



BILL RICHARDSON
Governor

DIANE DENISH
Lieutenant Governor

Permit
**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Hazardous Waste Bureau

2905 Rodeo Park Drive East, Building 1

Santa Fe, New Mexico 87505-6303

Phone (505) 476-6000 Fax (505) 476-6030

www.nmenv.state.nm.us



RON CURRY
Secretary

JON GOLDSTEIN
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

January 17, 2008

Donald L. Winchell, Jr., Manager
Los Alamos Site Office
Department of Energy
528 35th Street, Mail Stop A316
Los Alamos, NM 87544

Richard S. Watkins, Associate Director
Environment, Safety, Health, & Quality
Los Alamos National Security, LLC
Los Alamos Research Park
4200 Jemez Road, Suite 400
Los Alamos, NM 87545

**RE: REQUIREMENT TO SUBMIT A RESOURCE CONSERVATION AND
RECOVERY ACT (RCRA) PERMIT APPLICATION FOR THE TA-50
RADIOACTIVE LIQUID WASTE TREATMENT FACILITY
LOS ALAMOS NATIONAL LABORATORY (LANL)
EPA ID NO. NM 890010515
LANL-07-020**

Dear Messrs. Winchell and Watkins:

The New Mexico Environment Department (NMED) has reviewed the response provided by the Los Alamos National Security, LLC and the National Nuclear Security Administration (collectively the Permittees) dated November 28, 2007 (Response) to NMED's information request regarding the Resource Conservation and Recovery Act (RCRA) exemption status of the Technical Area (TA) 50 Radioactive Liquid Waste Treatment Facility (RLWTF). NMED has determined that the RLWTF is a hazardous waste management unit subject to New Mexico's Hazardous Waste Management regulations at 20.4.1 NMAC. The Permittees must therefore submit a permit application for the unit in accordance with 20.4.1.900 NMAC (incorporating the federal regulations at 40 CFR part 270).

The Permittees claim the Wastewater Treatment Unit (WWTU) permitting exemption at 20.4.1.900 NMAC (incorporating 40 CFR § 270.1(c)(2)(V)) applies to the RLWTF and therefore



31349

the unit is not subject to RCRA permitting. This exemption in part requires a unit be a WWTU subject to the regulations under Section 402 (National Pollution Discharge Elimination System (NPDES)) of the Clean Water Act (CWA). The RLWTF is a "dual use" unit because effluent from the unit both discharges to a National Pollution Discharge Elimination System (NPDES) permitted outfall (Outfall 51) and is transported to a non-NPDES permitted evaporation lagoon at TA-53. The WWTU exemption is not applicable to units where wastewater is managed by means other than, or in addition to, discharge through a NPDES permitted outfall.

The U.S. Environmental Protection Agency (EPA) elaborates on the WWTU exemption in an April 19, 1988 correspondence to Ms. Susan Pendleton (RCRA On-line (RO) # 14262). In that correspondence EPA states "EPA did not intend the WWTU exemption to apply in situations involving 'dual use' of a tank (where a tank is concurrently used for wastewater treatment and for another purpose). Nor did EPA intend for the exemption to apply in situations, such as the one your letter describes, involving 'alternating use' of a tank. Since the purpose of this exemption is to avoid dual regulation under the Clean Water Act and the Resource Conservation and Recovery Act (RCRA), EPA believes that a tank must be used only for wastewater treatment purposes at all times in connection with an on-site wastewater treatment facility in order to qualify for the exemption. EPA did not intend for the exemption to apply in either the 'dual use' or the 'alternating use' scenario. Accordingly, a tank that operates on a 'alternating use basis, as you describe above, does not satisfy the WWTU exemption and is subject to all relevant RCRA regulations."

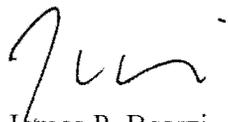
Furthermore, the WWTU exemption requires wastes entering the unit be classified as "wastewater." The Response provides numerous waste profile forms (WPF) of waste entering the RLWTF that either are identified as non-wastewaters or do not qualify as wastewater as defined by EPA in an August 2000 memorandum. WPF #s 32733, 35269, 35576, 36237, and 36404 identify hazardous or mixed wastes going to the RLWTF as non-wastewaters. EPA's memorandum dated August 4, 2000 (RO # 14472) states "[t]he Agency has not formally defined "wastewater" in the context of the wastewater treatment unit exclusion. However, in a July 31, 1981 letter from John P. Lehman to Richard C. Boyton ..., the Agency described wastewater by stating that wastewaters are 'not concentrated chemicals or non aqueous wastes. While we have not promulgated a formal definition, we are interpreting the term (wastewaters) to refer to wastes which are substantially water with contaminants amounting to a few percent at most.'" The Response includes greater than thirty WPFs that identify wastes which at times contain less than 95 % water and concentrations of contaminants exceeding two percent. The unit is therefore disqualified from the WWTU exemption.

NMED hereby requires the Permittees to submit a RCRA permit application for the RLWTF. The Permittees must submit this application by April 30, 2008.

Messrs. Winchell and Watkins
January 17, 2008
Page 3

Please contact Steve Pullen at (505) 476-6044 if you have any questions.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: J. Kieling, NMED-HWB
D. Cobrain, NMED-HWB
S. Pullen, NMED-HWB
R. Kay, NMED-HWB
J. Young, NMED-HWB
B. Olsen, NMED-GWQB
M. Leavitt, NMED-SWQB
T. Grieggs, ENV-RCRA, LANL-LASO, MS K490
T. George, ENV-RCRA, LANL-LASO, MS J978
J. Ellvinger, ENV-RCRA, LANL-LASO, MS K490
G. Turner, DOE-LANS, MS A316
G. Rael, EO, LANL-LASO

file: Reading and LANL Permit 2008