

September 23, 1993

Morton S. Simon  
Carol Oppenheimer  
Jane Bloom Yohalem  
Nancy L. Kantrowitz

Richard J. Rubin  
*Of Counsel*

Mr. Thomas (Tad) McCall  
Acting Deputy Assistant Administrator  
for Federal Facilities Enforcement  
Environmental Protection Agency  
401 M Street, S.W. (LE-133)  
Washington, D.C. 20460



Dear Mr. McCall:

I am writing to you on behalf of Concerned Citizens for Nuclear Safety (CCNS) to inquire about the compliance status of Los Alamos National Laboratory (LANL) radioactive air emissions program under the Clean Air Act. We are also making the following formal requests: 1) an opportunity to participate in the negotiations of the Federal Facilities Compliance Agreement (FFCA) between the Department of Energy (DOE) and LANL; and 2) a written assurance that before the FFCA is complete, EPA will issue a formal notice and 60-day opportunity for public comment. This letter will describe the background leading up to these formal requests made by CCNS and will outline why we believe these requests for public participation are reasonable and will serve the public interest.

At the outset, we wish to emphasize our serious concern about the efficacy of the FFCA process based on the recent proposed September 7, 1993 FFCA regarding land disposal restriction requirements at LANL. That proposed compliance plan, also developed by EPA Region VI, is no more than a compliance study, which neither guarantees nor enforces real compliance. We would hope in this instant matter that the EPA can formulate an FFCA in which compliance is achieved as required by law and not through the completion of studies.

Background. On November 27, 1991, EPA Region VI issued a Notice of Noncompliance against DOE for LANL's Radioactive Air Emissions Monitoring (RAEM) Program. The Notice of Noncompliance cited LANL for its failure to comply with the requirements of 40 C.F.R. 61, Subpart H, National Emissions Standards for Radionuclides Other Than Radon from Department of Energy Facilities. As a result of that Notice of Noncompliance, on December 4, 1991, CCNS requested that Region VI conduct an audit of the LANL RAEM Program. CCNS considered an EPA-conducted audit critical to ensure use of independent data for the subsequent negotiations of a FFCA.

EPA Region VI conducted the air audit at LANL in August, 1992. The salient points of the audit's findings are set out below:

(1) The audit found that in 1990 LANL had violated the emissions standard at 40 C.F.R. 61.92. The standard requires that emissions of radionuclides to the ambient air "not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/year. EPA disallowed an



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unapproved dose reduction factor, the building shielding factor, which had been questioned previously by CCNS. As a result, the LANL effective dose equivalent was calculated at 11.5 mrem, in excess of the 10 mrem standard.

(2) The audit confirmed numerous, fundamental technical deficiencies in LANL's monitoring programs (e.g., too many bends in sampling lines, the lack of proper calibration of instrumentation, non-isokinetic sampling, radionuclide release points that remain unmonitored, radionuclide inventories incomplete).

(3) The audit confirmed that after December 15, 1989, construction of and modifications to buildings at LANL that emit or have the potential to emit radionuclides require approval under the CAA.

(4) The audit acknowledged that LANL for 1990 had misrepresented the data for the Los Alamos Meson Physics Facility (LAMPF), which is responsible for approximately 95% of LANL's air emissions.

(5) The audit identified the lack of prompt emergency response procedures for unplanned releases.

(6) The audit described grave deficiencies in quality assurance programs and the unwillingness of LANL to allocate the necessary funding for these programs.

Significantly, as a result of the audit, EPA issued a second Notice of Non-Compliance on November 23, 1992. It specifically notified DOE that it had exceeded the 10 mrem standard for 1990.

We are fast approaching two years since the issuance of the initial Notice of Noncompliance and one year since the second Notice. No FFCA has been negotiated, and no tangible evidence has been produced to demonstrate the systemic and comprehensive compliance required under the Clean Air Act.

Participation of CCNS. With the exception of transmitting to CCNS monthly and annual radioactive air emissions reports, all public documents, DOE has consistently denied to CCNS its rightful place in ensuring that LANL's RAEM program comes into compliance with the applicable Clean Air Act requirements. Both DOE and LANL have ignored the important contributions made by CCNS in bringing to public light the serious environmental health concerns created by LANL's deficient RAEM program. We are hopeful that EPA will facilitate CCNS participation in the upcoming FFCA negotiations, particularly given the very important concerns we have about its contents. These concerns are set out below.

First, the Clean Air Act at Section 113 (a)(4) requires that an order issued by EPA "shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be non-renewable." It is our understanding that an FFCA constitutes an "order" under Section 113 (a)(4). We would therefore ask you to clarify how DOE will be able to show compliance with the requirements of the FFCA within

one year's time. The extreme cost and resources necessary to revamp the RAEM in order to meet the applicable standards contained in 40 C.F.R. Part 61 make it highly dubious that DOE will be able to make the requisite showing.

Second, as a result of the two Notices of Noncompliance, it appears that LANL has instituted some corrective measures, primarily the cessation of operations at LAMPF as LANL begins to approach the 10 mrem/year standard. Yet 40 C.F.R. 61.92 requires facility-wide compliance with the 10 mrem standard, including all sources and all airborne radionuclides. Manifestly, LANL cannot demonstrate facility-wide compliance, because dozens of radionuclide sources remain unmonitored, uncharacterized, and unmodeled. Given that the inventory of sources remains unfinished and a substantial number of sources remain unmonitored, we can hardly be assured that LANL radioactive air emissions comply with the standard. Indeed, without the required characterization and proper monitoring of all radionuclide sources, we can hardly be assured that LANL presents no imminent health threat to the community.

Third, CCNS opposes the use of a residential shielding factor and an occupancy factor. It should be noted that if the occupancy factor had been disallowed, the calculated dose in 1990 would have been 15.3 mrem/year. Important policy considerations dictate EPA disapproval of the use by LANL of either the residential shielding factor or the occupancy factor, and CCNS would like an opportunity to present its reasons for opposing them.

Fourth, CCNS has serious concerns about DOE's anticipated request to EPA for approval of its ambient air monitoring program as an alternative dose calculation method. The DOE Tiger Team assessment, conducted by the DOE within the last several years, noted fifteen specific deficiencies in that program. An internal LANL technical review also acknowledged serious problems with the ambient air monitoring program. CCNS would like to provide its own detailed input on the question of EPA approval of the use of an ambient air monitoring program as an alternative to air emissions monitoring.

Finally, CCNS finds it difficult to understand why EPA has not aggressively and openly acted against LANL's misrepresentation of data in its 1990 Annual Air Emissions Report. Despite LANL's efforts to minimize the significance of misstating composition ratios for the radionuclide emissions at LAMPF, it is obviously vital to have accurate, current ratios for the required annual dose calculation, particularly given that LAMPF apparently contributes 95% of LANL's radioactive air emissions. CCNS notes as well that the Clean Air Act specifically provides for criminal penalties against any person who submits false information. CCNS points this out, not necessarily to urge resort to criminal penalties, but to underscore the importance that the Clean Air Act attaches to false representations. To underscore the value of public participation, we should emphasize that it was CCNS who first directed Region VI's attention to this matter.

In light of the five major concerns outlined above as well as the invaluable contributions already made by CCNS to this process, we believe that CCNS and the public at large should be allowed to play a role during the ongoing FFCA negotiations.

Tad McCall  
Acting Deputy Assistant Administrator  
September 22, 1993  
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EPA is to be commended for the substantial efforts it has invested in the Federal Facilities Environmental Restoration Dialogue Committee, which has as its goal substantive public participation in federal facility environmental restoration. The EPA Administrator, Carol Browner, has declared that "substantially increased public involvement is the best way to set credible and defensible priorities" and that "public involvement in environmental restoration activities at federal facility sites must be 'early, often, and always.'" We strongly urge you to follow that same policy and those same declarations in this FFCA negotiation. It is our view that inadequate FFCAs today will lead to the need for further environmental restoration and continuing public health threats tomorrow.

As EPA is certainly aware, serious proposals have been advanced in Congress, DOE, and LANL for the consolidation of nuclear materials and nuclear weapons programs at LANL. Already, the consolidation of various non-nuclear manufacturing processes for nuclear weapons at LANL has received a proposed Finding of No Significant Impact from DOE as the initial step towards rapid implementation. CCNS finds it regrettable that consolidation is likely to occur at a facility with an environmental record as inadequate as that of LANL. Given the environmental history of the entire weapons complex, that strong possibility calls for EPA's special attention in its environmental oversight of LANL. Vigorous enforcement of the provisions of the Clean Air Act at LANL and ample room for the public to impact FFCA negotiations would be a good starting point for the proper environmental oversight of the future weapons complex.

We would appreciate responses to our requests no later than October 14, 1993. Thank you for your consideration of these matters.

Sincerely,



CAROL OPPENHEIMER  
Attorney for CCNS

cc: The Honorable Carol Browner  
Administrator, Environmental Protection Agency

✓ Mr. Stanley Meiburg, Director  
EPA Region VI, Air, Pesticides, and Toxics Division

Congressman Bill Richardson

Tom Udall, Attorney General of the State of New Mexico

Hazel O'Leary, Secretary, Department of Energy