



Department of Energy  
Albuquerque Operations  
Los Alamos Area Office  
Los Alamos, New Mexico 87544

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OCT 6 1988

HAZARDOUS WASTE SECTION

October 6, 1988

HAND-DELIVERED

Mr. Boyd Hamilton, Program Manager  
Hazardous Waste Section  
New Mexico Health and Environment Department  
Harold Runnels Building  
1190 St. Francis Drive  
Santa Fe, NM 87501

Request for Public Hearing in the Matter of Compliance  
Order/Schedule, Los Alamos National Laboratory, NM 0890010515 -  
Under Protest.

Dear Mr. Hamilton:

The United States Department of Energy (DOE) and the Regents of the University of California (the University) request a public hearing on the above referenced Compliance Order/Schedule pursuant to 74-4-10F, NMSA 1978, as amended. We make this request for public hearing under protest for the following reasons.

Section 74-4-10F, NMSA 1978, as amended, requires that the public hearing be requested within 30 days after the Compliance Order/Schedule is served. At this time the Environmental Improvement Division (EID) has not promulgated rules of procedure for a hearing conducted pursuant to 74-4-10F, NMSA 1978, as amended. DOE and the University assert that the requirement to elect a public hearing without adequate notice of the rules of procedure governing such hearing is a denial to DOE and the University of their fundamental rights of due process. Accordingly, this request for a public hearing shall not be construed as a waiver by DOE or the University of their rights to due process; nor shall it be construed as a waiver by DOE or the University of their rights to contest the validity of the public hearing for lack of due process either in the course of the public hearing or in a court of competent jurisdiction.

DOE and the University also protest the attempt by EID to impose two separate fines--one against DOE as owner and one against the University as operator of a hazardous waste facility--for the same alleged violations. In prior dealings with DOE and the University, EID has consistently asserted that the New Mexico Hazardous Waste Act creates joint and several liability between the owner and operator for any civil fine imposed. These two positions are inconsistent and appear to reflect an arbitrary enforcement policy.



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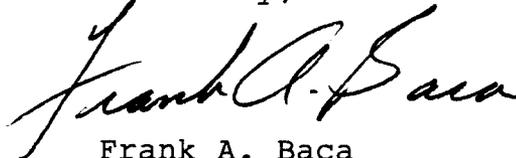
Mr. Boyd Hamilton

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In making this request for public hearing, neither DOE nor the University waive their rights to challenge the authority of New Mexico to impose administrative sanctions on DOE or the University for alleged violations at the Los Alamos National Laboratory of the New Mexico Hazardous Waste Act, on account of the sovereign immunity of the United States of America.

Should you have questions or require additional information, please contact Joyce Hester Laeser, Counsel, Los Alamos Area Office, Department of Energy, at 667-4667.

Sincerely,



Frank A. Baca  
Acting Area Manager  
Los Alamos Area Office  
Department of Energy



Allen J. Tiedman  
Associate Director for Support  
Los Alamos National Laboratory

cc: Gini Nelson, EID, PO Box 968, Santa Fe, NM 87504-0968

Hand delivery acknowledged by the Environmental Improvement Division in lieu of Certified Mail.

Gordon Dulin

Signature

Planner

Title

10-07-88

Date