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October 5, 1989

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Re: In the Matter of Compliance Orders Docket No. 880801
and 880801-A, Hearing No. 89-01

Dear Ms. Laeser and Mr. Yesley:

This letter supplements the Environmental Improvement Division's (EID) Response to the Department of Energy's (DOE) and University of California's (the University) Rule 303 discovery request as made in a letter dated September 12, 1989 from Joyce Laeser to me. As mutually agreed, EID is this same date providing DOE and the University access to the requested records. Of the additionally provided records, the following documents or excerpts from documents within those files are being withheld from disclosure pursuant to the articulated privileges:

- (1) LANL 1986 Blue (Enforcement) File:
 - a. Memorandum dated May 2, 1986 from Jack Ellvinger, through Peter Pache, to Dick Young, re: Comments On the LANL Settlement Agreement withheld pursuant to attorney-client and/or executive privileges
 - b. Memorandum dated May 9, 1986 from Jack Ellvinger, through Richard Holland, Ernest Rebeck and Peter Pache, to Denise Fort, re: Explanation of the current LANL situation. How we got here and where do we go from here, withheld pursuant to executive privilege
 - c. Memorandum dated September 18, 1986 from Dick Young to Carol Oppenheimer, re: LANL Settlement Progress, withheld pursuant to attorney-client and/or executive privileges

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Joyce Hester Laeser, Esq.
Michael Yesley, Esq.
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- (2) LANL Yellow (Notification) File #1:
 - a. From EID Buckslip to September 9, 1987 letter from Michael Burkhart to Harold E. Valencia, "Comments By Drafter Or Reviewer(s)" section only withheld pursuant to executive privilege
 - b. From EID Buckslip to August 8, 1986 letter from Ernest Rebeck to Harold E. Valencia, "Comments By Drafter Or Reviewer(s)" section only withheld pursuant to executive privilege
- (3) LANL 1988 Red (Permit) File #1:
 - a. From EID Buckslip to March 26, 1988 letter from Michael Burkhart to Harold E. Valencia, "Comments By Drafter Or Reviewer(s)" section only withheld pursuant to executive privilege
 - b. From EID Buckslip to April 20, 1988 letter from Jack Ellvinger to Harold E. Valencia, "Comments By Drafter Or Reviewer(s)" section only withheld pursuant to executive privilege
- (4) LANL 1989 Red (Permit) File #1:
 - a. Request For Legal Services dated February 17, 1989, withheld pursuant to attorney-client privilege

EID understands its continuing obligation to supplement such discovery requests.

Sincerely,



GINI NELSON
Assistant General Counsel

Enclosure

cc: Boyd Hamilton

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BEFORE THE DIRECTOR OF THE
ENVIRONMENTAL IMPROVEMENT DIVISION
OF THE NEW MEXICO HEALTH AND ENVIRONMENT DEPARTMENT

In the Matter of
Compliance Orders
Docket Nos. 880801 and 880801-A

DOCKET NO. 89-01

CERTIFICATE OF SERVICE

I hereby certify that copies of EID's Second Supplemental Response to the United States Department of Energy's and the University of California's Request for Documents Under Rule 303 were mailed by first class mail, via certified mail, return receipt requested, on this 5th day of October, 1989, to the following:

JOYCE LAESER
Counsel
U.S. Department of Energy
Albuquerque Operations
Los Alamos Area Office
Los Alamos, NM 87544

MICHAEL YESLEY
Staff Attorney
Los Alamos National Laboratory
Office of Laboratory Counsel
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Los Alamos, NM 87545


GINI NELSON

A F F I D A V I T

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, BOYD HAMILTON being first duly sworn upon my oath depose and state as follows:

1. I am the Program Manager of the Hazardous Waste Program (HWP). I have held this position for one year. I have been in the HWP for the past seven (7) years and employed by the Environmental Improvement Division for the past ten (10) years.

2. I am also the HWP person with responsibility for these Compliance Orders.

3. In order to manage and track the voluminous amount of correspondence received by the HWP and/or generated by the HWP the following type of filing system is used:

- a. All EPA Forms 3510 series and notification forms 8700-12 are filed in the YELLOW tabbed file for the Treatment/Storage/Disposal (TSD) facilities.
- b. All correspondence relating to permitting, closure and post-closure are filed in the RED tabbed file for TSD facilities by calendar year.
- c. All correspondence relating to inspection, enforcement and groundwater, including the biennial reports are filed in the BLUE tabbed files for the TSD facilities by calendar year.
- d. All permit applications are filed in the bookcases.
- e. All general administrative data is filed in the file



cabinets.

4. The materials identified in Paragraph 3, a-c, are kept in the sliding file case. In order to reduce the volume of materials so filed, however, bound documents and/or information that exceeds 1/2 inch in thickness collected or submitted at one time are placed in a magazine file and filed in the bookcase. The original letter of transmittal and/or a copy of the file page is retained in the appropriate facility file along with a reference to where the original submittal has been filed.

5. In addition to the formal HWP filing system (described in Paragraphs 3 and 4), HWP staff may have working files in their offices. It is the policy of the HWP that staff working files only contain:

- a. Copies of documents from the formal HWP files, and
- b. Working notes before incorporation into final documents.

The working notes are discarded when the final document is completed and the final document filed in the formal HWP filing system.

6. To prepare for DOE's and the University's October 5, 1989 review, I checked the following HWP files and/or file locations:

- a. The red files for the years 1986-1989.
- b. The blue files for the years 1986-1989.
- c. The yellow files (all years).
- d. The general administrative files (all years).
- e. Magazine files containing the following documents:

- 1) Bound closure plan documents as submitted by LANL for TA-16, TA 3-102, TA 22-24, TA-40-2, TA-54 Area L tanks.
- 2) EPA inspection reports.
- 3) LANL NOV response of July 5, 1984 and November 22, 1985.
- 4) LANL RCRA Facility Assessment.
- 5) LANL HSWA Part B response.

- f. The LANL Permit Application data.
- g. My own working file, and that of Mr. Kelley Crossman.

7. Additionally, I checked the following files and/or file locations:

- a. The EID Director's office.
- b. The EID Deputy Director's office.
- c. The Hazardous Waste Bureau Chief's office.

8. All of the files identified in Paragraphs 6-7 were made available, subject to privilege withholding, to the DOE and University representatives on October 5, 1989; except for:

- a. Paragraph 6, d., because there was nothing in the files specific to LANL that was not itself a copy of the original in the LANL file;
- b. Paragraph 7, a., because there was no LANL-specific file;
- c. Paragraph 7, b., because there was nothing specific to LANL that was not itself a copy of the original

in the LANL file; and

- d. Paragraph 7, because there was nothing specific to LANL that was not itself a copy of the original in the LANL file.

9. As the DOE and University representatives were leaving they commented to me that certain LANL submissions had not been in the files and that they would identify them in a letter. As a result of their comment and this Motion, I checked HWP staff offices and located the following documents which were not made available to DOE and the University on October 5th:

- a. The LANL response to EID dated February 11, 1988.
- b. Two (2) boxes of LANL data submitted in 1988 entitled "Inventory of Federal Hazardous Waste Activities."
- c. Groundwater Monitoring Waiver Application for TA-35, an unrelated unit at LANL.
- d. Additional permit application data.

Because this data had not been properly checked out of the HWP formal files or referenced by location so as to be locatable, I was not able to identify them as missing in preparing for the October 5th file review. They are now available for DOE and University review.

10. Regarding the absence of LANL settlement agreement drafts, it is HWP policy to discard drafts and working notes once they are incorporated into final documents. It is my practice to comply with this policy. To the best of my recollection, I would

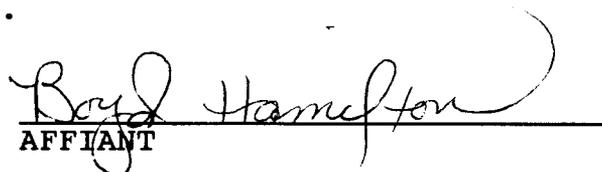
have discarded any draft settlement agreements once I formalized my comments into a final memorandum, or other final response.

11. Regarding the University's Rule 302 witness list, I do not recognize the majority of the non-regulatory agency names, and cannot begin to guess what their roles and/or connections with the violations cited in the Compliance Orders might currently be or might have been in the past. I also at this time do not know what connections several of the listed EID individuals might have or might have had with the cited violations.

12. Regarding the EID/EPA conversation notes, I have reviewed them and they are not related to the cited violations in the CO/Ss. Rather, they concern other suspected Hazardous Waste Act violations at the LANL facility at unrelated locations and at unrelated times.

13. Attached is a copy of the current Memorandum of Understanding (MOU) effective October 1, 1988 as agreed to by the EID and U. S. Environmental Protection Agency (EPA). Pursuant to the MOU, EID and EPA agree deterring noncompliance would require that both parties work together, e.g., by exchanging data, and discussing suspected violations, responsibilities and procedures. This exchange of information is critical between EPA and EID to ensure an effective enforcement program that is equivalent to that of EPA's in order to maintain authorization, and also to utilize their expertise.

FURTHER AFFIANT SAYETH NAUGHT.


AFFIANT

SUBSCRIBED AND SWORN to before me this 25TH day of OCTOBER,
1989, by BOYD HAMILTON, Affiant.



NOTARY PUBLIC

My Commission Expires:

3/10/93

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