



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

**MAR 15 1994**

**Mr. J. G. Berry  
P.O. Box 4712  
Los Alamos, New Mexico 87544**

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

**Dear Mr. Berry:**

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



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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.

RCRA requires that hazardous waste stored in containers be inspected on a weekly basis. This ensures that containers remain in good condition, leaks can be identified before they become a problem, and inventory is easily accomplished. Hazardous wastes stored in this manner present far less danger to human health and the environment than wastes which are buried. Buried containers cannot be easily assessed for leaks.

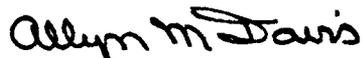
EPA recognizes that increased exposure to workers may result from frequent "walk through" inspections of mixed waste in storage. The Nuclear Regulatory Commission (NRC) and EPA, are currently developing storage guidelines that address this problem. RCRA regulations and permit guidance do not require that inspections must be "walk through". NRC and EPA suggest that facilities storing mixed waste use methods other than "walk through" as a means to inspect high activity mixed waste in storage.

Furthermore, should EPA, NMED, or DOE determine that any activity carried out pursuant to the FFCA may cause a threat of release or an actual release of hazardous waste or hazardous constituents, that activity will immediately cease and action will be initiated to abate the threat or the release.

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