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Los Alamos Study Group

September 6, 2001

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Hand-delivered

Secretary Pete Maggiore
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive
Santa Fe, NM 87502 - 6110

- Re:**
- a) A request that the New Mexico Environment Department (NMED) initiate the Resource Conservation and Recovery Act (RCRA) closure process for areas G, H, and L, Technical Area 54, Los Alamos National Laboratory (LANL) in any permit document, corrective action order, or installation work plan issued or approved by the NMED;
 - b) A request that the NMED order the Department of Energy (DOE) and the University of California (UC) to cease disposal of solid waste at Area G at an early date certain.

Dear Secretary Maggiore –

Thank you for meeting with us today regarding the above matters and others.

I have twice before, in previous meetings with you over the past few months, communicated our deep concern that LANL continues to illegally dispose of large quantities of radioactive and solid waste at its Area G disposal site. You promised me that your legal staff would investigate. I have not heard anything from either you or your staff regarding this matter.

Besides radioactive and solid waste, I should point out that hazardous waste has also been disposed at Area G in the late 1990s, as one or more NMED enforcement actions attest. Given the complexity and opacity of LANL operations, even to DOE oversight personnel, given the extensive history of noncompliance to RCRA and other environmental laws at the site, and given the total lack of oversight for Area G disposal by any agency external to DOE, it is highly likely that RCRA hazardous waste is being disposed at Area G on an ongoing or a intermittent basis, and that RCRA waste is present in each and every pit at the site, since they are large and receive waste over long periods.

The disposal of solid waste at areas G and L has been illegal since April 2, 1985, when DOE actively withdrew its RCRA Part A permit application for those areas, causing the loss of RCRA interim status and requiring formal closure for these sites. Even if DOE had not actively chosen to close areas G and L, interim status expired for all units for which a Part B permit application had not been received by November 8, 1985 on that date, triggering a requirement to close within 60 days.

Since areas G and L received waste after July 26, 1982, post-closure permits and related assurances (e.g. groundwater monitoring, financial assurance) for these sites have also long been required.

It is important to remember, in this regard, that LANL currently catalogs approximately 24 formal Material Disposal Areas (MDAs), collectively containing at least 18 million cubic feet of hazardous and radioactive waste in shallow, unlined, earth-covered pits and shafts, among more than 2,000 other known or presumptively contaminated areas, some of which are extensive. *All* of these sites have released contaminants to the environment. Off-site releases to downstream and downwind areas, including the Rio Grande, began in 1944 and have continued since that time. Aquifer contamination likewise began in 1944 in the Los Alamos and Water canyon watersheds, at a minimum.

As your staff knows, the wastes at Area G include large and unknown amounts of very long-lived transuranic wastes, including both plutonium and americium in large quantities, fresh and spent nuclear fuel, uranium metal and compounds in large quantities, mixed fission and activation products, nuclear reactor components and housings, highly-mobile tritium, together with a very diverse group of RCRA and Toxic Substances Control Act (TSCA) wastes such as PCBs and pesticides. There is no primary or secondary

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containment for most of these wastes. Underground plumes of toxic vapors are present at both areas G and L. Both solids and liquids were, upon information and belief, disposed at areas G and L. A plume of radioactive tritium is present at Area G. Perennial springs which have been used for both domestic and livestock purposes within living memory are present within a few hundred feet of the site, and are topographically below it. The LANL site boundary lies at the northern boundary of areas G and L, and is topographically below the waste pits.

In its 1980 Part A application, DOE wrote: "It is our interpretation that disposal may occur anywhere at TA-54 and still be a part of an existing disposal facility." That is, all of TA-54 was declared an existing RCRA hazardous waste disposal facility. On April 10, 1985, the (revised?) LANL Part A then on file at NMED identified 100 acres as a hazardous waste disposal facility, including Area G (63 acres), Area L, and all the mesa-top potential disposal sites between them. On June 7, 1985, DOE stated that Area G is 63 acres "and will be closed" and that a 37-acre area, including Area L and the land between areas G and L, still remained to be fully permitted as a hazardous waste disposal site. By November 25, 1985, DOE had acknowledged the loss of interim status for both areas L and G, including the land between them. Upon information and belief, subsequent NMED and DOE practice has been to treat areas G, L, and H as three separately-permitted units within TA-54.

At a minimum, there is no basis or precedent for dividing the existing 63-acre Area G disposal site into different sites or units for permitting and closure purposes. To the contrary, there is a strong possibility that research will show that closure requirements extend not only to the existing 63-acre site but also to the declared 100-acres, or the previously-declared area of TA-54 taken as a whole. Legal requirements aside, the narrower and wetter (i.e. higher and more western) portions of Mesita del Buey are likely to prove even more unsuited for future waste disposal than areas G and L.

It is for these reasons among others that the New Mexico Attorney General attorney Lindsey Lovejoy wrote to James Bearzi of your staff on July 12, 2001, reminding him that NMED had a legal requirement to close areas G, H, and L, and that Area G in particular *must stop receiving waste*. **It is difficult to see how any permit-related action – any order requiring corrective action, any permit modification or extension, or any installation work plan – taken by NMED, which did not contain a requirement to close these sites, could be considered either legal or complete, at this juncture.** Any such order, modification, extension, variance, or work plan – one which did not contain an requirement to close these sites, a requirement which is now 16 years overdue -- would be certainly be unacceptable on its face to this organization. This would include, first of all, any permit modification involving NMED acceptance of a "no further action" request from DOE at LANL.

Of course, closure means closure – that the site cease to receive solid waste for disposal by a date certain. I believe the legal grace period is 60 days; your attorneys will be able to advise you on this point.

As Mr. Lovejoy pointed out on July 12, any attempt to issue permit-related documents without full public participation would not meet legal standards. It would especially be inappropriate given the near-total lack of public participation throughout the history of the LANL permit, and the long-standing issues raised in this letter. I believe that letters to interested parties naming certain potential release sites as being considered for "no further action" are not, given the cumulative nature of the impact from all these sites, and the fundamental compliance issues raised here, appropriate.

Although I am not an expert, it appears to me that the requirement to close, and the process of selecting closure and post-closure remedies for these areas, existed prior to and independently of subsequently-enacted corrective action requirements for the site. If this is true, then the full scope of the RCRA closure and post-closure process, and not merely the corrective action process, will be necessary. Given the complexity of the issues and their importance for the region, such formality is almost certainly appropriate.

We look forward to working with you in the prompt resolution of these concerns.

Sincerely,

Greg Mello

