

LANL General
State of New Mexico
ENVIRONMENT DEPARTMENT



GARY E. JOHNSON
GOVERNOR

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



JOHN D'ANTONIO, Jr.
SECRETARY

October 22, 2002

Ralph E. Erickson, Director
Department of Energy
National Nuclear Security Administration
Albuquerque Operations Office
Office of Los Alamos Site Operations
Mail Stop A316
Los Alamos, New Mexico 87544

NOV 2002

Dear Mr. Erickson:

Governor Johnson has asked me to respond to your letter of October 4, 2002, regarding the request by the Department of Energy (DOE) for the Governor's concurrence in deferral of covenants under Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). On October 2, 2002, I mailed a letter containing the Governor's response to your initial request and outlining New Mexico's position on the issue. I assume the two letters crossed in the mail, as you wrote that you had not yet received our formal response.

Given that you lacked the opportunity to review our response to the covenant deferral request before mailing your letter of October 4, 2002, we do not know whether your position remains as stated therein. The State of New Mexico's position as stated in my letter remains unchanged. We believe that all transfers of property required by Public Law (PL) 105-119, Section 632 must be conducted pursuant to the provisions of that law. Section 120(h)(3) of CERCLA does not apply to federal-to-federal transfers, and covenants are therefore not available to DOE. DOE must, of course, comply with Sections 120(h)(1) and (2) of CERCLA, but that compliance creates no conflict with the requirements of PL 105-119, Section 632.

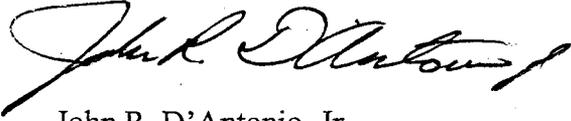
We hope that you have considered our response letter and will adhere to the requirements of PL 105-119, Section 632, regarding the proposed transfers. Please notify us, in writing, on or before November 8, 2002, of your commitment to that course of action. Failing that notice, we will understand that the substance of your letter of October 4, 2002, remains your final determination.



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Thank you for your assistance in this matter, and please don't hesitate to contact me should you wish to discuss this further.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. D'Antonio, Jr.", written in dark ink.

John R. D'Antonio, Jr.
Cabinet Secretary

cc: David McCumber, Chief of Staff, Office of the Governor