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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Mr. Benito J. Garcia, Chief
Hazardous and Radioactive Materials Bureau
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502

Dear Mr. Garcia:

On August 10, 1995, you submitted to this office a request for guidance on management of lead-contaminated soil at Los Alamos National Laboratory (LANL) solid waste management unit (SWMU) 0-016 and the active firing range TA-72.

It is our understanding that LANL was conducting soil washing to remove lead from the soil at the Inactive Firing Range (SWMU 0-016) as part of a Voluntary Corrective Action. The soil washing operation was intended to be completed in the fall of 1994. However, additional soil containing lead was found, increasing the total amount of soil requiring processing.

On April 18, 1995, LANL requested that the New Mexico Environment Department (NMED) approve a proposed alternative "solution" to continued soil washing at SWMU 0-016. The proposal recommended moving untreated lead-contaminated soil from SWMU 0-016 to an active firing range (TA-72) to be used as fill material for existing backstops.

LANL has requested confirmation that the lead and the soil containing lead constitute a recyclable material under the Resource Conservation & Recovery Act (RCRA) as provided by 40 CFR § 261.6(a)(3)(iii) - scrap metal. Scrap metal is defined in Volume 50 of the Federal Register of January 4, 1985, as bits or pieces of metal that are discarded after consumer use or that result from metal processing operations. Soil containing lead does not meet the definition of scrap metal and is not, therefore, eligible for the exemptions provided by 40 CFR § 261.6(a)(3).

LANL also contends that the soil from SWMU 0-016 would "function as effectively as clean soil (i.e., commercial product)." Presumably LANL is asserting that the use of the



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contaminated soil as a substitute for "clean" fill material constitutes use or reuse as an effective substitute for a commercial product. This type of activity would exempt the material from being a solid waste, and from RCRA regulation (40 CFR § 261.2(e)(ii)).

However, this type of activity is subject to regulation if the material is used in a manner constituting disposal (40 CFR § 261.2(e)(2)(i)). As defined in 40 CFR § 261.1(c), "used in a manner constituting disposal" generally means placement on or in the land unless it is a commercial chemical product listed in 40 CFR § 263.33 and that is its ordinary manner of use.

The Agency also uses other criteria in evaluating whether or not a waste is being legitimately recycled. One criterion is how closely the substitute material resembles an analogous raw material. According to LANL, soil from the Inactive Firing Range contains lead bullets and is a characteristic hazardous waste due to lead (D008). Normal soil does not exhibit a hazardous characteristic and, therefore, is not similar to the material LANL wishes to use as a substitute.

The Land Disposal Restrictions (LDR) promulgated under the Hazardous and Solid Waste Amendments (HSWA) of RCRA forbid the placement of any hazardous waste in or on the land. Specifically, restricted wastes removed from SWMU's must meet applicable treatment standards before subsequent placement on the land. There are no exemptions which allow placement of hazardous wastes obtained from one SWMU into another "unit" without appropriate treatment. LANL's proposal would violate the requirements of LDR. Therefore, we recommend that your office deny LANL's request.

If LANL continues soil washing operations to remove lead bullets from the soil, the lead bullets could be recycled as scrap metal as provided by the scrap metal exemption. If the hazardous characteristic of D008 is removed from the soil, the soil could then be used as fill or berm material at the active firing range since it would no longer be considered a hazardous waste.

LANL could also pursue the option of designating certain areas at its facility as Corrective Action Management Units (CAMU) as specified in 40 CFR § 264.552 and detailed in Volume 58 of the Federal Register of February 16, 1993. Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes. To explore the possibility of using this option, please call Ms. Barbara Driscoll of our RCRA Permits Office at (214) 665-7441.

If you have any questions concerning this matter, or wish to discuss it in greater detail, please have your staff call Dr. Joel Dougherty of my staff at (214) 665-2281.

Sincerely yours,



Mark W. Potts, P.E., Chief
ALONM Section
Hazardous Waste Enforcement Branch
Compliance Assurance &
Enforcement Division