



BRUCE KING
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502
(505) 827-2850

JUDITH M. ESPINOSA
SECRETARY

RON CURRY
DEPUTY SECRETARY

June 2, 1992

Lovelace Medical Center
Dr. Derrick Pasternak, Chief Executive Officer
5400 Gibson Blvd S.E.
Albuquerque, New Mexico 87108

RE: NMD075769000

Dear Dr. Pasternak:

On May 18, 1992 your staff requested assistance from Ernest Preciado and John Tymkowych to assist you with the documentation of your hazardous waste program. Once on site contact was established with Ms. Sadie Nieto, the inspectors were informed that the documentation questions had been addressed, however, there was a concern regarding the storage of the hazardous and medical wastes at the facility. Ms. Nieto informed Mr. Charlie Lavato, Director of Safety of our visit and access was granted for a walk through inspection/consultation. The following is a list of items that should to be addressed as a result of the walk-through:

1. The storage of flammable hazardous waste (xylene, ethyl alcohol) in 5 gallon plastic containers is not acceptable. Storage should be in well sealed metal drums/containers.
2. The draining of the flammables from the plastic containers to metal containers is currently conducted inside the storage building. The ventilation of the building is poor and there is only one exit/entrance for this storage area. This practice is unsafe and should be done outside.
3. The management of the storage area is poor. Both hazardous waste and biohazardous wastes are currently be stored in the area. Both inspectors watched Ms. Neito lock the storage area when the walk-through was completed. While departing the facility the inspectors returned to the building to take some photographs and found the building unlocked and accessible to any unauthorized personnel. Control of this storage area is obviously non-existent.
4. The building has no labeling or signs denoting the storage of hazardous waste in the building.

Dr. Pasternak
June 2, 1992
Page 2

5. The surrounding area is a parking lot with no means of clear and easy access to the building in case of an emergency response.

Due to the severity of the findings during the walk through a referral has been made to OSHA.

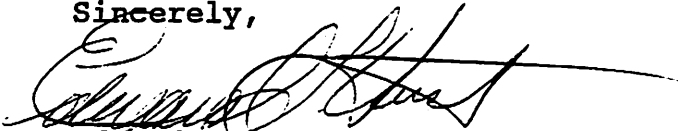
The above listed items should be corrected within thirty (30) calendar days from the receipt of this letter and provide documentation that the items have been addressed.

If you fail to respond, the items listed will be upgraded to violations and a Notice of Violation will be sent.

We would like to thank you for inviting us into your facility to assist you with your hazardous waste management program.

Please call Mr. Ernest Preciado, or John Tymkowych, 827-4300, if you have any questions in the future.

Sincerely,



Edward L. Horst, Program Manager
Hazardous and Radioactive Materials Bureau

cc: Lynn Prince, U.S. EPA Region VI (6H-HS)
Mr. Garth Graves, District I Office



June 22, 1992

State Of New Mexico
Environment Department
Edward L. Horst, Program Manager
Hazardous And Radioactive Materials Bureau
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502



RE: NMD075769000

Dear Mr. Horst:

On June 5, 1992, Dr. Pasternak's office received your letter dated June 2, 1992. The letter referenced the consultation visit made by Mr. Preciado and Mr. Tymkowych which was conducted, as per my request, on or about May 18, 1992. As a result of the walk-through, five recommendations were made and subsequently addressed by my staff and I.

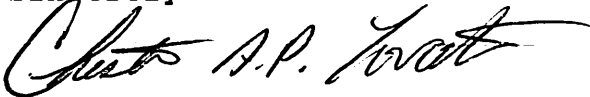
1. The allegation of the storage of flammable hazardous waste (Xylene, Ethyl Alcohol) in plastic containers is unfounded. When Mr. Preciado inquired about the plastic containers of Xylene and Ethyl Alcohol, I advised him the storage of these chemicals are in 55 gallon metal drums. The plastic containers, which are what these products are shipped to us in by the manufacturer, are used to safely transport these hazardous liquids from the laboratory area to the storage area. The 5 gallon plastic containers are used as safety carriers to reduce the possibility of breaking of glass containers and so they can be easily and safely managed by my staff during the transfer process.
2. The transfer of Xylene is done in the storage area while the door is open. There is only one rotating roof vent at this time; although, an additional 4 X 4 wall vent has been requisitioned to be installed. The procedure of transferring this waste has been changed during the interim, and will be performed outdoors in a properly cordoned area until the installation of the additional vent. The vent will also be utilized as an escape hatch in case of an emergency.
3. The alleged non-existent control of the storage area is a drastic conclusion to come to based upon one observation of the door left unlocked. This storage area is shared by two departments. Environmental Services uses it for bio-hazardous waste. The manager of Environmental Services, Ken Hill, has been advised of the unlocked door incident and assured me this would not happen again.



4. The storage building has been labeled with signs denoting the storage of hazardous waste, flammables, and no smoking.
5. The access to the building for emergency response is not a problem. The East side of the building is an entry ramp where parking is not allowed and which is always clear of traffic obstruction.

Thank you for bringing these matters to my attention. I look forward to utilizing your services in the future.

Sincerely

A handwritten signature in cursive script that reads "Chester A.P. Lovato". The signature is written in black ink and is positioned above the typed name.

Chester A.P. Lovato, Director
Safety and Security



DUKE RODRIGUEZ
Chief Operating Officer

June 16, 1992

Mr. Gary Ortiz
Discrimination Investigator
Occupational Health and Safety Bureau
Environment Department
P. O. Box 26110
Santa Fe, NM 87502

Re: Sadie Nieto vs Lovelace
Case Number: 92-012

Dear Mr. Ortiz:

I appreciate you meeting with me today, June 16, 1992. We take Ms. Nieto's allegation quite seriously and are hereby submitting our formal response.

On or about the second week in April, Ms. Nieto was assigned the task of filing for EPA numbers from the State of New Mexico. This task was directly assigned by the Department Director, Mr. Chester Lovato, Director of Safety and Security for Lovelace, Inc. This assignment came about after one of our Supervisors in Radiology had asked for assistance in properly registering the disposal of waste from satellite radiography sites. The task for assisting with completing these applications was given to Ms. Nieto. During a department meeting in the second week of April Ms. Nieto expressed concern about how to properly fill out the paperwork and at that point she was instructed by Mr. Lovato to call the State OSHA/EPA Office for assistance. The telephone numbers and contact names were provided to her by Mr. Lovato. Those in attendance at the department meeting included several other employees of Lovelace. A full list of these witnesses can be provided to you if necessary.

Accordingly, on April 28, 1992, Ann Walker from OSHA/EPA came out to our Safety and Security offices on Gibson Blvd. to assist Ms. Nieto in filling out these forms. The forms were filled out for all satellite clinics to indicate that they were generating hazardous radiological waste from their sites. These wastes are

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To Gary Ortiz	From Duke Rodriguez
Co. Env. Dept.	Co. Lovelace
Dept.	Phone #
Fax # 827-4422	Fax # 262-7729

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92 JUN 19 PM 4:03

JUN 13 1992 3:12PM R261 P.02

picked up by Southwest Radiographics. After these forms were reviewed by Mr. Lovato it was noted that they only contained notice of radiologic waste and Ms. Nieto was asked to indicate other hazardous waste which might be produced from each of these satellite locations on the appropriate forms. Ms. Nieto again expressed confusion as to which waste needed to be indicated specifically and again Ms. Nieto was asked by Mr. Lovato to seek OSHA/EPA assistance.

On May 18, 1992, Mr. Preciado and Mr. Tymkowych from the State of New Mexico Environment Department, arrived at our Gibson Safety and Security Offices to assist Ms. Nieto with the documentation of our Hazardous Waste Program. While in our offices Mr. Preciado and Mr. Tymkowych asked if they could see our temporary storage facility which is utilized for bio-hazardous waste and small amounts of hazardous waste. Ms. Nieto asked Mr. Lovato if he would give permission to look at the storage site. Although permission could have been denied, Mr. Lovato, wanting to be as cooperative as possible, approved their inspection. On June 5, 1992 a letter was received from Mr. Edward L. Horst, from the State of New Mexico Environmental Department indicating five (5) recommendations which needed to be addressed within 30 calendar days. The letter also informed us that a referral had been made to OSHA.

Prior to receiving Mr. Horst's letter, Mr. Richard Johnston, from New Mexico OSHA, arrived on June 3, 1992 to conduct an inspection. He advised our staff that it was initiated by the EPA Division. It should be noted that Mr. Lovato was on vacation the first week of June and did not meet with Mr. Johnston, however we were informed by Mr. Johnston that he had identified a couple of minor infractions but otherwise we were doing a "great job", and we would be notified within 4 to 6 weeks.

We are asserting in this document that Ms. Nieto at no time contacted OSHA, to our knowledge, without first being instructed to do so by her supervisor, Mr. Lovato. Mr. Lovato has requested consultative visits in the past resulting in certificates of compliance. We do not agree to Ms. Nieto's assertion that her termination was related to any voluntary activity of her own as she was instructed to call OSHA/EPA from the very beginning because of her inability to complete her assignment regarding proper application for EPA hazardous waste regulation numbers as referenced above. Ms. Nieto had experienced a very difficult probationary employment period with the Lovelace organization. Her attitudinal difficulties relate back as far as her new employee orientation which was provided by our Human Resources Department at the beginning of her employment several months ago. Ms. Nieto had also contacted Mr. Steve Morgan, General Service Officer, and Mr. Morgan interviewed her with witnesses to attempt to find substance to her complaints regarding Mr. Lovato. Further, Mr. Morgan referred both Ms. Nieto and Mr. Lovato for a mediation conference with the Human Resources Officer, Ms. Sharon Chadwick, for Lovelace, Inc., which was scheduled for May 4, 1992 at 2:00 p.m. in Ms. Chadwick's office. Ms. Chadwick's report back to Mr. Morgan included her counseling to Ms. Nieto that her job included a responsibility for following instructions of her supervisor in relation to job matters.

Finally, Ms. Nieto was terminated from her employment last Friday, June 12, 1992. This termination was driven by two factors, Ms. Nieto's inability to work cooperatively in her surroundings and, a decision that had to be made regarding her permanent employment in relation to the approaching end of her probationary period, July 6, 1992. The relationship to Ms. Nieto's call to OSHA, (which were under direct instructions from her superior), and her termination were coincidental.

Ms. Nieto was given every opportunity to improve upon her conduct; however, this could not be achieved and after Mr. Lovato consulted with his superior, Mr. Morgan, and with the Lovelace Human Resources Officer it was felt that there was no way to salvage this situation.

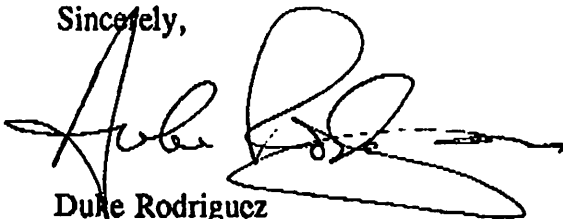
In conclusion, although we do not agree with Ms. Nieto's allegation that she was wrongly terminated we will offer the following in an attempt to resolve this matter.

1. Lovelace will not resist Ms. Nieto's application for Unemployment Compensation.
2. That Lovelace Human Resources, and any other employees for the Lovelace organization will provide only neutral information regarding Ms. Nieto's employment within the Lovelace organization.
3. Ms. Nieto's employment record will be expunged of references as to why she was terminated.

The Lovelace organization has always aggressively pursued its responsibilities in regard to Hazardous Waste Management, employee and patient safety. I must state that I am very troubled when I hear of this type of allegation and I assure you that our record is very well documented with timely responses to any OSHA/EPA inquiries. Further the record is evident, I believe, with incidences when any Lovelace employee, even in the most advisory fashion, sought advice from OSHA there has been immediate follow-up without any retaliation to the employee.

We appreciate your inquiry and hope that this matter is clarified by our response and our assurance that the Lovelace organization is committed to aggressively pursuing compliance with the requirements generated by the Occupational Health and Safety Bureau and the Environment Department.

Sincerely,



Duke Rodriguez
Chief Operating Officer



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JUDITH M. ESPINOSA
SECRETARY

RON CURRY
DEPUTY SECRETARY

M E M O R A N D U M

TO: Ed Horst, Program Manager

THROUGH: Coby Muckelroy, Supervisor

FROM: Ernest Preciado 

DATE: June 23, 1992

RE: Response to Lovelace Letter June 16, 1992
Sadie Nieto vs Lovelace
Case Number 92-012

On May 18, 1992 Mr. John Tymkowych and myself arrived at the Lovelace Medical Center to assist with a consultation in regards to their hazardous waste management practices. This was in response to a request being made by Mr. Ed Horst, Program Manager who was contacted by Ms. Sadie Nieto of the Lovelace safety office.

In the response letter Mr. Duke Rodriguez states that the inspectors requested to tour the storage area.

This is not true, the request was made by Ms. Nieto because she felt her safety was being compromised. When asked if she had brought her concerns to her management staff she stated yes, however she was receiving very little or no support. She did inform Mr. Lovato of the tour of the storage area prior to the visit taking place.

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June 23, 1992
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The entire time of the visit Ms. Nieto kept informing the inspectors of the repercussions that she would be facing upon their departure and stated that she was in fear of her losing her job.

During the out briefing Mr. Lovato became extremely defensive and insisted that his department was in compliance with OSHA regulations. He also insisted that this was an inspection and not a consultation. At which point I informed him that had this been an inspection and the severity of the findings that a Notice of Violation or a Compliance Order would be following not a letter of recommendation. I informed him that the findings were based on the 40 CFR RCRA requirements and not OSHA Requirements.



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JUDITH M. ESPINOSA
SECRETARY

RON CURRY
DEPUTY SECRETARY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

July 10, 1992

Dr. Derrick Pasternak, CEO
Lovelace Medical Center
5400 Gibson Blvd S.E.
Albuquerque, New Mexico 87108

RE: Response to Lovelace Letter dated 6/2/92

Dear Dr. Pasternak:

We have received a response from Mr. Chester Lovato, Director of Safety & Security (see attachment 1) to the letter of recommendation sent to you on June 2, 1992. There are several items in Mr. Lovato's letter I would like to address, and they are as follows

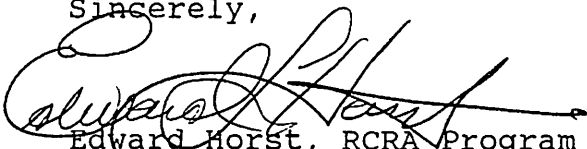
1. The request to visit your facility was never made by Mr. Lovato, but by Ms. Sadie Neito. This office had no contact with Mr. Lovato prior to the out-briefing on May 18, 1992, contrary to Mr. Lovato's statement in the first paragraph.
2. Point #1 by Mr. Lovato states that the inspectors from HRMB "allege" that flammable hazardous wastes were being stored in plastic containers. Please view the enclosed photos taken during the consultation visit. Photo #1, #2 and #3 clearly demonstrate that flammable hazardous wastes were being stored in plastic containers at the time of the consultation.

Dr. Pasternak
Page 2
July 10, 1992

3. Point #2 by Mr. Lovato of an additional 4 X 4 wall vent being installed to allow the transferring of flammable hazardous waste within the storage building to continue is an unacceptable solution to the recommendation. The installation of security devices to control accessibility would counteract the emergency vent concept proposed by Mr. Lovato. By closing off the adjacent parking area (located directly north of the storage building) for a short period of time to allow for the transfer of the waste to take place in an open area would solve the confined space problem and would allow for emergency response to take place from the east or south areas of the facility.
4. Point #3 by Mr. Lovato states that the inspectors from HRMB "allege" of non-existent control of the storage area and is a drastic conclusion based on one observation. It only takes one unauthorized entry, by one untrained person to have an exposure incident or one exposure to a spark or open flame to have an explosion of a flammable hazardous waste. We therefore conclude that the finding of the unsecured storage area is not an allegation (see photo #4 & 5) nor a drastic conclusion.
5. Point #5 concerning the accessibility to the building in the event of an emergency is still unresolved issue. The contention of the building being accessible from the east was never a concern, the concern was the parking area directly north of the building which inhibits accessibility by responding emergency personnel and equipment.

If you have any questions, please feel free to contact Mr. Ernest Preciado at (505) 827-4308.

Sincerely,



Edward Horst, RCRA Program Manager
Hazardous and Radioactive Materials Bureau

EH/ecp
enclosures