ERID-203625

Los Alamos
NATIONAL LABORATORY
EST 1943

ACTION REQUIRED

IRM-RMMSO

Official Correspondence Form

Name:	U1101071
Title:	Notice of Violation
Date Received:	6/6/2011
Addressee Name:	Chris Cantwell, ADESH
Originator:	John Kieling, NMED
Action Item Description:	
Action Due Date:	6/17/2011
Responsible for Action:	Search Cantwell, James C
Responsible Office:	ADEP
Distribution:	Chris Cantwell Charles McMillan Isaac RichardsonIII Richard Marquez Carl Beard Michael Graham Deborah Woitte Paul Henry

U1101071

IRM RMMSO Record Copy

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

SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

DAVE MARTIN
Cabinet Secretary

RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 3, 2011

George Rael
Environmental Operations Manager
U.S. Department of Energy/NNSA
Los Alamos Site Office
3747 West Jemez Rd., Mail Stop A316
Los Alamos, NM 87544

Chris Cantwell
Associate Director
Environment, Safety, Health & Quality
Los Alamos National Security, LLC
P.O. Box 1663, MS K491
Los Alamos, NM 87545

RE: NOTICE OF VIOLATION
LOS ALAMOS NATIONAL LABORATORY
EPA ID #NM0890010515

Dear Messrs. Real and Cantwell:

The New Mexico Environment Department (the Department) hereby issues this Notice of Violation (NOV) to the United States Department of Energy (DOE) and Los Alamos National Security, LLC (collectively, the Respondents) for violation of the June 14, 2007 Settlement Agreement and Stipulated Final Order (Stipulated Order), No. HWB 07-27, made by and among the Department and the Respondents. The Department and the Respondents entered into this Stipulated Order to resolve alleged violations of the Hazardous Waste Facility Permit issued by the Department pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978, § 74-4-10, and alleged violations of the administrative Compliance Order on Consent (Consent Order) dated March 1, 2005.

The Department hereby gives the Respondents notice of the following violation:

The violation occurred when the Respondents failed to enter environmental data, such as soil, rock, and pore gas data, from the Los Alamos National Laboratory (Laboratory), every week into the Risk Analysis, Communication, Evaluation, and Reduction (RACER) database as required by

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sections IV.28.b and IV.29 of the Stipulated Order. In the Stipulated Order, RACER is also known as the "project."

Section IV.28.b of the Stipulated Order requires that "The project will accumulate, consolidate, and organize all environmental data, such as soil and groundwater monitoring data, from the Laboratory and enter the data into a computer database." In addition, section IV.29 of the Stipulated Order requires that "As soon as the database is functioning, the Respondents shall provide updated data to the independent manager each week until the termination of the Consent Order."

The New Mexico Community Foundation (NMCF) is the independent manager of the RACER database as required by section IV.28.c of the Stipulated Order. NMCF has been managing the database since June 6, 2009. The RACER Data Analysis Tool was created so that persons interested in environmental conditions in and around the Laboratory could have access to environmental data collected in the area. To ensure that the data provided to RACER are accurate and complete, an audit was conducted of Laboratory's database by Risk Assessment Corporation under contract with the NMCF on December 8, 2010. During the site visit, the audit team discovered that some available environmental data, primarily from rock, soil, and pore gas samples, had not been added to the RACER database. Laboratory staff informed the audit team that the Laboratory had not been providing all new environmental media data to the NMCF or adding the data directly to RACER each week since early September 2010. This omission is contrary to the requirements of the Stipulated Order.

The draft audit report was provided to the Department and the Respondents on February 14, 2011 by NMCF. One of the key findings of the draft audit report was that the Laboratory is no longer providing all new data on the routine basis to the RACER database. At the RACER Project Steering Committee Meeting on March 15, 2011, the Laboratory acknowledged that the audit conclusion is essentially correct, and that the Respondents failed to provide soils, rock, and sediments data into RACER since September 2010.

The Department independently verified that recent data was not available in RACER database. For example, the *Investigation Report for Potrillo and Fence Canyons*, December 2010 (referenced by LA-UR-10-8316/ EP2010-0523) was submitted to the Department on December 21, 2010. The report contains data from samples that were collected in July and August of 2010. These data were not available in the RACER database on February 24, 2011. The *Periodic Monitoring Report for Vapor-Sampling Activities at Material Disposal Area T, Consolidated Unit 21-016(a)-99, at Technical Area 21, July to September 2010* (referenced by LA-UR-11-0396/EP2011-0016), submitted to the Department on January 31, 2011, contains data from samples collected in September 2010. These data were not available in the RACER database on March, 9, 2011.

The weekly Data Update Reports provided by the Laboratory to the NMCF also demonstrate that rock, soil, and pore gas data were not being uploaded into the RACER database from September 7, 2010 until mid-March 2011. Although the Respondents were providing weekly updates to the RACER database during this period, these updates were incomplete since new data generated

from soil, rock, and pore gas samples collected by the Laboratory were not included as required by the Stipulated Order.

In accordance with section 74-4-10.C of the HWA, the Department may assess a civil penalty of not more than $25,000 for each day of noncompliance with a compliance order. In this matter, the Department is proposing a civil penalty for these violations in a settlement offer, which will be sent under separate cover.

The Department requests a meeting with appropriate representatives of the Respondents for the purposes of negotiating a settlement relating to this Notice of Violation. Any action the Respondents take in response to this letter does not relieve the Respondents of their obligation to comply with all applicable laws, regulations, and orders. If you have any questions regarding this letter, or wish to arrange a settlement meeting, contact me directly within 10 days of your receipt of this letter at the above address, or at (505) 476-6035.

Sincerely,

John E. Kieling
Acting Chief
Hazardous Waste Bureau

cc:

J. Davis, NMED RPD
A. Vollmer, NMED HWB
N. Dhawan, NMED HWB
R. Flynn, NMED OGC
C. de Saillan, NMED OGC
T. Skibitski, NMED DOE OB
S. Yanicak, NMED DOE OB, MS J993
L. King, EPA 6PD-N

file: Reading and LANL '11, RACER NOV

NAME Doreen Montoya
Z# 086365
DATE 6-6-11

State of New Mexico
ENVIRONMENT DEPARTMENT
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

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US POSTAGE

Mr. Chris Cantwell
Associate Director
Environment, Safety, Health & Quality
Los Alamos National Security, L.L.C.
P.O. Box 1663, ~~Mail Stop K491~~
Los Alamos, New Mexico 87545

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