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Duplicate

Date: December 10, 1997
 Refer to: EM/ER:97-506

HSWA 6/11/97/14
 LAND

Dr. Ed Kelley, Director
 NMED-WWMD
 P.O. Box 26110
 Santa Fe, NM 87502

**SUBJECT: REPORTING REQUIREMENTS FOR NOTIFICATION OF
 RELEASE/DISCHARGE UNDER NM WQCC REGULATIONS
 AND THE RCRA/HSWA PERMIT**

Dear Dr. Kelley:

This letter responds to the New Mexico Environment Department's (NMED's) May 1, 1997, letter (May 1 letter) regarding release/discharge notifications, and outlines the Los Alamos National Laboratory's concerns regarding NMED's proposed streamlining of those requirements as they pertain to the Laboratory under the New Mexico Water Quality Control Commission Regulations (WQCC) and the Hazardous and Solid Waste Amendments (HSWA) Resource Conservation and Recovery Act (RCRA) operating permit.

The subject of notification requirements was initiated by the State and the Laboratory several months ago when staff from the Hazardous and Radioactive Material Bureau (HRMB), Surface Water Quality Bureau (SWQB), the Department of Energy (DOE) Oversight Bureau (OB), and the Laboratory met to discuss the distinctions, discrepancies, and similarities in notification requirements between HRMB and SWQB regulations and the impact they have on the Laboratory's efforts and ability to achieve effective regulatory compliance. It is the Laboratory's goal to work with NMED to establish a streamlined approach to reporting, one that will assist rather than impede compliance efforts at the Laboratory. Toward that end, the Laboratory continues to urge that NMED appoint a single point-of-contact (POC) for the HRMB and SWQB to whom the Laboratory would report, among other things, its releases/discharges. The POC would be the information lead for distribution, and would serve as a regulatory information manager. We perceive that this function would have an overall long-term benefit for both NMED and the Laboratory.

We have grouped our concerns about the notification mechanisms proposed in the May 1 letter under two headings: RCRA Operating Permit and Module VIII, Section H; and Water Quality Control Commission Regulations, 20 NMAC 6.2, 1203.

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RCRA Operating Permit and Module VIII, Section H

The Laboratory's Operating Permit contains reporting requirements related to releases in Module II Subsections K.2.b. and c. Subsection K.2.b. provides that in accordance with 40 CFR 270.30(l)(6), the Laboratory shall report to the Director any noncompliance with the permit that may endanger human health or the environment. Such report is to be made orally within 24 hours of discovery and includes 2 circumstances related to releases: (1) Information concerning the release of any hazardous waste which may endanger public or private drinking water supplies; and (2) information concerning the release or discharge of any hazardous waste, or of a fire or explosion at the facility, which could threaten the environment or human health. The Laboratory is required to follow up the 24-hour notification with a written report within 5 working days of the discovery, unless the Director waives this requirement, in which case, a written report is due within 15 days. The Laboratory recognizes the importance of observing these notification requirements and has followed them as required.

The May 1 letter appears to be relying on the above-described requirements in suggesting that the Laboratory request a permit modification to extend the reporting requirement deadline from 5 days to 7 days for the follow-up written report. We would note that the circumstances under which the 24-hour, 5-day, and possible 15-day reporting requirements are triggered are limited to circumstances involving noncompliance with the permit that may endanger human health or the environment and, in the instance of a release, where the release of hazardous waste endangers public or private drinking water supplies, or where the release of any hazardous waste could endanger human health or the environment. Noncompliance with the permit and [in the context of a release] release of a hazardous waste are both conditions necessary for triggering the reporting requirements of this subsection. The May 1 letter proposed notification requirements on page 3 and the proposed notification form itself go far beyond the requirements of these sections of the Operating Permit and extend to the ER Project responsibilities that were not intended for corrective action but for ongoing RCRA/HWA operations.

With regard to Module VIII, the Laboratory has been in compliance with Section H of this portion of the Permit since its issuance, on May 23, 1990. This Module contains a step-by-step description of the RCRA facility investigation (RFI) process, a schedule for accomplishing these steps, and any needed corrective action. Numerous volumes of Solid Waste Management Unit (SWMU) Reports and RFI work plans and reports have been submitted to the Administrative Authority indicating suspected and confirmed historical releases at hundreds of SWMUs. Clearly, neither the process nor the schedule contemplates including a requirement that each time a screening action level is threefold exceeded (May 1 letter, para. 4, pg. 2) or the concentration of a contaminant in a medium shows a statistically significant increase over background (May 1 letter para. 3, pg. 2), an additional round of notifications (24-hour, then 7-day, then 15-day) would need to occur.

The Laboratory, however, does recognize that some unanticipated releases (e.g. releases from vessels and releases discovered outside previously identified areas of

contamination) may be encountered in the course of conducting investigations that may pose an immediate threat to human health or the environment. In the event they occur, such releases should be reported in accordance with the terms of Module VIII, Section H and potentially to other bureaus to appropriately meet the requirements of the regulations they administer. We believe the May 1 letter proposed definition of a newly identified release for a potential release site (PRS) goes beyond past intent and notification practices and would duplicate the information currently provided in the above-mentioned documents. We also believe that the May 1 letter proposal, because of the sheer volume of notifications anticipated, could result in NMED not being able to easily distinguish between those PRSs with newly-identified releases that are a threat to human health and the environment and all other sites. The Laboratory has expressed serious misgivings with the May 1 letter definition of release/discharge and the reporting requirements flowing out of that definition as set forth on Page 2, as definitions and regulatory regimes are combined to arrive at conclusions that go beyond the individual requirements of the regulations themselves.

Water Quality Control Commission Regulations. 20 NMAC 6.2. 1203:

As required by 20 NMAC 1203, the Laboratory will continue to provide notification of discharges from operational activities within 24-hours, following up with the appropriate written reports. This reporting includes special mention of an operational discharge that involves a PRS. In the event that a discharge involves a PRS and includes hazardous constituents, HRMB is copied on the notification reports. The Laboratory coordinates with the NMED DOE/OB by scheduling site visits to observe corrective action measures which have been performed.

We believe that the May 1 letter causes confusion related to the criteria for reporting discharges under 1203 with action levels and ultimately cleanup at identified PRSs. That is, it seemingly requires immediate reporting under Section 1203 simply based on a sample result from any medium that may be above background, regardless of whether a discharge is involved that may reasonably reach surface or ground waters or whether it meets the criteria of Section 1203. Accordingly, we have expressed concerns that the proposed notification requirements in the May 1 letter go far beyond the express terms of Section 1203 and the administrative intent in enacting this provision, which was to ensure the prompt reporting in emergency situations of accidental discharges into water.

ER Administrative Procedure:

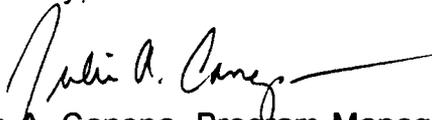
The Laboratory has responded to NMED requests for information concerning PRSs in or near watercourses by preparing lists of such units, providing maps showing locations, and submitting RFI reports, which present analyses of soil and water data when collected from the units. Subsequent to the first submittal of this information on May 10, 1996, and May 17, 1996, the ER Project started attending monthly meetings with SWQB/GWQB as a means of continuing to work with NMED on other information that the bureaus might require.

During a monthly meeting on June 11, 1997, our staffs expressed our concerns regarding the proposed notification process for PRSs in the May 1 letter. In addition to the legal concerns mentioned above, we believe NMED's proposed process is unworkable due to the scope and volume of ER activities at the Laboratory. Specifically, as we interpret reporting criteria in the May 1 letter, immediate and numerous reporting would be triggered during the investigation of contamination at an identified PRS (i.e., mere receipt of a sample result that exceeds background concentrations would require immediate notification under Section 1203 and RCRA to 4 different offices, with follow-up written reports). The bulk of ER's resources would shift from cleanup activities and environmental protection to submitting and keeping track of literally hundreds of reports.

We believe that there is a distinction between operational discharges and activities that investigate the nature and extent of contamination at a PRS already identified to NMED. We view the previously described corrective action process as addressing past releases and the Section 1203 process as addressing operational discharges. Further, as stated during the November 21, 1997, monthly meeting, the Laboratory will continue to report newly discovered releases from PRSs that meet the criteria of 1203. In order to address PRSs of concern to SWQB, the Laboratory proposed use of the ER Administrative Procedure (AP) 4.5, which was developed in cooperation with SWQB/GWQB and DOE/OB. In addition to identifying sites of concern, the AP is prioritizing activities to stabilize or remediate sites and serves as a mechanism for sharing information with NMED. We believe that this is a reasonable and workable approach. As also discussed at the November 21, 1997, monthly meeting, our attorneys will contact the NMED legal staff for further discussions pertaining to these issues.

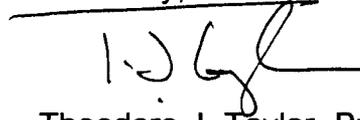
Thank you for working with us on this endeavor to simplify the notification process. We would appreciate the opportunity to continue discussions with your staff to develop a process that would meet our respective needs. Please ask your staff to contact Jody Plum at 665-5042 or Tori George at 665-6953 to arrange a meeting to continue our discussions on this important matter.

Sincerely,



Julie A. Canepa, Program Manager
LANL/ER Project

Sincerely,



Theodore J. Taylor, Program Manager
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