

07-034



January 15, 2007

Ron Curry, Secretary
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

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

State of New Mexico
Attorney General
Gary King, Esq.
P.O. Drawer 1508
Santa Fe, NM 87504-1508

RE: Sandia National Laboratories' (SNL) Mixed Waste Landfill (MWL):
1. Citizen Action Request for Information; 2. Request for New Mexico Environment Department (NMED) Investigation of SNL and the Department of Energy's (DOE) Construction of a Subgrade Structure at the MWL in Violation of a NMED November 2006 Notice of Disapproval; 3. Request for NMED to Order a Halt and/or Initiate Action to Seek a Restraining Order for Construction Activities at the MWL; 4. Request for Imposition of Penalties against the SNL/DOE, and; 5. Request for Suspension/Revocation of the MWL Module IV HSWA Permit for Permit Violations and Violation of the Resource Conservation and Recovery Act (RCRA), and; 6) Request for Implementation of RCRA Closure for the MWL as per 40 C.F.R Subparts F and G.

Dear Secretary Curry, Attorney General King and Mr. Bearzi:

Appendix A of the Sandia/DOE response to the NMED November 2006 Notice of Disapproval (NOD) regarding the Mixed Waste Landfill indicates that Sandia has illegally proceeded with the construction and implementation of the Corrective Measures Implementation Plan by constructing the subgrade for the dirt cover. This directly contravenes the NMED's 11/21/06 Dear Citizen letter that states, "NMED's review of the CMI Plan has revealed several deficiencies that must be corrected before implementation of the CMI work." (Emphasis supplied.)

Violation of RCRA Corrective Action and the NMED's NOD. On Nov. 20, 2006, the NMED sent out a "Notice of Disapproval: Mixed Waste Landfill Corrective Measures Implementation Work Plan, November 2005, and Requirement for Soil-Vapor Sampling and Analysis Plan, Sandia National Laboratories. (NOD)" The Notice of Disapproval is

aimed at the landfill cover construction plans and the performance modeling. NMED specifically noted “the rupturing of containers” that could have occurred since the mid 1990s and “the leaking of their contents” and the need to have “more current soil-gas data to help resolve this issue.”

NMED stated (Part 1, at para 2) that the Sandia was to “Provide a more detailed schedule that, at a minimum, indicates completion times for the following cover and project elements: subgrade, bio-intrusion barrier, native soil layer, topsoil layer, seeding fencing, overall completion of project, and submittal of Corrective Implementation (CMI) Report to NMED. *As the actual start time is dependent on when the CMI Plan is approved*, the completion times can be proposed as the number of days from the start time (assume the start time = 0 days).” (Emphasis supplied).

On December 15, 2006 DOE/Sandia Filed Responses to NMED’s Notice of Disapproval. In Appendix A of that document, the DOE/Sandia states “Since boreholes will be drilled through **the recently-completed subgrade**, the added thickness of the subgrade at each boring location will have to be accounted for, in order that the samples are collected from the same depths that were sampled in 1994.” This statement indicates that DOE/Sandia has completed action to construct the subgrade component of the evapo-transpiration vegetative cover for the MWL without the prior approval of NMED and before the authorized start time.

SNL/DOE’s action constitutes noncompliance with the NOD statement that the actual start time for the subgrade (among other items) is “dependent on when the CMI Plan is approved.” The CMI Plan has not been approved and the SNL/DOE action is precipitous and illegal.

Violation of the Module IV HSWA Permit. Under terms of the EPA issued Module IV HSWA Permit, the construction of the subgrade prior to the final approval of the CMI Plan is a “failure to comply with [a] condition of the Permit, constitutes a violation of the Permit and is grounds for enforcement action, permit amendment, termination, revocation, suspension, or denial of permit renewal application. (See, Module IV HSWA Permit F. Reporting Requirements). **Citizen Action is hereby requesting that NMED:**

- **Bring an action for immediate suspension of all construction activities at the MWL;**
- **Revoke the applicable portion of the MWL HSWA permit; and,**
- **Impose full RCRA requirements of 40 CFR Subparts F and G for closure, post closure and a RCRA-compliant well monitoring program as per 40 CFR 264.90-100.**

Violation of RCRA Corrective Action. The RCRA provisions for Corrective Action have been violated because the SNL/DOE proceeded with construction activities for the cover contrary to the November 2006 NOD that required that the start time to be after approval of the Constructive Measures Implementation (CMI) Plan. RCRA provisions for Corrective Action have been violated because Sandia proceeded with construction of the subgrade portion of a dirt cover without public notice requirements and prior to

submission of a final Operation and Maintenance Plan, Construction Workplan and final Plans and Specifications after final review by NMED in accordance with a November 2006 Notice of Disapproval issued to Sandia.

Request for Information. Citizen Action has some questions about this matter and would like to receive all documentation pertinent to these questions as well as NMED's written answers:

1. Did NMED provide approval for the construction of the subgrade structure?
2. When did NMED become aware of the construction of the subgrade structure?
3. Did the NMED issue any order to halt construction when it became aware of the subgrade construction?
4. Has NMED inspected the subgrade construction?
5. How much area does the subgrade construction cover? Does it include the unclassified and the classified areas at the MWL?
6. What were the operations and equipment used in putting down the subgrade structure?
7. What is the depth of the subgrade structure?
8. Does NMED have a workplan on file that was approved by NMED for construction of the subgrade cover prior to issuance of the NOD?
9. The Response indicates that Sandia/DOE apparently intend to proceed with more construction of the dirt cover at the MWL upon the "assumption" that NMED has provided approval. Is NMED accepting Sandia's "assumption of approval" as de facto approval by NMED?
10. Is additional work currently proceeding for installation/construction of any other portions of the evapo-transpiration vegetative cover which are in the CMI Plan?
11. What are the physical properties of the materials used in construction of the subgrade structure?
12. What types of compaction were used in the subgrade construction?
13. What is the permeability (k_{unsat}) for the travel of moisture and air through the constructed subgrade?
14. What will be the effect on soil surface monitoring for gaseous contaminants of concern at the MWL?
15. How much federal money has been expended by SNL/DOE on the construction of the subgrade structure?
16. How much money will be expended by SNL/DOE to continue construction activities at MWL?
17. How does the construction of the subgrade structure further any protection of the ground water for Albuquerque?

Demand for Investigation by NMED. Citizen Action believes that the conduct of Sandia/DOE in constructing the subgrade structure is a violation of the NOD; the continuing CMI Plan process; the Consent Order, the Module IV HSWA Permit; RCRA Corrective Action; a denial of Due Process; violation of DOE Orders for Health and Safety, and; ignores the existence of the lawsuit challenging the dirt cover remedy currently in the New Mexico Court of Appeals to which NMED, SNL/DOE and Citizen

Action are parties. Citizen Action hereby requests that NMED immediately investigate and provide written responses regarding our complaint as per 40 CFR 261.16 (d)(2)(i).

Demand for NMED Order to Halt or Restraining Order for Construction Activities.

Citizen Action Requests that NMED order a halt or seek a restraining order to all SNL/DOE construction activities at the MWL associated with the CMI Plan cover remedy.

Demand for NMED Penalties. Citizen Action requests further that NMED impose stipulated financial penalties for the construction of the subsurface area for non-compliance with procedures as per the Consent Order (CO) of April 29, 2004. See also, p. 28 of the CO that requires Respondents SNL/DOE “to comply with all applicable federal, state and local laws or regulations, and shall obtain all necessary approvals or permits prior to conducting the activities required by this Consent Order and performing the obligations required hereunder.”

Citizen Action is requesting a meeting with the NMED at the earliest opportunity and an immediate response from NMED regarding this matter. Thank you.

Sincerely,

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Cc: New Mexico Governor Bill Richardson; New Mexico Senators Jeff Bingaman and Pete Domenici; New Mexico Rep. Heather Wilson; Region 6 Environmental Protection Agency (EPA) Rich Mayer; Office of EPA Inspector General John Coll, Ed Baldinger and Larry Dare; Office of DOE Inspector General Dan McAdams; City of Albuquerque Groundwater Protection Advisory Board Bruce Thomson; Attorney Nancy L. Simmons