UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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MEMORANDUM

SUBJECT: November 1, 1993 Letter to Deputy Administrator Sussman Concerned Citizens for Nuclear Safety (CCNS) (Headquarters Control #AX9311471)

FROM: Joe D. Winkle Allyn M. Davis
for Acting Regional Administrator (6A)

TO: Susan O'Keefe
Acting Enforcement Counsel
for RCRA
Office of Enforcement (2246)

Headquarter's Office of Executive Correspondence sent Region 6 a courtesy copy of the subject letter regarding the Region's oversight of Los Alamos National Laboratory (LANL). We are providing Resource Conservation and Recovery Act (RCRA) information to assist in your response due December 8, 1993.

On September 30, 1992, the Region issued a Notice of Non-compliance (NON) to LANL in order to address violations of the Resource Conservation and Recovery Act (RCRA), Land Disposal Restrictions (LDR) for mixed wastes. In order to bring the facility into compliance, the Region and LANL entered into negotiations for a Federal Facility Compliance Agreement (FFCA). During these negotiations, the Federal Facility Compliance Act of 1992 (the Act) was passed.

LANL and the Region reached an agreement in principle in June 1993. The draft FFCA was forwarded to the Department of Energy (DOE) Headquarters for its approval, and the document was made available for public review and comment on July 30, 1993.

At the request of several groups, including CCNS, the comment period was extended another 10 days. Therefore, the Draft FFCA was available for public review from July 30 until September 10, 1993. Notice of the comment period was placed in four New Mexico newspapers, and the Draft FFCA was placed at four public locations throughout the State. The public comment stipulation was above and beyond what is normally included in this type of enforcement action; however, Region 6 thought it was important to seek citizen involvement given the significance of the issues for the public and LANL.

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Comments were received from several concerned groups including CCNS. The Region has drafted a Response to Comments which should be issued within the next two weeks. Furthermore, the Draft FFCA has been modified as a result of the comments received. Several of CCNS' concerns which appear in their letter to Deputy Administrator Sussman, were more fully elaborated in their comments to the Region regarding the Draft FFCA.

CCNS is concerned that the FFCA results in more of a "compliance study" than compliance. The FFCA will require LANL to invest heavily in research and development (R&D) for treatment of mixed wastes. These R&D efforts are concrete requirements which are tied to detailed timelines for compliance.

The main objective of the FFCA is to bring LANL into compliance with the requirements of the RCRA LDR provisions. Absent available treatment capacity and technology, LANL will have to develop these technologies in order to meet the LDR requirements. Obviously, mixed waste treatment must consider the radioactive component, and this added dimension complicates any treatment strategy. At present, technology is just too limited, or simply nonexistent.

During the time LANL is developing specific treatment technologies it will have to maintain mixed wastes in otherwise RCRA compliant storage. This will ensure safe handling of the wastes and enable early detection of problems; eg., leaking drums.

It is important to note, that the Act will impose similar requirements for R&D. Therefore, the compliance agenda dictated by the FFCA is consistent with what Congress envisioned when it passed the Federal Facility Compliance Act of 1992. As a consequence, the FFCA could actually bring LANL into compliance at an earlier date than would otherwise be achieved by the Act alone.

CCNS believes that too much reliance is placed on controversial facilities such as the Waste Isolation Pilot Plant (WIPP) and the Controlled Air Incinerator (CAI). The CAI is only one of several treatment options that LANL could use. It will have to undergo extensive testing and successfully pass a battery of stringent requirements before the existing permit can be modified by the New Mexico Environment Department (NMED) to treat mixed wastes.

DOE has chosen to comply with LDR requirements for certain transuranic (TRU) mixed wastes, by pursuing the demonstration of no migration (from an injection zone) - WIPP. DOE is considering alternatives to WIPP, but at present WIPP represents a reasonable option. Should WIPP prove non-viable, R&D activities for treatment of TRU mixed wastes will have to be increased. In the

interim, RCRA compliant storage is the only alternative since there are no available treatment technologies. In this regard, the Region continues to closely oversee the activities at the WIPP site.

The LANL FFCA provides for the safe and prudent management of mixed wastes, and mandates the development of treatment technology. Furthermore, the Region assured citizen involvement by incorporating into the Draft FFCA the requirement for public review.

Region 6 provides aggressive environmental oversight at LANL. In July 1993, the National Enforcement Investigations Center (NEIC) conducted an in depth multi-media inspection of the facility. NMED, as authorized by EPA, conducts yearly RCRA Compliance Evaluation Inspections (CEI's) at LANL. In addition, EPA and NMED jointly provide ongoing oversight of LANL's compliance with the RCRA permit.

We have also received, for direct reply, a letter from CCNS originally addressed to Tad McCall on the subject of public participation in the development of an Air FFCA. A copy of the incoming letter is attached. We will forward a copy of our reply when it is signed.

We appreciate the opportunity to offer input, and hope these comments will be helpful in formulating your response to CCNS. If you have any questions or would like further information, please contact me, or have your staff contact Joel Dougherty of my RCRA enforcement staff at (214) 655-2281.

Attachment