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August 19, 2005

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Subject: Oil Spills and Petroleum Storage Tanks

Dear Ms. Hughes:

I am writing to express the concern of the Los Alamos National Laboratory (LANL) regarding letters we received from the Hazardous Waste Bureau (HWB) staff stating that certain oil spills are subject to the corrective action process under LANL's Operating Permit and/or the RCRA Consent Order dated March 1, 2005. Specifically, HWB staff assert that LANL must address under its Operating Permit or the Consent Order certain diesel fuel spills from above ground petroleum storage tanks (ASTs) at TA-21 and TA-3, and residual diesel contamination at TA-16-7. We believe this approach is in conflict with and duplicative of other regulation, and is not authorized by applicable law.

LANL, like other regulated entities, is required to report, investigate and remediate oil spills from petroleum tanks under the authority of the New Mexico Hazardous Waste Act and the Petroleum Storage Tank regulations, and the New Mexico Water Quality Act (WQCC) and WQCC regulations. NMED, as EPA has done under RCRA Subtitle I, issued extensive regulations governing the investigation and remediation of soil and groundwater contaminated by spills from petroleum storage tanks. Pursuant to these regulations, LANL registered its petroleum storage tanks, paid fees, filed required reports and followed applicable requirements for oil spills such as those from ASTs at TA-21 and TA-3. LANL has complied with all applicable WQCC regulations for the residual diesel contamination at TA-16-7.

The Consent Order, on the other hand, addresses the reporting, investigation and remediation of hazardous and legacy wastes originating from "areas of concern" (AOC) and "solid waste management units" (SWMUs). The Consent Order does not govern or address oil spills from petroleum storage tanks that are subject to, and addressed under, different regulatory requirements. Moreover, with regard to other spills (not from petroleum tanks), an accidental



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spill of oil does not create a SWMU or AOC. An accidental spill is not "routine" or "systematic." See e.g. EPA's Final Rule and Preamble, 50 FR 28,713 (July 15, 1985).

Under these circumstances, we do not believe that the HWB may regulate the petroleum spills at issue under LANL's Operating Permit or the Consent Order. These petroleum spills have historically been, and continue to be, regulated under a different statutory and regulatory framework. To impose RCRA Subtitle C permit and corrective action requirements would result in impermissible conflicting and duplicative requirements. Further, it is inconsistent with NMED's state-wide regulation of petroleum-contaminated soils and debris resulting from ASTs and petroleum spills.

We are committed to timely and appropriate action to address the petroleum spills at issue, and hope that you find this information to be of assistance. We would like to meet with you or your staff at your earliest convenience. If you have any questions, please call me at 667-3766.

Sincerely,


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