



GARY E JOHNSON  
GOVERNOR

**State of New Mexico**  
**ENVIRONMENT DEPARTMENT**

*Office of the Secretary*  
*Harold Runnels Building*  
1190 St. Francis Drive, P.O. Box 26110  
Santa Fe, New Mexico 87502-6110  
Telephone (505) 827-2855  
Fax (505) 827-2836



PETER MAGGIORE  
SECRETARY

July 2, 2002

The Honorable Patricia A. Madrid  
Attorney General  
State of New Mexico  
P.O. Drawer 1508  
Santa Fe, New Mexico 87504-1508

Dear Attorney General Madrid:

Thank you for the opportunity to address the points raised in your June 13, 2002 letter concerning the Letter of Intent (LOI), Meeting Environmental Responsibilities at New Mexico DOE Facilities document, signed by the Department of Energy (DOE), the New Mexico Environment Department (NMED), and the U.S. Environmental Protection Agency (EPA) Region 6.

First, let me assure you that I would not have signed the LOI on behalf of the NMED had there been any possibility that it would constrain or compromise NMED's abilities concerning current and future cleanup of the state's DOE facilities. The NMED views the LOI as just that: a letter describing the signatory parties' collective commitment to getting New Mexico's DOE facilities cleaned up in a more timely manner than current projections suggest. I don't believe anyone could argue against the need for a more aggressive cleanup schedule for DOE facilities. Of course, time will tell the effectiveness of the proposed changes, but I believe the goals to be meritorious.

I would also like to reiterate, as you point out in your letter, that the LOI in no way compromises the public process provided by the Resource Conservation and Recovery Act (RCRA), or other permitting authorities that are used to regulate DOE facilities in New Mexico. Consequently, the NMED sees no material change in how permitting decisions are made (other than hopefully having those decisions happen more rapidly), and all such decisions will of course be subject to public involvement provided for by statute and regulation. I believe some entities are reading more into the language of the LOI than is there insofar as how it may impact NMED decision making.

In your letter, you call out two specific items in the LOI as being potentially problematic. The two items of concern are from Commitment 2 of the LOI namely, "Define regulatory endpoints for LANL and SNL." Specifically, your letter quotes a portion of Commitment 2.b, pursue necessary actions to "ensure long-term effectiveness of institutional controls," as well as a portion of Commitment 2.c,



13665

The Honorable Patricia A. Madrid  
July 2, 2002  
Page 2

continue to improve the definition of data quality objectives and what constitutes "sufficient and acceptable data for predictive modeling."

It is likely that some portions of LANL and SNL will not be closed at levels clean enough as to allow for unrestricted use. Correspondingly, some form of institutional control will be required to ensure that such properties are not used in a manner that causes unacceptable risk exposure. Presently, New Mexico has no mechanism to enforce such institutional controls or restrictive covenants once a site has been removed from a permit. (This issue is most certainly not restricted to DOE facilities in New Mexico. There are a number of Superfund, mining, underground storage tank, and other sites that are dependent on institutional controls to minimize exposure). The NMED has had discussions with the DOE about this issue as it may pertain to its sites; and DOE recognizes the need for covenant enforceability. Moreover, it is the NMED's intention to pursue environmental covenants legislation, irrespective of the LOI.

The second issue raised in your letter; i.e., what constitutes sufficient and acceptable data for predictive modeling, is aimed at resolving what data are suitable for use in such models. Be assured that the NMED has no intention of substituting predictive modeling for actual data; however, predictive models are a valuable tool for many analyses such as fate and transport of contaminants in ground water. Determining when data are sufficient and acceptable for modeling has been an ongoing issue; and NMED is working to develop clear guidance toward that end.

The key commitments of the LOI are designed to accelerate risk reduction and effect more timely cleanup and closure at New Mexico's DOE facilities. Adoption of more aggressive schedules and milestones for completing risk-reduction activities is one means of accelerating cleanup. The NMED also supports working toward a regulatory endpoint that would, in effect, define the future levels or standards for cleanup and closure and the quality of the data used to demonstrate future compliance.

In short, the NMED supports any measure that would accelerate cleanup and produce better environmental results. Support by the NMED does not mean that, in an effort to meet the commitments found in the LOI, regulatory control and oversight by the NMED will be constrained or compromised. Accelerated cleanup does not mean less cleanup. The LOI is a good-faith commitment by all the signatories to explore, develop, and implement performance management in an effort to accelerate the cleanup and closure of DOE facilities without compromising the necessary regulatory requirements.

I hope this letter adequately addresses the points you raised. Please let me know if you need additional information.

Sincerely,



Peter Maggiore  
Secretary