New Mexico Health and Environment Department

CARLA L. MUTH
Deputy Secretary
MICHAEL J. BURKHART
Deputy Secretary
FLORENCE RUTH J. BROWN
General Counsel
LOUIS W. ROSE
Deputy General Counsel

July 10, 1989

Joyce Hester Laeser, Esq.
Counsel
U.S. Department of Energy
Albuquerque Operations
Los Alamos Area Office
Los Alamos, New Mexico 87544

ALSO VIA FAX

James E. Mitchell, Esq.
Senior Counsel
Office of Laboratory Counsel
Los Alamos National Laboratory
Post Office Box 1663
Mail Stop A187
Los Alamos, New Mexico 87545

ALSO VIA FAX

RECEIVED
JUL 1 1 '89
HAZARDOUS WASTE SECTION

Re: Docket No. 880801
Docket No. 880801-A

Dear Ms. Laeser and Mr. Mitchell:

Thank you for your comments on the proposed procedures I received by fax on July 6, 1989.

EID's responses to your reply comments follow (with the same numbering sequence):

2. For this hearing, it is acceptable to EID to revise §103.A.2. to state that EID is the complainant, and that EID will be represented at the hearing by an employee of EID.

9. EID concurs.

10. I enclose relevant pages from Senate Bill 217 showing the amendments to §74-4-10, and the emergency provision. Whether its application to hearings held after the effective date, for compliance orders issued before its effective date, violates constitutional law is unlikely, as the change has no substantive effect. However, for this hearing, it is acceptable to EID to define the rules to provide for Attorney General approval of the hearing officer.

13. Please see response at No. 10 above, regarding the Attorney General approval of the hearing officer.

17. As DOE and the University have already requested a

— OFFICE OF GE
Harold R
(505)
1190 S
Santa Fe, Ne

16504

hearing on the Compliance Orders, EID suggests we delete E. from the rules for this proceeding. It is EID's position that, given the requirements of notice pleading, the Compliance Orders do satisfy B. and D. DOE and the University would be free under the procedures to challenge the completeness of the Compliance Orders, if they conclude that is appropriate.

18. I will revise the procedures to reflect that the requests for hearing have already been made.

19. EID concurs.

24. Please see response at No. 25 below.

25. Under these procedures, DOE and the University would have "a right to a review of any final order which imposes new or additional requirements," by judicially appealing the final order. As it would be purely speculative at assume that the Director will issue a final order with a penalty larger than that proposed in the compliance orders, I think DOE and the University can sufficiently protect themselves by reserving their right to challenge the final order on these grounds.

Please respond with any further comments you may have to the responses EID is making in this letter as soon as possible. In the interim, I will revise the procedures as indicated previously and by this letter, and forward you copies for your review, by delivering them to Sheila Brown for delivery to you on July 11th. I will also draft a Joint Motion for Adoption of Procedures and forward copies to you for your consideration shortly thereafter.

Sincerely,

GINI NELSON
Assistant General Counsel

cc: Kirkland Jones
Jack Ellvinger
Boyd Hamilton