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NEW MEXICO ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau



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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

November 17, 2008

Donald L. Winchell, Jr., Manager
Los Alamos Site Office-Department of Energy
528 35th Street, Mail Stop A316
Los Alamos, NM 87544

Richard Watkins, Director
Environment, Safety, Health, & Quality
Los Alamos National Security, LLC
Los Alamos Research Park
4200 Jemez Road, Suite 400
Los Alamos, NM 87545

RE: REQUEST FOR INFORMATION REGARDING MATERIAL DISPOSAL AREA A SUBSURFACE VAPOR MONITORING LOS ALAMOS NATIONAL LABORATORY PURSUANT TO THE NEW MEXICO HAZARDOUS WASTE ACT AND RESOURCE CONSERVATION AND RECOVERY ACT EPA I.D. NUMBER NM0890010515

Dear Messrs. Winchell and Watkins:

Pursuant to Section 74-4-4.3.A of the New Mexico Hazardous Waste Act (HWA), NMSA 1978, section 74-4-1 et seq., and Section 3007(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., the New Mexico Environment Department (NMED) hereby requests that the Department of Energy (DOE) and the Los Alamos National Security, L.L.C. (LANS) (collectively, the Permittees) provide NMED the below-listed information concerning vapor sampling activities associated with the Material Disposal Area A (MDA A), Solid Waste Management Unit (SWMU) 21-014 at Technical Area 21.

Section 74-4-4.3.A of HWA provides that "[f]or the purposes of developing or assisting in the development of any rules, conducting any study, taking any corrective action or enforcing the provisions of the Hazardous Waste Act, upon request of the Secretary or his authorized representative, any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall furnish information relating to such hazardous wastes. . . ." Likewise, section 3007(a) of RCRA provides that "[f]or purposes of developing or



assisting in the development of any regulation or enforcing the provisions of [RCRA], any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any . . . duly designated officer, employee, or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes. . . ." 42 U.S.C. § 6927(a).

NMED requests the following information:

- 1) soil vapor monitoring and sampling data and all information related to the collection of such data at MDA A, SWMU 21-014 from January 2008 to the present.

Your compliance with this information request is mandatory. Failure to respond fully and truthfully within the time specified herein, or adequately justify such failure to respond, may result in an enforcement action by NMED pursuant to Section 74-4-10 of HWA, or Section 7002(a)(1)(A) of RCRA (42 U.S.C. § 6972(a)(1)(A)) or both. Both HWA and RCRA provide for the imposition of civil penalties for noncompliance. Section 74-4-12 of the HWA provides that any person who violates any provision of the HWA "may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs." See also NMSA 1978, § 74-4-10.A and B. Section 3008(g) of RCRA provides that any person who violates any requirement of RCRA shall be liable for a civil penalty not to exceed \$32,500¹ for each such violation. 42 U.S.C. § 6928(g). Both the HWA and RCRA also provide for criminal fines and imprisonment for knowingly omitting material information or making a false statement or representation in any document used for compliance with HWA or RCRA. NMSA 1978, § 74-4-11.A(3); 42 U.S.C. § 6928(d)(3).

The Permittees may claim confidentiality for any information required by this information request pursuant to the requirements of Section 74-4-4.3(D) and (F) of HWA, 42 U.S.C. § 6927(b), and 20.4.1.100 NMAC (incorporating 40 CFR 260.2).

Please submit your response no later than December 19, 2008.

¹ Although this provision of RCRA on its face provides for a civil penalty not to exceed \$25,000, the maximum penalty has been increased to \$32,500 to account for inflation pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3107 note, 40 C.F.R. § 19.4, Table 1.

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Thank you for your cooperation in this matter. If you have any questions regarding the information request, please contact Kristen Van Horn of my staff at (505) 476-6046.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: K. Roberts. NMED HWB
D. Cobrain. NMED HWB
A. Vollmer. NMED HWBS.
Yanicak. NMED DOE OB. MS J993
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file: Reading and LANL 08 TA-21 (SWMU 21-014)