



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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FEB 6 2001



J.Y.

Joseph C. Vozella, Assistant Area Manager
Department of Energy
Los Alamos Area Office
Los Alamos, New Mexico 87544

Re: Potential Transfer of Property
Los Alamos National Laboratory, Los Alamos, New Mexico

Dear Mr. Vozella:

Region 6 of the U.S. Environmental Protection Agency (EPA) has recently learned that the U.S. Department of Energy (DOE) is contemplating a potential transfer of property to Los Alamos County. As you may know, each department, agency, and instrumentality of the United States, including DOE, is subject to the requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601, et seq., and in accordance with CERCLA, EPA has certain oversight obligations concerning such transfers.

This letter is intended to assist DOE in two ways. First, it will discuss some of the significant requirements of CERCLA, as they pertain to property transfers by a Federal entity. Second, in an effort to facilitate the potential transfer of the above-referenced property contemplated by DOE, it will briefly discuss EPA's current process involving the review of land transfers by Federal entities.

CERCLA Section 120(h) requires Federal agencies to disclosure specific information concerning the storage, release, or disposal of hazardous substances on any property they sell, lease, or otherwise transfer. In addition, CERCLA also requires a Federal entity to include in any deed to transfer property a covenant that all remedial action necessary to protect human health and the environment has been taken before the date of the transfer, and any remedial action found to be necessary after the transfer will be conducted by the United States. 42 U.S.C. § 9620(h)(3)(A)(ii). CERCLA provides that all remedial action has been taken if construction and installation of an approved remedial design has been completed and the remedy has been demonstrated to EPA to be operating properly and successfully. 42 U.S.C. § 9620(h)(3)(B).

Significantly, these CERCLA obligations apply whether the property to be transferred is on an active facility, closing facility, or facility Congressionally mandated for closure pursuant to the Base Realignment and Closure Act (BRAC). By involving EPA and state regulators in the property evaluation and transfer process, DOE can have greater certainty that its environmental obligations have been met and that it will not be required to come back at some future date to



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fulfill obligations under CERCLA and deed covenants to perform additional environmental remediation on transferred property.

Fortunately, by working closely with other Federal entities over the last eight years, EPA Region 6 has gained valuable experience concerning property transfers under BRAC. For their part, BRAC facilities nationwide have developed extensive guidance designed to ensure that their CERCLA disclosure and covenant obligations are fulfilled. To facilitate your evaluation of the property transfer process, you may wish to review the BRAC guidance, which is entitled "Fast Track to FOST" (Finding of Suitability for Transfer) and can be found at the following web site: <http://www.dtic.mil/envirodod/brac/fostfast/index.html>.

Typically, a transferring Federal agency will first send EPA a draft document designed to demonstrate that, in accordance with CERCLA, the Federal agency has taken, or will take, all remedial action necessary to protect human health and the environment before the date of the proposed transfer. After reviewing the draft document, EPA will provide the transferring Federal agency with comments and suggestions concerning the draft document and the proposed transfer. The transferring Federal agency then revises the draft document in response to EPA's comments, and submits the document to EPA for concurrence. If EPA believes the draft document successfully demonstrates that CERCLA obligations have been or will be met, EPA will then issue a letter to the transferring Federal Agency, concurring upon the proposed transfer. Please be aware that, in addition to the aforementioned process, DOE would still need to satisfy the State of New Mexico that any RCRA requirements, including permit obligations, have been met.

I hope this letter provides some assistance in your understanding of the regulatory requirements and process associated with Federal property transfers. EPA Region 6 looks forward to working with DOE if it decides to proceed with the contemplated transfer of property to Los Alamos County. If you have any questions regarding the issues raised in this letter, please contact Rich Mayer at (214) 665-7442.

Sincerely,


David W. Neleigh, Chief
New Mexico & Federal
Facilities Section

cc: ✓ James Bearzi, NMED
Julie Canepa, LANL