



RICHARD M. WEINSTEIN
COUNSELLOR AT LAW

215 BLOOMFIELD STREET #1E
HOBOKEN, NJ 07030
TEL. (201) 420-8136
FAX (201) 420-8136

July 23, 2000

Mr. John Kieling
New Mexico Environment Department
2044 Galisteo, Suite A
Santa Fe, NM 87502

Re: **Notice:** Environmental Restoration Project
Los Alamos National Laboratory
Class III Permit Modification

Dear Mr. Kieling:

As I stated in our telephone conversation last week, I am interested in a recent notice from the Los Alamos National Laboratory (hereinafter "LANL") "requesting approval from New Mexico Environment Department (hereinafter "NMED") to remove nine (9) Solid Waste Management Units (SWMUs) from Module VIII of the Laboratory's Hazardous Waste Facility Permit (EPA ID NO. NM0890010515)" The Notice further states that "This request is considered a Class III permit modification because it involves the removal of SWMUs from the permit. It further describes these units generically as "nine (9) SWMUs which include units such as an inactive outfall, a former septic tank and seepage pit, and supposed operational release." More importantly, LANL is "recommending to NMED that these nine SWMUs warrant no further investigation or remediation, based on one or more of the five no further action criteria", none of which are enumerated in the Notice.

Although I am not able to review the permit modification, because I am miles from the legal depositories listed in the Notice I would like to at least obtain a copy of the part of the modification in which LANL states why it believes it meets the respective NFA criteria. I have reviewed Title 20, Chapter 4, Part 1, of the NMED regulations for HWMF and Title 40 CFR 260 et seq. and have found no reference to the term "No Further Action". In addition, as I stated I have been interested in environmental protection issues at LANL since 1999 when I received a similar Notice concerning LANL proposal to jettison a number of SWMUs, which were under corrective action plans because they had impacted on site and off-site underground aquifers. In addition,



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the recipients of this largesse from DOE and LANL were among others the municipality of Los Alamos and the Ildefonso Pueblo. Although I was interested in the outcome of this proposal sometime around the time of the incident of the alleged espionage by a Chinese scientist which was all over the national news, I ceased to be kept informed regarding developments with that initiative.

After we spoke I also visited the Department's Internet site and learned that there was a press release on January 6, 2000 indicating that NMED had issued a broad compliance order against DOE and the Regents of the University of California listing 30 alleged violations that were discovered during a compliance inspection conducted between August 10, 1998 and September 18, 1998. The news release described the violations as failures to perform required waste characterization; failure to maintain adequate control of waste generators; exceeding storage time limits for hazardous wastes, presumably beyond 90 days thus requiring the issuance of a disposal permit rather than a generator restriction etc.

Because I am concerned that LANL and NMED may be following the permit modification procedure suggested in the Notice in order to circumvent the need to address serious remedial concerns resulting from contamination from the subject SWMUs, I am hereby requesting a copy of the compliance order which NMED issued on or before January 6, 2000 so that I can compare the facilities identified in the order with the facilities which are the subject of this latest Notice from LANL. By copy of this letter I am also notifying James E. Holst, Esq., General Counsel, Office of the Secretary of the Regents of my concerns about this permit modification request from LANL. In closing, I would hope that NMED is not following the regrettable approach that I often saw at EPA when a permittee was out of compliance with a schedule or in violation of a permit limitation of backsliding to wit: removing the condition or requirement which the permittee was violating in order to put it in compliance instead of vigorously enforcing the existing permit conditions in the first place.

Yours truly,



Richard M. Weinstein

cc:

James E. Holst, Esq.
General Counsel
Office of the Secretary of the Regents
1111 Franklin Street, 12th Floor
Oakland, CA 94607