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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

DEC 13 2007

Mr. David B. McCoy, Executive Director
Citizen Action New Mexico
P.O. Box 4276
Albuquerque, NM 87196-4276

Dear Mr. McCoy:

This letter is the U.S. Environmental Protection Agency Region 6's (EPA) response to your various written, e-mail, and voicemail correspondence to our office, including: Letter of March 1, 2007; e-mail of September 18, 2007; and e-mail of November 16, 2007. The thoughts and concerns you have raised in your correspondence about the Sandia National Laboratories, New Mexico, (SNL) Mixed Waste Landfill (MWL) pertain primarily to public participation and ground water monitoring.

The New Mexico Environment Department (NMED), like all other State environmental agencies in Region 6 of the EPA, has been authorized to administer the Resource Conservation and Recovery Act (RCRA) program, and received that authority after having met the requirements for an authorized State program under RCRA. The EPA's role in these federally authorized States is programmatic oversight. In contrast, the authorized State program, which includes relevant State administrative and judicial processes, is in place to address the type of facility-specific concerns you have raised.

However, because of your high level of interest in the MWL, EPA has reviewed certain aspects of the regulatory activities involving the MWL and has addressed several of your comments below.

Regulatory Status of the MWL

You have frequently raised concerns about whether the MWL should be considered a Solid Waste Management Unit (SWMU) or a regulated unit for regulatory purposes. As a result of the appeal Citizen Action filed in October, 2006, the New Mexico State Court of Appeals is currently considering this matter. The EPA considers this an issue that must be allowed an opportunity for resolution through the State administrative and judicial processes and, therefore, declines to comment on this matter.

Public Participation

You have repeatedly expressed concerns about NMED's offering of opportunities for public participation in its regulatory activities related to the MWL. In general, EPA believes that NMED has provided adequate public notice and opportunity for participation in activities related to the MWL. More specifically, NMED has routinely placed MWL documents on its website and numerous opportunities have been provided for formal public comment on MWL proposals and plans. For example, the decision to place a cover over the MWL while maintaining long term monitoring was made after several years of public meetings, study, and discussion.

Participants included a formal Citizen's Advisory Board (CAB), NMED, Department of Energy, SNL, various independent technical experts, as well as local interested citizens. The EPA was an ex officio participant in the CAB. Several possible scenarios were discussed before the cover and monitoring plan were selected. Please keep in mind that the purpose of placing a cover on the MWL is to decrease the impact of erosion, water infiltration, and animal intrusion in order to reduce the potential for ground water contamination.

Additionally, you have claimed that decisions regarding monitoring and well installation have been approved without the opportunity for public participation; however, the Long Term Monitoring and Maintenance Plan (LTMMP) for the MWL is currently open for public comment. Your concerns about this issue should be raised during the public comment period and addressed through the appropriate channels of NMED's federally authorized RCRA program. Therefore, we encourage you to utilize the proper State administrative and judicial processes to address any concerns you have regarding public participation and the LTMMP.

You have also made requests that EPA direct NMED to release the "Tech Law report." Because Citizen Action is a party to the lawsuit concerning NMED's release of that document, this matter is also currently being addressed through the New Mexico state court system. The EPA considers this an issue of State law and we are confident that this matter will be appropriately resolved through the State judicial process.

Ground Water Monitoring Network

In your letter dated March 1, 2007, you requested that we forward information regarding the MWL monitoring well network and sampling to the EPA National Risk Management Research Laboratory (NRMRL) for review. You also requested that NRMRL review the November, 2006, NMED report by Mr. William Moats, et al., entitled, "Evaluation of the Representativeness and Reliability of Ground Water Monitoring Well Data."

The EPA believes that ensuring the effectiveness of the fundamental aspects of the ground water monitoring well system is the most important element in detecting releases and protecting ground water resources. Therefore, EPA reviewed the overall MWL ground water monitoring system in order to determine its efficacy in detecting contamination. We reviewed well locations, depth of wells and well screens, purging and sampling methods, downhole videos, and analytical results. We also consulted with the NRML on various technical ground water issues. We did not conduct a rigorous technical review of the November, 2006, NMED report because NMED has already directed SNL to replace a number of MWL monitoring wells due to factors such as well screen corrosion and dropping water levels.

Based on our review, we have determined that NMED's overall actions and decisions for administration of the authorized program have been technically sound and consistent with applicable RCRA requirements. We have also found no evidence to indicate that the MWL poses an imminent or substantial danger to citizens or ground water supply.

As part of our oversight responsibility, EPA maintains an open dialogue with our States, routinely discussing program matters and raising any concerns we may have, and we have discussed these matters with NMED.

We recognize that ground water is a critical resource for New Mexico and the Albuquerque area. While we appreciate your abiding interest in this facility, we believe that NMED has acted appropriately in matters regarding the MWL. We encourage you to continue working with NMED through the State administrative and judicial processes to appropriately resolve your concerns regarding the MWL. If you have any questions, please contact Ashley Phillips of our Office of Regional Counsel at (214) 665-7121.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Edlund', written in a cursive style.

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

cc: Senator Jeff Bingaman