

Nuke lawsuit deal encourages N.M.

By LAWRENCE SPORN
Staff reporter

probed

MacDonald, whose robe of a major land was complying with over his passport. reported Friday that an dors were trying to nald conducted any and during a trip to \$33.4 million sale of rbe last year. spokesman for the Friday that the FBI matter. U.S. Attorney comment earlier. be's headquarters in nent Friday through who wants to look at d.

ts 2

led by the Roosevelt ting at Eastern New nesses and reviewed Department and the lx counts, including ssory to attempted en counts, including npted murder. of Jay Price and the ssy, on Oct. 29 at a eonard Hines, 21, has

itnesses in the case, urned away two men ternity identification

t buttock, was not est and pronounced tal.

The federal government's decision to settle an environmental lawsuit over practices at a nuclear bomb plant in Ohio has encouraged New Mexico officials who have cases pending against the state's two national laboratories.

By agreeing Friday to pay \$128,000 in legal expenses and a \$275,000 fine for violations of Ohio environmental laws, the Department of Energy may have set a precedent in its relations with states, said Kirkland Jones, deputy director of the New Mexico Environmental Improvement Division.

DOE has questioned states' authority to enforce certain rules as well as to assess fines to both the department and its contractors, a procedure the state says it is required to do. Jones said the law makes both operators and owners responsible for environmental degradation.

The department agreed to make the payments, which it described as "settlement costs" not fines or penalties, in a federal court settlement of Ohio's charges that the DOE, as owner, and Westinghouse, as operator, violated state air standards by emitting radioactive gas at the Fernald nuclear bomb plant.

It also agreed to allow Ohio a major role, at federal expense, in some long-term clean-up activities at Fernald.

Douglas Elmets, a spokesman for Energy Secretary John S. Herrington, said the case: "represents another major milestone in reaching agreement on steps to be taken by the Department of Energy in addressing major improvements in the area of waste

management, waste water runoff control and control of air emissions."

New Mexico environmental officials Friday were holding strategy sessions on pending regulatory cases against Los Alamos and Sandia National Laboratories. The New Mexico cases involve hazardous waste violations, in contrast to the radioactive emissions suit in Ohio.

"Some of the same issues are in dispute here," said Jones, who is also head of the state's waste management branch.

The New Mexico cases are headed toward state hearings, he said, and possibly court, partly because of disputes over the state's authority to assess both the DOE and its contractor operators for penalties assessed for violating the state's environmental laws.

Although environmental contamination may be occurring at the laboratories, state officials stressed Friday that their cases do not allege that. Instead, they involve procedural violations involved in mishandling hazardous wastes. The procedures are in effect to protect the environment.

Los Alamos has been assessed a \$104,000 penalty — \$52,000 charged to DOE and \$52,000 charged to the University of California, which operates Los Alamos — for hazardous waste violations initially found in an Oct. 14, 1986 inspection.

Similarly, Sandia faces a \$38,000 fine, half of it assessed the operator, Sandia Corporation, and the other half the DOE, for hazardous waste violations the state cited dating to Jan. 26, 1988.

Sandia was cited for six violations, Los Alamos for 19 violations. The most serious

transgression of state rules at both laboratories was the failure to have an adequate groundwater monitoring system around on-site hazardous waste landfills or ponds.

Louis Rose, New Mexico assistant attorney general for environmental cases, had filed a friend of the court brief in the Ohio case and was preparing to file another to support the case on appeal, said Jack Ellbinger, chief of the state's hazardous waste bureau.

Ellbinger said the Ohio development is "very interesting," for several reasons:

- it appears to acknowledge state authority in enforcing existing state environmental laws and in holding DOE liable for future transgressions;
- it apparently concedes to states the authority and a prominent role in "corrective actions" in cleaning up past environmental ills at DOE sites;

■ and it suggests that DOE may be acknowledging that both the DOE and its contractors are responsible for paying assessed fines, penalties or court costs — even if DOE ends up paying the contractor's as well.

However, DOE apparently continues to maintain the doctrine of "sovereign immunity," insisting it cannot be penalized by a state for violating federal environmental law. DOE plans to appeal a separate \$250,000 civil penalty assessed by Ohio for violations of state and federal clean water and air laws.

"The biggest point (in Ohio), I think, is it's a settlement agreement," said Ellbinger. "That may be a sign that we can work things out here too."

Hut for homeless gets test tonight

