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Date: July 22, 2003
 Refer to: ER2003-0485



Mr. John Young, Corrective Action Project Leader
 Permits Management Program
 NMED – Hazardous Waste Bureau
 2905 Rodeo Park Drive East
 Building 1
 Santa Fe, NM 87505-6303

**SUBJECT: FEE ASSESSMENT FOR VOLUNTARY CORRECTIVE ACTION (VCA)
 COMPLETION REPORT FOR AREA OF CONTAMINATION (AOC) 48-012 AT
 TECHNICAL AREA (TA) 48 LOS ALAMOS NATIONAL LABORATORY (LANL)
 NM0890010515**

Dear Mr. Young:

We are in receipt of your letter of July 2, 2003 and the invoice dated July 8, 2003 for review of the VCA Report for AOC 48-012. As you are aware, while excavating a trench for installation of utility lines, LANL identified an area of contaminated soil. The contamination could not be traced to any Solid Waste Management Unit (SWMU) or operational activity in the area. LANL determined the area was a spill we were obligated to clean up immediately, and we undertook a VCA. You note in your letter that the New Mexico Environmental Department (NMED) has determined this unit is a SWMU.

The Environmental Protection Agency (EPA) defines a SWMU to include “any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released”; Module VIII.A, NM0890010515. The EPA has explained that “a discernible unit in this context includes the types of units typically identified with the Resource Conservation and Recovery Act regulatory program, including landfills, surface impoundments, land treatment units, waste piles, tanks, container storage areas, injection wells, wastewater treatment units, waste recycling units, and other physical chemical or biological treatment units”; 55 Fed. Reg. 30808 (July 27, 1990). The EPA excluded from the definition of SWMU a one-time spill or passive leak because neither are the result of “systematic human activity”; *Id.* at 30809. Based on EPA’s definition, LANL determined 48-012 was not a SWMU in that it was not a “discernible unit” within the context of the regulatory language, nor was it an area where waste had been “routinely and systematically released.” Rather, the area was a one-time spill and we were obligated to clean it up immediately.

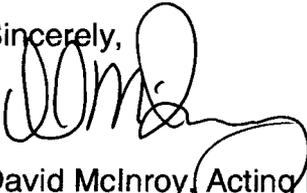


Although NMED has communicated its decision that 48-012 is a SWMU, you have provided no technical basis for that determination, so we are unable to analyze this question further. We would appreciate hearing any additional input you may have on this question.

I note that the invoice, dated July 8th, was actually mailed on July 14th, and references a fee for submittal of VCA Completion Report for an Area of Concern. For purposes of 20.4.2.302 NMAC, we will consider July 14, 2003 to be the date of the invoice.

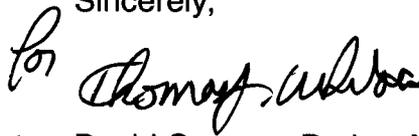
Thank you for your attention to this matter. Please refer any questions to Gabriela Lopez Escobedo at (505) 665-7352.

Sincerely,



David McInroy, Acting Deputy Project Director
Remediation Services
Los Alamos National Laboratory

Sincerely,



David Gregory, Project Manager
Department of Energy
Los Alamos Site Operations

DM/DG/GLE/dv

Cy:

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