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Los Alamos

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memorandum

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 THRU: ^{2-KH} Ken Hargis, EM-8, MS K490
 Robert Vocke, EM-13, MS M992
 FROM: Dave McInroy, EM-8 *DM*
 SUBJECT: **NEPA EXCLUSION JEOPARDIZING RCRA COMPLIANCE**

DATE: January 21, 1992
 MAIL STOP/TELEPHONE: K490/7-0819
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The Department of Energy (DOE) and Los Alamos National Laboratory (LANL) received an approved Resource Conservation and Recovery Act (RCRA) Closure Plan for the TA-40 scrap detonation site on September 16, 1991. The New Mexico Environment Department (NMED) has designated September 30, 1991 as the effective date or start date of the closure. The Laboratory has 180 days from the effective date (March 28, 1992) to finish this closure.

On June 6, 1991 the HSE Questionnaire committee identified the closure activity as needing a DOE Environmental Checklist (DEC). The Environmental Assessments & Resource Evaluation Section within the Environmental Protection Group (EM-8) delivered a draft DEC to the Environmental Restoration Group (EM-13) for review on June 24, 1991. Group EM-13 reviewed the DEC for technical accuracy and returned it to EM-8 on August 18, 1991. On September 10, 1991, LANL transmitted the DEC to DOE for a National Environmental Policy Act (NEPA) determination. As of January 21, 1992, the approved exclusion from NEPA has not been received by the Laboratory. EM-8 has closely tracked the process of the categorical exclusion and has found that it has been approved through EM 20 and is now awaiting Duffy's signature.

LANL has a remainder of 67 days to complete this closure or violate RCRA. It should be noted that in many cases analytical time in dealing with each sampling event during these types of closures has taken up to 60 days.

During conversations with State ED personnel, they have stated that while the internal milestones of the closure could be negotiated, the 180 day completion date was final. The ED went on to explain that if the closure was not completed by the 180th day, DOE and LANL would receive a Notification of Violation. It was also made clear by the ED that they would probably pursue issuing the Laboratory a Compliance Order, including assessment of fines.

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Ans'd *YPA*



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Knowing the NMED reaction to this situation I suggest that some consideration be given to performing the sampling part of the closure now, since this seems to be the most critical pathway in the successful completion of the closure. Similar sampling activities have been covered within the Laboratory's site wide Environmental Impact Statement (EIS). For this reason and the fact that the categorical exclusion appears to be imminent, the risk of proceeding appears to be less than that of not initiating the sampling.

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