

Permit

RICHARD M. WEINSTEIN  
COUNSELLOR AT LAW

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

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Letter Fax

Mr. James P. Bearzi, Chief  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505-6303

Re: **Los Alamos National Laboratory Facility Order  
and NMED PERMIT NO. NM0890010515 US DEPARTMENT OF ENERGY/LOS  
ALAMOS**

Dear Mr. Bearzi:

I have devoted some time to reviewing the New Mexico Environment Department's proposed order pursuant to Sections 74-4-10.1 and 74-4-13 to the Los Alamos National Laboratory Facility. In conjunction with my review of this order I have also reviewed Module VIII of the subject permit; Title 74 of the Hazardous Waste Act and the Summary of the Environmental Restoration Activities to Support Land Conveyance and Transfer at Los Alamos National Laboratory (LANL) under Public Law 105-119 as it applies to TA 21, which is a subject of this order.

At the outset I commend the Department in recognizing "the substantial hazard to human health or the environment" (Section 74-4-10.1) and "the imminent and substantial endangerment to health or the environment" (Section 74-4-13) posed by releases from the subject areas cited in the order. Presumably, your findings are based, in part, on LANL's RCRA Facility Investigations required by Condition I of the subject permit. In the case of TA 21 at the very least, the same five (5) MDAs referred to on pages 4-5 of the proposed Order, are clearly regulated under the subject permit (See p. 12-13 Summary of the Environmental Restoration Activities to Support Land Conveyance and Transfer at Los Alamos National Laboratory) through the 82 SWMUs. What troubles me about this order is the approach neglects the past compliance or non-compliance of the permittee in complying with the conditions of its permit. The Order merely provides for future compliance, not for penalties for past non-compliance. It is not clear in the Order that a comparison with the current permit conditions for the LANL release sites has been made with the LANL release sites cited in the Order. It should be



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noted that non-compliance under Section 74-4-10, which addresses violations of permit conditions, provides for a \$25,000.00 per day of continued violation and the sections under which the proposed Order would be issued only provide \$5000 per day. A threshold question must be answered before this Order is issued to LANL. Has the Department legal staff investigated the question of permit non-compliance and determined that no permit violations have occurred requiring the assessment of penalties?

I have attempted to undertake the same analysis I suggest the Department should undertake and have ran into a number of obstacles. Most notable is the fact that the Tables in the permit address SWMUs not MDAs as in the order. I would like to see a matrix which distinguishes permit conditions and their compliance status for those sites of releases which are the subject of this order and those sites of releases that are the subject of the order that are not regulated by the LANL permit. Perhaps this could be attached to the Order as an Exhibit. Not only would it make the order more understandable visa-vis the permit, but also would put the public on notice as to which conditions LANL has complied with since it permit was issued 23 years ago and to which conditions it has failed to comply.

I have reviewed as best I can the proposal for future compliance with the order and I am not able to evaluate the appropriateness of the technical requirements without the assistance of an expert in hydrology and other environmental sciences. Thank you for the opportunity to provide the comments on your proposed order and I look forward to your responsiveness summary.

Yours truly,  
  
Richard M. Weinstein