



General
DEPARTMENT OF ENERGY
 National Nuclear Security Administration
 Los Alamos Site Office
 Los Alamos, New Mexico 87544



SEP 26 2006

Mr. James Bearzi
 Chief, Hazardous Waste Bureau
 New Mexico Environment Department
 2905 Rodeo Park Drive East, Building 1
 Santa Fe, New Mexico 87505-6303



Dear Mr. Bearzi:

By letter dated March 15, 2006, you stated that "the upcoming change in the operator from the UC to a for-profit corporation will subject LANL to the financial assurance requirements in 20.4.1.500 and 20.4.1.600 NMAC."

It is the position of the Department of Energy (DOE) that NMED may not enforce against DOE or any of DOE's contractors, a requirement to post bond or any other financial responsibility requirement relating to closure or post-closure care and monitoring. This issue has arisen at least twice in the past, when NMED attempted to impose similar requirements at the Waste Isolation Pilot Project (WIPP) and at Sandia National Laboratory. In each case, DOE resisted NMED's attempts to impose financial assurance requirements upon those federal facilities, and ultimately, legislation was passed by the United States Congress prohibiting the State of New Mexico from enforcing such requirements. See Section 201 of Public Law 106-246 with respect to WIPP, and Section 127 of Public Law 108-199 with respect to Sandia National Laboratory.

In addition, by letter dated August 9, 2000, Peter Maggiore, then Secretary of NMED, wrote a letter to Inez Triay, then Manager of the Carlsbad Site Office, stating that after reviewing Public Law 106-246, and after legal analysis by the New Mexico Attorney General, he was convinced that "the State of New Mexico may no longer impose upon DOE's contractors the financial assurance requirements" set forth in WIPP's permit. A copy of this letter is posted on NMED's website at <http://www.nmenv.state.nm.us/wipp/secltr080900.html>.

In summary, NMED has not imposed financial assurance requirements on the two other DOE facilities in New Mexico, which, like the Los Alamos National Laboratory, are managed and



operated by for-profit contractors. DOE's position is that NMED may not impose such requirements on DOE or any of its contractors operating DOE facilities located in New Mexico.

If you have any questions, please contact Lisa Cummings at 665-9172.

Sincerely,

A handwritten signature in black ink, appearing to read "Edwin L. Wilmot". The signature is written in a cursive style with some overlapping strokes.

Edwin L. Wilmot
Manager