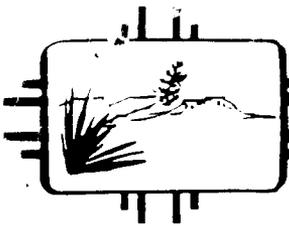


Boyer



December 22, 1989

DEC 27 1989

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ALSO VIA FAX

Michael Yesley, Esq.
Office of Laboratory Counsel
Los Alamos National Laboratory
Post Office Box 1663
Mail Stop A187
Los Alamos, New Mexico 87545

ALSO VIA FAX

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

Dear Ms. Laeser and Mr. Yesley:

I have reviewed the draft Consent Agreement Ms. Laeser provided by letter dated November 13, 1989 and discussed it with my clients. Please note the following comments and proposed revisions:

(1) Re: ¶I.E. This is better amended as follows: "... and to legally bind such party to this Agreement[,] subject, however, to ¶IV.G. of this Agreement."

(2) Re: ¶IV.A. This Agreement cannot as drafted "release" LANL from its obligations under the 1988 orders. Procedurally, there can only be a release of the obligations after the Director issues the final orders in Docket Nos. 880801 and 880801-A, and LANL satisfies the requirements of the final orders. The Director, in those final orders, will disapprove the consent agreement or approve and order compliance with the terms of the consent agreement. Thus, this needs to be amended something like as follows: "This Agreement once approved by the EID Director Upon approval of this Agreement by the EID Director, EID waives ... and releases ... subject to the requirement of ¶IV.H." Alternatively, there could be an "effective date of agreement" provision, i.e.: "[New Provision: Effective Date. This agreement is effective upon final approval by the EID Director pursuant to the Hearing Rules."



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Then, as the Agreement requires the University to pay EID \$30,000 and release cannot occur until after payment has been received, please add a new section: "[New Provision: Termination. DOE's and the University's obligations under this Agreement shall terminate upon EID's certification to DOE and the University in writing that they have complied with all of the requirements of the Agreement.]"

(4) Re: ¶IV.C. EID at the November 3, 1989 meeting stated that this language would need to be changed to be solely a recital of the law. Please revise this to something like as follows: "Nothing in the Hazardous Waste Act shall be construed to apply to any activity or substance which is subject to the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1151 et seq.), the Safe Drinking Water Act, as amended, (42 U.S.C. 300f et seq.) or the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011 et seq.) except to the extent that such application or regulation is not inconsistent with the requirements of such acts. Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended, are not solid wastes for the purpose of Part 261 of HWMR-5."

(5) Re: ¶IV.D. Payment should be as indicated but with the addition of the street address of the Department, i.e., 1190 St. Francis Drive.

(6) Re: ¶VI. Please amend the last sentence as follows: "This Agreement shall not bind any other state or federal regulatory agencies."

(7) Re: **Hearing Rule 108.B.** DOE and the University must admit the jurisdictional allegations of the compliance orders. There are no such provisions in the draft consent agreement. Appropriate language could be: "[New Section]: DOE and the University, for the purpose of this proceeding, admit the jurisdictional allegations of Compliance Orders 880801 and 880801-A."

(8) Re: **signature lines.** Deputy Director Kirkland Jones will sign this consent agreement for presentation to the hearing officer and to the Director, not Director Richard Mitzelfelt.

Please call me at your earliest convenience to discuss these comments and revision. I am available for a telephone conference

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call most any time next week, but for Christmas Day, given appropriate notice.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gini Nelson".

GINI NELSON
Assistant General Counsel

cc: Boyd Hamilton, EID Hazardous Waste Program Manager