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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

DATE: September 25, 1990

SUBJECT: Los Alamos Permit Modification

FROM: George B. Wyeth, Attorney *GBW*
Solid Waste and Emergency Response Division (LE-132S)

TO: James Costello, Attorney
Office of Regional Counsel
Region VI

I have reviewed, and have discussed with Deputy General Counsel Gerald Yamada, the modification proposed in the letter dated September 7, 1990, from Harry T. Season, Jr. of the Department of Energy. Based on our review, we consider that modification to be an acceptable basis for resolving the permit challenge.



Permit

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FACT SHEET
PERMIT APPEAL RESOLUTION

- o DOE proposes to drop LANL HSWA permit appeal if the modification language in its September 7, 1990, letter is added to the permit.
- o The NMEID portion of the permit has been appealed by DOE for similar provisions dealing with radionuclide monitoring.
- o NMEID has indicated that the compromise language in DOE's September 7, 1990 letter is unacceptable because:
 - 1) They do not consider the language to be a Class I (minor) modification. [A class one modification can be put into effect by the permittee simply by notifying the Director and the persons on the facility mailing list.]
 - 2) They believe that the language in the letter which indicates that DOE will monitor the radionuclides under the AEA renders the monitoring requirements unenforceable under RCRA.
- o Peggy Strand, Chief of DOJ's Environmental Defense Section, inferred to Costello that she thought EPA's case was strong. That is, she seemed to think that EPA could require radionuclide monitoring under Section 3007 of RCRA.
- o It should be noted that the September 7, 1990 letter was written for DOE by Region 6 (with some changes); however, the language was supplied to DOE before DOE's appeal was filed, with the understanding that no appeal would be made. DOE reneged on this agreement.