

TA 21

State of New Mexico
ENVIRONMENT DEPARTMENT



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**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

April 22, 2003

Mr. G. Pete Nanos, Interim Director
Los Alamos National Laboratory
P.O. Box 1663, Mail Stop A100
Los Alamos, New Mexico 87545

Mr. David Gregory, Project Manager
Office of Los Alamos Site Operations
Department of Energy
528 35th Street, Mail Stop A316
Los Alamos, New Mexico 87544

**SUBJECT: COMMENTS AND CONDITIONS FOR NOTICE OF DEFICIENCY
RESPONSE, SOLID WASTE MANAGEMENT UNIT (SWMU) 21-011(k)
VCM PLAN
LOS ALAMOS NATIONAL LABORATORY EPA ID# NM0890010515
HWB-FACILITY-02-020**

Dear Messrs. Nanos and Gregory:

The New Mexico Environment Department (NMED) is in receipt of Los Alamos National Laboratory and U.S Department of Energy's (Permittees') response to the notice of deficiency (NOD) for SWMU 21-011(k) dated January 16, 2003 and titled "Submittal of Response to Notice of Deficiency (NOD), Voluntary Corrective Measure (VCM) Plan for Solid Waste Management Unit (SWMU) 21-011(k) at Technical Area (TA) 21 (Revision 2. Los Alamos National Laboratory EPA ID NO: NM0890010515 Task Number HWB002-020)" and referenced by ER2003-0040. NMED hereby deems the response adequate with the following comments and conditions:

- NMED maintains that it has the authority to regulate radioactive wastes, other than source, special nuclear and byproduct material as narrowly defined in the Atomic Energy Act of 1954, and to require the monitoring and reporting of radionuclides as necessary to properly regulate non-exempt wastes; and



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- NMED requires LANL to evaluate risk to human health based on lifetime carcinogenic risk. In order to determine if the proposed remedy may be considered as a final remedy for SWMU 21-011(k), the risk assessment must contain an estimate of dose and risk over time for a residential receptor. NMED recognizes that LANL must also provide information to DOE on radionuclides present at corrective action sites to satisfy DOE Orders. However, NMED is the regulatory authority for sites undergoing corrective action at the LANL Facility, not the DOE as stated in your response to comments. NMED is requiring LANL to provide information regarding all carcinogens, including radionuclides, present at the site in a format deemed appropriate by NMED. NMED evaluates risk in accordance with published EPA literature, including "*Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (RAGS)*". Although the RAGS document is written for CERCLA (Superfund) sites, in a September 1996 memorandum on Coordination Between Resource Conservation and Recovery Act (RCRA) Corrective Action and Closure and CERCLA Site Activities, EPA stated that EPA is "...committed to the principle of parity between the RCRA corrective action and CERCLA programs..." The RAGS document is therefore appropriate for use at RCRA corrective action sites. EPA, in published literature, has determined that allowable dose limits set by other organizations are not suitable for use in evaluating risk at corrective action sites. NMED is requiring LANL to provide information on radionuclides in a format that is consistent with EPA guidance (i.e. RAGS). NMED believes that reporting radionuclide concentrations to NMED in a format consistent with that outlined by EPA does not exceed the authority of NMED under the New Mexico Hazardous Waste Act.

NMED requires the Permittees' to incorporate comments from the NOD and NOD response into a revised VCM Plan. As stated in the Permittees' response, a revised VCM Plan will be submitted to NMED within 15 days from NMED's written notification of adequacy (this letter). The revised VCM Plan is due to NMED on or before May 7, 2003.

Should you have any questions regarding the regulatory deadlines outlined above, please feel free to contact Vickie Maranville at (505) 428-2546.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

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cc: D. Cobrain, NMED HWB
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File: Reading and LANL TA-21 [SWMU 21-011(k)]