

TA21

ENTERED



NEW MEXICO ENVIRONMENT DEPARTMENT



Hazardous Waste Bureau

BILL RICHARDSON Governor

2905 Rodeo Park Drive East, Building 1

Santa Fe, New Mexico 87505-6303

RON CURRY Secretary

DIANE DENISH Lieutenant Governor

Phone (505) 476-6000 Fax (505) 476-6030

JON GOLDSTEIN Deputy Secretary

www.nmenv.state.nm.us

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

January 4, 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

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

Dear Messrs. Winchell and Watkins:

The New Mexico Environment Department (Department) hereby issues this Notice of Violation (NOV) to the Department of Energy (DOE) and the Los Alamos National Security, LLC (LANS) (collectively, the Respondents), for violation of the March 1, 2005 Compliance Order on Consent (Order) issued under the New Mexico Hazardous Waste Act (HWA), NMSA 1978, § 74-4-10. The violation occurred when the Respondents failed to timely submit the Status Report for Supplemental Sampling at Material Disposal Area (MDA) A, Technical Area 21 (Status Report), due to the Department on November 30, 2007.

The Department's May 29, 2007 letter addressing the Respondents' Response to the Approval with Modifications dated March 15, 2007, required the Respondents to collect one additional round of tritium pore-gas samples from previously sampled depths at five locations (21-26485, 21-26481, 21-26596, 21-26588, and 21-26484). In addition, collection of pore-gas samples for volatile organic compound (VOC) analysis was required at location 21-26593. The Department's letter required that the Status Report be submitted no later than November 30, 2007.

On November 29, 2007, the Respondents sent a Notification of Force Majeure for the Status Report for Solid Waste Management Unit 21-014, Material Disposal Area A, at Technical Area



33138

21 (Notification). The Notification stated that “exceptionally dry subsurface conditions slowed the collection of subsurface pore-gas samples” and “multiple power outages at the analytical laboratory processing the tritium samples” were the cause for a delay in field operations and sample processing at MDA A. The Respondents asserted that decreased moisture conditions resulted in longer than anticipated time for sample collection and power disruptions caused a loss of data requiring reanalysis of tritium samples.

Pursuant to Section III.H.3 of the Order, the Department provided written notice of its disagreement that a force majeure event had occurred on December 7, 2007. The Department stated that “[d]rought conditions have existed in northern New Mexico since at least the mid 1990’s. Relatively dry subsurface conditions should have been anticipated. Likewise, sound project planning would have reduced or eliminated the impact of temporary power outages. Had sufficient contingencies been incorporated into the project scope, a delay of three days due to these factors could have and should have been mitigated.”

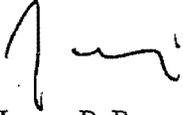
Section III.U of the Order states “[t]his Consent Order is an enforceable document. If the Respondents violate any requirements of this Consent Order, the State’s sole remedy for such noncompliance shall be to enforce those requirements pursuant to applicable law...” Because investigation and remediation of MDA A are specifically required by the Order, all requirements for documents concerning MDA A, including the Status Report, are enforceable under the Order. The Status Report was submitted on December 5, 2007, five days after the required submittal date. NMED has therefore determined that the Respondents were in violation of the Order because they failed to submit the Status Report on time.

In accordance with section 74-4-10.C. NMSA 1978, the Department may: (1) issue a Compliance Order requiring compliance immediately or within a specified time period, or assess a civil penalty for any past or current violations of up to \$25,000 per day of noncompliance for each violation, or both; (2) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction.

NMED has determined that the violation cited in the Notice of Violation has been adequately addressed and no further action is required. Any action the Respondents take in response to this letter does not relieve the Respondents of their obligation to comply with all applicable laws and regulations. If you have any questions regarding this letter, please contact me at 505-476-6016.

Messrs. Winchell and Watkins
January 4, 2008
Page 3

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: K. Roberts, NMED HWB
D. Cobrain, NMED HWB
A. Vollmer, NMED HWB
C. de Saillan, OGC
S. Yanicak, NMED DOE OB, MS J993
L. King, EPA 6PD-N
V. George, ENVP-DO, MS J978
S. Stiger, ADEP, MS M991
G. Rael, DOE LASO, MS A316

file: Reading and LANL '08 (SWMU 21-014)