

TO: Joel Dougherty and Mike Barra, EPA Region 6
FROM: Joyce Laesser, DOE, LAAO
DATE: November 23, 1993
RE: Suggestions to resolve State and San Ildefonso Comments

I have not yet discussed with DOE HQ any changes to the draft Federal Facility Compliance Agreement as a result of public comments. However, I am suggesting the following to resolve some of the issues.

STATE Comments:

On November 18, 1993, Susan McMichael sent me a fax with language to substitute for the two paragraphs she had sent us earlier.

With respect to her suggested language to be added to Section I.8, I could go along with adding what she has suggested if the first sentence is not used and the remainder is modified as follows:

DOE understands that the waiver of sovereign immunity for penalties and fines referred to in Section 102(c)(3)(A) of the FFC Act shall apply after October 6, 1995, unless DOE is in compliance with a plan that has been approved by the State or an agreement entered into between DOE and the State and an order requiring compliance with such plan or agreement which has been issued by the State, as described in Section 102(c)(3)(B) of the FFC Act. DOE also understands that the terms of this Agreement shall not restrict in any manner the content of such plan or agreement and cannot be relied upon by DOE as having any precedential effect in negotiations with the State regarding such plan or agreement.

Susan has also suggested an addition to the Termination clause, which mirrors an issue that DOE and EPA considered before passage of the FFC Act--the disposition of the FFCA when the State gets the federal LDR program. I have told Susan that we had discussed this issue at length and never been able to nail anything down because, as I understood EPA's position, it did not want to bound by a particular course of action. But, that she should discuss it with you. My personal view is that it is pretty late in the game to be suggesting a new change of this type.

SAN ILDEFONSO Comments:

With respect to the ACCORD language that Jon Mack sent last week, I suggest that we add a new paragraph I.9 to read as follows (and that we leave Section XXIII (Other Applicable Law) exactly the way it is, although this is negotiable):



0193
Permit
FFCA

9. DOE has entered into Accords with the Pueblos of San Ildefonso, Santa Clara, Jemez, and Cochiti, pursuant to which DOE has agreed to consult with the Pueblos to assure that tribal rights, responsibilities, and concerns are addressed prior to DOE taking actions, making decision, or implementing programs that may affect the Pueblos or their cultural, religious, and environmental resources. Nothing in this Agreement shall be construed to interfere with DOE's obligations under the Accords and DOE assures that it intends to consult with the Pueblos concerning the effects on the Pueblos of the decisions and programs which are required as a result of this Agreement.