



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAR 15 1994

Mr. Gilbert Sanchez
Pueblo de San Ildefonso
Route 5, Box 315-A
Santa Fe, New Mexico 87501

Re: EPA Response to Comments on the Los Alamos National Laboratory
Draft Federal Facility Compliance Agreement

Dear Mr. Sanchez:

Enclosed for your review is the "Response to Comments" prepared by the U.S. Environmental Protection Agency (EPA) Region 6 for the Los Alamos National Laboratory (LANL) Draft Federal Facility Compliance Agreement (FFCA, Agreement). These comments were received during the public comment period required by the terms of the Agreement (July 30 - September 10, 1993). Although detailed responses to your comments are presented in the enclosure, we present here an executive summary of the Region's response to your concerns.

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 FFCA.

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. 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.

It is important to note that the FFCA represents an agreed response to the NON, and it covers only those matters involving hazardous and mixed wastes specifically identified in the document. Any other RCRA violations will be addressed separately. Furthermore, the FFCA does not interfere with the ability of the State of New Mexico to ensure compliance with all applicable state regulations.

The FFCA is not, and has never been construed as a substitute for the Mixed Waste Inventory Report or the Site Specific Treatment Plan or any other requirement of the Federal Facility Compliance Act of 1992 (the Act), and the FFCA does not relieve DOE or LANL from complying with the requirements of the Act. Therefore, the FFCA cannot be used by DOE or LANL to invoke sovereign immunity under the Act.



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Please be assured that the Region is very sensitive to the concerns raised by San Ildefonso regarding cultural and ancestral issues. However, the scope of the FFCA is very narrow and does not specifically address these types of issues. The Region has added language to the FFCA which should emphasize the importance of the points you raise and highlights DOE's obligation to ensure compliance with the Accords signed by you and the Pueblos of Santa Clara, Jemez, and Cochiti. The Region intends that no action taken by LANL to comply with the FFCA adversely impact Pueblo concerns.

Although EPA recognizes Tribal Governments as sovereign entities, and the Pueblo's authority to enforce environmental regulations on Pueblo land, there is no regulatory mechanism to allow the Pueblo to enforce RCRA within LANL boundaries. As such, it would be inappropriate to create such authority in this Agreement by making the Pueblo a signatory and granting the powers you requested. However, the Region welcomes your input and seeks to work closely with the Pueblo and DOE/LANL to resolve Pueblo concerns.

In regard to your comments regarding the Anti-Deficiency Act, the Region feels that the FFCA adequately defines DOE's obligations to obtain funding for compliance and the obligation to pay stipulated penalties. Specifically, Section XX.1. requires DOE to take all necessary steps and use its best efforts to obtain timely and sufficient funding to meet its obligations and commitments under the FFCA. Lack of funding does not alleviate DOE's obligation to comply with the requirements of the FFCA or RCRA.

The burden of proof lies with DOE to provide that something required by the FFCA is a violation of the Anti-Deficiency Act. This would involve written opinions from the Comptroller General of the United States and the Department of Justice. In other words, the FFCA has been written in such a way that it does not allow for an Anti-Deficiency Act defense when there would not otherwise be one.

Several modifications concerning procedural and technical matters were made to the FFCA as a result of the comments received. The Region strongly believes that the LANL FFCA provides for the safe and prudent management of mixed wastes, and mandates the development of needed treatment technology.

Thank you for your comments; we appreciate your involvement in the development of the LANL FFCA. If you have any questions or require further information, please contact me or Joel Dougherty of my staff at (214) 655-2281.

Sincerely yours,



Allyn M. Davis, Director
Hazardous Waste Management Division

Enclosure