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file
Ed
LANL file

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February 2, 1993

Joyce Laeser, Esq.
U.S. Department of Energy
Los Alamos Area Office
Los Alamos, N.M. 87544

4 1993

Re: **Response to your February 1, 1993 telefax letter.**

Dear Ms. Laeser:

Thank you for your telefax letter of February 1, 1993. I am responding as quickly as possible because the issues you raise are significant, and to acknowledge that I agree time is of the essence.

First, the two middle paragraphs on page one accurately reflect our telephone agreement. As to paragraph 3, you are correct in your assumption that the compliance orders (or such portions thereof as you may elect to contest), do not become final if a hearing is timely requested. However, the further assumption that a timely request for hearing automatically stays the timelines in the compliance order is not correct. DOE and LANL must decide, and decide soon, which demands you are willing to meet and which will be contested. DOE and LANL bear the risk of penalties for noncompliance or untimely compliance with CO deadlines both now and in the event of a later adverse decision on a challenged requirement.

NMED may extend deadlines to the extent LANL and DOE can demonstrate good grounds for an extension, or where NMED determines that an extension may enhance the possibility of an early and global negotiated resolution. In particular, if **before they expire**, DOE or LANL wish to suggest in writing why the five day deadlines set forth in the orders cannot be met or should be extended, NMED will consider your request. No penalties will accrue while that request is being considered. I wish to emphasize however, that NMED otherwise reserves its statutory right to seek penalties for noncompliance beyond all stated deadlines, and that the safest course for LANL and DOE is to meet those deadlines.

As has been indicated in the COs, NMED encourages and welcomes early settlement discussions. To that end, and without waiver of any privilege or work product exceptions as to other documents, we will furnish you with copies of:



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1. NMED's penalty policy and matrix.
2. NMED's narrative and calculation sheets for each assessed penalty.
3. A copy of the final inspection report for the May 4-8, 1992 inspection.

NMED will not provide draft documents, field or internal notes or memoranda of a draft or privileged nature. However, I think you will find the foregoing, in conjunction with RCRA's penalty policy (October 1990) which I am assuming you already have, will explain to your satisfaction the violations and the rationale for penalties and amounts.

As there is not a moment to be lost, I await your instructions on how to transmit these documents, which are not enclosed with the telefax of this letter due to their length. Please call my paralegal, Virginia Jackson at 827-2989 to make these arrangements. After you have had time to digest them, please call at your earliest convenience and let's discuss times for an initial conference. Susan and I too look forward to working with you and Sheila Brown in this matter.

Sincerely,



RIPLEY B. HARWOOD
Assistant General Counsel

RBH:vmj

Enclosures (w/mail version only)

cc: Sheila Brown, Esq.
Kathleen Sisneros, Division Director, Water and Waste
Management Division, NMED
Benito Garcia, Bureau Chief, Hazardous and Radioactive
Materials Bureau, NMED