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RECEIVED
JAN 2013
NMED Hazardous Waste Bureau

National Nuclear Security Administration
Los Alamos Site Office, MS A316
Environmental Restoration Program
Los Alamos, New Mexico 87544
(505) 667-4255/FAX (505) 606-2132

Date: JAN 02 2013
Refer To: EP2012-0303

John Kieling, Bureau Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

Jerry Schoeppner, Bureau Chief
Groundwater Quality Bureau
New Mexico Environment Department
Harold Runnels Building, Room N2261
1190 St. Francis Dr.
P.O. Box 26110
Santa Fe, NM 87502

Subject: Submittal of the Solid Waste Management Unit Assessment Report for the Pit 38 Newly Identified Area of Concern

Dear Messrs. Kieling and Schoeppner:

The U.S. Department of Energy and Los Alamos National Security, LLC (DOE/LANS, also the Permittees) are in receipt of correspondence dated October 1, 2012, and December 5, 2012, from the New Mexico Environment Department (NMED) Hazardous Waste Bureau (HWB) regarding the use of potable water for worker safety reasons at Pit 38 in Technical Area 54 (TA-54), Material Disposal Area (MDA) G of Los Alamos National Laboratory. In the October 1, 2012, letter, NMED-HWB requested that the Permittees submit a solid waste management unit (SWMU) assessment report for the newly identified area of concern (AOC), Pit 38. The requested SWMU assessment report is enclosed herewith.

However, DOE/LANS would like to take this opportunity to address one issue raised by the correspondence. NMED appears to suggest that the nonhazardous low-level waste (LLW) from Material Disposal Area (MDA) B placed in Pit 38 is "solid waste containing hazardous constituents." DOE/LANS respectfully disagree that the bulk LLW from MDA B constitutes "solid waste." The definition of "solid waste" provided in the March 2005 Compliance Order on Consent (the Consent Order) expressly excludes "source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended…" [the Consent Order § III.B; 42 United States Code §6903(27); New Mexico Statutes Annotated §74-4-3(O)]. The presence of hazardous constituents alone does not transform AEA-regulated waste into "solid waste." The bulk LLW from

MDA B is covered by the AEA exclusion and therefore is not "solid waste." However, for the reasons explained in the attached report, DOE/LANS have conservatively identified Pit 38 as an AOC and are submitting the requested SWMU assessment report.

If you have any questions, please contact Kathryn Roberts at (505) 665-0006 (kroberts@lanl.gov) or Ed Worth at (505) 606-0398 (edwin.worth@nnsa.doe.gov).

Sincerely,

David R Cox For JM

Jeff Mousseau, Associate Director
Environmental Programs
Los Alamos National Laboratory

Sincerely,

Peter Maggiore, Assistant Manager
Environmental Projects Office
Los Alamos Site Office

JM/PM/TG:sm

Attachment: Solid Waste Management Unit Assessment Report for the Pit 38 Newly Identified Area of Concern (LA-UR-12-27006)

Cy: (w/att.)
Laurie King, EPA Region 6, Dallas, TX
Steve Yanicak, NMED-DOE-OB, MS M894
Tom Skibitski, NMED-OB (date-stamped letter emailed)
Jennifer Fullam, NMED-WQB (date-stamped letter emailed)
Annette Russell, DOE-LASO (date-stamped letter emailed)
Roberto Torres, DOE-LASO (date-stamped letter emailed)
Darlene Rodriguez, DOE-LASO (date-stamped letter emailed)
Ed Worth, DOE-LASO (date-stamped letter emailed)
David Rhodes, DOE-LASO (date-stamped letter emailed)
Alison Dorries, ENV-DO (date-stamped letter emailed)
Michael Saladen, ENV-RCRA (date-stamped letter emailed)
Robert Beers, ENV-RCRA (date-stamped letter emailed)
Tori George, EP-REG (date-stamped letter emailed)
Kate Lynnes, EP-REG (date-stamped letter emailed)
Derek Faulk, EP-CAP (date-stamped letter emailed)
Sean French, EP-CAP (date-stamped letter emailed)
Gilbert Montoya, EP-CAP (date-stamped letter emailed)
Craig Douglass, EP-CAP (date-stamped letter emailed)
Dave McInroy, EP-CAP (date-stamped letter emailed)
Jeff Mousseau, ADEP (date-stamped letter emailed)
Wendy Staples, EP-BPS (date-stamped letter emailed)
Public Reading Room, MS M992 (hard copy)
RPF (electronic copy)