



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

**MAR 15 1994**

Mr. Jay Coghlan  
LANL Project Director  
Concerned Citizens for Nuclear Safety  
107 Cienega  
Santa Fe, New Mexico 87501

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

Dear Mr. Coghlan:

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,



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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.

In order to avoid any confusion between the requirements of the FFCA and the requirements specified by the Act, the Region incorporated language suggested by the New Mexico Environment Department (NMED) into the revised document. This revision should clarify the distinction between the FFCA and the Act and the respective roles of EPA and NMED pursuant to each.

Concerned Citizens for Nuclear Safety (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 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.

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*

Allyn M. Davis, Director  
Hazardous Waste Management Division

Enclosure

cc: Margret Carde  
Nuclear Waste Project Director  
Concerned Citizens for Nuclear Safety