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May 23, 2003

The Honorable Pete Domenici
United States Senate
Washington, D.C 20510

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Dear Senator Domenici:

I thank you for the time your staff spent with me on April 16, 2003, in your offices in Washington, D.C., to discuss environmental issues of concern to New Mexico. In addition to being able to get acquainted with your staff, I think all parties gained a better understanding of many of the environmental issues that we have to grapple with each day.

I take this opportunity to respond in writing to two issues specific to Los Alamos National Laboratory (LANL) about which your staff had questions: 1) the basis of the New Mexico Environment Department's (NMED) Finding of Imminent and Substantial Endangerment (Finding) issued to LANL; and 2) NMED's position with respect to the clean up of parcels slated to be transferred from DOE or LANL control.

Basis of NMED's Imminent and Substantial Endangerment Finding at LANL

By way of background, the NMED issued a Finding to LANL on May 2, 2002, under the authority of the New Mexico Hazardous Waste Act (which mirrors federal authority under the Resource Conservation and Recovery Act). At that time, the NMED also released for public comment a draft Order to LANL designed to address the Finding by mandating specific investigative, reporting, and cleanup measures. After addressing all the comments, NMED issued a revised Finding and Final Order on November 26, 2002. The U.S. Department of Energy (DOE) and the Regents of the University of California (UC) filed four lawsuits challenging the Finding and the Order. Two more lawsuits were filed attempting to bar the State from enforcing the cleanup provisions of the existing RCRA permit for LANL. The parties have agreed to stay the lawsuits, and the NMED has agreed not to enforce the Order, pending settlement negotiations that are ongoing.

Section II of the Order provides support for NMED's assertion that historic and current operations at LANL pose an imminent and substantial endangerment to the residents and environment of New



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Mexico. In the interest of brevity, I will cover only a few of the more prominent examples of endangerment caused by LANL.

It is well known that LANL has discharged millions of gallons of industrial wastewater to the canyons that drain the LANL Facility for 60 years. These discharges contained toxic chemicals such as lead, mercury, nickel, cadmium and chromium; organic chemicals such as chlorinated solvents and high explosive compounds; inorganic contaminants such as nitrate and perchlorate; and radioactive contaminants such as various isotopes of plutonium, uranium, strontium, cesium, americium, technetium and tritium. These discharges have led to documented contamination of groundwater and surface water, including springs that directly feed the Rio Grande.

Given the current drought conditions in New Mexico, the presence of many of these contaminants in the aquifer from which LANL and the communities of White Rock and Los Alamos derive their drinking water is cause of grave concern. Most alarmingly, perchlorate, strontium-90, tritium, and nitrates have been detected in water supply wells, and perchlorate has been detected in tap water. All of these compounds have been shown to endanger human health.

Ground water contamination, and the recent conclusions that many scientists are drawing concerning groundwater flow velocities that are ten to one hundred times faster than previously suggested by DOE and UC, are only the most obvious pieces of evidence supporting the Finding. Waste piles and landfills with uninventoried chemical and radioactive wastes that in many cases have escaped the unlined and unmonitored dumps; "chunk" high explosives; metals, radionuclides, and other contaminants in canyon bottoms that frequently wash into the Rio Grande during storm events – these are but a few of the other environmental problems caused by LANL that are not being adequately addressed at this time.

These issues are not, however, unaddressable. NMED's Order requires LANL to fully address all their environmental problems including investigate groundwater contamination. The Order is an appropriate mechanism for timely, enforceable contaminant investigations and the implementation of any needed remedies. NMED is disappointed that DOE and UC have refused to execute the work under the Order and their Permit, as the environmental health of northern New Mexico's communities depends on it.

Land Transfer

Your staff also expressed concern about land transfer at the LANL Facility, and the perception that NMED was inhibiting timely transference of parcels to San Ildefonso Pueblo, the County of Los Alamos, and other entities. As you know, land transfer at LANL is governed in large part by Public Law 105-119 (PL 105-119), enacted on November 26, 1997. Through the law, Congress intended not only for the DOE to identify certain parcels at LANL to be conveyed, but also for DOE to "...complete the environmental restoration or remediation of the parcel not later than 10 years after the date of enactment of this Act". Should such restoration or remediation not occur, "...the Secretary [of Energy] shall not convey or transfer the parcel under this section." Congress also ensured that passage of the law brought in additional funding for environmental restoration activities for parcels to be transferred. NMED applauds Congress's wisdom in passing PL 105-119 with these important provisions.

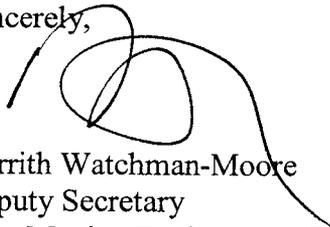
Unfortunately, DOE has a poor record of complying with PL 105-119. Despite the development of a vast "Land Transfer Project Office", the DOE has actually transferred few parcels, and is "under the gun" to meet the 2007 deadline to complete the conveyances. DOE has done a poor job of adequately characterizing environmental conditions of most parcels slated for transfer, much less cleaning them up. Of course, many parcels have no environmental concerns, and NMED has provided its concurrence on the conveyance of those parcels in a timely and appropriate manner. For parcels with demonstrable environmental concerns, however, NMED has been quick to point out DOE's responsibilities under PL 105-119, and under LANL's RCRA Permit.

As an example, NMED has made the DOE aware of its concerns over potential contamination on or originating from at least two tracts that were transferred in October 2002. For one of these parcels, the potential impact of contamination to drinking water has not been investigated whatsoever. DOE even denies that NMED access to data from this parcel is essential to an adequate assessment of the parcel.

It is an important point that NMED has never barred DOE from conveying any parcels. Rather, NMED has insisted that DOE comply with PL 105-119 and its RCRA Permit with respect to land transfer, and has issued formal correspondence to that effect. DOE continues to dispute that it has any obligations under its permit with respect to land transfer.

I hope that this letter clarifies NMED's position with respect to your staff's questions. Secretary Curry and I look forward to visiting with you and your staff in the future to discuss these and other important issues regarding LANL and New Mexico's other federal facilities. And again, I thank you and your staff for taking the time to visit with me.

Sincerely,



Derrith Watchman-Moore
Deputy Secretary
New Mexico Environment Department

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