NEW MEXICO
ENVIRONMENT DEPARTMENT

SUSANA MARTINEZ
Governor

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Lt. Governor

Harold Runnels Building
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BUTCH TONGATE
Cabinet Secretary

J. C. BORREGO
Deputy Secretary

Certified Mail - Return Receipt Requested

December 28, 2017

Leslie M. Molina, Contracting Officer
US Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza, NE
Albuquerque, NM 87109

Re: **US Army Corps of Engineers/TA-3 Substation; CGP; SIC 1731; NPDES Compliance Evaluation Inspection; NPDES #NMU0001951; November 28, 2017**

Dear Ms. Molina:

Enclosed please find a copy of the report and check list for the referenced inspection that the New Mexico Environment Department (NMED) conducted at your facility on behalf of the U.S. Environmental Protection Agency (USEPA). This inspection report will be sent to the USEPA in Dallas for their review. These inspections are used by USEPA to determine compliance with the National Pollutant Discharge Elimination System (NPDES) permitting program in accordance with requirements of the federal Clean Water Act.

Introduction, detailed site observations, and findings noted during this inspection are discussed in the "NPDES Construction General Permit" section of the inspection report.

You are encouraged to review the inspection report, required to correct any problems noted during the inspection, and advised to modify your operational and/or administrative procedures, as appropriate. If you have comments on or concerns with the basis for the findings in the NMED inspection report, please contact us (see the address below) in writing within 30 days from the date of this letter. Further, you are encouraged to notify in writing both the USEPA and NMED regarding modifications and compliance schedules at the addresses below:

Robert Houston
US Environmental Protection Agency, Suite 1200
Enforcement Branch (6EN-WS)
1445 Ross Avenue
Dallas, Texas 75202-2733

Sarah Holcomb, Program Manager
New Mexico Environment Department
Surface Water Quality Bureau
Point Source Regulation Section
P.O. Box 5469
Santa Fe, New Mexico 87502

If you have any questions about this inspection report, please contact Jennifer Foote at (505)827-0596 or at Jennifer.Foote@state.nm.us.

Sincerely,

/s/ Sarah Holcomb

Sarah Holcomb
Surface Water Quality Bureau

Cc: Carol Peters-Wagnon, USEPA (6EN-WM) by e-mail
David Long, USEPA (6EN-WM) by e-mail
Amy Andrews, USEPA (6EN-WM) by e-mail
David Esparza, USEPA (6EN-WM) by e-mail
Robert Houston, USEPA (6EN-WS) by e-mail
Darlene Whitten-Hill, USEPA (6EN-WC) by e-mail
Nancy Williams, USEPA (6EN-WC) by e-mail
Robert Italiano, NMED District II by e-mail
Karen Armijo, NNSA by email
Bonita Rogozinsky, NNSA by email
Michael Martinez, USACE, by email
Leslie Molina, USACE, by email
Joan F. Coffing, USACE, by email

Form Approved
OMB No. 2040-0003
Approval Expires 7-31-85

NPDES Compliance Inspection Report

Section A: National Data System Coding

Transaction Code	NPDES	yr/mo/day	Inspec. Type	Inspector	Fac Type
1 N 2 5 3	N M U 0 0 1 9 5 1 11	12 1 7 1 1 2 8 17	18 }	19 S 20	2

Remarks

C O N S T R U C T I O N > 1 A C R E

Inspection Work Days	Facility Evaluation Rating	BI	QA	Reserved
67 69	70 2	71 N 72	N 73 74	75 80

Section B: Facility Data

Name and Location of Facility Inspected *(For industrial users discharging to POTW, also include POTW name and NPDES permit number)*	Entry Time /Date	Permit Effective Date
TA-3 SUBSTATION REPLACEMENT PROJECT NEC OF DIAMOND DRIVE AND MERCURY ROAD LOS ALAMOS, NM 87544	10:50am 11/28/17	2/16/2017
	Exit Time/Date 12:41 pm 11/28/17	Permit Expiration Date 2/16/2022

Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s)
Matthew Englert/Gardner Zemke Site Safety Officer/ 904-838-8074
Brian Rose/ Electrical Superintendent

Other Facility Data

SIC CODE:

1731- Electrical Work

Name, Address of Responsible Official/Title/Phone and Fax Number
Leslie M. Molina/ Contracting Officer/ (505) 342-3460
US Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza, NE
Albuquerque, NM 87109

Contacted: Yes [ ] No [x]

Section C: Areas Evaluated During Inspection

(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

U	**Permit**	N	**Flow Measurement**	M	**Operations & Maintenance**	N	**CSO/SSO**
U	**Records/Reports**	N	**Self-Monitoring Program**	N	**Sludge Handling/Disposal**	N	**Pollution Prevention**
N	**Facility Site Review**	N	**Compliance Schedules**	N	**Pretreatment**	N	**Multimedia**
N	**Effluent/Receiving Waters**	N	**Laboratory**	M	**Storm Water**	N	**Other:**

Section D: Summary of Findings/Comments (Attach additional sheets if necessary)

1. **Inspector arrived on site at 10:50am on November 28, 2017 and conducted entrance interview with Matthew Englert where she made introductions, presented credentials and explained the purpose of the inspection. USACE and NNSA representatives were notified by phone of the inspection.**
2. **Exit interview was conducted at approximately 10:50am on November 28, 2017. Preliminary findings of the inspection as detailed in the attached report were discussed with the permittee representatives.**

Name(s) and Signature(s) of Inspector(s)	Agency/Office/Telephone/Fax	Date
Jennifer Foote */s/ Jennifer Foote*	**NMED/SWQB 505-827-0596**	**12/28/17**
Signature of Management QA Reviewer	**Agency/Office/Phone and Fax Numbers**	**Date**
Sarah Holcomb, Program Manager */ s/ Sarah Holcomb*	**NMED/SWQB 505-827-2798**	**12/28/17**

EPA Form 3560-3 (Rev. 9-94) Previous editions are obsolete.

NPDES Construction General Permit Inspection Report – State of New Mexico

Inspection Date	11/28/2017	Entry Time Exit Time	10:50am 12:40 pm
Inspector Name/ Telephone	Jennifer Foote 505-827-0596		
Facility Name/ Physical Location	TA-3 Substation Replacement Project NEC Of Diamond Drive and Mercury Road Los Alamos, NM 87544		
Facility Type	☐ Commercial ☐ Residential ☐ Municipal ☒ Industrial		
County Location	Los Alamos		
Latitude/Longitude (Decimal Degrees)	35.8759°N, 106.32°W		

Operator/Mailing Address	Date Company Operation Began	Authorized Official(s)	Phone	NPDES Tracking Number	NOI Cert Date	SWPPP Cert Date
Gardner Zemke 6821 Academy Parkway W, NE Albuquerque NM 87109	11/20/64	Bill Velasquez	(505) 344-9362	NMR10003H	5/9/17	5/9/17
Army Corp of Engineers	1942	Leslie Molina	(505) 342-3460	NMU0001951	none	none

Was project covered under a previous permit?		☒ Yes	☐ No
If yes, previous NPDES Tracking Numbers:		Gardner Zemke: NMR12BP04 certified Jan 4, 2017	
Actual Start Date	Early April 2017	Estimated End Date	July 31, 2018
Disturbed Area	☐ >5 acre ☒ 1>acre<5 ☐ <1acre and part of larger common plan		
Receiving Water, including information on segment number, impairments, tier	Sandia Canyon; NM-9000.A_047; impairments: Alpha Particles|Aluminum, Dissolved|Copper, Dissolved|Polychlorinated Biphenyls (PCBs)|Thallium; Tier 1		

Permittee Representatives Present During Inspection:			
Name	Company/Organization	Title	Telephone
Matthew Englert	Gardner Zemke	Site Safety Officer	904-838-8074
Ben Kaiser	E2RC	Inspector	(505) 867-4040
Brian Rose	Gardner Zemke	Elec Supt.	

Section I – Introduction:
The TA-3 Substation Project will replace an electrical substation at LANL. The project is estimated to disturb 2 acres at the head of Sandia Canyon. NNSA owns the land the project is constructed on but has subcontracted out the contracting and management of the project to US Army Corp of Engineers and has no authority to direct the contractor with day to day control over the site.

Due to security requirements at LANL, the inspector was not able to take photos during the inspection.

Section II – Observations Summary:

Permit:
Gardner Zemke is the contractor with day to day control over the site and had permit coverage for this project under both the 2012 and 2017 CGP. Their current NOI was certified on 5/9/17.

The Project owner with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications is the US Army Corp of Engineers. They have not applied for permit coverage. Though National Nuclear Security Administration (NNSA) is listed in some documents as providing federal oversight for the project, they cannot direct the contractor who has day to day control over the site.

SWPPP:
The plan certification was not onsite at the time of inspection, but was at the corporate office and forwarded to the inspector the same day. The SWPPP was certified by Gardner Zemke 5/9/17, the same day as the new 2017 NOI was submitted. No updates, including actual dates of start of disturbance, or site map updates were in the onsite plan. BMPs onsite did not match the SWPPP, the SWPPP stated portions of the plan would be updated once details such as the ductbank were finalized. There was no information on stabilization methods, only the standard statement that temporary stabilization such as soil tackifiers would be implemented if an area was undisturbed for 7 days. There is no mention of post construction BMPs such as controls for herbicide contaminated runoff from the future pad. RUSLE calculations were performed using silt fence as a BMP, it appears that the site is currently using the pre-existing sediment pond as the primary BMP, with silt fence and wattles around the perimeter. The plan did include the 2017 permit language.

The actual start date was guessed by Project staff to be around April 3, when the first inspection was performed. Electronic copies of inspections were available onsite. The SWPPP stated inspections would be retained in the SWPPP plan Appendices.

Recordkeeping & Inspections:
The NOI posting was out of date both in format and permit number. Inspections are performed by a subcontractor. The current inspector's qualifications were not in the plan at the time of inspection. Electronic copies of inspections were available but were unsigned by the Operator at the time of this inspection. Corrective actions are not documented per section 5 of the permit. There was no documentation of training being performed.

BMPs/Implementation:
Most downhill perimeter areas of the site had a silt fence installed that acted as a diversion to an existing stormwater pond. No information on the capacity of the pond was available and drainage patterns are changing due to this project. The silt fence had a few areas where only 6-12" remained above the surface, and a couple small holes/thin areas were starting to form in the material but it seemed functional as a diversionary structure. The silt fence was undercut in one area and the existing berm behind it had blown out indicating a discharge from the site. Wattles were installed at the top edge of the pad to reduce flow velocity, there were signs of erosion on the slope below. The Operator stated they had had problems with runon from the adjacent parking lot.

The SWPPP stated that BMPs for the ductbank crossing the head of Sandia Canyon would be determined at a later time. Wattles and a brush barrier were installed, but the SWPPP and site map had

not been updated. No details for brush barrier installation were in the SWPPP. The contractor stated they had rock onsite and stabilized the outfall that day.

One area that had been recently disturbed (since the last rain) had no BMPs installed for a small section that may drain to the canyon instead of to the pond. The liner for the concrete washout was torn. Soil piles and areas that were not disturbed for 7 days were not temporarily stabilized. No materials such as soil stabilizers were onsite.

There was a stabilized construction entrance, dumpsters were covered and a spill kit was available.

Section III – Inspection Findings:
Findings below are organized by permit section.

Part I: Permit Eligibility
Findings:
- Part 1.1.1. Party with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications did not obtain a permit
- Part 1.5 SWPPP Public posting was not current (updated version provided 12-12-17)

Part 2: Design, Installation and Maintenance Requirements
Findings:
- Part 2.1.3 Complete installation of stormwater controls by the time each phase of construction activities has begun
- Part 2.2.5 No temporary stabilization or covering of soil stockpiles
- Part 2.2.12 No documentation of sediment basin design was available
- Part 2.2.14 No documentation of temporary stabilization of disturbed areas
- Part 2.3.4 Liner for concrete washout not maintained

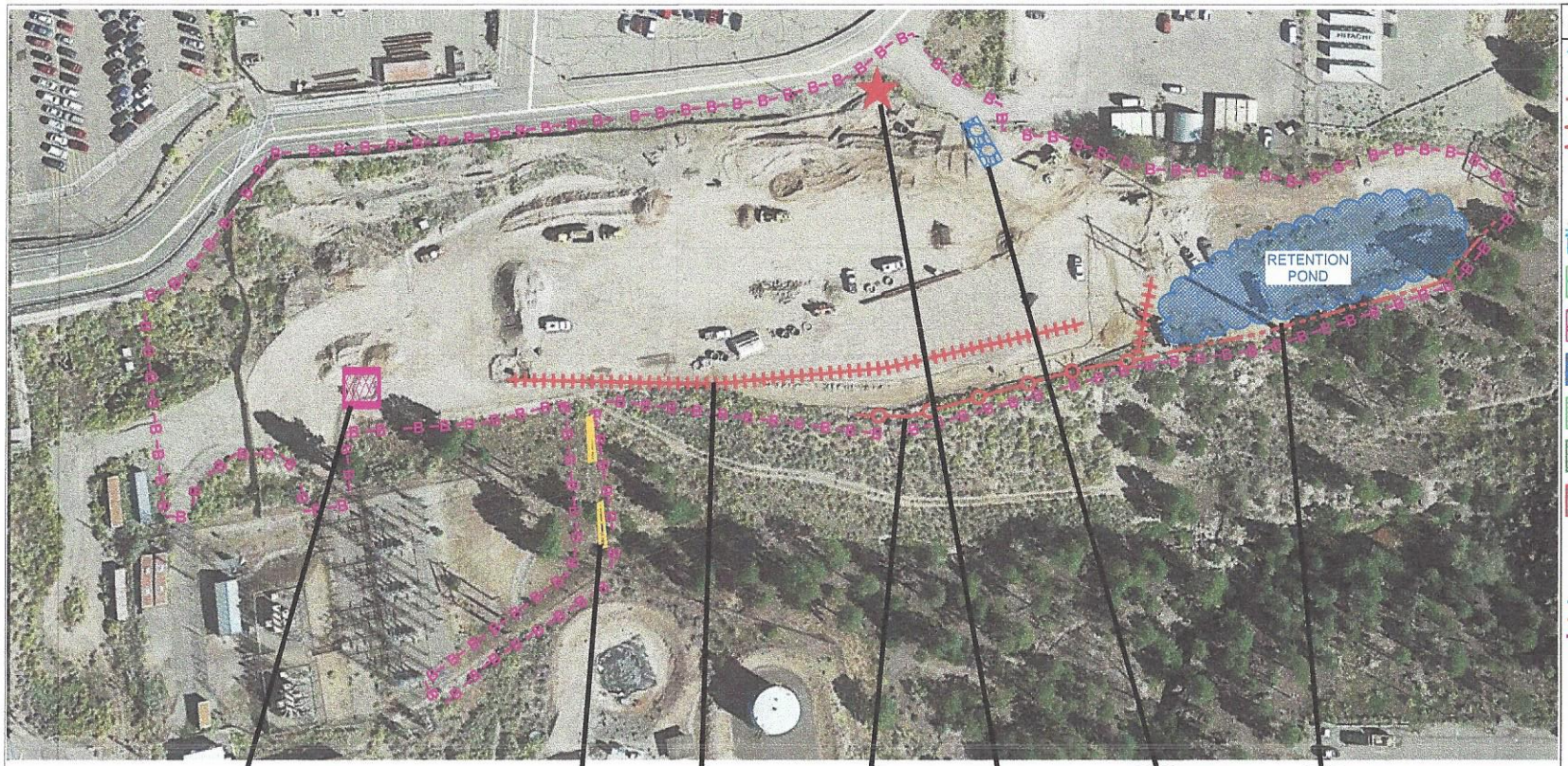
Part 4: Site Inspection Requirements
Findings:
- Part 4.1 Qualifications for the most recent inspector were not included in the SWPPP (provided 11-28-17)
- Part 4.7.2. Inspections were not signed by the Operator (Operator provided delegation of authority letters and stated they have signed the inspections on 12-12-17)

Part 5: Corrective Actions
Findings:
- Part 5 Documentation of corrective actions was not available

Part 6: Staff Training Requirements
Findings:
- Part 6 No documentation of staff training was available (documentation was submitted that training of staff began 11-29-17)

Part 7: Stormwater Pollution Prevention Plan (SWPPP)
Findings:
- Part 7.1 The SWPPP including dates of disturbance and BMP installation tables was not updated
- Part 7.2.4 The site map in the SWPPP had not been updated (updated map provided 12-12-17)
- Part 7.2.6 The plan did not describe controls currently in place including no details for brush barrier

Section IV - List of Appendices:
Appendix A: Updated Site Map (submitted to inspector on 12-12-17)



LEGEND

- POST - CONSTRUCTION FLOW
- PRE - CONSTRUCTION FLOW
- SILT FENCE
- WATTLE OR SOCK
- SPOILS PILE PROTECTION
- EARTHEN BERM
- INLET PROTECTION
- NATURAL BUFFER
- PARKING AND STAGING AREA
- CONCRETE WASHOUT
- STABILIZED CONSTRUCTION ENTRANCE
- VEGETATIVE STABILIZATION
- ENDANGERED/THREATENED SPECIES
- C — CHEMICAL STORAGE
- TEMP TOILET
- LOCATION FOR PUBLIC NOTIFICATION OF NPDES
- PROJECT BOUNDRY
- DISTURBED AREA
- -B -B -B - PROJECT AND DISTURBED BOUNDRY
- CHECK DAM

PARKING AND STAGING AREA, CHEMICAL STORAGE AND CONCRETE WASHOUT IN APPROXIMATE LOCATION. THESE AREAS ARE TO REMAIN TOGETHER IF MOVED. AREAS CAN BE MOVED AFTER START OF CONSTRUCTION.

IMPLEMENTATION	
BMP INSTALL	BMP REMOVE
FINAL STABILIZATION	

CONCRETE WASHOUT

IMPLEMENTATION	
BMP INSTALL	BMP REMOVE
FINAL STABILIZATION	

RIP RAP

WATTLE INSTALLATION

IMPLEMENTATION	
BMP INSTALL	BMP REMOVE
FINAL STABILIZATION	

SILT FENCE

IMPLEMENTATION	
BMP INSTALL	BMP REMOVE
FINAL STABILIZATION	

NPDES PERMITTING

IMPLEMENTATION	
BMP INSTALL	BMP REMOVE
FINAL STABILIZATION	

STABILIZED CONSTRUCTION ENTRANCE

IMPLEMENTATION	
BMP INSTALL	BMP REMOVE
FINAL STABILIZATION	

EARTHEN BERM

IMPLEMENTATION	
BMP INSTALL	BMP REMOVE
FINAL STABILIZATION	

1. SPOIL PILE PROTECTION MEASURES ARE APPLIED AS NEEDED AND ONLY IF A SPOILE PILE EXISTS.
2. PARKING AND STAGING AREAS ARE LOCATED OFF SITE IF NOT INDICATED ON THIS DRAWING SET.
3. ITEMS SHOWN IN THE LEGEND ARE INCLUDED SO THAT ALTERNATIVE BMP'S MAY BE INCORPORATED INTO THE PROJECT AFTER THE INITIAL SET UP, SOME BMP'S SHOWN ARE AVAILABLE BUT NOT NECESSARILY UTILIZED AT THE ONSET OF CONSTRUCTION.
4. NATURAL BUFFER WILL BE USED AS THE INITIAL BMP WHEN APPROPRIATE.
5. WATTLES AND/OR SILT FENCE ARE ONLY REQUIRED IF THERE IS NO 50 FOOT SECTION OF UNDISTURBED VEGETATION.
6. RECEIVING WATER = DRY STREAM, SANDIA CANYON
7. GPS COORDINATES = 35.8759, -106.32
8. DISTURBED AREA = 2 ACRES

N

KELLEY VINCENT FETTER — NEW MEXICO — 13450 — REGISTERED PROFESSIONAL ENGINEER

CERTIFIED PROFESSIONAL — CPSWQ — STORMWATER QUALITY

No	Revision Item	Date

E2RC — INTEGRATED ENVIRONMENTAL CONSTRUCTION ENGINEERING

Design | Comply | Restore

TA-3 SUBSTATION REPLACEMENT PRJ.
LOS ALAMOS, LOS ALAMOS COUNTY, NM

STORMWATER POLLUTION PREVENTION PLAN

DRAWN: C. FETTER PINNEY

DATE: AUGUST 7, 2017

DRAWING NO: 4

Attachment: U.S. Army Corps of Engineers Response

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT,
U.S. ARMY CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109-3435

REPLY TO ATTENTION OF

CESPA-CT 17 January 2018

Ms. Sarah Holcomb, Program Manager
Surface Water Quality Bureau
New Mexico Department of Environmental Quality
1190 South St. Francis Drive
Santa Fe, New Mexico 87502-5469

Dear Ms. Holcomb:

I am writing to clarify the role of the U.S. Army Corps of Engineers, Albuquerque District (USACE) for construction projects being performed on behalf of the National Nuclear Security Agency (NNSA) (and thereby the Department of Energy). These projects are conducted pursuant to the Economy Act, 31 USC §1535, and a Memorandum of Agreement (MOA) between NNSA and USACE. Under that MOA, USACE only serves in a construction and contracting oversight role for the project at issue, and is not the "(p)roject owner with operational control" as stated in Section II of the Inspection Report dated November 28, 2017. The federal Agency proponent of the project is NNSA, and the day-to-day operator is Gardner Zemke Company.

As you are aware, the Environmental Protection Agency's 2017 Construction General Permit (CGP) guidance provides 'Eligibility Conditions' where “operators” of a construction site must obtain coverage under the permit. An “operator” is a party associated with a construction project that meets either of the following two criteria:

a. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., in most cases this is the owner of the site); or
b. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit; in most cases this is the general contractor (as defined in Appendix A) of the project).

USACE meets neither of these criteria. As to criterion (a), in our work with NNSA, USACE does not have authority to unilaterally make changes to plans and specifications. Like many intergovernmental relationships, USACE has been given limited authority to act on behalf of NNSA, which in this case is delineated by the MOA between the Agencies. Under this MOA, USACE has the ability to conduct certain activities for NNSA, but operational control and the "ability to make modifications to (the) plans and specifications" is not one of those conferred abilities.

The MOA between NNSA and USACE makes it clear that when it comes to seeking the appropriate permits, that “NNSA shall obtain for [USACE] all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits and environmental certifications from Federal, state, and local agencies, as necessary during [project] execution.” This provision of the MOA establishes that between the two agencies, USACE is not the entity responsible for seeking "ANY permits and environmental certifications from Federal, state and local agencies...."

As to criterion (b), the party that has day-to-day operational control of project activities is correctly identified in the first sentence of the Section II of the Inspection Report as Gardner Zemke Company. As the general contractor identified on the permit and the NOI, Gardner Zemke is required to ensure compliance with the permit conditions, and are the sole entity authorized to direct their own workforce at the site to carry out activities required by the permit. USACE’s only role is to ensure that Gardner Zemke Company complies with the conditions of their contract.

There is a final reason that USACE cannot be identified as either owner or operator of the project. To do so would be a violation of the Anti-Deficiency Act, 31 USC §1341 (ADA). The ADA provides that no federal agency can perform any function without authorization and without properly appropriated funds. Congress has provided one federal Agency, in this case NNSA, with appropriated funds to perform the work on this project. No funds have been Congressionally-authorized for USACE to perform any of this work. For USACE as an Agency to accept any liability for non-compliance by either NNSA or the contractor would be unlawful.

I hope this clarifies the roles at the project and that you will correct your records accordingly.

Leslie M. Molina

Leslie M. Molina
Contracting Officer
U. S. Army Corps of Engineers
Albuquerque District

Cc:
Carol Peters-Wagnon, USEPA (6EN-WM) by e-mail
David Long, USEPA (6EN-WM) by e-mail
Amy Andrews, USEPA (6EN-WM) by e-mail
David Esparza, USEPA (6EN-WM) by e-mail
Robert Houston, USEPA (6EN-WS) by e-mail
Darlene Whitten-Hill, USEPA (6EN-WC) by e-mail
Nancy Williams, USEPA (6EN-WC) by e-mail
Cont.

Robert Italiano, NMED District II by e-mail
Karen Armijo, NNSA by email
Bonita Rogozinsky, NNSA by email
Michael Martinez, USACE, by email
Joan F. Coffing, USACE, by email
Clinton Muncy, Gardner Zemke by email
Matthew Englert, Gardner Zemke by email