



**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Hazardous Waste Bureau

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

January 21, 2011

25 JAN '11 AM 11:31

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Group Leader
Water Quality & RCRA Group
Environmental Protection Division
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P.O. Box 1663, K490
Los Alamos, NM 87545

Gene E. Turner
Environmental Permitting Manager
Environmental Project Office
Los Alamos Site Office
National Nuclear Security Administration
3747 W. Jemez Road, MS A316
Los Alamos, NM 87544

**SUBJECT: RESOLUTION OF NOTICE OF VIOLATION
U.S. NNSA/DOE LOS ALAMOS NATIONAL LABORATORY
EPA ID# NM0890010515**

Dear Messrs. Grieggs and Turner:

On December 1, 2009, the New Mexico Environment Department (NMED) conducted a hazardous waste Compliance Evaluation Inspection at Los Alamos National Laboratory (LANL), located in Los Alamos County, Los Alamos. LANL is owned and operated by U.S. NNSA/DOE, and co-operated by Los Alamos National Security, LLC (collectively the Permittees). Based on that inspection and review of information obtained, the NMED issued a Notice of Violation (NOV) dated September 17, 2010.

The NMED has reviewed your response to the NOV dated October 19, 2010. Based on that review, the NMED has made the following determinations regarding the alleged violations:

Violation 1: The Permittees failed to make a proper hazardous waste determination for metal shavings located at Satellite Accumulation Area (SAA) #5053 at TA-3-102 in violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.11. At the time of the inspection, the Permittees' stated the waste was being managed as low-level radioactive waste (LLW) and had used analytical data from a field portable x-ray fluorescence (XRF) instrument to screen for concentrations of metals.

1002-EP-1-25-2011-318103

On December 1, 2009 Chris Serazio, a LANL waste management coordinator escorted NMED inspector Mark Coffman to SAA 5053 in TA-3, Bldg. 102. Mr. Serazio told Mr. Coffman that the waste was currently being managed as LLW, not mixed LLW. NMED requested the analytical data used to make the determination that the waste was nonhazardous. The analytical data provided was a page from a field notebook dated December 3, 2009 and contained only results for rubidium, copper, and iron from XRF analysis on a 5-gallon poly drum. NMED made a second request for analytical data for the SAA 5053 waste during the exit conference on February 2, 2010. In response, the Permittees provided a printout of XRF data dated November 3, 2009. On April 1, 2010, Dusty Rich, the Permittees' lead waste sampling technician, returned a call to Doug Hopinkah, NMED's lead inspector, to answer questions regarding how the Permittees used this analytical data to make a hazardous waste determination. Ms. Rich repeated that the SAA 5033 waste was being managed as LLW only. Furthermore, Ms. Rich stated that the XRF "totals" data was used to make a hazardous waste determination following the "twenty times rule."

The NMED based its finding on this information. However, since the waste was being managed in an SAA, the NMED is willing to accept the Permittees's claim in the NOV response that the waste was being conservatively managed as low-level mixed waste and that the XRF data was only used for screening purposes and not to make a hazardous waste determination. As a result, the NMED has decided to withdraw this violation. Should the Permittees eventually decide to manage the metal shavings as LLW, a proper hazardous waste determination must be made using approved methods.

Violation 2: The Permittees failed to obtain a permit for storage hazardous waste at TA-3-29 Room 9163, Wing 9 Hot Cell (SAA #3181), in violation of 20.1.4.300 NMAC, incorporating 40 CFR 262.34(b), and 20.4.1.900 NMAC, incorporating 40 CFR 270.1(c). The NMED alleged that the original generator was no longer managing this waste and waste has not been added to the container since November 2005. Therefore the waste does not qualify for management using the satellite accumulation requirements.

The federal satellite accumulation rule was developed by EPA in response to requests from the regulated community to reduce the regulatory burden on the initial accumulation of hazardous wastes at various points of generation within a manufacturing facility or laboratory where hazardous wastes are initially generated and collected during daily operations (49 FR 49568-49571, December 20, 1984). In addition, 40 CFR 262.34(c)(1) states that a generator may accumulate hazardous at a point of generation, which is under the control of the operator of the process generating the waste, without a permit or interim status. In a 1993 memo discussing the satellite provision that wastes accumulated be under the control of the operator of the process generating the waste, EPA stated it would view this condition as being satisfied provided the generator demonstrates that the personnel responsible for generating and/or accumulating the waste have adequate control over the temporary storage of these wastes (RCRA Online #11728).

While NMED acknowledges that neither EPA nor the NMED set specific time limits for satellite accumulation except if certain volume criteria were exceeded, the NMED takes the position that the language "initially generated and collected during daily operations," "control of the operator

of the process generating the waste,” and “temporary storage” in these citations implies that an SAA be associated with an on-going process and that satellite accumulation was never intended to allow never-ending storage without a need to support an active waste generating process. Therefore, once the “process” that generated the hazardous waste is gone or significantly changed, the NMED contends the hazardous waste in the former satellite accumulation area should be promptly removed and transferred to a 90-day central accumulation area or a permitted storage unit to avoid the appearance that the generator is attempting to circumvent storage requirements.

The NMED continues to maintain that since the operations in TA-3-29 Room 9163 did not generate any hazardous waste, even intermittently, for five years, the subject waste would not qualify for management under the satellite accumulation provisions. This violation is not substantially different from violations cited in paragraphs 11.e and 11.f of final compliance order, HWB-05-30, issued, 2005. The Permittees’s decision to close to SAA 3181 on September 7, 2010 further underscores the NMED’s position that the operational process in Room 9163 was no longer generating hazardous waste and maintenance of the SAA was unwarranted.

Because each SAA presents unique, site-specific conditions, the applicability of the use of the satellite accumulation provision will always depend upon a generator's particular set of circumstances. Therefore the NMED recommends that a facility contact the Hazardous Waste Bureau if there are any questions regarding the application of this rule.

The NMED withdraws Violation No. 1. Violation No. 2 stands, but been adequately addressed. The NMED will not pursue formal enforcement actions regarding the violations cited in the NOV. No further action relative to the NOV on the part of the Permittees is required. Neither this letter nor any action taken in response to it relieves your facility of its obligation to comply with any other applicable laws and regulations.

If you have any questions regarding this letter, please contact Art Vollmer of my staff at (505) 476-6004.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

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Messrs.Grieggs and Turner
January 21, 2011
Page 4

cc: Art Vollmer, NMED HWB
Sandra Martin, NMED HWB
Doug Hopinkah, NMED HWB
Steve Pullen, NMED HWB
James. C Cantwell, ADESHQ, LANS, LLC

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