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ENVIRONMENT DEPARTMENT

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RON CURRY
SECRETARY



CERTIFIED MAIL
RETURN RECEIPT REQUIRED

September 15, 2006

Mr. Edwin Wilmot, Manager
Los Alamos Site Office-Department of Energy
528 35th Street, Mail Stop A316
Los Alamos, NM 87544

Mr. 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

SUBJECT: NOTICE OF VIOLATION
LOS ALAMOS NATIONAL LABORATORY (LANL),
EPA ID NM0890010515

Dear Messrs. Wilmot and Watkins:

The New Mexico Environment Department (Department) hereby issues this Notice of Violation (NOV) to the United States Department of Energy and the Los Alamos National Security, LLC (collectively, the Respondents), for violation of Section VIII.H of the Respondent's Hazardous Waste Facility Operating Permit (Permit) issued under the Resource Conservation and Recovery Act (RCRA) and the New Mexico Hazardous Waste Act (HWA), NMSA 1978, § 74-4-4.2; and the March 1, 2005 Compliance Order on Consent (Order) issued under the HWA NMSA 1978, § 74-4-10. The Department identified the violations described herein after the Respondents notified the Department by telephone on December 23, 2005 of elevated chromium contamination in groundwater at regional well R-28, and based upon the Department's review of documents submitted by the Respondents on May 19, 2006 pursuant to the Department's May 2, 2006 information request.

The Department hereby gives the Respondents notice of the following violations:

1. Section VIII.H of the Permit requires that "[t]he Permittee[s] shall notify the [Department], verbally, of any releases(s) of hazardous waste including hazardous constituents in which there is a statistically significant increase over the background data for the media of concern, during



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the course of ground water monitoring ... no later than twenty four (24) hours after discovery. This notification must also be made in writing within 15 days of discovery."

On January 12, 2004, the Respondents collected a groundwater sample from regional aquifer well R-28. The Respondents received the data from this sample on or about January 26, 2004. The data revealed chromium concentrations in groundwater of 270 µg/L, exceeding both the New Mexico drinking water maximum contaminant level of 100 µg/L, 20.7.10.100 NMAC incorporating 40 C.F.R. § 141.62(b)(5), and the New Mexico human health standard for groundwater quality of 50 µg/L, 20.6.2.3103.A(4) NMAC. The R-28 chromium level is significantly above the background range of chromium concentrations obtained from other regional aquifer wells in and around Mortandad Canyon (non-detect to 8 µg/L in R-14, R-1, R-33, R-15, R-13, R-34, R-12, and R-10A). The only way that the Respondents communicated this significant increase in the detected chromium levels to the Department was through one entry in a lengthy table in an appendix to the *Completion Report for Regional Aquifer Well R-28* (Well Completion Report) dated April 28, 2004. This Well Completion Report, received by the department on May 5, 2004, did not discuss the chromium data or "flag" the data as exceeding background or a regulatory standard.

The Respondents are therefore in violation of Section VIII.H of the Permit which requires 24-hour verbal and 15-day written reporting. For purposes of this NOV and the associated civil penalty assessment, the Department has divided the period of this violation into two segments: 1) the period from the approximate date the Respondents received the January 2004 analytical data (January 26, 2004) until the date the Department received the R-28 Well Completion Report (May 5, 2004); and 2) the period from the date the Department received the Well Completion Report (May 5, 2004) until the effective date of the Order (March 1, 2005).

2. Section V.D of the Order, *Newly Discovered Releases from SWMUs or AOCs*, states "[w]ithin fifteen (15) days after the discovery of any previously unknown release of a contaminant from a SWMU or AOC, the Respondents shall notify the Department in writing of such discovery."

As of March 1, 2005, the Respondents knew of the January 2004 data from R-28. Furthermore, the Respondents re-sampled R-28 on May 20, 2005, and again on September 1 and November 10, 2005. The Department believes that the Respondents received the data from the May 2005 sample on or about July 8, 2005. These data revealed that chromium concentrations had increased significantly, from 270 to 375 µg/L (roughly a 40% increase) since January 2004. The Respondents received the September 1, 2005 sampling data on or about November 1, 2005 and the November 10, 2005 sampling data on or about December 16, 2005. Those data showed similar results. The Respondents notified the Department of the January 2004 and the July, November and December 2005 sample results by telephone on December 23, 2005. The Respondents provided the Department with written notification of the elevated chromium levels in the Interim Measures Work Plan, which the Department received on March 31, 2006.

Further, the more recent investigation that the Respondents have conducted – at the Department's direction – and reported in the Interim Measures Work Plan, confirm that the 2004 and 2005 chromium concentrations were not an anomaly, but have remained elevated. The data collected subsequent to the January 2004 sample also demonstrate that the chromium in the regional aquifer is in the more mobile and more toxic hexavalent form.

The Respondents are therefore in violation of Section V.D of the Order which requires 15-day written reporting. For purposes of this NOV and the associated civil penalty assessment, the Department alleges two violations: 1) one violation for failure to report the January 2004 data, which occurred from the effective date of the Order (March 1, 2005) until at least the date of the telephonic notification (December 23, 2005); and 2) one violation for failure to report the May 2005 data, which occurred from the date the Respondents received that data (July 22, 2005) until at least the date of the telephonic notification (December 23, 2005).

Pursuant to section 74-4-10(A) of the HWA, the Department may assess a civil penalty of up to \$10,000 per day of noncompliance for any past or current violations of any condition of a permit. Pursuant to section 74-4-10(C) of the HWA, the Department may assess a civil penalty of not more than \$25,000 for each day of noncompliance with a compliance order.

The Department proposes to assess a civil penalty totaling \$795,620 to settle its claims for the violations described in this NOV. The proposed civil penalty is assessed as follows:

1. Failure to meet reporting requirements for newly discovered releases above background from solid waste management units in violation of Section VIII.H of the Permit, from January 27, 2004 to May 5, 2004. \$ 198,140
- 1b. Failure to meet reporting requirements for newly discovered releases above background from solid waste management units in violation of Section VIII.H of the Permit, from May 5, 2004 to March 1, 2005. \$ 27,000
2. Failure to meet reporting requirements for newly discovered releases from solid waste management units and areas of concern pursuant to Section V.D of the Order, from March 1, 2005 to December 23, 2006. \$ 26,730
3. Failure to meet reporting requirements for newly discovered releases from solid waste management units and areas of concern pursuant to Section V.D of the Order, from August 6, 2005 to December 23, 2005. \$ 543,750

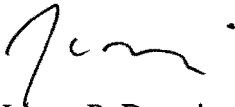
Detailed penalty calculation worksheets and narratives are being provided under separate cover.

The Department requests a meeting with appropriate representatives of the Respondents for the purposes of negotiating a settlement relating to this Notice of Violation. Any action the

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Respondents take in response to this letter does not relieve the Respondents of their obligation to comply with all applicable laws, regulations and Orders. If you have any questions regarding this letter, or wish to arrange a settlement meeting, contact me directly within ten (10) days of your receipt of this letter at the above address, or at (505) 428-2512.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: J. Young, NMED HWB
D. Cobrain, NMED HWB
A. Vollmer, NMED HWB
C. de Saillan, NMED OGC
S. Yanicak, NMED DOE OB, MS J993
L. King, EPA 6PD-N
V. George, ENVP-DO, MS J978
A. Phelps, ENV, MS T002
G. Rael, DOE LASO, MS A316

file: Reading and LANL '06 TA-5 (Groundwater, R-28, Mortandad Canyon)