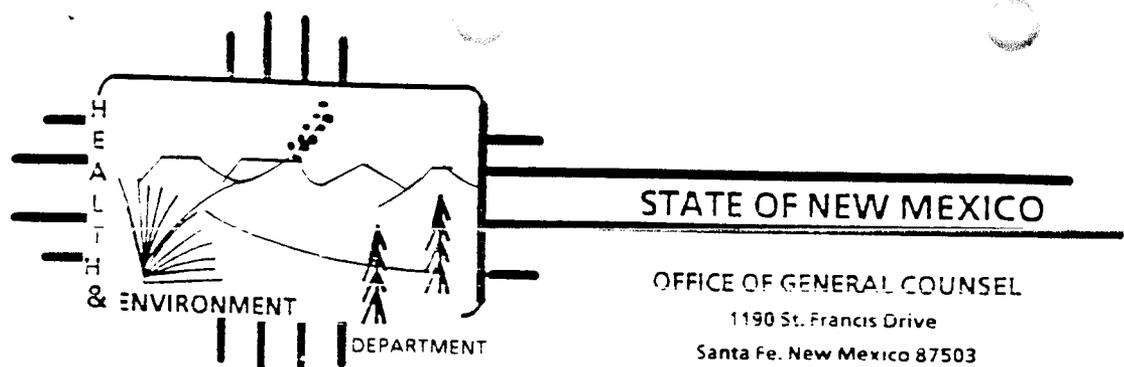


John Gould

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January 10, 1989

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Re: November 23, 1988 Notice of Violation

Dear Ms. Laeser and Ms. Brown:

I understood from my telephone conversation of January 4, 1989 with Ms. Brown that: (1) she had not yet made the revisions of our December 22, 1988 telephone conversation; (2) DOE and the University had additional technical proposals to make; and (3) that no policy decision had at that time yet been made regarding payments of money for the violations set out in the November 23, 1988 NOV, and for future violations of the Agreement. As things stand, DOE and the University must respond to the NOV by Wednesday, January 11th, including the issues we are trying to address with this Agreement. In the event that negotiations can proceed in this matter, please discuss the following proposals with the appropriate people and get back to me at your earliest convenience.

EID has completed its technical review of LANL's proposal of December 20, 1988, has some additional questions, and proposes these additional changes to those we discussed by telephone on December 22, 1988 (references are to your draft of 12/20/88):

1. Page 1, Statement of Facts, paragraph 2, line 3: "first" versus "main" aquifer (per your request on December 22, 1988). The language used in the cited regulations is "in the uppermost aquifer" and EID proposes this language.
2. Page 1, Statement of Facts, paragraph 2: Add at the end of



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the paragraph, "Closure plan review and approval by EID is independent of and not bound by this Consent Agreement."

3. Page 2, third line from top: Add at the end of the sentence, "to monitor for releases from these impoundments."

4. Page 2, Compliance Schedule, paragraph 2: EID proposes that the first two sentences of the first subpart of this paragraph state: "Using a truck mounted, motor-driven auger, three borings will be drilled in the bottom area of each impoundment to a depth to be determined during drilling, but at least 20'. At least one of these borings will extend through the upper moderately welded tuff to the densely welded tuff (approximately 100 feet)." Also, regarding the last sentence of the first subpart, what is your definition of "auger refusal?"

5. Page 2, Compliance Schedule, paragraph 2 (and wherever dates for submittal are given): EID will require that DOE and the University submit a final report and not only sample analyses. A new section in the Agreement is appropriate. Please see Note 16, infra, for proposed language.

6. Page 3, first full paragraph: What do you mean by a "sampler" and by "sampler refusal?"

7. Page 3, part 3)a) (and for sampling requirements throughout the Agreement): EID will require that DOE and the University collect and analyze all samples under this Agreement as indicated in the proposed new section, please see Note 17, infra. Assuming the sampling requirements are in the new section, EID proposes to substitute this language here: "A ten foot boring will be drilled in each surface impoundment for the purpose of sampling. Core samples from these as well as from the three borings beneath each impoundment will be taken from the following depths: 2-3 ft., 7-8 ft. If analytic results indicate contamination, additional samples will be submitted for analysis to determine the extent of the release. Auger refusal may restrict the proposed depth of sample collection. If this should occur, a sample will be collected from the bottom of the last core retrieved."

8. Page 3, part 3)b): EID proposes to substitute this language: "Core samples from the two borings in the canyon floor will also be submitted for analysis. Two cores from each boring will be retrieved. A sample from each core will be analyzed. Samples will not be composited before analysis." (The second and third paragraphs in 3)b) can be deleted with the new paragraph applicable to all samples in both impoundments and canyons as proposed in Note 17.)

9. Page 4, part 4) first paragraph: HWMR-4, §206.D.1.F.(2) is

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an improper cite as that section regulates permitted facilities and not facilities with interim status. The appropriate regulation is HWMR-5, Part VI, §265.91. Additionally, what is the point of this assertion? The parties are seeking by this Agreement to allow the alternative of testing the canyon bottoms instead of drilling the 1000' wells that this regulation requires.

10. Page 4, part 4)a): EID proposes to substitute this language: "Samples of soil will be collected in the canyon floor from the location of the surface impoundment to the first NPDES outfall encountered, for approximately every 100 feet, and for a minimum of four samples. Sample collection will be achieved with a hand auger and shall extend to the base of the alluvium. ... Soil will be evaluated to determine the likelihood of ground water existing in quantities sufficient to obtain samples for analysis. If such quantities exist, shallow monitoring wells will be installed to collect ground water in such locations as to provide one upgradient and 3 downgradient wells for statistical comparison. Analysis of existent ground water will be performed to identify the hazardous constituents detected in the surface impoundment. If no water is found, soil extraction testing will be done. If none of the hazardous constituents are found, it will be presumed that the impoundment has not impacted the alluvial ground water. If these constituents are detected, efforts to confirm their source will be undertaken, [i.e., please provide detail], and there will be continued monitoring pursuant to HWMR-5, Part VI, Subpart F."

11. Page 4, part 4)a), paragraph 3: As this information appears to be irrelevant to this Agreement, EID suggests that it be deleted. Alternatively, EID proposes that the paragraph be prefaced that it states DOE's and the University's position; and that the second to last sentence in the paragraph be deleted.

12. Page 4, part 4)b): As there may have been an overflow, the same investigation as is delineated in part 4)a) regarding Ten Site Canyon is necessary for Mortendad Canyon. EID proposes that the current language be substituted as indicated to parallel the language in part 4)a).

13. Page 6, Availability of Appropriations: EID proposes that DOE and the University assert that there currently is enough money available to do all required activities under the Agreement; and that they agree to seek sufficient money if, due to unexpected circumstances, there is not.

14. Page 6, Amendment of Closure Plan: EID proposes to substitute the following language: "DOE and the University agree to amend the closure plans for the TA-35 impoundments by January 30, 1989 to incorporate with further detail the provisions of

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this Consent Agreement. Closure plan review and approval by EID is independent of and not bound by this Consent Agreement."

15. Re: Termination: By telephone conversation of December 23, 1988 I proposed the following language: "This Consent Agreement terminates upon EID's written certification that DOE and the University have successfully performed the activities specified in the Schedule of Compliance, which approval shall not be unreasonably withheld." You requested that EID respond within 30 days. Alternatively, EID proposes that EID respond "within a reasonable time." EID could agree to inform DOE and the University, within five (5) days of receipt of an approvable final report, how long review is likely to be based on the volume of the submitted response. If DOE and the University continue to request a stated number of days in which EID would respond, EID can probably agree to thirty (30) working days, so long as DOE's and the University's final report is timely submitted.

16. Re: Final Report: EID proposes two new sections in the Agreement as follows:

REPORT

On or before September 15, 1989 DOE and the University shall submit to EID a thorough report which includes the following:

- (1) narrative summary of results;
- (2) results summary in tabular form;
- (3) supporting analyses requests on analyses reports, identified with same sample number,
- (4) scale maps reflecting sample locations; and
- (5) any other technical information requested by EID which is reasonably necessary to meet the requirements of this Agreement.

EID REVIEW AND APPROVAL OF REPORT

Within thirty (30) days of EID's receipt of the report, EID will review the report and will either approve the report or notify DOE and the University, in writing, of the report's inadequacies. If inadequacies are found which can be corrected with existing data, DOE and the University shall, within fifteen (15) days of such notice of inadequacy, modify the report and submit it to EID for review and written approval or disapproval. If inadequacies are found

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which require additional field investigation, including but not limited to additional chemical analyses of groundwater or soils, drilling of additional monitoring wells, etc., DOE and the University shall, within forty-five (45) days of such notice of inadequacies, modify the report and submit it to EID for review and written approval or disapproval. EID shall not unreasonably withhold its approval.

17. Re: Sampling: "All samples collected pursuant to this Agreement will be analyzed for volatile and semi-volatile organics and total metals as listed in HWMR-5, Part 261, Appendix VIII, using SW846 EPA-approved procedures."

Finally, I note that we have not yet discussed specific language addressing payments for failure to comply with the Agreement; and language addressing payments for the violations cited in the November 23rd NOV letter.

Sincerely,



GINI NELSON
Assistant General Counsel

GN:vmj

cc: John Gould, EID

[novchnag]