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GOVERNOR

State of New Mexico *General*
ENVIRONMENT DEPARTMENT

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RON CURRY
SECRETARY

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DEPUTY SECRETARY

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

January 31, 2003

Mr. Ralph E. Erickson, Area Manager
Office of Los Alamos Site Operations
Department of Energy
528 35th Street, Mail Stop A316
Los Alamos, New Mexico 87544

Dr. John C. Browne, Director
Los Alamos National Laboratory
P.O. Box 1663, Mail Stop A100
Los Alamos, New Mexico 87545

**SUBJECT: RESPONSE TO RESPONSE TO NOTIFICATION OF VIOLATION
FOR FAILURE TO SUBMIT PERMIT MODIFICATION
REQUESTS PRIOR TO CONVEYANCES OR TRANSFERS OF
PROPERTY UNDER PUBLIC LAW 105-119, SECTION 632, AT
THE LOS ALAMOS NATIONAL LABORATORY, NM0890010515**

Dear Mr. Erickson and Dr. Browne:

The Hazardous Waste Bureau (HWB) of the New Mexico Environment Department (NMED) is in receipt of the Response to the Notification of Violation for Failure to Submit Permit Modification Requests Prior to Conveyances of Transfers of Property Under Public Law 105-119, Section 632 at the Los Alamos National Laboratory (LANL), dated December 23, 2002 and referenced by DO-02-110 (ER2002-0888) ("the response"). The response requests a determination that the transfer of the properties requires either no permit modification or is a Class 1 permit modification under 40 C.F.R. §§ 270.41 and 270.42, and alternatively requests a classification determination pursuant to 40 C.F.R. §§ 270.42(d).

The HWB issued its notice of violation to the Department of Energy (DOE) and LANL (collectively referred to as the "Permittees") on November 6, 2002, citing failure to request permit modifications as required by 40 C.F.R. § 270.42. 40 C.F.R. § 270.41 is not, therefore,



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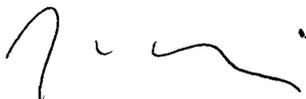
relevant to this matter. The HWB rejects the arguments made in Attachment 1 to the response ("Attachment 1") that permit modifications pursuant to 40 C.F.R. § 270.42 are not required for transfers of the properties. The HWB rejects the request for a Class 1 modification because it finds no support for a Class 1 modification in Attachment 1 and disagrees with the Permittee's conclusion that "LANL's changes to its property boundary is, at most, a minor change that does not substantively impact or alter any identifiable permit conditions." The HWB has determined that the response does not adequately constitute a request for classification determination.

Because the permit modifications prompted by these land transfers are not explicitly listed in Appendix I to 40 C.F.R. § 270.42, the Permittees submitted to HWB what they termed a request for a classification determination. The Permittees failed, however, to submit the necessary information to support the request. In order to determine whether a modification should be reviewed and approved as a Class 1 or Class 2, as opposed to Class 3, modification, HWB must receive the information required in a Class 3 modification request. That information is specified in 40 C.F.R. § 270.42(c)(1). HWB suggests that the Permittees refer, if necessary, to requests by DOE for classification determinations at the Waste Isolation Pilot Plant in Carlsbad, New Mexico for guidance.

The Permittees shall submit complete request(s) for classification determination(s) on all transferred properties to the HWB within 15 days of receipt of this letter. HWB encourages the Permittees to submit separate requests for individual properties or groups of properties if factually appropriate. The Permittees shall follow the procedures and provide the information as set forth in 40 C.F.R. § 270.42. As stated in the notice of violation and pursuant to NMSA 1978, § 74-4-10 (1977), NMED may: (1) issue a compliance order requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation of up to \$10,000 per day of noncompliance for each violation, or both; or (2) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction. Any such order may include a suspension or revocation of any permit issued by NMED.

If you have any questions regarding this letter, please feel free to contact Ms. Darlene Goering of my staff at (505) 428-2548.

Sincerely,



James Bearzi

Chief

Hazardous Waste Bureau

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JPB:dxg

cc: J. Kieling, NMED HWB
C. Lundstrom, NMED WWMD
L. King, EPA 6PD
J. Mullen, NMED OGC
D. Goering, NMED HWB
D. Cobrain, NMED HWB
J. Young, NMED HWB
J. Vozella, DOE OLASO MS A316
B. Ramsey, LANL RRES-DO, MS J591
D. McInroy, LANL RRES-ER, MS M992
N. Quintana, LANL RRES-ER, MS M992
File: Reading and LANL: General (Land Transfer, Airport Tract, White Rock Tract, White Rock "Y", LAAO Tract, TA-10, TA-74, Los Alamos Canyon, Pueblo Canyon, Bayo Canyon, Canada del Buey)