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TA-54

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 28, 2003

Mr. G. Pete Nanos, Interim Director
Los Alamos National Laboratory
P.O Box 1663, MS A100
Los Alamos, NM 87545

Mr. Ralph Erickson, Area Manager
Los Alamos Area Office
Department of Energy
528 35th Street, MS A316
Los Alamos, NM 87544

SUBJECT: INFORMATION REQUEST
TECHNICAL AREA 54, AREA G
WASTE CHARACTERIZATION INFORMATION
LOS ALAMOS NATIONAL LABORATORY
EPA ID# NM0890010515
HWB-LANL-99-050

Dear Messrs. Nanos and Erickson:

The New Mexico Environment Department (NMED) requires additional waste characterization information for wastes disposed of at Technical Area (TA) 54, Area G. This request is in response to the U.S. Department of Energy (DOE) and Los Alamos National Laboratory (LANL), submittal of waste characterization documents for TA 54, Area G, titled "TA-54 Area G Disposal Supplemental Information as Requested by NMED" (Supplemental Information), dated September 2002. NMED originally requested this information as follow up to an Area G site visit by NMED on June 11, 2002.

The Supplemental Information includes waste characterization documentation for 24 waste streams disposed of at Area G between the years 1982 and 2001 inclusive, and contains an electronic version of a listing of wastes disposed of at Area G from January 1991 through March 2001 inclusive.



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NMED reviewed DOE and LANL waste characterization records for wastes disposed of at Area G to determine if the wastes are hazardous waste subject to regulation under the federal Resource Conservation and Recovery Act (RCRA) and the New Mexico Hazardous Waste Act (HWA) and regulations promulgated pursuant thereto at 40 C.F.R., Parts 260 through 270, and 20.4.1 NMAC. The waste characterization data reviewed by NMED during the June 11, 2002, site visit and contained in the Supplemental Information is not sufficient to demonstrate that certain waste streams disposed of at Area G are not hazardous wastes subject to regulation.

DOE and LANL are required by 20.4.1.300 (incorporating 40 C.F.R. § 262.11) to perform a hazardous waste determination on solid waste that they generate. This hazardous waste determination must include documentation of the basis for exclusion of any waste pursuant to 40 C.F.R. § 262.11(a) and 40 C.F.R. § 261.4. Pursuant to 20.4.1.300 and 800 NMAC (incorporating 40 C.F.R. §§ 262.40(c) and 268.7(a)(8)), DOE and LANL are required to retain waste analyses and other determinations made in accordance with 40 C.F.R. §§ 262.11 and 268.7. The requirement to maintain these records applies even when the waste is excluded from the definition of hazardous or solid waste under 20.4.1.300 NMAC (incorporating 40 C.F.R. §§ 261.2 through 261.6). DOE and LANL are required by 20.4.1.600 NMAC (incorporating 40 C.F.R. §§ 265.13 and 265.73(b)) to maintain documentation that demonstrates that waste disposed of at TA 54 Area G is not hazardous waste as defined at 20.4.1.500 NMAC (incorporating 40 C.F.R. Part 261).

The waste streams disposed of at Area G that may be regulated as hazardous waste under RCRA and the HWA are identified in the table on the first page of the Supplemental Information as Item ID numbers 18772, 517638, 520511, 524522, 524567, 529413, 530036, 1001767, 1008018, 1017402, 1017458, and 1035245. In addition, the presence of source, special nuclear, or by-product material was not indicated for Item ID No. 520511, and that waste may be regulated as a non-hazardous solid waste under RCRA Subtitle D.

Non-mixed hazardous waste has been prohibited from disposal at Area G since April 2, 1985, when RCRA interim status authority to dispose of hazardous waste at Area G ended because DOE and LANL withdrew their RCRA Part A Application for waste disposal at Area G. Mixed waste has been regulated by NMED since July 25, 1990, when New Mexico received mixed waste authorization from the U.S. Environmental Protection Agency. Mixed waste is a combination of hazardous waste and source, special nuclear, or by-product material as defined in the federal Atomic Energy Act, 42 U.S.C. § 2011 *et seq.*

In order to determine if records exist that demonstrate that waste disposed of at Area G after interim status authority was lost is not hazardous waste, NMED requires that DOE and LANL submit the following additional information:

1. All non-radiological waste characterization information for the waste streams with Item ID numbers 18772, 517638, 520511, 524522, 524567, 529413, 530036, 1001767, 1008018, 1017402, 1017458, and 1035245, including all acceptable knowledge (AK) documentation as defined in LANL's Acceptable Knowledge Guidance (LIG 404-00-02.0), which was not included in the Supplemental Information.
2. Documentation of toxicity tests performed on, or documentation showing why toxicity tests were not performed on, the waste streams containing or potentially containing RCRA metals, Item ID numbers 524522, 529413, and 530036.

(Explanation for Information Request No. 2: Numerous transmittal forms suggest the presence or potential presence of RCRA toxic metals in the wastes. For example, Waste Profile Request (WPR) No. 2943 indicates the presence of cadmium, lead, and silver. Firing site debris may also be contaminated with RCRA toxic metals. However, there is no indication that these wastes were tested to determine whether they exhibit a toxicity characteristic. For the wastes with Waste Profile Forms (WPF) provided, the forms indicate that DOE and LANL concluded that no RCRA toxic metals were present in the wastes.)

3. Documentation showing how the determination was made, based on knowledge of process, that the waste associated with Chemical Waste Disposal Request (CWDR) 1003449 and WPF 04613, asphalt and dirt from a spill cleanup contaminated with xylene, is not a hazardous waste.

(Explanation for Information Request No. 3: Xylene commercial chemical product or manufacturing chemical intermediate is a hazardous waste under 40 C.F.R. § 261.33(f), and soil or debris contaminated with xylene is a hazardous waste under 40 C.F.R. § 261.33(d). In addition, soil or debris contaminated with xylene, a flammable chemical, at high enough concentrations could exhibit the characteristic of ignitability.)

4. For Item ID No. 517638, documentation showing how the suspected presence of U238 was confirmed.
5. Documentation showing how the presence and concentrations of metals and other hazardous waste in firing site debris are determined using knowledge of process. Include a definition of the terms "firing site debris" and "firing points debris," with an explanation of what specific materials are included. Include an explanation of how it is determined that firing site debris does not include contaminated soil.

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(Explanation for Information Request No. 5: Firing site debris may include metals, HE, and other hazardous wastes. WPF 05720 states "Firing Points Debris itself is not contaminated, however possibility of contaminated dirt comes in contact with debris!!!" Documents included for firing site debris in the Information Submittal state that no metals or other contaminants exist in those waste streams based on a knowledge of process method of characterization.)

6. Documentation showing how it was determined that the waste associated with CWDR 19900925141800 is not a reactive hazardous waste. Include a description of what mock HE consists of and documentation of a hazardous waste determination for mock HE.

(Explanation for Information Request No. 6: CWDR 19900925141800 indicates that the waste contains LiOH, LiH, and mock HE.)

7. A statement of whether or not solid waste that is neither hazardous waste nor source, special nuclear, or by-product material was in the past or is currently being disposed of at Area G. If non-hazardous solid waste has been or is being disposed of, state whether and how requirements in RCRA Subtitle D and New Mexico solid waste management regulations are met. Provide documented criteria for waste disposal at Area G.

(Explanation for Information Request No. 7: RSWDR S855873 indicates the disposal of asbestos waste and shows no confirmed evidence of radioactivity in the waste.)

8. A copy of all forms referenced in the Supplemental Information, and an explanation of how the wastes with Item ID Nos. 1001767, 1008018, 1017402, 1017458, and 1035245 are identified on CWDR No. 199009251418000.

(Explanation for Information Request No. 8: The table on the first page of the Supplemental Information cross-references numerous waste characterization and disposal documents included in the Supplemental Information and refers to a number of CWDR forms that were not included in the Supplemental Information. Only CWDR Nos. 1003449 and 3011359 were included in the Supplemental Information.)

9. A description of DOE and LANL's record retention policy for waste characterization documents associated with wastes disposed of at Area G. If the record retention policy has changed over time, include a description of those changes from 1980 to the present. Include an explanation of why WPF's and sufficient AK documentation are not provided for all wastes referenced in the Supplemental Information.

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(Explanation for Information Request No. 9: LANL Implementation Guidelines (LIG) 404-00-02.0, Section 8, Records, states that DOE requires that waste characterization records be retained for the life of the facility accepting the waste.)

10. Hazardous waste characterization information for depleted uranium (DU) waste, if the DU is in alloy form containing a RCRA metal.

(Explanation for Information Request No. 10: Twelve of the 24 waste streams referenced in the Supplemental Information contain DU. The WPF's associated with those waste streams indicate that no or minimal toxic RCRA metals are present in the alloys. A memorandum associated with RSWD L94000596 identifies DU types 11 and 12, various purities of the metal, and the fact that DU is an alloy.)

11. All waste characterization documentation for the ten waste streams disposed of at Area G immediately prior to the date of this correspondence. NMED anticipates that the disposal log reference numbers for these waste streams will be consecutive.
12. A description of efforts to obtain the documentation requested above, including the location of the records, identification of any requested documentation that is known or suspected to be missing or otherwise unobtainable, identity of persons who may have direct knowledge of the waste streams which are the subject of this request, and contact information for those persons.

DOE and LANL shall submit the required information within 60 days of receipt of this letter.

This information request is issued pursuant to NMSA 1978, § 74-4-4.3, 42 U.S.C. § 6927(a), and 20.4.1.600 NMAC (incorporating 40 C.F.R. § 265.74). Section 74-4-4.3.A(1) of the HWA provides that "For the purposes of taking any corrective action or enforcing the provisions of the [HWA], . . . upon request of [NMED] 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 "For 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).

In accordance with these provisions, compliance with this information request by you 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 NMED pursuant to section 74-4-10 of the HWA, or section 7002(a)(1)(A) of RCRA,

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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 \$27,500¹ for each 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).

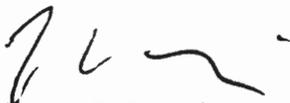
Pursuant to 20.4.1.300 and 800 NMAC (incorporating 40 C.F.R. §§ 262.40(d) and 268.7(a)(8)), NMED requires that all notices, certifications, waste analyses, test results, and documentation of determinations made pursuant to 20.4.1.300 and 800 NMAC (incorporating 40 C.F.R. §§ 262.11 and 268.7) for all waste disposed of at Area G be maintained indefinitely pending resolution of the issues which are the subject of this letter. These records must be maintained even if the waste is excluded from the definition of hazardous or solid waste pursuant to 20.4.1.200 (incorporating 40 C.F.R. §§ 261.2 through 261.6). These records include any documentation of determinations made that the waste was excluded from the definition of hazardous or solid waste pursuant to 20.4.1.200 (incorporating 40 C.F.R. §§ 261.2 through 261.6). Failure to maintain these records is a violation of 20.4.1.300 and 800 NMAC (incorporating 40 C.F.R. §§ 262.40(d) and 268.7(a)(8)), and may subject DOE and LANL to the penalties specified above.

¹ Although this provision of RCRA on its face provides for a civil penalty not to exceed \$25,000, the maximum penalty has been increased to \$27,500 to account for inflation pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3107 note, 40 C.F.R. § 19.4, Table 1.

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Please contact Steve Pullen of my staff at (505) 428-2544 if you have questions or need additional information.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:sp

cc: J. Kieling, NMED HWB
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C. Will, NMED HWB
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file: Reading and LANL TA-54