

TA73

State of New Mexico
ENVIRONMENT DEPARTMENT



BILL RICHARDSON
GOVERNOR

Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Telephone (505) 428-2500
Fax (505) 428-2567
www.nmenv.state.nm.us



RON CURRY
SECRETARY

CERTIFIED MAIL
RETURN RECEIPT REQUIRED

July 12, 2006

Mr. Edwin Wilmot, Manager
Los Alamos Site Office-Department of Energy
528 35th Street, Mail Stop A316
Los Alamos, NM 87544

Mr. 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 87545

SUBJECT: NOTICE OF VIOLATION
LOS ALAMOS NATIONAL LABORATORY (LANL),
EPA ID NM0890010515

Dear Messrs. Wilmot and Watkins:

The New Mexico Environment Department (Department) hereby issues this Notice of Violation (NOV) to the Department of Energy (DOE) and the Los Alamos National Security, LLC (LANS) (collectively, the Respondents), for violation of the March 1, 2005 Compliance Order on Consent (Order) issued under the New Mexico Hazardous Waste Act (HWA), NMSA 1978, § 74-4-10. The violation occurred during removal of the ash pile, Solid Waste Management Unit (SWMU) 73-002, at Sigma Mesa. The Department concluded that a violation occurred based on the Respondents' letter dated January 18, 2006 and the documents included therewith, submitted in response to the Department's December 19, 2005 Request for Information under the HWA.

The Department hereby gives the Respondents notice of the following violation:

On November 11, 14, and 16, 2005, the Respondents sent five shipments of debris from the ash pile on Sigma Mesa (SWMU 73-002) to the Los Alamos County municipal landfill for disposal, contrary to the express provisions of the approved work plan entitled *Corrective Action Work Plan for Solid Waste Management Unit (SWMU) 73-002 (Incinerator Ash Removal)*, dated September 2005. Section VI.L.2 of the Order provides that, upon approval, the work plan is incorporated into and becomes an enforceable part of the Order; it also requires the Respondents to implement the



Messrs. Wilmot & Watkins
July 12, 2006
Page 2

approved work plan. The Respondents' disposal of the debris at the municipal landfill is therefore in violation of the requirements of the Order.

The Order clearly states the requirements for approval and implementation of the work plan. Section III.M.2 of the Order contains the general procedure for submittal and review of work plans and other documents. The Order provides that upon completing its review of a work plan, "the Department will send the Respondents a written notice of approval, approval with modifications, or disapproval, and will state in writing the deficiencies and other reasons for any modifications or disapproval." The Order further provides that "[u]pon receipt of a written notice of disapproval, the Respondents shall revise the document to incorporate all modifications and comments, and otherwise correct all deficiencies that gave rise to the disapproval, or provide responses to written deficiency comments."

Section VI.L.2 of the Order sets forth the requirements for investigation and cleanup of the ash pile. It requires the Respondents to submit to the Department for approval a work plan, "prepared in accordance with Section XI.B of this Consent Order," and "submitted by the date specified in Section XII of this Consent Order," or May 31, 2005. Section VI.L.2 of the Order further provides: "Upon notice of written approval, the Respondents shall implement the approved work plan. Upon Department approval, the work plan shall be incorporated herein by reference and become an enforceable part of the Order."

In May 2005, pursuant to Section VI.L.2 and the schedule in Section XII of the Order, the Respondents submitted to the Department for approval a draft work plan for the ash pile, entitled *Corrective Action Work Plan for Solid Waste Management Unit (SWMU) 73-002 (Incinerator Ash Removal)*, and dated May 2005. The draft work plan stated (p. 16) that debris associated with the ash pile "will be picked and or segregated, bagged and disposed of as municipal waste. This may include brushing off ash from the debris to accomplish the goal of sending most of the debris to a local landfill." On July 19, 2005, the Department sent to the Respondents a letter disapproving the work plan, and explaining the reasons for that disapproval. Among other comments, the Department's letter stated (p. 3): "[The Department] does not believe that the [Respondents] will be able to reasonably demonstrate that all contamination has been successfully removed from debris encountered at the site nor have the [Respondents] proposed a method to demonstrate this."

In August 2005, the Respondents submitted to the Department a second draft work plan. The work plan stated (p. 14) that items of debris "will be cleaned in an area set up for decontamination by brushing off ash residue, using wet wipes to wipe all surfaces, followed by a visual inspection by the waste management representative to ensure proper cleanliness." The items would then be disposed of in a municipal landfill. On September 6, 2005, the Department sent the Respondents a second notice of disapproval letter. The Department restated (p. 2) its earlier comment that removal of all contamination could not be demonstrated.

In September 2005, the Respondents submitted to the Department a third draft work plan. The work plan stated (pp. 11-12) that debris "that has been in direct contact with the ash will be

Messrs. Wilmot & Watkins

July 12, 2006

Page 3

managed with the ash” and disposed of at the EnviroCare of Utah facility. The Department approved the revised work plan on September 30, 2005.

In November 2005, the Respondents implemented the approved work plan. However, on November 11, 14, and 16, 2005, the Respondents sent five shipments of debris from the ash pile to the Los Alamos County municipal landfill for disposal.

The Department first became aware of the disposal during a conference call with Laboratory representatives on December 16, 2005. After the meeting, by letter dated December 19, 2005, the Department requested any and all information pertaining to the final disposition of remediation waste from SWMU 73-002 corrective action, including manifests and other shipping documents. In their January 15, 2006 response, the Respondents acknowledged that disposal of the debris “was not in accordance with the approved work plan, and was due to human error.”

In accordance with section 74-4-10(C) of the HWA, the Department may assess a civil penalty of not more than \$25,000 for each day of noncompliance with a compliance order. The Department will propose a civil penalty for these violations in a settlement offer, which will be sent by separate letter. The Department requests a meeting with the Respondents for the purpose of negotiating a settlement of the Department’s claim for penalties for the violations described in this NOV.

Any action the Respondents take in response to this letter does not relieve the Respondents of their obligation to comply with all applicable laws and regulations. If you have any questions regarding this letter, please call Kathryn Chamberlain of my staff at (505) 428-2546. To arrange a settlement meeting, contact me directly within ten (10) days of your receipt of this letter at the above address, or at (505) 428-2512.

Messrs. Wilmot & Watkins

July 12, 2006

Page 4

Sincerely,



James P. Bearzi

Chief

Hazardous Waste Bureau

JPB:kc

cc: K. Chamberlain, NMED HWB
D. Cobrain, NMED HWB
A. Vollmer, NMED HWB
C. de Saillan, OGC
S. Yanicak, NMED DOE OB, MS J993
L. King, EPA 6PD-N
V. George, ENVP-DO, MS J978
A. Phelps, ENV, MS T002
J. Ordaz, DOE LASO, MS A316
file: Reading and LANL '06 (SWMU 73-002)