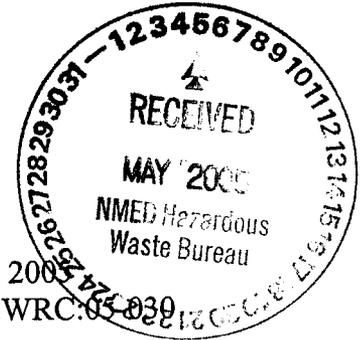


**Solid Waste Regulatory Compliance**  
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Date: May 5, 2005  
Refer To: ENV-SWRC:05-039

Art Vollmer  
New Mexico Environment Department  
Hazardous Waste Bureau  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303

**SUBJECT: Response to Notice of Violation, April 20, 2005**

The Department of Energy (DOE) and the Regents of the University of California (UC) appreciate NMED's timely notice of potential violations from the recent RCRA inspections at LANL, and the opportunity to respond to the Notice of Violation (NOV) issued by the New Mexico Environment Department (NMED) on April 20, 2005. The NOV identified four violations of the New Mexico Hazardous Waste Management Regulations, 20.4.2. NMAC, at the Los Alamos National Laboratory during the 2004 RCRA inspection and an additional four violations identified during the 2005 inspection.

The NOV requires that DOE and UC submit to the NMED a written description of corrective actions taken to address the violations identified, and a schedule for implementation for any actions not yet completed. This letter satisfies that requirement. In addition, DOE and UC are providing additional information to NMED in support of our position that certain alleged violations did not occur.

For ease of reference, the alleged violation is presented with DOE and UC's response.

1. *LANL failed to label one container with a proper accumulation start date. A 30-gallon drum (Container # C03160215) of nitric acid waste, a corrosive waste, located at TA-54 Area L was not labeled with an accurate accumulation start date. The label had date "3/20/03" rather than the actual date the container was received (5/9/03) at the TA-54 hazardous waste storage facility. This is a violation of Permit Condition III.B.3.b, referring to 40 CFR 268.50(a)(2)(i).*

DOE and UC provide the following information that we believe supports our position that a violation of 40 CFR 268.50(a)(2)(i) did not occur. The regulation requires that a container "be clearly marked to identify its contents and the date each period of accumulation begins" at the time of the inspection the top of container #CO3160215 was clearly marked with the following written notation: "Arrived TA-54 5-9-03," which was accurate and met the regulatory requirement. The start accumulation date of "5-9-03" at TA-54 was plainly visible and is depicted on photographs taken by DOE and UC on the day of the inspection. Although the container was also marked with the date "20-



MAR-2003," this date did not refer to TA-54, but was an accumulation start date for the container when it had arrived at a <90-day storage unit.

- 2. LANL failed to retain a required land disposal restriction notification on site for three years. The LDR notice for Manifest #02286 of 4/29/03 was not available in the TA-54 Area L hazardous waste storage facility's files or its shipping contractor's onsite files at the time of the inspection. This is a violation of Permit Condition II.K.1, referring to 40 CFR 264.73(b)(3) and (16), referring to 40 CFR 268(7)(a)(8).*

An accurate and complete copy of the land disposal restriction notification for Manifest #02286 was at TA-54 Area L at the time of the inspection. A LANL employee, Bob Lechel, obtained a copy of the complete LDR notice from the shipping contractor's on-site files and provided a copy to the NMED inspector per the inspector's request. Accordingly, we deny this alleged violation of Permit Condition II.K.1.

- 3. LANL failed to demonstrate that greater than one-year storage was necessary for one container of hazardous waste. A gas cylinder (Container # C02156175) of nitrous oxide, an ignitable waste, was stored at the TA-54 Area L hazardous waste storage facility for more than one year from 12/19/02 to 1/28/04 as noted on Inspection Record Forms for Area L and Waste Non-Conformance Report Form 2004-2. LANL did not provide any evidence that such storage was solely for the purpose of accumulating such quantities of the waste as is necessary to facilitate proper recovery, treatment, or disposal. This is a violation of Permit Condition III.B.3.a, referring to 40 CFR 268.50(c).*

DOE and UC admit this violation, which was identified and corrected prior to the inspection. The container was shipped off site January 28, 2004. The container was appropriately labeled and stored in a designated storage area with controls in place for safe management at all times. The following additional corrective action was taken: the database report used to manage waste at Area L was updated to include gas cylinders. This report alerts the personnel who identify materials for shipment to the length of time each container at Area L has been on site. It is expected that this corrective action will preclude a repeat of this error in the future.

- 4. LANL failed to properly label one container of used oil. A 55-gallon black metal drum of used oil stored at TA-3 Bldg 38 adjacent to site #2636 was not labeled with the words "Used Oil." This is a violation of 20.4.1.1002 NMAC, incorporating 40 CFR 279.22(c)(1).*

DOE and UC admit this violation. A "Used Oil" label was applied to the container at the time of the inspection in the presence of the NMED inspector. The container was in a designated and well-marked used oil storage area, was locked, and was within secondary containment.

- 5. LANL failed to obtain a permit for hazardous waste stored at two locations. At site #2396, located in TA-15 along the "R site road," LANL stored containers of hazardous waste outdoors in a "flammable storage cabinet" since sometime in*



*hazardous waste outdoors in a "flammable storage cabinet" since sometime in 2002. At site #1824 located in TA-3 Building 29, LANL stored containers of hazardous waste in a glove box in the basement since sometime in 1998. LANL has incorrectly characterized these areas as satellite accumulation areas under 40 CFR 262.34(c). However, LANL ceased the processes or other activities that generated these wastes years ago. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.34(b).*

With respect to the containers of hazardous waste in the glove box at the CMR building, DOE and UC admit this violation. To correct this violation, personnel will remove the waste from the glove box and manage it within an interim status storage area in the building. DOE and UC anticipate that the transfer of the waste into interim status storage will be completed by May 31, 2005. DOE and UC will notify the Environment Department if that date cannot be met.

With respect to the flammable cabinet at TA-15, DOE and UC provide the following information in support of their position that the cabinet was properly identified as a SAA and was in compliance with the requirements of 40 CFR 262.34(c)(1) at the time of the inspection. Less than 55 gallons of hazardous waste was stored at the site. The process that generated waste held in the SAA was the clean-out of a building that had been affected by the May 2000 Cerro Grande fire but which had remained in use after the fire. In 2002, the building was determined to be structurally unsound, and additional equipment and chemicals were removed from the building prior to transferring it to Decontamination and Decommissioning (D&D). Beginning in March or April of 2002, the Waste Management Coordinator (WMC) conducted the clean out of the building, determined which materials could be recycled, which were waste, and which could be transferred to others for use or reuse. In July 2002, the WMC opened the SAA to store the small amount of hazardous and non-hazardous waste generated by the clean-out process. The WMC kept the SAA locked at all times, and the location of the key was known to a very few people. Access to the cabinet is also limited by the fact that access to the area (TA-15) is controlled by a guard gate. The building from which the waste was removed had been determined to be structurally unsound and unsafe at that time and access to the building was limited to D&D and associated personnel. The WMC placed the SAA at a point that was as close to the building from which the wastes were taken as was safely possible, given the unstable condition of the building and the limited access.

The SAA, therefore, met both of the requirements of 40 CFR 262.34(c)(1): the waste was stored in containers "at or near the point of generation where wastes initially accumulate;" and was "under the control of the operator of the process generating the waste"

- 6. LANL failed to keep three containers of hazardous waste closed except when necessary to add or remove waste. At sites #1900, #122, and #1010, LANL drains waste acids through plastic tubes from analytical equipment into containers of volumes varying from about 5 liters to over 2 gallons. The containers were not sealed nor were the machines in operation at the time of the inspection. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.34(c)(1)(i), referring to 40 CFR 265.173(a).*



DOE and UC admit the violation at sites #1900 and #122. To implement a corrective action, closed caps were placed on each container of hazardous waste. Personnel were reminded that these caps must be placed on the containers whenever the equipment is not in operating mode.

DOE and UC provide the following information in support of their position that the requirement to keep a container within an SAA closed except when adding or removing waste was not violated at site #1010 at TA-50. A container is defined as "any portable device in which a material is stored, transported, treated, disposed, or otherwise handled." 40 CFR §260.10. The bottle that collects waste acid from the analytical equipment during operations meets the regulatory definition of container, was closed with a screw cap, and the tubes that drain to the container were securely attached to the cap. The tubes themselves do not fall within the definition of container.

7. *LANL failed to maintain accurate operating records of hazardous waste in storage at an interim status unit. The operating log for the "EV tanks" in interim status unit #481 identified the unit as #1226, a different interim status unit, resulting in an inaccurate description of the waste in storage. This is a violation of 20.4.1.600 NMAC, incorporating 40 CFR 265.73(b)(1).*

DOE and UC provide the following information in support of their position that there was no failure to maintain accurate operating records of hazardous waste in storage at the interim status unit #481 at TA-55-401. The operating record for the EV tanks consists of both a paper record and a computer record, the Waste Management System (WMS). Some information in the operating record appears in both the written and the computer tracking system while other pieces of information are kept either on paper or in the database. The operating record of hazardous waste managed is maintained for each tank, irrespective of the internal site identification number assigned to the tanks. Both the paper portion of the operating record and the computer-tracking portion of the operating record track waste by tank number. Both the database and the paper record identified the specific tank in which waste was placed or removed, and the presence of an incorrect internal LANL identification number on the paper record has no effect on the accuracy of the information in the operating record. The operating record (consisting of both paper and the WMS Database) accurately identified the hazardous waste managed in each of the EV tanks, when each batch of waste entered each tank and when it was removed to a cementation tank.

8. *LANL failed to maintain inspection records of permitted facilities with the name of the inspector and a notation of observations. The inspection records at TA-54 Building 38 (RANT) dated 12/25/04, 1/24/05, and 1/24/05 for permitted storage units #1579, #1580, and #1581, respectively, do not list the name of the inspector, and inspection record dated 6/14/04 for permitted storage unit #1581 does not include any notation of observations. This is a violation of 20.4.1.500, incorporating 40 CFR 264.15(d), and Permit Condition B.9.4.*

DOE and UC admit this violation and recognize the need for an inspector to provide a name and notation of observations for each inspection. The personnel conducting the



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inspections were informed of the violation and reminded of the requirements for completing written inspection records and the importance of doing so.

DOE and UC appreciate this opportunity to respond to the NOV, and look forward to meeting in the near future with NMED representatives to resolve the outstanding issues. If you have any questions, please contact me at 665-0451.

Sincerely

  
Tony Grieggs  
Group Leader

TG:vc

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