

Los Alamos Study Group

March 29, 1999

Pete Maggiore, Secretary
New Mexico Environment Department (NMED)
Harold Runnels Building
1190 St. Francis Drive
Santa Fe, NM 87502

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To	Stu Dinwiddie	From	Greg Mello
Co.		Co.	
Dept.		Phone #	
Fax #		Fax #	

- Re: 1) Formal information request related to a possible Resource Conservation and Recovery Act (RCRA) permit extension for Los Alamos National Laboratory (LANL); and
- 2) Request for careful Department review, and the opportunity for public review, of all current RCRA decisions for Department of Energy (DOE) facilities.

Dear Pete--

I hope all is well with you and your now-larger family. Congratulations to you and your wife on the birth of the twins!

For several months now, we at the Study Group have been trying to understand aspects of LANL's operating RCRA permit and its RCRA compliance record. We do not understand the situation very well, and when we have requested records from the Hazardous and Radioactive Materials Bureau, neither the permitting section nor the compliance section has been able to show us clear records. In both cases, what is apparently a state of near-total confusion appears to go back approximately a decade and a half. The confusion is so complete that the public has, realistically, no access to coherent information on LANL's RCRA status, and I doubt if even your staff can understand the situation fully.

I think we can safely infer that the root of the problem is not recent, nor is it localized in any one section. It seems to run across the Bureau and the decades. Review of selected files suggests that an underlying problem is that NMED has (with exceptions) traditionally maintained such a passive posture toward all aspects of LANL RCRA compliance that it accepts low-quality submittals that do not add up to any kind of coherent and meaningful operating envelope for the Laboratory--or any regulatory framework with which your staff can easily work.

It is quite possible that there is confusion with regard to other regulated facilities as well. Last summer and subsequently, the Bureau was not even able to provide our contractors with a paper or electronic copy of the applicable New Mexico laws and regulations, which suggests a problem of rather broad scope.

Amidst, or despite, this situation, the operating permit for LANL is being considered for extension. Given that there are outstanding compliance issues at LANL, any decision to extend the permit, together with any conditions attached to such an extension, should be very carefully considered.

We have not yet received formal notice of this proposed extension. When we do, it is our understanding that we will have 45 days to comment on it.

Such an opportunity will be meaningless without some basic factual information, information which is not now available to the public, including but not limited to:

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- a summary of the existing permit, including at least a description of all permitted activities and units on the site--those fully permitted, those under interim status, those in closure, and those in post-closure care, together with any binding corrective action commitments and progress in meeting those commitments;
- a summary of the proposed new permit now being considered by NMED, including all the above components;
- a summary of the compliance history and status of LANL under RCRA;
- other relevant NMED LANL RCRA decisions pending; and
- the applicable and relevant site-specific legal framework, including easily-useable citations (e.g. to relevant agreements made under the Federal Facilities Compliance Act), any binding deadlines, and so on.

This information should be available to anyone who requests it at no cost. There may also be other categories of information that are as important as the above in informing the public (and your staff) about this proposed extension.

There may be controversies and issues that complicate the presentations listed above. For example, is Area G one unit or many? For it to be one unit, my understanding is that the waste in the separate pits must be assumed to commingle. Why not simply and openly list these issues and/or decisions not yet made?

As you may know, there are requirements for record-keeping in any delegated RCRA program. It does not appear, from the records we have seen, that NMED's program has been managed in a way that meets this standard. The possible extension of LANL's operating permit provides your staff with an impetus to summarize the situation in a way that can allow all parties to move forward with greater clarity, confidence, and compliance.

Needless to say, it is LANL, whose RCRA-compliance resources are effectively unlimited, who should be doing most of this work, under the very careful eye of your most aggressive inspectors and permitting officers, under pain of losing all or part of its RCRA operating privileges. If NMED retains its habit of relatively passive review, no progress whatsoever will be made.

This brings me to the second topic. Across a broad front, the DOE seeks a wide regulatory license for its operations, and a "No Further Action" (NFA) status for certain contaminated sites. You are intimately familiar with how DOE works from your personal involvement in the Waste Isolation Pilot Plant (WIPP) issue.

Not long ago, I received a call from a knowledgeable citizen about a landfill at Sandia for which the DOE is apparently attempting to orchestrate a NFA finding. I learned that this landfill contains a great deal of radioactivity--one or more Co-60 sources, significant amounts of plutonium, and more--facts that were in general confirmed by your staff.

Many other examples could be provided, but it is enough to skip to the bottom line and say that it is my impression that RCRA compliance at DOE facilities appears to be in a delicate situation, and I would urge your staff to review carefully each and every decision being made

in the Bureau, to be sure that NMED is not foreclosing important environmental, fee-generating, economic development, and regulatory options at DOE facilities. The files I have seen are replete with semi-formal "deals" that were cut in the distant past, and patently-inadequate documents accepted from LANL, that create a legacy of confusion for your staff today, costing them time, money, and effectiveness.

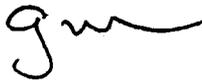
There could be a temptation to do more of this, or to simply eliminate paperwork problems by walking away from tough issues, thus "cleaning up" the files. Such "paper compliance" would be disastrous and could even open NMED to legal challenge.

Given the politically-charged nature of anything dealing with DOE in this state, it will be important, in my opinion, to involve, and give credence to, each and every staff person in the Bureau, supplementing the confusing records the Bureau has with the institutional memory these line staff and lower managers bring.

And it is critical to involve the public. We certainly applaud your seeking public review in the matter of LANL's proposed permit extension. We hope you do this often, both formally and informally.

Thank you for your attention. Please let us know if we can help in any way.

Sincerely,

A handwritten signature in cursive script, appearing to read "gm", written in black ink.

Greg Mello