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**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

December 28, 2004

Mr. Stephen A. Gilrein, P.E.
Associate Director for RCRA Multimedia
Planning and Permitting Division
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

**RE: CA 725 DESIGNATION FOR LOS ALAMOS NATIONAL LABORATORY
EPA ID# NM0890010515**

Dear Mr. Gilrein,

As you know, the U.S. Environmental Protection Agency (EPA) has established a goal under the Government Performance Results Act (GPRA) of having 95 per cent of Resource Conservation and Recovery Act (RCRA) facilities designated as "Human Exposures Controlled" (CA725) by the year 2005. The New Mexico Environment Department (NMED) is aware that the EPA Region VI is urging a "Human Exposures Controlled" or CA725 designation for the Los Alamos National Laboratory (LANL facility) to meet region-specific GPRA goals. The LANL facility is the only facility in New Mexico that has not achieved such a designation.

At this time, the NMED cannot support a CA725 designation for the LANL facility. Our foremost reasons include, but are not limited to, the following:

1. The LANL facility has not fully investigated all solid waste management units and areas of concern. While this in and of itself does not preclude a CA725 designation, many of these sites exist within the town site of Los Alamos where the public currently has unrestricted use of the land. The sites include waste lines, septic systems, septic tank outfalls, and other areas where hazardous, solid, and radioactive wastes were disposed of or buried in place. Historic data available to assess potential risks is hardly adequate and of questionable quality. It should therefore not be relied upon in qualitative – much less quantitative – assessments of risk. In addition, historic investigations often only included radiologic sampling. Without more information about the panoply of contaminants of concern, an assessment of cumulative risk according to current EPA guidance – guidance



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to which NMED generally subscribes – cannot be accomplished. A determination that exposures are controlled is therefore premature.

2. The general public has unrestricted access to several canyon watersheds at the LANL Facility, including Bayo, Pueblo, Los Alamos, and Sandia canyons. Investigation of these canyon systems is basic to the understanding of exposures to which humans may be subject. While some of these investigations are ongoing, none are complete. All are required under the draft Consent Order, in which the last Canyon investigation report (Potrillo/Fence Canyons) is due in 2011. See Section XII of the draft Consent Order at the following web address:

http://www.nmenv.state.nm.us/hwb/lanl/OrderConsent/Draft_Order%20on_Consent_September-1-2004.pdf

A wide body of evidence exists that access to canyons is not controlled. Most alarming yet vaguely whimsical is the recent discovery of the “Los Alamos Caveman”, who was found living in Los Alamos Canyon just below the Department of Energy Los Alamos Site Office. The “Caveman” lived in a cavity in the cliff for roughly four years until his detection in October, 2004 (Attachments 1 and 2).

3. The United States Fish and Wildlife Service has documented access to the upper Sandia Canyon wetlands by children (Attachments 3 and 4). Attachment 5 illustrates a toy in DP Canyon adjacent to the 21-011(k) outfall, a site with documented chemical and radioactive contamination.
4. Since 1963, Mortandad Canyon has received over 340 million gallons of wastewater discharges from the Radioactive Liquid Waste Treatment Facility at Technical Area (TA) 50. Currently the public utilizes the stream channel, trails, and roads within Mortandad Canyon, including portions downcanyon of the TA-50 outfall, for recreational purposes (e.g., walking, jogging and mountain biking).
5. Storm water continues to move contaminants from solid waste management units and areas of concern to off-site, and even off-facility, locations – including the Rio Grande. For example, NMED has recently discovered a site previously granted “no further action” status to have polychlorinated biphenyls migrating via storm water beyond the facility boundaries into areas with unrestricted public access (Attachment 6). Significant plutonium migration into the Rio Grande via Los Alamos Canyon since the Cerro Grande Fire has also been documented by NMED’s Department of Energy Oversight Bureau (Attachment 7).
6. Members of the Pueblo of San Ildefonso routinely access Mortandad Canyon and other impacted areas (e.g., recently transferred lands of former TA-74 located down gradient of TA-10) for cultural purposes. Cultural land use scenarios practiced by Pueblo Indians are not considered in current risk assessments. NMED nevertheless believes that such uses must be assessed prior to any CA725 designation for the LANL facility.
7. The LANL facility currently encompasses over 40 square miles (not including the recently transferred land) and is adjacent to the communities of Los Alamos and White

Rock. Many portions of the laboratory are still used extensively for recreational purposes.

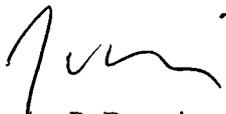
8. Rationale for CA725 designations at other federal facilities (Attachments 8 and 9) include site security and health and safety plans that “alleviate the majority of potential exposures” or where site access by “the public and onsite workers is controlled” and air monitoring programs that should “detect releases and provide warning” (*see* Rocky Flats Environmental Technology Site; Rocky Mountain Arsenal). In the case of Rocky Mountain Arsenal, rationale cited includes multiple levels of access restrictions, including guarded gates and “tightly controlled” access to contaminated areas; no one is allowed into contaminated areas without the proper training and clearances. Although access restrictions to firing sites and classified areas exist at the LANL facility, these restrictions do not apply to the entire facility or the historic footprint of the facility (Los Alamos County). Access to contaminated areas by the public and workers is not controlled nor are potential hazards identified.

Unrestricted access to numerous poorly characterized or uncharacterized SWMUs, AOCs and other contaminated areas... Documented off-site contaminant (non-radiogenic and radiogenic) migration via storm water even today... EPA’s own assessment of the lack of controls on the “ash pile” at the Los Alamos County Airport... Mortandad Canyon routinely accessed by members of the Pueblo of San Ildefonso for cultural purposes... Documented detections of contaminants in water supply wells... These are facts that should lead even the most casual observer to conclude that the U.S. Department of Energy and the Regents of the University of California (collectively, the owner and co-operators of the LANL facility) have not done the minimum required to control human exposures. Clearly, no factual basis exists upon which to support a CA725 designation for the LANL facility. NMED therefore cannot make such a designation while still remaining true to its statutory mission of protecting human health and the environment.

While NMED declines at this time to make a CA725 designation for the LANL facility, we also respectfully discourage EPA from doing so as well. To do so – especially without considering Native American cultural and spiritual uses of the impacted areas – effectively exonerates the importance of the most affected receptors and raises significant environmental justice concerns.

Should you have any questions, please feel free to contact me at (505) 428-2512, or have your staff contact John Young at (505) 428-2538.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: J. Kieling, NMED HWB
S. Yanicak, NMED DOE OB, MS J993
L. King, EPA 6PD-N
file: Reading and LANL General