

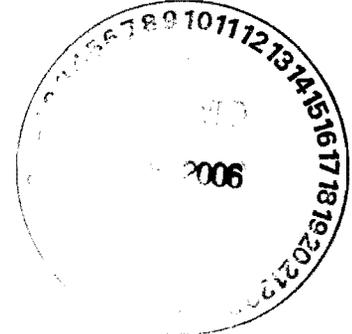


TAQ1
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

FEB 07 2006

John Ordaz, Assistant Manager
for Environmental Management
Department of Energy
528 35th Street
Los Alamos Area Office
Los Alamos, New Mexico 87544



Re: Request for Information in Connection with the Potential Transfer of Tracts A-18, A-18-b and A-5-1 (under CERCLA 120(h)) at Los Alamos National Laboratory to Los Alamos County

Dear Mr. Ordaz:

Region 6 of the U.S. Environmental Protection Agency (EPA) has recently learned that the U.S. Department of Energy (DOE) may be contemplating transferring title to a number of tracts of land to Los Alamos County, including Tracts A-18, A-18-b, and A-5-1. It is our understanding that hazardous substances have been stored for one year or more and/or are known to have been released or disposed of on some or all of these tracts. Under these circumstances, the requirements of section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9620(h)(3), are applicable.

When hazardous substances have been stored for one year or more and/or are known to have been released or disposed of on a tract to be transferred, DOE is required by section 120(h)(3)(A)(ii) of CERCLA, 42 U.S.C. § 9620(h)(3)(A)(ii), to include in any deed to transfer the tract a covenant warranting that all remedial action necessary to protect human health and the environment has been taken before the date of the transfer and that any remedial action found to be necessary after the transfer will be conducted by the United States (unless DOE has obtained a covenant deferral under section 120(h)(3)(C) of CERCLA, 42 U.S.C. § 9620(h)(3)(C)). According to section 120(h)(3)(B) of CERCLA, 42 U.S.C. § 9620(h)(3)(B), all remedial action has been taken if construction and installation of an approved remedial design has been completed and the remedy has been demonstrated to EPA to be operating properly and successfully (an "OPS demonstration"). EPA has interpreted these provisions not to require an OPS demonstration in circumstances where hazardous substances were stored but not released and have been removed from the property; where a final documented decision of no remedial action has been made with the concurrence of the appropriate regulator with respect to any hazardous substances that were released or disposed of on the property; or where an approved remedial or removal action has achieved its objective, which is documented in a close-out or similar report approved by the appropriate regulator. See EPA's Guidance for Evaluation of Federal Agency Demonstrations that Remedial Actions are Operating Properly and Successfully Under CERCLA Section 120(h)(3).



EPA is concerned that DOE may be considering transferring tracts that do not fall within the exceptions to the requirement for an OPS demonstration without making an OPS demonstration to EPA. Under the circumstances, absent such a demonstration to EPA, DOE cannot include the required covenant in the deed. DOE, therefore, cannot transfer title to the tracts to Los Alamos County until it has made the required demonstration to EPA or it has completed the covenant deferral procedures of section 120(h)(3)(C) of CERCLA, 42 U.S.C. § 9620(h)(3)(C).

As you know, EPA has reviewed several land transfer (tracts) documents for several parcels at the Los Alamos National Laboratory dating back to 2001, including tracts A-3; A-12, LAAO-1 (east); A-19, White Rock-1 Tract; A-17, TA-74-1 West Tract; B-2, TA-74 Tract; B-4, White Rock Tract; A-6, Airport Tract; A-9, DP Road Tract; C-1, White Rock Tract; A-7, Airport Central Tract; A-15-1, TA-21 West; A-8, DP Road South; Manhattan Monument Site; and Site 22. We believe that EPA and DOE have had a good working relationship that has resulted in timely transfers of property at the Los Alamos National Laboratory in the past, and we look forward to continuing with a good relationship in the future.

In order to avoid delay in accomplishing the transfer of the parcels, EPA is requesting that DOE submit to EPA as soon as possible the necessary OPS demonstrations for parcels A-18, A-18-b, and A-5-1 or, in the alternative, documentation showing that the tracts fall into one of the exceptions to the OPS demonstration requirement. EPA is also requesting that DOE provide the revised land transfer documents for tracts A-15-1 and A-8, which EPA reviewed and commented on some time ago.

Thank you in advance for your cooperation. If you have any questions regarding in this letter, please contact Rich Mayer at (214) 665-7442.

Sincerely,



Laurie King, Chief
Federal Facilities Section

cc: ✓ James Bearzi, NMED