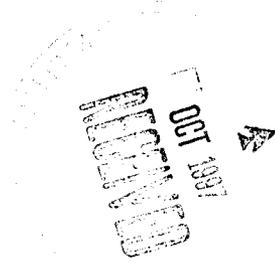




**Department of Energy**  
 Albuquerque Operations Office  
 Los Alamos Area Office  
 Los Alamos, New Mexico 87544



OCT 20 1997

Ms. Teri Davis  
 Hazardous and Radioactive Materials Bureau  
 New Mexico Environment Department  
 2044 Galisteo Street, Bldg. A  
 P. O. Box 26110  
 Santa Fe, NM 87505

Dear Ms. Davis:

Subject: Proposed Modification to HSWA Module of LANL RCRA Permit

Thank you for meeting with the Department of Energy (DOE) and Los Alamos National Laboratory (LANL) staff to discuss the Class I Permit Modification to Module VIII concerning the Hydrogeologic Workplan (Workplan) that the New Mexico Environment Department (NMED) has indicated it will initiate. Pursuant to our meeting with you on October 6, 1997, DOE/LANL developed proposed language for the modification and presented it to you for review on October 9, 1997 (see enclosure). Your comments on this language, provided to DOE and LANL staff during a meeting on October 9, 1997, indicate that NMED prefers language different from that which has been proposed by DOE/LANL. We are writing this letter to you to discuss your issues with our proposed language and to also explicitly present reasons for avoiding incorporation of the Workplan into Module VIII.

As a first issue, you have requested that we specifically identify portions of the Workplan which can be matrixed with the requirements set forth under Task III.A.1 and 2. of Module VIII. Although we are currently engaged in investigating this possibility, we would like to explain some difficulties inherent to such referencing. Because the Workplan may have integrated several activities addressing HSWA requirements throughout the document, it may be difficult to ensure that reference to a particular section(s) in the Plan would capture all relevant proposed activities. In addition, the Workplan is an umbrella document for many other ER investigations, for instance, the Canyons Workplans and other RFI Workplans, which will also, perhaps in large part, satisfy Task III requirements. Because of the integrated nature of the Workplan itself and the integrated nature of other investigations tiered to the Workplan, reference to specific portions of this document for purposes of accomplishing Task III are difficult to compile and may be non-comprehensive. Because of this general problem associated with integration, we have proposed the language shown on the enclosure under paragraph 1 (sentences one and two) and paragraph 2.

As a second issue, you have requested removal of the enclosed language in sentence 3 of paragraph 1, which specifically addresses our concern with incorporation of the Workplan into Module VIII. We would like to clearly present reasons why incorporation by reference should be avoided. First, as indicated above, workplans already incorporated into Module VIII under Sections D and I(4) implement many of the requirements of Task III, some in more detail than those outlined in the Workplan. As the documents that will implement the Workplan are enforceable under the permit, incorporation of the Workplan into Module VIII creates a duplication of regulatory authority that already exists in Module VIII. Second, to create a logically developed, comprehensive and also cost effective characterization of the

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Teri Davis

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cc w/enclosure:

John Kieling

Hazardous and Radioactive Materials Bureau

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P. O. Box 26110

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D. Couchman-Griswold, ERD, AL

cc w/o enclosure:

H. Haynes, Office of Counsel, LAAO

J. Vozella, AAMEP, LAAO

B. Koch, LAAMEP, LAAO

T. Taylor, LAAMEP, LAAO

D. McInroy, EM-ER, LANL, MS-M992

J. Canepa, EM-ER, LANL, MS-M992

D. Erickson, ESH-DO, LANL, MS-K491

T. Baca, EM-DO, LANL, MS-J591

S. Younger, NWT-PO, LANL, MS-A105

J. Holt, NWT-PO, LANL, MS-F629

A. Barr, ESH-19, LANL, MS-K498

S. Rae, ESH-18, LANL, MS-K497

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site-wide hydrogeologic environment, the Workplan must be implemented according to the iterative approach. For the more than five year program outlined in the Workplan, the iterative approach requires an on-going technical re-evaluation of the programs set forth in the Workplan based on the integration of new data from drilling and modeling. Incorporation by reference could serve to negatively impact this need for flexibility in changes to planning. As the Workplan includes language that acknowledges negotiation of significant changes to the document and annual review of past activities through yearly reporting to and meeting with NMED, an incorporation by reference into the permit is not required to provide for regulatory concurrence associated with implementation of and modification to the Workplan.

We would also like to particularly highlight a third reason for why incorporation by reference of the Workplan into Module VIII should be avoided. During the development of the Workplan, the regulatory basis for the document was broadened beyond RCRA/HSWA to meet the requirements of DOE Orders which require planning to address compliance with all applicable State and Federal regulations, such as the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the New Water Quality Control Commission (WQCC) regulations. Therefore, inclusion of the Workplan into Module VIII would result in a commingling of regulatory programs and would become legally problematic regarding the enforcement of other statutory-related activities under the specific requirements of the RCRA/HSWA Permit. Avoidance of such commingling is consistent with the statutory requirements found in RCRA 1006, which dictates that RCRA shall not apply to activities subject to other Acts, such as the SDWA, and shall not duplicate enforcement provided by such acts.

We hope that these explanations for the development of the proposed language provide you with more insight into the reasons why we feel the language is suitable to meet your needs as well as ours. If you have any questions regarding this letter, please contact Bonnie Koch at 665-7202 or Alice Barr at 667-0820. We hope to continue working with you on the proposed language.

Sincerely,



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Bonnie Koch  
DOE Groundwater Investigations  
Office of Environment



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Alice Barr  
LANL RCRA Permitting

LAAMEP:3BK-010

Enclosure

cc:  
See page 3

### **Proposed Language to Add to Task III**

**Insert below Paragraph I (Paragraphs above Section A):**

The RCRA/HSWA requirements associated with this Task, including Section A(1) and portions of A(2) below, shall be addressed by implementation of the Hydrogeologic Workplan (December 1996). The scope of the Hydrogeologic Workplan shall be re-evaluated with the AA on an annual basis, integrating the previous year's investigations. Reference to implementation of the Hydrogeologic Workplan for purposes stated herein, or any amendment to the Workplan, shall not be construed to incorporate the Hydrogeologic Workplan into this Module for the purpose of enforcement of the document as a compliance measure.

**Add to the end of the existing Paragraph II (which because of the above insertion will become Paragraph III) that begins "Investigations should result in data...":**

The Canyons Core Workplan, specific Canyons Workplans, and the RFI Workplans, and other studies, implement portions of the Hydrogeologic Workplan referenced above.