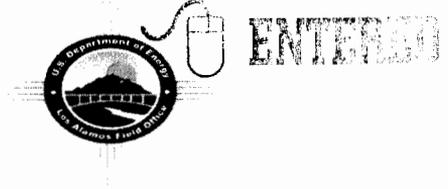


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Date: **DEC 16 2014**
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LA-UR: 14-29266

Locates Action No.: N/A

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Mr. John E. Kieling, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive, Building 1
Santa Fe, NM 87505-6303

DEC 16 2014

**NMED
Hazardous Waste Bureau**

Dear Mr. Kieling:

**Subject: Response to Request for a SWMU Assessment Report for the Diesel Fuel Spill from
AST 55-560 Los Alamos National Laboratory EPA ID#NM0890010515**

The United States Department of Energy and Los Alamos National Security, LLC ("DOE/LANS") provide the following response to the New Mexico Environment Department's ("NMED") Hazardous Waste Bureau ("HWB") letter request of October 16, 2014, for a "SWMU Assessment Report Diesel Fuel Spill from AST 55-560 Los Alamos National Laboratory EPA ID # NM0890010515 HWB-LANL-MISC." As explained below, DOE/LANS do not believe a report is necessary because significant investigative and remediation work has already been performed, and reported on, pursuant to Petroleum Storage Tank Bureau ("PSTB") direction under 20.5.12 NMAC. Further, a SWMU assessment report is not required under the March 1, 2005, Compliance Order on Consent ("Consent Order").

Site History

On January 22, 2013, a #2 Low Sulfur Diesel Fuel release was discovered at the skid sump associated with Aboveground Storage Tank ("AST") 55-560. It is believed the release into the skid sump began in November of 2012 resulting in an overflow from the sump on or about January 10, 2013. An emergency response, subsequent soil removal and application of a commercial bioremediation product were conducted between January and August of 2013, and the nature and extent of remaining contamination at the site is defined. Additionally, there is no surface water within 500 feet of AST 55-560, nearby storm drains were



not impacted by the release and the depth to the regional aquifer in the vicinity is approximately 1,300 feet. No perched groundwater or intermediate-depth saturated horizons have been encountered during previous investigations within the vicinity of AST 55-560.

Regulatory History

DOE/LANS have submitted to NMED the following notifications and reports related to the AST 55-560 release:

- Investigation Report For Addendum to the Work Plan For The Removal Of Soils Contaminated With Diesel Fuel Released From RLUOB Aboveground Storage Tank 55-560, Additional Sampling and Analysis Plan. **LA-UR-14-24294 June 2014.**
- Addendum to the Work Plan for the Removal Of Soils Contaminated with Diesel Fuel Released from the RLUOB Aboveground Storage Tank 55-560,#4670, Additional Sampling and Analysis Plan. **LA-UR-13-28207 October 2013.**
- Soil Resampling Results at the RLUOB Release Site, #4670, Following Bioremediation. **LA-UR-13-26629 August 27, 2013.**
- Addendum to the Work Plan For The Removal Of Soils Contaminated With Diesel Fuel Released From RLUOB Aboveground Storage Tank 55-560 (LAUR-13-20652) For Bioremediation Of Contaminated Soil At The Radiological Laboratory/Utility/Office Building (RLUOB) Aboveground Storage Tank Diesel Release Site #4670. **LA-UR-13-25131 July 11, 2013.**
- Estimated Volume of Diesel In Excavated Soil Removed From The Radiological Laboratory/Utility/Office Building (RLUOB) Aboveground Storage Tank Diesel Release Site. **LA-UR-13-24047 July 11, 2013.**
- Response to the May 20, 2013 NMED/HWB Email on the Radiological Laboratory/Utility/Office Building (RLUOB) Aboveground Storage Tank Diesel Release Site Investigation Report. **LA-UR-13-24148 June 11, 2013.**
- Proposed Work Plan for Bioremediation of Contaminated Soil at the Radiological Laboratory/Utility/Office Building (RLUOB) Aboveground Storage Tank Diesel Release Site #4670. **LA-UR-13-24771 July 2, 2013.**
- Preliminary Investigation Report for the Removal of Soils Contaminated with Diesel Fuel Released From RLUOB Aboveground Storage Tank 55-560. **LA-UR-13-22726 April 29, 2013.**
- Work Plan for the Removal Of Soils Contaminated With Diesel Fuel Released from RLUOB Aboveground Storage Tank 55-560. **LA-UR-13-20652 February 1, 2013.**
- 14 Day Spill Report for the RLUOB Diesel Aboveground Storage Tank Spill at the Los Alamos National Laboratory. **LA-UR-13-20651 February 5, 2013.**

Based on the investigation and remediation performed at the release site, DOE/LANS requested a determination from the PSTB for “no further action” (“NFA”) at the site. That request is pending.

Current Status

While the no further action request to the PSTB was pending, DOE/LANS received a request to submit a SWMU assessment report pursuant to Section V.C. of the Consent Order. That section requires submission of information relating to the type and function of the unit, general dimensions, dates of operation, waste identification, information relating to the release and monitoring data. This information has been submitted already to NMED in the aforementioned reports.

DOE/LANS has also addressed NMED's request regarding the presence of residual TPH-DRO in one borehole at a level greater than the NMED industrial screening guideline (which is based on groundwater exposure). At the next sampled interval (23-24 ft below ground surface) in the same borehole, the TPH-DRO concentration decreased by more than 80%, was below the industrial screening guideline and substantially decreased further at deeper depths. Based on the decreasing concentration of TPH-DRO, lack of proximity to any water source or privately owned property and the low risk of any hazard to workers, DOE/LANS stated no further characterization or removal is necessary. Restating this conclusion in another report would be duplicative regulation and is unnecessary.

Solid Waste Management Units

More broadly, the release at AST 55-560 does not meet the definition of a SWMU under the Consent Order, which is:

Any discernable unit at which solid waste has been placed at any time, and from which the Department determines there may be a risk of a release of hazardous waste or hazardous waste constituents irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at the Facility at which solid wastes have been routinely and systematically released; they do not include one-time spills. Consent Order, Section III.B (emphasis added).

This language is consistent with EPA's interpretation of what constitutes a SWMU. In 1990, EPA stated that a "one-time spill of hazardous wastes () would not be considered a [SWMU]" and "leakage from a chemical product storage tank would generally not constitute a solid waste management unit; such "passive" leakage would not constitute a routine and systematic release since it is not the result of a systematic human activity." 55 Fed. Reg. 30798 (July 27, 1990). EPA confirmed this interpretation of a SWMU in 1996 and noted it had been used consistently in permits and affirmed by the Environmental Appeals Board. 61 Fed. Reg. 19431 (May 1, 1996).

It has thus far not been disputed that the release at AST 55-560 was a one-time spill and not a routine and systematic release. Accordingly, the site should not be regulated as a SWMU. DOE/LANS recognize that EPA has stated the form of regulatory authority used to oversee cleanup may have little practical impact as investigative and remedial techniques are generally similar. However, in this case, the PSTB has already invoked its authority and directed investigation and cleanup actions under 20.5.12 NMAC. The site is at the stage where an NFA determination may be appropriate. It may be that NMED-HWB disagrees that an NFA

is proper and that more work or monitoring will be required. However, if that is the case, such work should be completed under the regulatory program administered by the PSTB, which has already been employed and is tailored to address releases from above ground storage tanks. In any event, it would be inefficient and unnecessary to commence a new regulatory process under the Consent Order.

Conclusion

DOE/LANS are committed to the appropriate investigation, remediation and closure of the AST 55-560 release. However, that work should be completed under the appropriate regulatory framework. Because that regulatory framework does not include the Consent Order, DOE/LANS respectfully request that the release be resolved within the ongoing PSTB process without the need to submit a SWMU Assessment Report.

Sincerely,



Anthony R. Grieggs
Group Leader
Environmental Compliance Programs (ENV-CP)
Los Alamos National Security LLC

Sincerely,



Gene E. Turner
Environmental Permitting Manager
Environmental Projects Office
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ARG:GET/lm

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