

HSWA LANL G/M/95 & prior



# CCNS

## Concerned Citizens for Nuclear Safety

ENCLOSURE

March 21, 1994

Mr. David Coss  
Director, Environmental Protection Division  
New Mexico Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87502

Dear Mr. Coss,

Thank you for meeting with Caron Balkany and myself last week. We found the discussion on the subject of environmental non-compliance at Los Alamos National Laboratory (LANL) to be very valuable. This letter is to formalize the following requests that emerged from our meeting:

**1. That the New Mexico Environment Department (NMED) immediately gain a participatory role in the ongoing negotiations between LANL/DOE and the Environmental Protection Agency (EPA) Region VI concerning a Clean Air Act Federal Facilities Compliance Agreement.**

EPA Region VI has filed two Notices of Noncompliance against DOE for LANL's Radioactive Air Emissions Monitoring (RAEM) Program. As a result, LANL and DOE officials have been required to enter into negotiations with Region VI towards a Federal Facilities Compliance Agreement. An active NMED role in these negotiations would be highly appropriate since the State is due to assume Clean Air Act jurisdiction in the near future under the Federal Facilities Compliance Act (FFCA). We fear that the State could find itself in the untenable position of enforcing a substandard compliance agreement in which it played no role in formulating. Also, we fear that an agreement forged without NMED participation may conflict with State policy and regulatory plans, resulting in lengthy litigation which would waste time and resources better spent on compliance enforcement.

TV



12483

2. That NMED insist of DOE that LANL obtain its required site-wide Environmental Impact Statement (EIS), together with funding for, and substantial completion of, programs to attain compliance with existing environmental regulations prior to approval of any LANL permits to expand/modify/construct or upgrade its facilities.

If LANL were a private facility, the State would have taken action against it long ago for its continued violation of major environmental laws, as well as for its failure to obtain funding for, and to begin execution of, compliance programs (1).

Under the FFCA, the State is required to treat LANL, in most regards, the same way it treats a private facility. Yet, LANL is proceeding with plans for the construction of numerous new facilities for defense programs and waste management of these programs, without obtaining funding for, much less commencing, a site-wide EIS. (2) No private facility would be allowed to so blatantly ignore the environmental laws which the State is charged with enforcing.

---

(1) LANL has consistently violated the requirements of the National Environmental Policy Act (NEPA) as outlined in the Lab's own Environmental Compliance Audit of 1992. Council of Environmental Quality and DOE regulations, along with NEPA, require that all major federal projects at a DOE facility have as their foundation a current or updated site-wide Environmental Impact Statement. LANL's only site-wide EIS was performed in 1979 and has not been updated. Even LANL has admitted that significant changes have occurred at LANL since that time, and that 1979 site-wide EIS is factually obsolete and legally non-complying. The site-wide EIS is crucial in that it is the sole vehicle of study for a facility's total and cumulative impacts.

A September DOE Albuquerque Operations Office memorandum recommends the preparation of multiple programmatic EISs for LANL. This, we maintain, is not sufficient to meet NEPA requirements.

(2) See, 1993 LANL Strategic Plan and 1993 LANL Institutional Plan.

**3. That NMED oppose LANL's request to use its admittedly deficient Ambient Air Program as a substitute methodology for determining calculated dose.**

DOE has requested of EPA Region VI approval for the use of LANL's Ambient Air Monitoring Program as a substitute for the mandated methodology of calculating the annual dose from data obtained at the emissions sources. LANL's Ambient Air Monitoring Program has grave deficiencies of its own, according to the 1992 Tiger Team Report and LANL's 1991 technical review of that program. We request that NMED contact Region VI to advise that the request not be granted.

**4. That NMED investigate the existence and validity of any LANL Clean Air permits, and initiate enforcement action when appropriate.**

EPA Region VI's November 1992 LANL Air Audit reaffirmed the requirement for DOE to obtain Clean Air Act permits for any facilities with the potential to emit radionuclides planned or constructed at LANL since 1989. CCNS requests that NMED determine the existence and validity of these permits.

**5. That NMED require LANL to comply with Clean Air Act criteria in determining the calculated dose resulting from its radioactive emissions, and advise DOE and EPA of the State's requirement that these regulations be met.**

Because of the known systemic deficiencies in LANL's RAEM Program (see, for example, DOE Albuquerque Operations Office's Environmental Checklist on LANL's RAEM Program, March 1992), the annual LANL calculated dose to the most exposed member of the public required under the Clean Air Act is scientifically invalid. We believe that NMED should insist on a calculated dose that is scientifically defensible, and discuss the matter with both DOE and EPA.

6. That NMED convene a departmental meeting to facilitate these requests, and to advise CCNS of how we can best assist in their implementation.

Were LANL a private sector entity, NMED would have never tolerated the Lab's egregious environmental record. Fortunately, NMED is soon due to receive jurisdiction over most environmental regulatory activities at LANL. CCNS suggests that it would be a prudent strategy for the Department to act aggressively now on these issues, before imminent compliance agreements and facility permitting hinder the State's future role.

Should you have any questions, please don't hesitate to call me. We would be happy to provide NMED with relevant supporting documents. We await further word from you.

Sincerely,

A handwritten signature in cursive script that reads "Jay Coghlan".

Jay Coghlan  
Director, LANL Programs