

# Los Alamos National Laboratory

Los Alamos, New Mexico 87545

Operated by the University of California for the Department of Energy

August 19, 1999

Secretary Peter Maggiore  
New Mexico Environment Department  
1190 St. Francis Drive  
Santa Fe, New Mexico 87502

Dear Secretary Maggiore:

**SUBJECT: SUGGESTIONS - IMPROVING EFFICIENCY IN COMPLIANCE WITH NMED RCRA REGULATIONS**

During your visit to the Laboratory on July 15, 1999, we discussed ways in which the Laboratory could cooperate with the New Mexico Environment Department (NMED) to improve relationships and enhance environmental protection.

In this spirit, I am writing to transmit two suggestions put forward by our staff, which would be very helpful to the Laboratory and to other regulated entities in addressing two important hazardous waste management areas.

The two suggestions are: (1) that NMED operate with RCRA regulations which are as current as possible with corresponding EPA regulations; and (2) that NMED conduct a rulemaking proceeding as soon as conveniently possible for the specific purpose of adopting by reference the new amendments of the "Universal Waste Rule" dealing with spent hazardous waste lamps. EPA promulgated these amendments on July 6, 1999; I attach a copy of them for your convenience.

Basically, the philosophy behind these suggestions is to improve compliance by reducing ambiguity and confusion in meeting the regulatory requirements. If, under your leadership, the NMED can take steps toward simplification of regulations where possible, I believe the Department will be moving in a positive direction to attain environmental excellence and sustainable development.

(1) *Current regulations.* Use of less than current rules can cause confusion. Parenthetically, we understand that, with limited exceptions, regulations in effect at the time of permit issuance are those that dictate permit requirements. Our suggestion is not intended to address these regulations.

As an example of the confusion that noncurrent regulations can cause, EPA has amended the Land Disposal Restrictions (LDRs) regulations a number of times in significant ways since 1995.

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These amendments not only affect such substantive areas as treatment levels for waste, but also the types of information that must be included in LDR notification forms. The Laboratory, like other New Mexico enterprises, uses a number of out-of-state treatment and disposal facilities, which operate under more current LDR regulations. Confusion and paperwork conflicts result when the Laboratory sends its waste with notifications reflecting out-of-date regulations, to states operating under more current regulations.

As another example, the NMED closeout briefings of the 1997 RCRA inspection reported apparent findings (two counts) indicating "no treatment (or no treatability groups) marked on LDR notifications" (Waste Manifests #97013 and #97016). Although EPA's 1995 regulations require inclusion of the treatability groups, subsequent revisions in 1997 and 1998 do not require the marking of treatability groups on LDR notifications. While the inspectors relied on 1995 regulations in their 1997 inspection, it seems that this was only the case because of delays in incorporating by reference the more recent EPA regulatory changes into New Mexico's regulations.

It is my understanding that, as of the date of this letter, NMED is still using the 1995 version of the EPA RCRA regulations. This requires the Laboratory to refer back and forth between EPA's 1995 and current regulations in making internal inspections and planning operations.

A possible model that the Hazardous and Radioactive Materials Bureau could emulate is the approach used by NMED's air program, which updates its incorporation of federal regulations annually. Following this approach would introduce consistency in the implementation of federal regulations across NMED's environmental programs. It would be good timing if the RCRA program would incorporate EPA's changes as soon as possible after the revisions are widely available to the regulated community, following the annual publication of the printed codification of CFRs.

(2) *Fluorescent lights*. EPA adopted amendments to its Universal Waste Rule on July 6, 1999, dealing with hazardous waste lamps, 64 F.R. 36466-36490 (July 6, 1999), in recognition of the declining levels of mercury in such devices. EPA summarized the rationale for including hazardous waste lamps in the Universal Waste Rule as that such lamps are "highly appropriate for this waste stream, and that it is in fact exactly this type of waste that the universal waste system was designed for; ...and the agency believes that this approach will improve implementation of the hazardous waste regulatory program, and will adequately protect human health and the environment from the risks posed by management of this waste stream." Other advantages of the new rule are that it "streamlines the Subtitle C management requirements of hazardous waste lamps and supports energy conservation efforts."

The Laboratory, like almost every other business enterprise in New Mexico, disposes of many waste fluorescent lights in a year. Under normal circumstances, I believe the soonest NMED

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would incorporate this new rule would be the winter of 2001. A specific factor stated by EPA for including the "spent hazardous lamps" in the Universal Waste Rule is that "they are generated by a large variety of generators, including retail establishments, manufacturing establishments and office buildings." Consequently, if NMED were to adopt this measure as soon as possible, and publicize the change, it would be extremely beneficial to a very broad segment of the regulated community.

Thank you for your willingness to listen to our concerns; and to work in partnership to attain excellence in environmental protection, including developing regulations that foster common sense hazardous waste management programs which achieve that goal.

If you or your staff have any questions concerning these suggestions, please contact Aden Jackson (665-1120).

Sincerely,



Richard J. Burick  
Deputy Laboratory Director for Operations

RJB:pr

Attachment: a/s

Cy: David A. Gurule, DOE-LAAO, A316  
Dennis E. Erickson, ESH, K491  
Anthony R. Stanford, F, P913  
Sandra R. Moreno, LC-LG, A187  
Aden C. Jackson, ESH-19, K490  
Thomas C. Gunderson, DLDOPS, A100