



BILL RICHARDSON  
Governor

DIANE DENISH  
Lieutenant Governor

TASD  
NEW MEXICO  
ENVIRONMENT DEPARTMENT

*Hazardous Waste Bureau*

2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303  
Phone (505) 476-6000 Fax (505) 476-6030  
[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)



RON CURRY  
Secretary

CINDY PADILLA  
Deputy Secretary

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

October 26, 2007

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

Richard S. Watkins, Associate Director  
Environment, Safety, Health, & Quality  
Los Alamos National Security, LLC  
Los Alamos Research Park  
4200 Jemez Road, Suite 400  
Los Alamos, NM 87544

**RE: INFORMATION REQUEST REGARDING THE EXEMPTION STATUS OF THE  
TECHNICAL AREA 50 RADIOACTIVE LIQUID WASTE TREATMENT  
FACILITY  
LOS ALAMOS NATIONAL LABORATORY (LANL)  
EPA ID #NM0890010515**

Dear Messrs. Winchell and Watkins:

This information request is made pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 to 74-4-14, and the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 to 6992k. Los Alamos National Laboratory (LANL) is a national laboratory owned and operated by the United States Department of Energy (DOE). DOE is an agency of the United States. LANL is also operated by Los Alamos National Security, L.L.C. (LANS). Each of these entities, collectively the "Permittees", is a person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes within the meaning of the HWA and RCRA. NMSA 1978, § 74-4-3(K); 42 U.S.C. § 6903(15).

Section 74-4-4.3(A)(1) of the HWA provides that "[f]or the purposes of taking any corrective action or enforcing the provisions of the [HWA], . . . upon request of [the Department] 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 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)).

Furthermore, Condition I.D.7 of the Permittees' Hazardous Waste Facility Permit (No. NM0890010515), as modified, provides that the Permittees must furnish to the Department "any relevant information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit." In addition, Section III.P of the Compliance Order on Consent, dated March 1, 2005, provides that the Respondents shall, within a reasonable time after receipt of a request from the Department, "furnish information to the Department relating to hazardous wastes that are or have been managed at the [LANL] facility."

This letter requests information regarding the Permittees' claimed RCRA hazardous waste and hazardous waste permitting exemption(s) for the Technical Area 50 Radioactive Liquid Waste Treatment Facility (RLWTF). The Department understands that the Permittees claim a RCRA exemption for the RLWTF and will also claim an exemption when the RLWTF is converted to a zero-discharge unit. The Department therefore requests the following information:

1. Documentation demonstrating that LANL has sought an opinion on the exemption of the RLWTF or any predecessor facility from the Department or the U.S. Environmental Protection Agency (EPA);
2. Documentation identifying the New Mexico Hazardous Waste Management Regulation (HWMR) 20.4.1 NMAC citations that form the basis for the Permittees' current exemption;
3. Documentation identifying the HWMR regulatory citations that form the basis for an exemption for the planned zero-discharge RLWTF;
4. Documentation describing the Permittees' interpretation of how the above referenced regulatory citations apply to the RLWTF, to the wastes before they arrive at the facility, to wastes generated at the facility, and to wastes that exit the facility both through the National Pollution Discharge Elimination System (NPDES) permitted outfall and by other means;
5. A listing of all wastes transferred to the RLWTF from January 1, 2002, to the present. This list shall identify which wastes are hazardous wastes as defined in the HWMRs at the point of generation by identifying all applicable U.S. EPA Hazardous Waste Numbers associated with the individual wastes, and should include a unique identifier and

common reference name for each waste if available;

6. Applicable waste profile forms for the above referenced hazardous and non-hazardous wastes. If the waste profile forms for hazardous wastes do not include a description of how an associated waste could be considered incidental to laboratory operations as described in U.S. EPA correspondence dated July 1984 and February 1993 (Attachments 1 and 2) and 46 FR 56582 and 56587 (Nov. 17, 1981), provide this information;
7. Documentation identifying a definition of the term *laboratory* that LANL would utilize to qualify for the exemption at 20.4.1.200 NMAC (incorporating 40 CFR § 261.3(a)(2)(iv)(E));
8. Copies of records for the above referenced wastes identifying the date(s) the wastes were transferred to the RLWTF over the period from January 1, 2002, to the present, and the volume of those wastes;
9. A copy of existing LANL guidance for the characterization of waste streams going to the RLWTF;
10. A summary of the analytical data referenced in a document entitled "Documentation of Information Required to Comply with 40 CFR § 268.7(a)(7) (LA-UR-07-6624) in association with § 261.3(a)(2)(iv)(E)." This summary must identify all analytes measured and the maximum concentrations measured for each analyte;
11. A copy of the NPDES permit application referenced in LA-UR-07-6624.
12. A listing of all wastes generated at the RLWTF through the period January 1, 2002, to the present. This list shall identify the disposition methodology of the wastes and all applicable U.S. EPA Hazardous Waste Numbers associated with the individual wastes, and should include a unique identifier and common reference name for each waste if available;

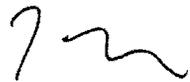
Compliance with this information request by the Permittees is mandatory. Failure to respond fully and truthfully to this information request within the time specified herein, or adequately justify such failure to respond, may result in an enforcement action by the Department pursuant to section 74-4-10 of the HWA, or section 7002(a)(1)(A) of RCRA, 42 U.S.C. § 6972(a)(1)(A), or both. Both the 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 \$32,500 per day for each

Messrs. Winchell and Waw...  
October 26, 2007  
Page 4

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 the HWA or RCRA NMSA 1978, § 74-4-11(A)(3); 42 U.S.C. § 6928(d)(3).

All requested information must be submitted within 30 days of receipt of this letter. If you have any questions please contact Steve Pullen of my staff at (505) 476-6044.

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

JPB:sp

cc: S. Pullen, NMED HWB  
D. Cobrain, NMED HWB  
J. Kieling, NMED HWB  
Robert George, NMED GWQB  
C. de Saillan, NMED OGC  
L. Lovejoy  
L. King, EPA 6PD-N  
J. Ellvinger, LANS  
S. Stiger, LANS  
G. Rael, DOE LASO

file: Reading and file '07 LANL Permit - General

Messrs. Winchell and Watkins  
October 26, 2007

Attachment 1

9441.1984(22)

RCRA /SUPERFUND HOTLINE SUMMARY

JULY 84

7. A drum of listed wastes is dumped into an on-site wastewater treatment facility at a laboratory operation. Is this covered by the lab exclusion in §261.3(a)(iv)(E)?

This activity is not covered in the lab exclusion. §261.3(a)(iv)(E) was meant to cover small amounts of wastes added essentially unavoidably to large volumes of process wastewater. Examples include laboratory spills washed into a sink drain, and residues from the washing of glassware which are carried in the washwater into the sewer.

Source: Alan Corson  
Research: Tom Gainer

Messrs. Winchell and Watkins  
October 26, 2007

Attachment 2

9441.1993(01)

United States Environmental Protection Agency  
Washington, D.C. 20460  
Office of Solid Waste and Emergency Response

February 23, 1993

Mr. Larry E. Perry, P.E.  
Divisional Environmental Manager  
Frito-Lay, Incorporated  
P.O. Box 660634  
Dallas, Texas 75266-0634

Dear Mr. Perry:

Thank you for your letter of December 31, 1992, in which you inquire about the proper disposal of silver nitrate and chloroform as laboratory chemicals. Specifically, you wished to know how the laboratory wastewater exclusion of 40 CFR 261.3(a)(2)(iv)(E) applies to your facilities.

As we understand your situation (based on your letter and telephone conversation between your company and my staff), you use silver nitrate and chloroform in quality control experiments in the laboratory. These laboratories have quality control (QC) functions incidental to production. However, the filtrate from use of these particular chemicals contains them at levels above the regulatory levels for chloroform and silver specified in 40 CFR 261.24 (the Toxicity Characteristic, or TC). In addition, you noted the presence of chloroform as a commercial chemical product, EPA Hazardous Waste No. U044, in your wastewater.

On December 22, 1992, Messrs. Abrams, Brandes, and Josephson of my staff confirmed to you that based on the information you provided, your facilities may qualify for the laboratory wastewater exclusion, but only if there is a listed waste involved. I would like, again, to stress several additional points to remember in qualifying for this exclusion:

- 1) This exclusion pertains only to listed hazardous wastes (that are designated as toxic (T)) from laboratory operations and only at the headworks of the wastewater treatment

RO 11727

facility. As we understand it, your facilities would only qualify for this exclusion if unused chloroform was disposed of in your laboratory sinks or drains (U044). Chloroform is not an F001 or F002 solvent, but is on the toxicity characteristic list and on the product list (40 CFR 261.33(f)). Chloroform used as a solvent and then disposed would not meet the listing description for U044.

- 2) The exclusion applies to incidental losses of listed hazardous wastes (in your case, unused chloroform) from laboratory operations, not deliberate bulk discharges of chemicals that are not part of laboratory operations.
- 3) This exclusion applies to wastewater discharges that are subject to regulation under either section 402 or 307(b) of the Clean Water Act. Many facilities receive indirect discharge permits based on the operational parameters of the local publicly-owned treatment works (POTW). The POTW, in turn, sets indirect discharge standards to avoid plant upsets, generation of hazardous sludges, health hazards to their employees, and violation of its own discharge permit.
- 4) The laboratory wastewater exclusion is based on the total quantity of listed wastes from laboratory operations. The introduction of other listed wastes into the plant wastewater system (outside the conditions set forth in 40 CFR 261.3(a)(2)(iv)(A) - (E) may void the exclusion for the facility.
- 5) If any of the wastes in the laboratory wastewater discharge are subject to the Land Disposal Restrictions (40 CFR 268), the facility must keep records showing their generation and disposition according to §268.7(a).
- 6) Your letter states that you have investigated

"specific representative cases." As you know, the exclusion at 40 CFR 261.3(a)(2)(iv)(E) must be met by each individual facility, and this letter should not be construed as a regulatory determination on any particular wastestream. EPA regulations at 40 CFR 262.11 require each generator of solid waste to determine if that waste is hazardous.

You note in your letter that 1) the total annualized average flow of laboratory wastewater is below one percent of total facility flow, and 2) the total laboratory chemical concentration based on facility purchase and inventory records is less than one part per million. A facility must meet one of these two criteria in order to qualify for the wastewater exclusion.

Laboratory wastes that are hazardous because they exhibit one of the characteristics of a hazardous waste (see 40 CFR 261 Subpart C) are not addressed by the exclusion in 40 CFR 261.3(a)(2)(iv)(E). Therefore, TC hazardous levels of silver and chloroform in your laboratory wastewater would be discharged to publicly owned treatment works (POTWs). However the pretreatment (before discharge to POTWS) of laboratory wastewaters could generate a sludge that would be under RCRA Subtitle C control if it exhibited any of the hazardous waste characteristics.

You should be aware that, even if the facilities meet the terms of the laboratory wastewater exclusion according to Federal regulations, states may have more stringent hazardous waste regulations. Please check with the applicable state agency for further details on state regulations.

Thank you for your inquiry. If you have any questions, please contact Ron Josephson of my staff at (202) 260-4770.

Sincerely,  
Sylvia K. Lowrance, Director  
Office of Solid Waste

cc: Ken Gigliello, OWPE (OS-520); Mark Badalamente, OGC (LE-132S); Ron Josephson, OSW (OS-333)