

TA-05



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National Nuclear Security Administration
Los Alamos Site Operations, MS A316
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Los Alamos, New Mexico 87544
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Date: October 28, 2003
Refer to: RRES-GPP-03-096

Ms. Maura Hanning
Program Manager
Ground Water Pollution Prevention Section
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110

**SUBJECT: RESPONSE TO NOTICE OF NON-COMPLIANCE LOS ALAMOS
NATIONAL LABORATORY (LANL) CHARACTERIZATION WELL
MCOBT-4.4**

Dear Ms. Hanning,

The Department of Energy, Los Alamos Site Operations (DOE/LAS0) and LANL received your letter of June 5, 2003 (attached) regarding "Notice of Non-Compliance, LANL Characterization Well MCOBT-4.4." This letter states that the Laboratory violated Section 20.6.2.1203.A NMAC by failing to report analytical results from groundwater samples collected from well MCOBT-4.4 within the timeframes in the New Mexico Water Quality Control Commission Regulations (NMWQCC). Representatives of DOE and LANL met with representatives of the Ground Water Quality Bureau (GWQB) on July 24, 2003, in Santa Fe. This letter reiterates the DOE's and LANL's position with respect to the statements in your letter.

DOE and LANL respectfully contend that Section 20.6.2.1203.A NMAC has been misapplied to the well MCOBT-4.4 issue, and that a finding of non-compliance with that section is inappropriate. The following three points explain our position:

1. The cited section, 20.6.2.1203.A NMAC, does not apply because it refers to spills, not to the continuous releases in Mortandad Canyon.
2. The exemption in Section 20.6.2.1203.B NMAC clearly applies to the NPDES-permitted effluent discharge activity in Mortandad Canyon.



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3. The NMED has been aware of and continuously apprised of groundwater data that exceeds NMWQCC standards in Mortandad Canyon since the original groundwater discharge plan was submitted in August 1996.

These three points are discussed in more detail the remainder of this letter.

The cited section, 20.6.2.1203.A NMAC, does not apply because it refers to spills, not to the continuous releases in Mortandad Canyon

Section 20.6.2.1203.A was developed and has traditionally been applied to one-time discharges or spills. The most obvious evidence of this is that the discharges referred to in this section do not require a discharge permit but rather a corrective action plan, presumably because they are unexpected occurrences that should be corrected, not continuing discharges that need to have permitted limits to protect groundwater.

The second indication of the purpose of this section is the definition of "discharge" in this section and sections 20.6.2.4100 through 20.6.2.4115 (abatement requirements), which are different from all other sections in this part of the regulations. The definition of "discharge" for this section (20.6.2.1203.C) is

"discharge ' means spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is reasonable probability that the discharged substance will reach surface or subsurface water."

Although "discharge" is not defined for the other sections in this part, the definition for this section is clearly focused on non-systematic releases of fluid into the environment. It does not appear to have the intent of applying to continuous or periodic operational release of water containing contaminants, which would require a permit.

The reporting requirements in this section further point to the primary purpose of correcting or abating spills. The person in charge of the facility must notify the NMED GWQB as soon as possible, but no later than 24 hours after learning of the "discharge" with specific items of information including duration of discharge, source and cause of discharge, estimated volume of discharge, and any actions taken to mitigate immediate damage from the discharge. The timing and information items are applicable to unexpected occurrences of limited duration and volume. They are not as easily or appropriately applied to frequent or continuous discharges, as has been the physical case in Mortandad Canyon.

For these reasons, we believe that Section 20.6.2.1203.A applies to one-time, unexpected discharges or spills. Therefore, the cited section is not applicable to historic discharges to groundwater in Mortandad Canyon, which has been the site of continuous discharge from the Radioactive Liquid Waste Treatment Facility (RLWTF) since about 1963.

The exemption in Section 20.6.2.1203.B NMAC applies to the situation in Mortandad Canyon.

Section 20.6.2.1203.B NMAC sets forth exemptions from the requirements in Section 20.6.2.1203.A for certain continuous or periodic discharges. These exemptions include discharges which are made:

- “(1.) in conformance with regulations of the commission and rules, regulations, orders of other state or federal agencies; or
- “(2.) in violation of regulations of the commission, but pursuant to an assurance of discontinuance or schedule of compliance approved by the commission or one of its duly authorized constituent agencies.”

The RLWTF discharges treated effluent through an NPDES-permitted outfall to Mortandad Canyon. Groundwater in Mortandad is affected by the effluent discharge, which was the basis of the notice of “Discharge Plan Required” issued by NMED on April 3, 1996.

Discharges from the RLWTF into Mortandad Canyon have been in conformance with groundwater standards (20.6.2.3103 NMAC) since. Discharges from the RLWTF are regulated by NPDES Permit No. NM0028355, and subject to DOE Order 450.1. The Laboratory has fulfilled each of a number of requests by NMED for additional information regarding the pending discharge plan. As of September 15, 2003, the NMED has not completed its review of the discharge plan. The lack of an approved discharge plan is not a non-conformance with NMWQCC regulations.

The NMED has been aware of, and continuously apprised of groundwater contaminants in Mortandad Canyon since the original discharge plan was submitted in August 1996.

As noted above, the impacts from the discharge from the RLWTF to the groundwater in Mortandad Canyon were the basis for NMED's requiring a discharge plan in 1996. The RLWTF Discharge Plan describes in detail the known contamination in the alluvial groundwater in Mortandad Canyon. It refers to the planned Hydrogeologic Workplan characterization and the RFI characterization efforts to understand the impact to intermediate perched groundwater and the regional aquifer.

The NMED has acknowledged the presence of contaminants by requesting more frequent monitoring, monitoring of additional wells, and analytical results in letters written on April 21, 1997, August 6, 1998, and February 19, 1999. Beginning in 1999, NMED has received quarterly reports that include the analytical results from monitoring effluent and groundwater in Mortandad Canyon.

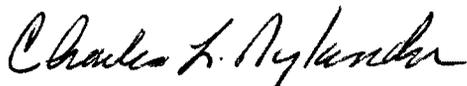
Thus, NMED has been aware of the existence of groundwater that exceeds groundwater standards in Mortandad Canyon for at least seven years. The NMED also recognized the potential for contaminants in lower water zones in a February 19, 1999, request for additional information. NMED requested a monitoring plan for intermediate depth groundwater. The confirmation that groundwater in the intermediate perched water is above groundwater standards was made by data from well R-15 in September 1999, and was further documented by data from well MCOBT-4.4.

Regarding the subject of data reporting, the Laboratory did commit to "submit validated data from monitoring of ground water produced during the drilling of Mortandad Canyon monitoring wells to the NMED/GWQB as soon as it is available" in a letter dated March 12, 1999. We agree that the length of elapsed time for submittal of the MCOBT-4.4 analytical data did not comply with the spirit of this reporting commitment. The discussion during our meeting on July 24, 2003 pointed out that procedures have been put in place to ensure more timely reporting of analytical results. Consistent with the pending discharge plan and NMED's interest, we will continue to provide timely validated data from the monitoring of groundwater from wells in Mortandad Canyon for informational purposes to the NMED/GWQB.

Please file this response with your file copies of the Notice of Noncompliance.

If you have any questions regarding our position on this matter, please contact Charlie Nylander at (505) 665-4681 or Mat Johansen at (505) 665-5046.

Sincerely,



Charles Nylander, Program Manager
Groundwater Protection Program
Los Alamos National Laboratory

Sincerely,



Mat Johansen, Project Manager
Program Compliance Manager
National Nuclear Security Admin.
Office of Los Alamos Site Operations

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IM-5, MS A150
RRES-GPP File, MS M992
RRES-RPF, MS M707 (ER2003-0677)