

General

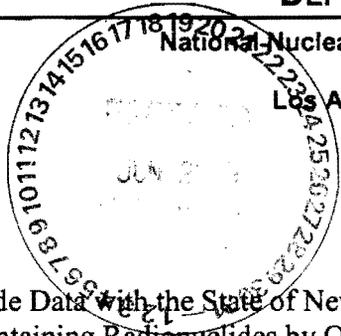
 ENTERED

UNITED STATES GOVERNMENT

DEPARTMENT OF ENERGY

memorandum

National Nuclear Security Administration
Los Alamos Site Office
Los Alamos, New Mexico 87544



DATE: JUN 16 2009
REPLY TO:
ATTN OF: OC-09-79:lc
SUBJECT: Sampling and Sharing of Radionuclide Data with the State of New Mexico, and Ensuring No Treatment of Waste Containing Radionuclides by Open Burning

TO: Michael B. Mallory, Principal Associate Director, Operations and Business, Los Alamos National Security, MS-A102

The U.S. Department of Energy (DOE) has a long-standing policy, as described in the joint guidance developed by the National Association of Attorneys General (NAAG) and the NAAG/DOE Working Group, *Sharing of Radionuclide Information with States*, dated September 1998 (Enclosure 1), to voluntarily provide the New Mexico Environment Department (NMED) radionuclide data that is gathered during implementation of environmental programs at the Los Alamos National Laboratory (LANL). DOE has expressed its continuing commitment (Enclosure 2) to provide radionuclide data to NMED in connection with the closure and corrective action requirements under LANL's hazardous waste facility permit (the permit) that is currently in the process of renewal. DOE expects Los Alamos National Security, LLC (LANS) to continue to support full implementation of DOE's policy by collecting and sharing radionuclide data in accordance with Enclosure 2.

With this letter, I am directing LANS to perform the following activities:

1. In connection with the soil sampling and analysis program required by the permit to establish baseline soil contaminant levels for hazardous constituents released to soils during open burning treatment events; LANS shall, for the first sampling event, collect and submit to NMED, information on radionuclides, including uranium and depleted uranium. The radionuclide information will be submitted to NMED at the same time LANS submits the sampling and analysis report for the first sampling event.
2. Ensure that no radionuclides are treated at the open burning units at TA-16.

If the Contractor believes the Performance Direction violates Contract No. DE-AC52-06NA25396 Clause H-2 entitled Performance Direction, the Contractor shall suspend implementation of the Performance Direction and promptly notify the LASO Contracting Officer of its reasons for believing that the Performance Direction violates this clause. Oral notification to the Contracting Officer shall be confirmed in writing



within ten calendar days of the oral notification. To contact the Los Alamos Site Office Contract Office, call (505) 665-9175.



Robert M. Poole
Contracting Officer
Los Alamos Site Office

Enclosure:

cc w/out enclosure:

R. Snyder, OOM, LASO
L. Cummings, OC, LASO
G. Rael, EO, LASO
G. Turner, EO, LASO
C. Cantwell, AD-ESH&Q, LANL, MS K491
T. George, ENV-DO, LANL, MS J978
M. Graham, ADEP, LANL, MS M991
D. Woitte, LC-LESH, LANL, MS A187
Contract Files, LASO

cc w/enclosure:

James Bearzi, NMED

**SHARING OF
RADIONUCLIDE
INFORMATION
WITH STATES**

Attachment 27

**PRODUCED FOR
THE OFFICES OF THE STATE ATTORNEYS GENERAL
AND DOE FIELD OFFICE PERSONNEL**

July, 1998

GUIDANCE SHARING OF RADIONUCLIDE INFORMATION WITH STATES

I. Background

The Office of Environmental Policy and Assistance had a cooperative agreement with the National Association of Attorneys General to improve communication among the States and DOE on environmental compliance issues related to DOE facilities. This work is continuing under an agreement with the Office of Environmental Management. NAAG, in its role as the membership organization of the Attorneys General of the 50 states, Commonwealth, Territories, and the District of Columbia, assists the legal officers in fulfilling the responsibilities of their offices. Therefore, NAAG is particularly well-suited to facilitate communication among DOE and the States.

Discussions associated with these agreements has led to the identification of several issues that DOE and NAAG considered important and warranted further evaluation. One of these issues is the States' position that DOE should establish a policy to provide radionuclide information as requested by individual States.

The States believe that there are cases where DOE has not been forthcoming in providing radionuclide information. NAAG has provided DOE the results of a survey on State experiences in receiving radionuclide information from DOE. The eight States responding to the survey (Idaho, Kentucky, Nevada, New Mexico, Ohio, Oregon, Tennessee, Washington) indicated that DOE generally provides, on a voluntary basis, radionuclide information requested. However, in some cases, the provision of data has been delayed or resisted by DOE. Moreover, DOE has occasionally resisted States' attempts to require the submission of such information unless statutory authority is clear. This resistance has, in a few cases, resulted in litigation or administrative appeal. In an effort to minimize such instances, it is important to remember that DOE currently has policies which address the sharing of environment, safety and health information with stakeholders. However, based on discussions with NAAG and the States, there appears to be some need to clarify these policies as they relate to the provision of radionuclide information.

The purpose of this guidance is to restate DOE's current policies and to provide assistance to DOE personnel sharing radionuclide information. This guidance will apply equally to requests from States where DOE facilities are located and from other States affected by DOE activities or facilities. This guidance is not applicable to a request for radionuclide information where a State has authority.

II. Existing Policy

Then Secretary of Energy Hazel O'Leary issued a memorandum, "Environment Safety and Health Policy for the Department of Energy Complex" on July 20, 1993 (copy attached). The purpose of this memorandum was to set forth the Department's vision of personal commitment, mutual trust, open

B. Mandatory v. Voluntary Provision

In the spirit of cooperation, DOE should focus discussions with the States on accommodating each other's needs and constraints and should attempt to avoid arguments concerning statutory or regulatory authority. In particular, DOE personnel should work to structure their interactions with the States such that issues of regulatory authority need not be addressed.

On some occasions the State's request for radionuclide information may come in the form of a mandatory requirement contained in a permit, agreement, etc. On those occasions, DOE personnel, in consultation with field office counsel, should attempt to resolve the issue by agreeing to voluntarily provide the information, as a matter of comity. In the event that the proposed resolution is unacceptable to the State, DOE field office personnel should determine whether to accept or challenge the requirement and/or reach an acceptable compromise with the State.

Although DOE's policy is to work with the States to accommodate their requests for radionuclide information by voluntarily providing this information in accordance with this guidance, it should be recognized that this policy does not eliminate any legal arguments DOE may have against a State's attempt to impose mandatory requirements to provide radionuclide information in the absence of a regulatory or legislative mandate to do so. However, it is hoped that by providing information on a voluntary basis the instances where States would unilaterally seek to impose mandatory requirements would be minimized.

C. Classified Information

When the information requested by a State is available, but cannot be released because the information is classified or controlled as provided by law, such as section 120(j) of CERCLA, or section 2168 of 42 United States Code (Dissemination of Unclassified Controlled Nuclear Information), DOE should consult with the appropriate classification officers or other appropriate officials to initiate a declassification review or in the case of sensitive information, to determine if the information can be released in accordance with applicable procedures for proper handling. If the information can be declassified in a meaningful form, or otherwise released, steps should be taken to accomplish this and the State should be notified of the approximate release date. If the information cannot be declassified in a meaningful form, or otherwise released, DOE personnel and the State should work together to determine if there are other alternatives to meeting State information needs.

IV. Conclusion

DOE is committed to continuous improvement in achieving excellence in worker, public, and environmental protection. One of the ways this can be accomplished is through open communications, such as sharing of information with all interested persons. Sharing includes providing radionuclide information to States in a manner consistent with the law and DOE policy. Circumstances which could hinder or prevent the release of requested information should be resolved, whenever practicable, through discussion with State authorities.



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



JUN 10 2009

The Honorable Ron Curry
Secretary
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive Santa Fe, NM 87502-6110

Dear Secretary Curry:

The purpose of this letter is to affirm that it remains the policy of the Department of Energy (DOE) to voluntarily provide radionuclide data to the New Mexico Environment Department (NMED). We have provided this information as a matter of comity consistent with long-standing DOE policy. That policy is described in the joint guidance developed by the National Association of Attorneys General (NAAG) and the NAAG/DOE Working Group, *Sharing of Radionuclide Information with States*, dated September 1998 (Enclosure 1).

DOE and Los Alamos National Security, LLC (LANS), the management and operating contractor at the Los Alamos National Laboratory, are co-permittees on a hazardous waste facility permit issued by NMED. As you are aware, NMED is in the process of renewing the permit. The permit addresses, among other things, the closure of treatment and storage facilities, and corrective action. In connection with the closure and corrective action requirements, the permit requires collection of environment data.

Although not required by the permit, the permittees will also, when appropriate, collect radionuclide data. The collection of radionuclide data will be conducted pursuant to the Atomic Energy Act of 1954 and implementing regulations and DOE orders. When the permittees collect radionuclide data in connection with closure or corrective action activities conducted under the hazardous waste permit, permittees will voluntarily provide that data to NMED. Radionuclide data will be submitted at the same time that reports called for under the permit are submitted to NMED.

To ensure that the information is sent to NMED as indicated above, DOE has sent a letter to LANS reminding it of its obligation to comply with DOE's information-sharing policy. Should DOE contract with any entity other than LANS to conduct closure and corrective action activities under the permit, DOE will likewise ensure that entity is aware of this policy.

If you experience any delay or difficulty in receiving such information, please contact me at (505) 667-5105.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald L. Winchell, Jr.", written in a cursive style.

Donald L. Winchell, Jr.
Manager

cc:

L. Cummings, OC, LASO, A316
G. Rael, EO, LASO, A316
G. Turner, EO, LASO, A316
C. Cantwell, ADESH&Q, K491
T. George, ENV-DO, J978
M. Graham, ADEP, M991
D. Woitte, LC-LESH, A187
Records Center, LASO