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October 31, 2002

James P. Bearzi, Chief
 Hazardous Waste Bureau
 New Mexico Environment Department
 2905 Rodeo Park Drive East, Building 1
 Santa Fe, New Mexico 87505-6303

2002

RE: DETERMINATIONS OF INCOMPLETENESS FOR TA-54 CLOSURE PLANS AND COMPLIANCE DEMONSTRATION

Dear Mr. Bearzi:

The National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) and the University of California (UC) are in receipt of your letter of August 5, 2002, finding that the following documents submitted by Los Alamos National Laboratory are incomplete: (1) the Closure/Post Closure Plan for Pit 29 and Shaft 124 at TA-54, Area G; (2) the Closure/Post Closure Plan for Shafts 1, 13-17, 19-34, and Impoundments B and D at TA-54, Area L; and (3) the Compliance Demonstration under corrective action procedures for TA-54, Area H. NMED failed to provide a technical basis supporting its finding of incompleteness and its assertion that MDAs G, H and L are each one landfill.

The threshold issue presented by NMED's August 5, 2002 letter (and, indeed, by numerous exchanges of correspondence between the Laboratory and NMED over these closure plans since December 21, 2001) is whether NMED has jurisdiction under its Hazardous Waste Act (HWA) to regulate the investigation and remediation of radionuclides. The Laboratory initially submitted Closure Plans in 1985 and 1986 for the interim status disposal units at Areas G, H and L that received hazardous waste sometime between 1980 and 1985. Closure of each of these units is within the purview of NMED regulation under the HWA. Areas G, H and L also have solid waste management units (SWMUs), identified in Module VIII of the Laboratory's permit, that are subject to corrective action under the HWA.

As the Laboratory set forth in detail in its July 31, 2002 comments on the May 2, 2002 NMED Draft Administrative Order, the other units within Areas G, H, and L that received radionuclide waste are outside NMED's authority because regulation of those wastes and units is preempted by the federal Atomic Energy Act (AEA), not covered by the sovereign immunity waiver, or



subject to other preclusions contained in federal and state law. *See*, pages 42-70 of the July 31, 2002 comments. On June 3, 2002, the Laboratory placed these issues before the United States District Court for resolution in an action challenging NMED's issuance of an Imminent and Substantial Endangerment Determination.

With respect to groundwater monitoring, the Laboratory has monitored groundwater in and around the facility for over 50 years. The monitoring system includes approximately 80 wells and springs. In 1995, however, NMED and other organizations questioned the adequacy of the monitoring system in place because they believed the hydrogeologic setting beneath the Laboratory was not well understood. The Laboratory subsequently developed and NMED approved a Hydrogeologic Workplan to address this concern. One of the primary purposes of the Hydrogeologic Workplan is to characterize the hydrogeologic setting in order to design a monitoring network. The Laboratory will use the resulting monitoring network to comprehensively evaluate groundwater quality.

Since the submittal of the closure plans and compliance demonstration, the Laboratory has committed to drill five additional deep wells around TA-54, pursuant to the Hydrogeologic Workplan. Accordingly, by the end of this calendar year, six regional aquifer wells will circumscribe TA-54. Each well will be sampled quarterly for one year, after which a geochemistry report will be prepared for the well. In addition, dozens of shallow (200-300' depth) boreholes have been drilled at TA-54 to characterize the subsurface. No water-bearing zones have been identified at any of the boreholes. We believe that these additional wells and sampling program represent substantial progress in addressing NMED's groundwater concerns at TA-54.

DOE and UC remain committed to completion of the Hydrogeologic Workplan and the development of a Laboratory-wide monitoring plan by July 2003. We hope to work cooperatively with NMED in developing and implementing the plan so as to ensure adequate protection of groundwater throughout the Laboratory. DOE and UC also completed, on July 25, 2002, a Performance Management Plan for Accelerated Cleanup to complete environmental restoration activities at the Laboratory by 2015, including actions to protect groundwater.

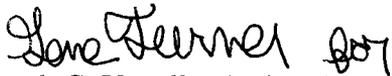
Pursuant to 40 CFR 264.90(f), the Laboratory provided detailed crosswalks for Areas H, L and G attached to the Comprehensive Demonstration and the respective closure plans comparing alternative requirements for groundwater monitoring with those delineated in 40 CFR 264.91-264.100. Pursuing alternative requirements under the provision described in 40 CFR 264.90(f) is a better approach for these units because SWMUs are located nearby and those alternative requirements would be fully protective of human health and the environment. Consistent with this regulation, submittal of the above-referenced crosswalks was intended to provide alternatives that offered adequate protectiveness while considering the potential impact from all units simultaneously.

NMED's recent assertion that Areas G, H and L are each "one landfill" or one operating unit subject to Closure/Post Closure contradicts the current storage and treatment permit and many years of correspondence and communication with NMED. Specifically, Module VIII of the

Laboratory's permit identifies individual SWMUs subject to corrective action at each Area; since 1998, the Annual Unit Audit for Areas G, H and L specifically listed SWMUs, as well as the individual interim status disposal units at the three areas that received hazardous waste between 1980 and 1985; and the Draft Order addresses corrective action for the SWMUs at Areas G, H and L.

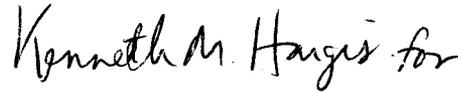
Finally, we believe other issues raised by your letter can be resolved through the permit renewal process. DOE and UC look forward to resolving with NMED the permit-related issues that can be addressed by the parties and continuing the professional and productive working relationship that supports our mutual goal of protecting human health and the environment at the Laboratory. Please feel free to call us if you have any questions.

Sincerely,



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Sincerely,



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D. McInroy, RRES-R, MS M992
RRES-DO Files, 02-82, MS J591
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