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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 5, 2008

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Richard S. Watkins, Associate Director
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**RE: NOTICE OF DISAPPROVAL OF LOS ALAMOS NATIONAL
LABORATORY (LANL) SITE TREATMENT PLAN (STP) MIXED TRU
WASTE TRACKING, JANUARY 28, 2008
HWB-LANL-07-019**

Dear Messrs. Winchell and Watkins:

The New Mexico Environment Department (NMED) has received the response to NMED's October 5, 2007 Notice of Disapproval (NOD) submitted by Los Alamos National Security (LANS) and the U.S. Department of Energy (the Respondents) and referenced by LANL document number ENV-RCRA-08-021. NMED has reviewed this letter and finds it to be unresponsive.

Comment #1:

The Respondents did not provide the information required by NOD Comment #7 which required the Respondents to devise and submit a plan to adequately track the Facility's covered Mixed Transuranic (MTRU) waste generation and off-site shipment. Specifically, NMED requested from the Respondents a plan to account for, track, and verify MTRU waste shipped off-site to the Waste Isolation Pilot Plant (WIPP). Currently, NMED has no way of knowing exact MTRU waste quantities covered by the Site Treatment Plan (STP), annual milestone activities for MTRU waste, specific quantities shipped to WIPP, or confirmation of these shipments.

The Respondents only provided: 1) a statement that “LANL Information Management personnel have revised the database tracking of MTRU STP covered waste”; 2) LANL’s opinion that NMED’s request for notices, such as “*Notices of Completion of Off-Site Waste Shipment*” would be redundant since NMED has access to the WIPP Waste Information System (WWIS) online; and 3) due to LANL’s frequency of waste shipments to WIPP (2 to 3 times weekly), submittals of paper copies of shipping documentation (e.g., manifests, certifications) would be burdensome for LANL.

Comment #2:

The Respondents requested an extension for the development of this tracking plan in a letter dated December 11, 2007 (referenced by ENV-RCRA-07-273). The letter stated, “LANL is working on the plan but requests an extension to February 1, 2008 to submit the MTRU waste reporting and tracking plan.” NMED subsequently granted the requested extension in a letter dated December 20, 2007. The Respondents have yet to submit the required revised tracking system plan.

Comment #3:

NMED understands through a September 25, 2006 letter (referenced by *ESH&Q-06-032*) that the 1995 Transuranic Waste Baseline Inventory Report (TWBR) system is antiquated and is no longer used by the Respondents. NMED has not required a change in the historical method of using treatability groups in the STP reporting system. NMED expects the continued use of treatability groups in future STP Updates for mixed low-level (MLL) and MTRU waste.

Comment #4:

The Respondents’ January 28, 2008 letter regarding the reliability of the WWIS as a tool for NMED to utilize in tracking and verifying shipped waste to WIPP is not accurate. Over the past two years, NMED has worked with the Respondents to improve the reporting of covered MTRU waste in the STP annual updates (see NMED February 28, 2006 letter and LANL September 25, 2006 letter). On November 14, 2006, NMED staff met with the Respondents to discuss MTRU waste stored at the Facility. In this meeting, NMED requested that a list be provided of MTRU waste containers covered under the Federal Facilities Compliance Order (FFCO) STP in order to more easily verify the inventory reported to NMED and the U.S. Environmental Protection Agency (EPA). This list, when it was provided, was compared to containers documented in the WWIS. NMED notified the Respondents in email correspondence dated April 11, 2007 (subject header “Questions on ‘List of FY06 STP Covered MTRU Containers’”) that the resultant comparison indicated an accounting discrepancy involving 4,430 containers. As the Respondents’ June 26, 2007 (referenced by ENV-RCRA-07-149) and September 25, 2006 letters confirm, the WWIS database is an unreliable source that is unable to distinguish between covered MTRU waste and waste historically managed as non-mixed TRU but subsequently identified as MTRU after waste characterization for WIPP disposal. This lack of traceability and verifiability is apparently the cause for discrepancies between the amount of waste managed at LANL, shipped to WIPP, and reported on the STP.

Comment #5:

NMED is concerned that the Respondents are unable to generate an adequate MTRU inventory or report on the inventory for NMED. The Respondents' statement in the September 25, 2006 letter that, "[a]fter extended discussions with DOE staff and LANL Waste Operations personnel it has become evident that it may not be possible to categorize LANL's MTRU waste in a manner that will allow NMED to achieve its stated goal of being '...able to more readily verify the inventory reported to NMED and the U.S. EPA'", while perhaps reflecting the difficulty of such a task, it is an unacceptable disposition of this issue.

A review of past STP Updates reveals that the Respondents are not shipping significant volumes of waste to WIPP. According to Revision 15.0, the total inventory reported in FY03 was 4,141 cubic meters (1,093,952.3 gallons); at the end of FY04 it increased to 4,303 cubic meters (1,136,745 gallons). According to Revision 16.0, the total inventory reported in FY04 was 4,462 cubic meters (1,178,844 gallons) and at the end of FY05, the total was 4,431 cubic meters (1,170,578 gallons). Revision 17.0 states 304.5 cubic meters (80,440 gallons) of MTRU waste was shipped to WIPP leaving an estimated covered 4,152 cubic meters (1,096,842 gallons) on-site. Simply put, the Respondents are not reducing the inventory of MTRU waste on the STP as required by the FFCO. The intention of the FFCO was "...to bring LANL into compliance with LDR storage prohibitions under the HWA and RCRA" (FFCO, page 13) by means of waste volume reporting and established compliance dates for waste shipments. The FFCO was not intended to provide unlimited long-term storage for MLL or MTRU waste at the Facility.

A lack of inventory reduction is also a concern identified by the Defense Nuclear Facilities Safety Board (DNFSB) as expressed in a January 18, 2007 letter from A.J. Eggenberger, DNFSB Chairman, to Samuel Bodman, Secretary of Energy. In the letter, Mr. Eggenberger states, "[t]he Board is concerned regarding the continuing lack of a viable disposition pathway for the high-activity transuranic waste drums at LANL, particularly given the previous failures to resolve this problem." Moreover, during a March 5, 2008 meeting between the U.S. EPA, DOE, and NMED, the EPA expressed their concern with their own lack of understanding of LANL's tracking and verifying processes of the Facility's TRU and mixed TRU waste. At this meeting, Bob Griffis of Shaw Environmental illustrated the tracking system he has devised for DOE. His system in fact shows that the level of MTRU waste tracking NMED is requiring LANL to provide is indeed possible.

Ultimately, risk reduction, particularly at Technical Area (TA) 54 Area G, where the majority of these drums are stored, depends in large part on shipping this waste off-site to WIPP. Eventually, the bottleneck of MTRU waste will ever jeopardize and compromise the closure schedule of TA-54 Area G under the March 1, 2005 Order on Consent. These concerns expressed by NMED, the U.S. EPA, DNFSB, and others are significant and should be taken more seriously by the Laboratory. NMED expects the Respondents to address this issue with the same, if not more, concern held by NMED.

As originally instructed in the October 5, 2007 NOD, the Respondents must submit a plan to adequately track MTRU waste in the STP Updates. Specifically, the plan must account for, at a minimum, the inventory, tracking, and verification of generated covered MTRU waste shipped

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off-site to WIPP. This information must be adequately addressed and submitted for NMED approval so that the STP FY 06 Update and Revision 17.0 Proposal may be approved.

If you have any questions or comments regarding this letter, please contact Rebecca Kay of my staff at (505) 476-6040 or by email at rebecca.kay@state.nm.us.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: J. Kieling, NMED-HWB
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File: Reading and LANL FFCO 2007