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07-044

RON CURRY
SECRETARY

CINDY PADILLA
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 23, 2007

David B. McCoy
Director, Citizen Action New Mexico
P. O. Box 4276
Albuquerque, NM 87196-4276

**RE: LETTER OF FEBRUARY 28, 2007, CONCERNING APPLICABILITY OF
SUBPART F GROUNDWATER REQUIREMENTS TO SANDIA NATIONAL
LABORATORIES' MIXED WASTE LANDFILL**

Dear Mr. McCoy:

I am in receipt of your February 28, 2007, letter to New Mexico Environment Department (NMED) Cabinet Secretary Ron Curry and me in which you request that NMED revise its Notice of Disapproval issued on November 20, 2006, for the Corrective Measures Implementation (CMI) Plan for the Sandia National Laboratories Mixed Waste Landfill (MWL). You also request that NMED revise and reissue its response to comments on the CMI Plan issued on the same day. You state that revisions should be made based on your belief that the groundwater monitoring requirements at 20.4.1 NMAC incorporating 40 C.F.R. §§ 264.91-264.100 apply to the MWL. In support of your argument, you quote a passage from a February 20, 2007, e-mail from Richard Mayer of the U. S. Environmental Protection Agency Region VI (EPA) to Joni Arends, Executive Director of Concerned Citizens for Nuclear Safety. In particular, you quote Mr. Mayer's statement that "[t]he groundwater monitoring requirements for SWMUs [solid waste management units] should mirror the requirements for regulated units under Subpart F".

Preliminarily, it should be noted that Mr. Mayer's e-mail did not specifically address the MWL or any specific groundwater monitoring requirements that should be in place at that site (as Ms. Arends' initial question did not address the MWL). However, Mr. Mayer's e-mail comports with EPA's and NMED's longstanding position that the ultimate goal of groundwater monitoring is to protect human health and the environment, whether conducted under 40 C.F.R. §§ 264.91-

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264.100 or under 40 C.F.R. § 264.101.

In his e-mail, Mr. Mayer did not state that Subpart F groundwater monitoring requirements apply to SWMUs. Rather, he stated that groundwater monitoring requirements for SWMUs "should mirror" Subpart F requirements. Thus, Mr. Mayer's use of the phrase "should mirror" instead of phrases such as "must meet" or "are identical to" appropriately acknowledges that the Subpart F groundwater monitoring regulations do not strictly apply to SWMUs that are not "regulated units", but should be used as guidance for such SWMUs. Mr. Mayer further stated that "each site can have its own unique groundwater monitoring issues." His acknowledgment of the uniqueness of each site recognizes as well that Subpart F requirements are not to be imported wholesale to SMWUs; rather SWMUs should be evaluated on a case by case basis and groundwater monitoring requirements should be tailored to each situation, with the ultimate goal of protecting human health and the environment.

For your reference, NMED's position regarding the application of the corrective action requirements to the MWL is more fully set forth in NMED's Answer Brief, pp. 17-28, in *Citizen Action v. Sandia Corp., et al.*, No. 25,896 (Ct. App.).

Because NMED has determined that the groundwater monitoring requirements at the MWL protect human health and the environment, NMED will not revise the Notice of Disapproval or the response to comments issued for the MWL CMI Plan, as Citizen Action has requested.

Finally, in its letter, Citizen Action has again made unsubstantiated allegations suggesting that NMED somehow has misled the public and the hearing officer. NMED finds the tone and content of your letter at times highly inappropriate and unprofessional. To maintain a productive dialog with NMED, your communications with us need to be professional and civil. Deputy Secretary Cindy Padilla conveyed this message to you in her February 27, 2007 letter to you.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

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JPB:wpm

cc: C. Padilla, NMED Deputy Secretary
J. Kieling, NMED HWB
W. Moats, NMED HWB
T. Skibitski, NMED DOE OB
T. Fox, NMED OGC
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