NEW MEXICO
ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau

2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone (505) 476-6000   Fax (505) 476-6030
www.nmenv.state.nm.us

BILL RICHARDSON
Governor

DIANE DENISH
Lieutenant Governor

RON CURRY
Secretary

JON GOLDSTEIN
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 15, 2009

Kimberly A. Davis
Acting Manager
Sandia Site Office/NNSA
U.S. Department of Energy
P.O. Box 5400, MS 0184
Albuquerque, NM 87185-5400

Michael W. Hazen
Vice President
Department 10000
Sandia National Laboratories
P.O. Box 5800, MS 0112
Albuquerque, NM 87185

RE: REQUEST FOR INFORMATION: STORAGE OF IRRADIATED REACTOR
      FUEL AND REACTOR IRRADIATED NUCLEAR MATERIALS
      SANDIA NATIONAL LABORATORIES, EPA ID# NM5890110518

Dear Ms. Davis and Mr. Hazen:

On July 6, 2004, the New Mexico Environment Department (NMED) issued a request for information to the United States Department of Energy (DOE) and Sandia Corporation (collectively, the Permittees) pursuant to Section 74-4-4.3(A) of the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 *et seq.*, and Section 3007(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 *et seq.*, requiring the submission of specified information concerning storage, management, and characterization of irradiated reactor fuel and reactor irradiated nuclear materials (RINM) at Sandia National Laboratories (SNL). NMED received a response from DOE and SC, dated September 9, 2004, to the information request. On November 5, 2004, the Permittees were notified by letter that the response did not provide the information required by the request for information.

On March 15, 2005, the Permittees agreed to provide additional information and requested an extension of time to prepare a report. On March 31, 2005, NMED granted the request. The report documented the storage of materials that NMED determined are potentially regulated as hazardous or mixed waste under RCRA, including materials containing cadmium, silver, sodium,

and lithium.

On March 16, 2006, after the review of the report, NMED again requested information concerning the storage, management, and characterization of irradiated reactor fuel and RINM at SNL, with specific references to items stored at TA-V, the Manzano Bunkers, and items referenced in two reports. The Permittees were also informed that compliance with the information request was mandatory, and that failure to respond fully and truthfully to the information request may result in an enforcement action by the NMED pursuant to Section 74-4-10 of the HWA, or 42 U.S.C. § 6972(a)(1)(A), or both.

NMED has the authority under Section 74-4-4.3(A)(1) of the HWA and Section 3007(a) of RCRA to request information from any person who generates, stores, treats, transports, disposes or otherwise handles hazardous waste. *See also* 20.4.1.900 (incorporating 40 CFR § 270.30(h)) (requiring entities to furnish NMED information to determine whether cause exists to modify, revoke and reissue, or terminate a permit). Pursuant to our authority to request information, NMED has the authority to request information that would assist in the threshold determination of whether materials are hazardous or mixed waste. As stated in other letters, the SNL document entitled "SNL Site Team Report on Assessment of Vulnerabilities of Department of Energy Storage of Irradiated Reactor Fuel and Other Reactor Irradiated Materials: Sandia National Laboratories, New Mexico," suggests that at least some irradiated reactor fuel and RINM stored at SNL is mixed waste. As such, our request for information on these materials is fully within our regulatory authority.
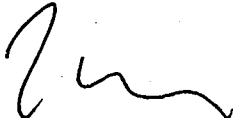
In its letter of June 9, 2006, the DOE, on behalf of the Permittees, informed NMED that it would not submit the requested information to the NMED, but offered, instead, to allow NMED personnel to review the information at SNL. Although not mentioned in the DOE's letter, NMED understands that the information requested by NMED is considered to be Unclassified Controlled Nuclear Information (UCNI). Because NMED may obtain and possess UCNI as provided for in 10 CFR § 1017, Identification and Protection of Unclassified Controlled Nuclear Information, the Permittees have no basis for continuing to withhold the requested information. The Permittees must therefore comply with NMED's letter of March 16, 2006.

As stated above, failure to comply with NMED's information request of March 16, 2006 may result in an enforcement action pursuant to Section 74-4-10 of the HWA, or 42 U.S.C. § 6972(a)(1)(A), or both. Both the HWA and RCRA provide for the imposition of civil penalties for noncompliance with this request. The HWA provides that any person who violates any provision of the HWA, regulation, or permit condition "may be assed a civil penalty not to exceed ten thousand dollars ($10,000) for each day during any portion of which a violation occurs." NMSA 1978, §§ 74-4-10 and -12. RCRA provides that any person who violates any requirement of RCRA shall be liable for a civil penalty not to exceed $27,500 per day for each violation. 42 U.S.C. § 6928(g). Both the HWA and RCRA also provide for criminal fines and imprisonment for knowingly omitting material information or making a false statement or representation in any document used for compliance with the HWA or RCRA. NMSA 1978, § 74-4-11(A)(3); 42 U.S.C. § 6928(d)(3).

The Permittees shall submit the information requested in NMED's letter of March 16, 2006, to the NMED within 30 days of receipt of this letter. If you have any questions regarding this matter, you may contact me by telephone at 505-476-6016 or Tannis Fox, Deputy General Counsel, at 505-827-1603.

Sincerely,

James P. Bearzi
Chief
Hazardous Waste Bureau

JPB: tlf

Cc: J. Goldstein, NMED OTS
       T. Fox, NMED OGC
       J. Kieling, NMED HWB
       W. Moats, NMED HWB
       B. Salem, NMED HWB
       T. Skibitski, NMED DOE OB
       D. Rast, DOE NNSA/SSO, MS0184
       T. Cooper, SNL, MS 1103
       L. King, EPA Region 6 (6PD-N)
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