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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

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NMED Hazardous Waste Bureau

Mr. A. John Ahlquist
1625 Geary Road
Walnut Creek, CA 94597

Dear Mr. Ahlquist:

This letter is the U.S. Environmental Protection Agency Region 6's (the Region) response to your e-mail, which we received on February 9, 2009, and your letter, which we received on February 17, 2009, concerning the Los Alamos National Laboratory (LANL). As noted by our December 22, 2009, response letter, the Region conducts frequent oversight over the New Mexico Environment Department (NMED)'s RCRA program, including its actions concerning LANL. The Region's reviews have generally found that NMED is implementing a program consistent with its authorization.

The Region has recently had a number of communications with you concerning LANL. On October 24, 2008, you wrote a letter to former Administrator Johnson. EPA's Office of Enforcement and Compliance Assurance responded to you with a letter on December 2, 2008, to acknowledge receipt of your letter. On December 22, 2008, the Region sent a letter to respond to the substance of your October 24th letter. Then, on December 30, 2008, you e-mailed Laurie King, Region 6 Chief for Federal Facilities; and on January 27, 2009, you left a voice message for Ms. King. Ms. King responded by calling you on February 3, 2009, got your voice mail, and left you a voice message. On February 9, 2009, you corresponded with Ms. King again via e-mail. The Region was in the process of responding to that e-mail in letter form when we received your letter on February 17, 2009, with the same questions and more. In your numerous communications, you expressed concerns about the RCRA program administered by the NMED and overseen by the Region as it applies to LANL. You are also interested in understanding the level of independence of the Region from the NMED.

RCRA provides that once a State is authorized to implement a RCRA program, the State program operates in lieu of the federal program. The program authorization regulations can be found in 40 CFR 271. The Region oversees the NMED's RCRA permitting and enforcement activities to ensure that their regulatory program is nationally consistent. The Region works closely with all its authorized States to ensure national consistency and the Region does both mid-year and end-of-year evaluations. EPA has autonomy from all state agencies within its jurisdiction, including the NMED. While EPA considers the input of the States, the public, and the regulated community; ultimately, all letters from the Region are the responsibility of the Region. Letters from the Region contain the Region's position based on the best information available from all sources possible at the time. Therefore, the contents of the Region's letter dated December 22, 2008, solely represent the views of EPA Region 6.

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You have also requested the title of the individual that drafted the Region's letter referenced above, the titles of all staff members who concurred on this letter, and whether the NMED was consulted about the draft letter. As relayed to you in a February 3rd voicemail message, the Region followed its typical procedures to draft, concur, and send this letter to you. The letter was drafted by a Multimedia Planning and Permitting Division staff member at the direction of the Federal Facilities Chief. The letter then underwent a routine concurrence review by Multimedia Planning and Permitting Division management and the Office of Regional Counsel. The Region contacted the NMED to confirm the accuracy of facts contained in the letter, such as the timeline of events at LANL. Such communication is customary to ensure that the letter accurately represents the facts surrounding a particular incident or facility. The NMED did not contribute any substance or comment on the content of the letter.

Your letter dated February 13, 2009, requests additional information concerning LANL. Please refer to our letter of December 22, 2008, where we addressed several of your concerns. First, your letter states that LANL's permit renewal is ten years overdue. We have previously discussed why the timeframe is understandable in relationship to LANL. We have also explained that NMED has expended substantial time and resources on a corrective action compliance order with LANL to ensure that the important cleanup issues at the facility are progressing in a timely manner. In addition, please note that LANL's existing permit is, by federal regulation 40 CFR 270.51, administratively extended until a new permit is issued. Therefore, the facility is still operating under a permit at this time.

Questions, including numbers 5), 6), 7), and 8), are basically requests for documents and would most appropriately be responded to under the Freedom Of Information Act (FOIA). Please visit the following web site to fill out a FOIA form, or contact Leticia Lane, the Regional FOIA Officer, at 214-665-7202 to properly submit a request under FOIA and obtain information concerning your rights and obligations under FOIA.
http://www.epa.gov/earth1r6/6md/foia/foiaform.htm.

Should you have further questions please contact Ms. Laurie King of my staff at 214-665-6771.

Sincerely yours,

Carl E. Edlund, P.E.
Director
Multimedia Planning
and Permitting Division

cc: Marcy Leavitt, NMED
James Bearzi, NMED