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**National Nuclear Security Administration**  
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*Date:* **AUG 26 2014**

*Symbol:* ENV-DO-14-0218

*LAUR:* 14-26224

*Locates Action No.:* N/A

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

Dear Mr. Kieling:

**Subject: Transmittal of Los Alamos National Laboratory Hazardous Waste Permit Applicability Associated with Waste Container Sampling**

The purpose of this letter is to transmit information as requested by the New Mexico Environment Department (NMED) during a technical phone call on June 16, 2014. Written submissions and twice weekly technical phone calls are conducted between the NMED; Los Alamos National Security, LLC (LANS); and the U.S. Department of Energy (DOE) as stipulated by the modified Administrative Order No. 5-19001 issued by the NMED.

On June 16, 2014, Tim Hall, NMED, requested an assessment regarding the Los Alamos National Laboratory (LANL) Hazardous Waste Facility Permit applicability for sampling waste containers. The documentation contained within Enclosure 1 (LA-UR-14-26224) completes Item # 12 of the *Summary Chart - Requested Information/Pending Issues* included as part of the written daily submissions to the NMED from the DOE and LANS, the Permittees.

Mr. John E. Kieling  
ENV-DO-14-0218

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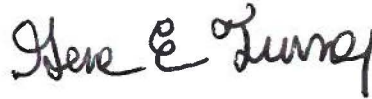
If you have comments or questions regarding this submittal, please contact Mark P. Haagenstad at (505) 665-2014 or Gene E. Turner at (505) 667-5794.

Sincerely,



Alison M. Dorries  
Division Leader  
Environmental Protection Division  
Los Alamos National Security LLC

Sincerely,



Gene E. Turner  
Environmental Permitting Manager  
Environmental Projects Office  
Los Alamos Field Office  
U.S. Department of Energy

AMD:GET:MPH:LVH/kt

Enclosures: (1) Assessment of Permit Section 3.5(1) for Sampling Applicability

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Steve Pullen, NMED/HWB, Santa Fe, NM, (E-File)  
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# **ENCLOSURE 1**

**Assessment of Permit Section 3.5(1) for Sampling  
Applicability**

**ENV-DO-14-0218**

**LA-UR-14-26224**

**Date:**           **AUG 26 2014**

### **Assessment of Permit Section 3.5(1) for Sampling Applicability**

The opening of waste storage containers for the purpose of sampling the contained waste is consistent with the requirements of Section 3.5(1) of the Los Alamos National Laboratory (LANL) Hazardous Waste Facility Permit (Permit). Section 3.5(1) of the Permit states, in part, that “The Permittees shall ensure that all containers are kept closed during storage except when waste is added to or removed from the container or when a container’s contents need to be repackaged (see 40 CFR § 264.173(a))...”

In the preamble to 40 CFR § 264.173(a) the U.S. Environmental Protection Agency (“EPA”) stated: “[a]ll containers have lids or some other closure device, and keeping containers closed whenever possible is simply a matter of good operating practice. It is not expected that containers of hazardous waste need be opened routinely to inspect the waste or the container for reasons other than to add or remove waste.” 45 Fed. Reg. 33199 (May 19, 1980). Subsequent EPA guidance concerning the closed container rule states “[g]enerators may transfer hazardous waste between containers to facilitate storage, transportation, or treatment.” Guidance on 40 CFR 264.173(a) and 265.173(a): Closed Containers (OSWER, Dec. 3, 2009).

The language of the Permit, the underlying regulation and EPA guidance all expressly provide for the opening of containers to add or remove waste. Necessarily, taking samples involves removal of waste. There are also Permit requirements which in certain circumstances mandate opening containers for the purpose of taking samples. Characterization must occur for waste stored or managed at the permitted unit (Permit Section 2.4.1). Permit Section 2.4.7 requires re-evaluation of waste stream characterizations if waste information or generating processes change (Permit Section 2.4.7(2)), or if off-site facilities report a discrepancy (Permit Section 2.4.7(4)). Re-evaluation is also required annually for waste characterized solely by acceptable knowledge (Permit Section 2.4.7(3)). In many cases these requirements cannot be met without opening containers to remove waste for sampling.

The purpose of the closed container rule is to “minimize emissions of volatile wastes, to help protect ignitable or reactive wastes from sources of ignition or reaction, to help prevent spills, and to reduce the potential for mixing of incompatible wastes and direct contact of facility personnel with waste...” 45 Fed. Reg. 33199. LANL employs procedures for sampling that mitigate the potential risks relating to opening containers and that satisfy the purpose of the regulation. Facility procedures include isolating the waste containers from external factors such as ignition sources, spill prevention and/or collection procedures, the use of personal protection equipment, and opening the containers for only the period necessary to remove the waste samples.