



# Los Alamos Study Group

*Nuclear Disarmament • Environmental Protection • Social and Economic Justice*

May 28, 2002

The Honorable Patricia A. Madrid, Attorney General  
Office of the New Mexico Attorney General  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508

Re: The recent joint letter of intent (LOI) between the Department of Energy (DOE) and the New Mexico Environment Department (NMED),

Dear Attorney General Madrid -

We are gravely concerned that, in the waning months of the Johnson Administration, Secretary Maggiore of the NMED is taking actions that could permanently impair the ability of the NMED to pursue its statutory responsibilities to protect, and above all to remediate, the environment surrounding DOE facilities.

Recently, there have been private negotiations underway between Secretary Maggiore, the DOE, and the University of California. One fruit of this process is the "letter of intent" (LOI) in question, which is attached. The LOI commits NMED to certain processes, principles, and agreements, which together limit NMED's regulatory options relative to the DOE. Upon information and belief, if the LOI is executed by all parties, the DOE will pay NMED more than one-half million dollars annually in return for these commitments. These agreements appear to prejudice, or may comprise in themselves, permit actions under the Resource Conservation and Recovery Act (RCRA). The private process by which these agreements were achieved does not rise to the public process required by RCRA.

The LOI and its supporting documents appear to aim toward a site "completion" that leaves essentially all the hazardous and radioactive waste at LANL in the ground - for the most part in exactly the places where it was originally spilled, dumped, or discharged. The LOI is silent, meanwhile, about the continued operation of Area G, which you have said must stop receiving solid waste and formally close. Given these two facts, the LOI could be interpreted as having the effect of eventually transferring to the State or to the inhabitants of the region the complete responsibility for an increasing amount - in fact increasing without bound - of contamination at Los Alamos.

This is the goal of the LOI. DOE has encouraged states like New Mexico to enter into agreements like this one for the explicit purpose of decreasing DOE's long-term environmental responsibilities (and costs), as well as in order to support DOE's nuclear weapons programs, as this LOI states, which continue to produce waste for disposal at LANL in unlined pits and shafts.

It is always possible that the LOI is meaningless, as some suggest. We must presume otherwise, however, since DOE is poised to redirect the expenditure of many tens, if not hundreds, of millions of dollars based in part on agreements made in the LOI,

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and since NMED would receive significant funding if the LOI is approved by DOE.

If the LOI prejudices future agency decisions, possibly including your own, it is by no means clear that Secretary Maggiore has the authority to sign it. Needless to say, a regulated party attempting to constrain a regulatory agency by means of payments to them made in connection to an avowedly contractual document created outside the agency's statutory framework, is novel in our experience and breathtaking in its potential implications.

We therefore request that you conduct your own analysis, and ask Secretary Maggiore to clarify to you that the LOI does not in any way limit or prejudice future NMED action. If you are yourself certain the LOI does not prejudice future NMED actions in any way, it is important to state this opinion with the full force of your office. Contrariwise, you may determine that the LOI would or could prejudice agency decisions relative to one or more RCRA permits, or itself comprises parts or modifications of permit(s).

Prompt action on your part is desirable, since this LOI, if it has meaning, apparently lacks only the signature of the Assistant Secretary of DOE.

As some of us discussed with you in our May 8th meeting, we also have concerns about NMED's recent draft "Corrective Action Order" for LANL, which has a connection to this LOI and its supporting documents. Our most pressing questions, however, concern the LOI, and it is only in relation to that LOI that we make our present request.

Thank you for your timely and favorable attention. We look forward to your reply and engagement with these questions at the earliest possible date.

Sincerely,

PAM

Dorelen F. Bunting, Coordinator  
Albuquerque Center for Peace and Justice  
144 Harvard SE  
Albuquerque, NM 87106

Dolores Herrera, Executive Director  
Albuquerque San Jose Community Awareness  
Council  
P.O. Box 12297  
Albuquerque, NM 87195

Brian Shields, Executive Director  
Amigos Bravos  
P.O. Box 238  
Taos, NM 87571

Stephen Picha, Director  
The Center for Action and Contemplation  
PO Box 12464  
Albuquerque, New Mexico  
87195

Deborah Reade, Research Director  
Citizens for Alternatives to Radioactive  
Dumping  
144 Harvard SE  
Albuquerque, NM 87106

Joni Arends, Waste Program Director  
Concerned Citizens for Nuclear Safety  
107 Cienega St.  
Santa Fe, NM 87501

John Horning, Conservation Director  
Forest Guardians  
312 Montezuma Avenue, Suite A  
Santa Fe, NM 87501

Harry Browne, Director  
Gila Resources Information Project  
306 North Cooper St.  
Silver City, NM 88061

Allison Moore, Co-Chair  
Dan Piburn, Co-Chair  
Green Party of Santa Fe  
P.O. Box 22485  
Santa Fe, NM 87502

David Bacon, Gubernatorial candidate  
Green Party  
54 San Marcos Rd. W  
Santa Fe, NM 87505

Penny McMullen  
Loretto Community  
324 Sanchez St.  
Santa Fe, NM 87505

Greg Mello, Executive Director  
Los Alamos Study Group  
212 E. Marcy, Suite 10  
Santa Fe, NM 87501

Peter Neils, Director,  
Native Forests Network  
3136-3 Glenwood Dr. NW  
Albuquerque, NM 87107

Jay Coghlan, Director  
Nuclear Watch of New Mexico  
551 W. Cordova Rd, #808  
Santa Fe, NM 87505

Mark Sardella, Director  
Southwest Energy Institute  
P.O. Box 608  
Tesuque, NM 87574

Michael Guerrero, Executive Director  
Southwest Organizing Project  
211 10<sup>th</sup> SW  
Albuquerque, NM 87102

Sam Hitt, Founder  
Wild Watershed  
P.O. Box 1943  
Santa Fe, NM 87504

cc: Pete Maggiore, Secretary, New Mexico Environment Department

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PAM