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NEW MEXICO  
ENVIRONMENT DEPARTMENT

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RON CURRY  
Secretary  
JON GOLDSTEIN  
Deputy Secretary

September 10, 2008

The Honorable David R. Salazar  
Chairman, San Miguel County Commission  
518 Valencia Street, Suite 100  
Las Vegas, New Mexico 87701

Dear Chairman Salazar:

Governor Richardson has forwarded to me the recent Resolution of the San Miguel County Commission, in which concerns are expressed about the disposal of radioactive waste at the Los Alamos National Laboratory (LANL), and he is urged to compel LANL to remove buried waste and cease future disposal of waste at the facility. The Governor and I share your concerns, and have made cleanup of LANL a top priority of this Administration.

Cleanup at LANL is governed by the historic fence-to-fence cleanup order, which prescribes the process LANL must use to address the hundreds of old waste sites left over from the Cold War. This order was signed by all parties (the New Mexico Environment Department (NMED), the U.S. Department of Energy (DOE), and University of California) on March 1, 2005, and represents the federal government's commitment to New Mexico to clean up its legacy of pollution at LANL. The Order, however, specifically excludes cleanup of radionuclides.

NMED's authority to regulate LANL is derived from the federal Resource Conservation and Recovery Act (RCRA) and the New Mexico Hazardous Waste Act, which, as your letter states, authorizes the State to regulate hazardous waste and the hazardous component of mixed waste (that is, waste that is both radioactive and has a chemically hazardous component). Unfortunately, RCRA has a clear exemption for source, special, and by-product nuclear material that is regulated under the Atomic Energy Act of 1954, which holds that the federal government – not states – shall regulate such materials. That includes radioactive waste, such as that disposed of at LANL's "Area G" disposal facility at TA-54. The State of New Mexico therefore has no authority to dictate the cleanup of radioactive waste at LANL, nor to force a cessation of radioactive waste (i.e., without a hazardous component) disposal at Area G or any other site at LANL.



The Honorable David Salazar  
September 10, 2008  
Page 2

The Governor and I nevertheless agree that the DOE should do everything in its power to expedite cleanup of all its waste sites, including those with radionuclides. For its part, DOE has pledged to integrate cleanup of radioactive waste with that of hazardous waste through the processes outlined in the Order. I encourage the County to submit comments on cleanup proposals as they are put out for public comment.

More importantly, the Governor and I appreciate the concerns of the County, and the time it took to express your concerns. I assure you the Environment Department is dedicated to effectively enforcing all environmental requirements at LANL.

Sincerely,



Ron Curry  
Cabinet Secretary

cc: Governor Bill Richardson