

NEW MEXICAN

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# Lab, DOE to fight N.M. over cleanup

► Lawsuit contests  
state's order to require  
cleanup of LANL  
contaminants

By JEFF TOLLEFSON  
The New Mexican

Los Alamos National Laboratory is asking a federal judge to throw out a state cleanup order and severely limit the state's ability to require cleanup of a host of contaminants at the laboratory.

The University of California, which contracts with DOE to manage the laboratory, filed the lawsuit challenging the New Mexico Environment Department's clean-up order, along with the state's determination that pollution at the laboratory might represent an "imminent and substantial endangerment" to human health or the environment.

The lawsuit also initiates a four-pronged attack on the state's cleanup authority. If successful, the lawsuit could prevent the state of New Mexico from requiring cleanup of everything from waste dumps containing both hazardous and nuclear materials to groundwater, canyon bottoms, explosives sites and such toxins as polychlorinated biphenyls.

"Los Alamos National Laboratory is trying to get out of any kind of governance whatsoever in the state of New Mexico," said Ruth Prokop, an attorney in Washington, D.C., who consults for the Los Alamos Study Group. "Everybody seems to be bowing their heads and ignoring the fact that this is happening."

For Prokop, a former White House attorney who served as general counsel of the U.S. Department of Housing and Urban Development, the lawsuit represents a substantial threat to state oversight. She notes that DOE won a lawsuit using similar arguments regarding state regulation of nuclear materials at a uranium enrichment plant in Paducah.

Please see LANL, Page A 4

ch, Ky.

The issue has been brewing for years. Citing the 1954 Atomic Energy Act, DOE asserts sole jurisdiction over all nuclear materials from cradle to grave. Alternatively, state officials claim authority under the 1976 Resource Conservation and Recovery Act, or RCRA, for not only hazardous wastes but also "mixed wastes" buried at various nuclear waste dumps where hazardous materials are mixed with plutonium and other radioactive materials every bit as dangerous as those shipped to the Waste Isolation Pilot Project today.

"The DOE feels that they are right, and NMED feels that they are right," said Scott Gibbs, deputy associate director for operations. "And so the appropriate way in our democracy to sort this out is to go to the legal branch."

U.S. District Judge Martha Vasquez will hear the case. No hearing date has been set.

In the suit, the lab challenges the Environment Department's underlying determination that pollution at the lab might represent an "imminent and substantial endangerment" to human health or the environment. Environment Department officials say that determination laid the legal groundwork for the cleanup order. The lab asks for an injunction halting state intervention on any radioactive waste issues. Moreover, the lawsuit claims the draft cleanup order is in many cases illegal even with regard to hazardous wastes because the state's efforts to regulate the hazardous waste portion of mixed wastes would interfere with the lab's management of radioactive materials.

But the lawsuit doesn't stop there. UC argues that the state has no legal authority to require investigations or cleanup of any pollution that originated in liquid-waste discharges — stemming to 1948. Aside from solid rubble that was dumped over hillsides, much of the pollution in the groundwater and canyon bottoms throughout the laboratory stems from liquid discharges.

Because the U.S. Environ-

ment issues permits for such discharges under the Clean Water Act, the lab argues that EPA must be responsible for cleanup of pollution caused by such discharges.

The lawsuit also contends the state cannot regulate munitions-related waste, including contamination from explosives at Technical Area 16 and other sites.

Additionally, PCBs and perhaps other chemicals are the sole responsibility of the EPA and are thus exempt from state regulation, according to the lab's complaint. PCBs cause numerous health problems and are suspected carcinogens. The chemicals were once common in a variety of industrial processes used in the 1970s.

Although the laboratory has answered questions and in some cases followed orders regarding contaminants, the lawsuit asserts that the lab did so voluntarily in the spirit of cooperation. Facing the Environment Department's cleanup order, however, the lab is invoking its legal privileges.

The Environment Department is preparing to release the final cleanup order in coming weeks. Department counsel Paul Ritzma said the state is aware that certain materials might fall outside the state's jurisdiction, most notably radioactive materials. Nonetheless, he said, hazardous-waste laws require regulators to consider cumulative impacts, which means the radioactive portion of contamination should not be separated from other toxins.

"I don't know that it does anybody any good to divide those out," Ritzma said, noting that the DOE agreed to treat all waste coming from WIPP in Carlsbad as mixed waste rather than argue about the contents of each individual waste drum. "I would think that would be the way the lab would ultimately want to go."

Ironically, in some instances the lab and the Los Alamos Study Group have voiced similar criticisms of the draft cleanup order. Both say the state's "cleanup order" is actually a revision to the lab's general hazardous-waste permit. The process for permit modifica-

tion, which EPA enforces, the state can regulate sites where PCBs are mixed with hazardous wastes, said Rich Mayer, EPA's senior environmental project manager for the laboratory.

Although EPA issues discharge permits to the laboratory under the Clean Water Act, the state can regulate the same chemicals if they become pollutants in soil or groundwater, Mayer said. This supports the state's position that it can require cleanup of contaminants in soils and groundwater stemming all the way back to the Manhattan Project that started during World War II.

The issue is a little more complex with regard to munitions testing sites, which the lab has used to test various explosives over the decades. Although EPA policy grants a waiver to federal testing sites that remain active, those sites remain under state regulatory control once they close, according to Mayer.

Even as far as radioactive materials are concerned, Mayer said, the state is not without authority in cleanup under the Resource Conservation and Recovery Act.

"RCRA does have a provision in it called the omnibus provision, which basically says you can do anything to protect human health and the environment," Mayer said. "When we are doing a risk assessment of a cleanup, our policy is that we do have to take into account ... cumulative effects of the radiation constituents and the chemical constituents. And the state has been doing that."

On the other hand, the lab argues that the state's efforts to regulate mixed wastes conflict with requirements under the Atomic Energy Act. Because the latter supersedes the former, any state requirements, including those that target hazardous wastes, are null and void, the lawsuit said.

For some nuclear watchdogs the lawsuit also should be targeted at lab's hazardous waste permit, which acts as a general operating permit for all hazardous-waste facilities at the 43-square-mile facility, and ultimately the waste dump at Area G. The Environment Department is preparing to issue a hazardous-waste permit as soon as next month.

in the case of the gaseous diffusion plant at Paducah, state regulators had required DOE to submit a waste characterization plan before placing radioactive materials in a new landfill. DOE successfully argued in federal court that the state of Kentucky did not have the legal authority to place any requirements on the DOE regarding radioactive materials. The Sixth Circuit Court of Appeals upheld the ruling.

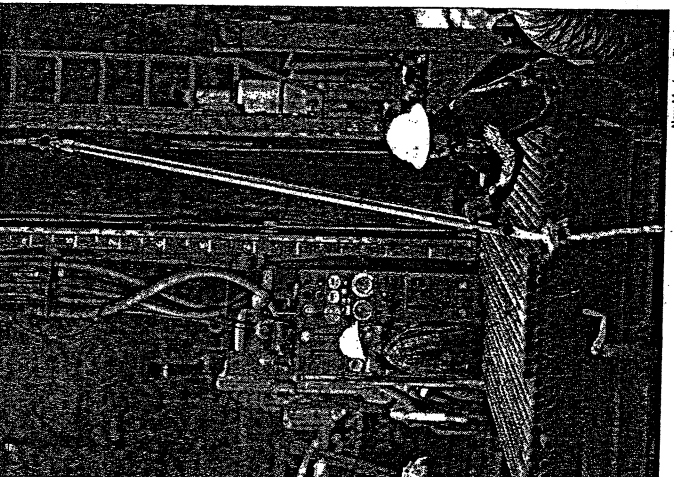
Siding with the study group, the New Mexico attorney general believes the lab has been illegally operating its waste dump at Area G, which has never received permits for hazardous wastes. Environment Department officials say the upcoming permit will address Area G and set requirements for closure of the hazardous-waste portion of the site.

Today, the lab says it is no longer dumping hazardous wastes at Area G. In all, Area G contains 39 pits, of which four are active, and 139 vertical shafts, of which 16 are active, according to the lab. Of those, the lab maintains that only one pit and one shaft at Area G contain hazardous materials that could be regulated by the state, but Environment Department officials aren't ready to concede the point.

Everybody agrees that the hazardous-waste portions of Area G need to close, said James Bearzi, chief of the department's Hazardous Waste Bureau. "It's unlined. It's unmonitored. Something like that would never get permitted today. Because of that, they have to close it."

But the records are so poor that it's tough to tell what kind of waste went where, he said. If hazardous wastes were buried in other pits and shafts, then the state will have a hand in how those are handled, too. Moreover, the state could assert authority over an investigation and potential cleanup at Area G if hazardous wastes are found in the vapor plume that has polluted the ground at Area G.

Gibbs, deputy associate director for operations, says the lab is waiting to see what the state does before making a decision to expand the lawsuit to include the hazardous waste permit.



New Mexican file photo Larry Thoren, left, and Daryl Kadmas of Dynatech Drilling help with a groundwater study earlier this year at the Los Alamos National Laboratory.

tamination to be left in the ground under the assumption that contaminated areas will be used for industrial purposes — as opposed to residential housing, schools or day-care centers.

In place of the state's cleanup order, the lab proposes to replace it with its own cleanup plan. A product of a departmentwide plan to overhaul and expedite cleanup throughout the national nuclear complex, the lab's Performance Management Plan would complete cleanup of legacy waste by 2015, the lab states.

Local nuclear activist groups, however, say even less cleanup would take place under the lab's proposal, which was pushed through with no public involvement. Although it will be up to a court to decide, regional EPA officials support the state in most of its legal arguments. While PCBs alone fall under the Toxic Substances Control

hearings, where citizens and the lab alike can object or make official comments. Under the process, which incorporated an unofficial public comment period, no such hearings were held.

Both the lab and the study group also argued that the state's order contains too much investigation and not enough cleanup. The lab would need to spend \$207 million to comply with the investigation requirements in the cleanup order — before cleanup of the legacy waste sites could begin, according to James Holt, the lab's associate director for operations.

On the other hand, the lab claims the state's proposed cleanup requirements are overly cumbersome; cleanup standards for water and soil are too stringent and do not allow for a "risk-based" approach. Risk-based remediation allows more con-

# Los Alamos cleanup can't wait

**S**ince 1943, the Department of Energy has designed, built and tested nuclear weapons in New Mexico. This business has left behind a considerable toxic legacy, including more than 1,000 contaminated sites at Los Alamos National Laboratory, of which 25 are hazardous and nuclear waste landfills.

**GREG MELLO**

### Commentary

At LANL, groundwater is contaminated in several locations, and low levels of contaminants have shown up in area wells. Despite this, unregulated nuclear waste disposal continues on a narrow mesa just above springs, streams and ancient burial sites with no signs of stopping.

The currently active dump is called "Area G." Waste is buried here in shallow pits and shafts and covered with as little as three feet of earth, just as it was in the 1950s.

Amazingly, this disposal is still entirely unregulated. There has been no licensing process, no hazardous-waste permit, no closure plan, no commitment to post-closure care, no performance bond, no disclosure of waste, and no external regulation of disposal.

The New Mexico Attorney General finally said last year that the site has been operating illegally since 1985. Subsequently, more than 2,000 New Mexico residents and 27 environmental organizations petitioned the New Mexico Environment Department to

close Area G. But neither Attorney General Madrid nor NMED, which is charged with regulating the site, has acted.

But isn't LANL being cleaned up, at least? Hardly. DOE has now spent more than \$700 million on LANL "cleanup" — meaning a program by that name, not the removal of waste from the environment. Few actual cleanups have been done and, because of the continued disposal, the total waste in the environment just keeps increasing.

Most of the clean-up money has gone to University of California overhead or paid for research.

Unregulated nuclear waste disposal does more than despoil the environment. It also defines a relationship — subjugation — and it creates a future, one where governmental failure allows "rogue" institutions to exploit the state's resources and subvert its regulatory functions; making a "good business climate" for more of the same.

In May, NMED finally determined that there might be an "imminent and substantial endangerment" of human health and the environment at LANL and so issued a "corrective action order."

The problem is that this order required no corrective action. Instead, it ordered several years of further study, primarily risk assessments of various kinds, in substantial part to keep federal dollars flowing to LANL (as Secretary Maggione explained at

the time). The studies requested will accomplish no cleanup — and most of them don't even relate to cleanup.

Then NMED turned right around and signed a "letter of intent" with DOE, a sort of preemptive regulatory surrender, signaling clearly that aggressive cleanup won't be necessary. In return, NMED will receive about \$700,000 from DOE.

But even NMED's not-too-subtle surrender did not satisfy UC or the Bush DOE, which want no regulation of Area G and the other hazardous and nuclear waste landfills at all. So UC reached into DOE's deep pockets (yes, they can do that, and yes, those are our pockets) and filed a massive lawsuit against NMED in federal court, which aims to decimate New Mexico's ability to regulate essentially any nuclear waste or environmental contamination in New Mexico — except possibly at WIPP, where separate legislation might provide some protection.

Will Gov. Bill Richardson vigorously defend the state's environment and sovereignty against UC and the Bush crowd? Will NMED take itself off the DOE dole, repudiate the weird "letter of intent" signed by the last administration, and start real environmental cleanup at LANL?

Probably not — unless citizens ask for it.

*Greg Mello heads the Los Alamos Study Group and makes the case that it's past time to seriously clean up Los Alamos National Laboratory.*

# NUCLEAR showdown

Can the New Mexico Environment Department stand up to Los Alamos National Laboratory? From many accounts, that question is headed for a showdown.

The New Mexico Environment Department fired the first volley in the battle last May when it released the initial draft of a 250-page document, known as a corrective action order, for the lab.

In excruciating detail, the order describes the contaminants LANL has released into its mesas and canyon bottoms, from americium to zinc. It orders a top-to-bottom investigation of polluted sites with deadlines

and strict reporting requirements. The final version was released last week.

In response, the University of California, the private contractor that runs the lab, hired two private law firms and shot back on June 3 with a lawsuit challenging the state's finding that the lab's practices may be causing "imminent and substantial endangerment to health or the environment."

Yet while it appears the state is cracking down on the lab, some nuclear watchdogs believe the state's actions won't change the status quo when it comes to actual cleanup.





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# NUCLEAR showdown

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The legal outcome, on the other hand, could shift the balance of power between a historically weak state and a nuclear weapons lab accustomed to having its own way. Nuclear watchdog groups contend that the University of California, by virtue of Cold War-era laws and its political clout, has become the last polluter in the state to get away with little oversight. "No private industry and no other agency of government can operate this way," says Arjun Makhajani, director of the Institute of Energy and Environmental Research in Takoma Park, Md. "Not even the Department of Defense has this kind of fiat."

LANL officials dispute the claim that the lab is without oversight, calling itself "heavily regulated by the state."

Most believe that the outcome will be largely determined by how aggressive the state of New Mexico is willing to be. Says Geoff Fettus, a lawyer formerly of the New Mexico Attorney General's Office and now with the Washington, DC-based Natural Resources Defense Council, "The next few years will be the test."

The end result of this David and Goliath scenario could also have profound ramifications for states like Tennessee and Washington, which also

LANL is (or isn't). A normal person could be forgiven for giving up on the issue entirely.

A disturbing story occasionally makes its way down the hill: The Santa Fe New Mexican reports that trees in Bayo Canyon are radioactive. The Los Alamos Study group goes on to lab property with a Geiger counter and comes back with reports of radioactive plants and animals.

There is also one unofficial document that can't be called boring: an anonymously made videotape—allegedly created by a former LANL employee and now distributed among lab dissidents—which gives an unedited view of a workday at Area G, the lab's "low-level" radioactive waste dump. (Watchdog groups contend "low-level" is a misnomer, because of evidence that fuel rods and other highly radioactive materials are buried there.) Bordered by lands considered sacred by San Ildefonso Pueblo, the "hot dump" is a pre-modern, unlined, 63-acre area of scraped volcanic tuff. Here, radioactive and hazardous waste has been poured directly into the ground, buried in barrels under sheets of plywood and stored in drums under tents for shipment to WIPP.

The state's Hazardous Waste Bureau Chief James Bearzi points out that, by contrast, New Mexico's municipal landfills, which contain plain old garbage, are engineered and double-lined. Antinuke groups allege Area G is unpermitted and therefore illegal. LANL says the dump is legal. A DOE official said, "It depends on who you ask."

The video, thought to be about 10 years old, is so ham-handed that were the content not so alarming, it might appear on a bottom-of-the-barrel reality TV show called *America's Funniest Nuclear Waste Dump Videos*. The show starts with bulldozer running back and forth over tan volcanic tuff. A narrator explains that this is being done in order to dig up buried waste drums. The laborers wear street clothes or coveralls.

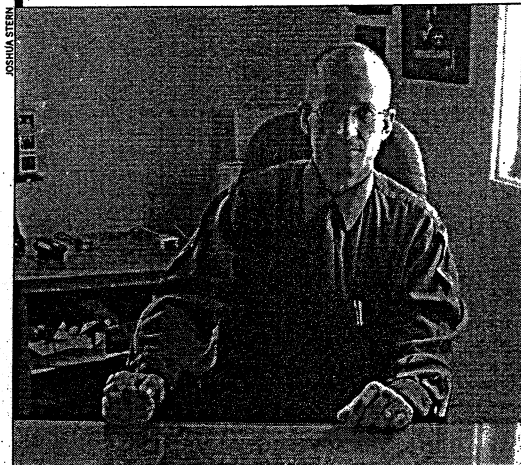
Then—whoops—because apparently no one knows exactly how deep the barrels are buried, the bulldozer breaks through the plywood. Next, lab officials wearing white haz-mat suits and respirators run out to the site to check for radioactivity, while laborers dressed in blue jeans and holding shovels wait nearby. A blasting wind blows dusts, and everyone covers their faces with their hands.

LANL spokesman James Rickman says he has no knowledge of the video's existence. "That's a new one on me," he says. "I've never heard of anything like that."

"We hope this is a period piece," comments Ken Silver, an expert on occupational health issues who works on worker safety at Los Alamos. "We hope this is not reflective of current conditions at the lab."

As it happens, LANL is proud of its cleanup program, and argues that it has been a wise steward of the roughly \$700 million it has spent during the last 12 years. Much of what

The Department of Energy filed a lawsuit of its own against The New Mexico Environment Department; but as of press time, it had not served the lawsuit on the state.



JOSHUA STERN

Hazardous Waste Bureau Chief James Bearzi acknowledges that the state hasn't always held the lab's feet to the fire.

house Department of Energy facilities. But perhaps the most important thing at stake is how well New Mexico will be able to protect its ground and surface water in the future.

The various contentions about LANL's impact on the environment are so well-hidden within hundreds of pages of eye-glazing legal and technical documents that many people may miss the fight altogether. The public has at its disposal many hundreds of pounds of paper from Los Alamos and the Department of Energy describing "accelerated cleanup strategies," "performance management plans" and "benchmarks."

Often these unwieldy documents start off with a two-page list of defined acronyms. One can wade through them and still come away without a clear idea of how environmentally screwed up

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the lab has done so far is to characterize—that is, find out what kind of contaminants are in—more than 2,000 sites that could potentially pollute the environment. These range from liquid radioactive waste to “literally a place where somebody said they remembered that hamburger grease was dumped,” says lab spokesman Rickman. In addition, the lab has sunk numerous wells into its property to monitor groundwater.

Rickman is aggrieved that the lab isn't credited for what it has accomplished. And it's true, lab critics have almost nothing good to say about LANL's cleanup program. Instead, they argue it has picked off the “low-hanging fruit”—crossing off sites that were never really contaminated in the first place and leaving the more difficult and potentially dangerous sites untouched. The lab, they say, has turned environmental engineering problems into endless academic research projects. They further contend that, left to its own devices, LANL would replace strict cleanup standards with weak ones. Land cleaned up for industrial use, for example, can be left dirtier than land slated for future residential use. Risk management, a strategy that gained favor under the Reagan administration, can be employed for endless studies of unprovable risks while real hazards go ignored.

Critics of DOE environmental management aren't just anti-nukers who oppose the lab on principle. A 1997 DOE Inspector General's report found that of the \$360 million spent by LANL by 1995, only 20 percent or so had gone to cleanup. On Nov. 24, The New York Times reported on an internal DOE document that blasted its own environmental management program. According to The Times, the internal report concluded that the environmental management program “has been fundamentally mismanaged since its founding 13 years ago, and much of the \$60 billion it has spent over that time was wasted.”

All of which helps to explain why most citizens groups are anxious for state oversight, because in the minds of some nuclear watchdogs, this recent order by the New Mexico Environment Department comes after years of inaction, or at best, inconsistent action. To one legal observer the state is like “a slumbering giant that is finally waking up.”

“We've been remiss,” acknowledges Bearzi. “We haven't held the lab's feet to the fire. This [order] is the first step to doing a better job.” The environment department contends it can require this “corrective action” under the state's Hazardous Waste Act, because the lab and the DOE's “past and current handling, storage, treatment and disposal of solid waste and hazardous waste at the LANL facility may present an imminent and substantial endangerment to human health or to the environment.”

In its lawsuit, filed in federal district court in Santa Fe, the lab argues the state's endangerment finding was an

“unlawful attempt to exercise regulatory jurisdiction over LANL.”

But LANL and DOE staff put a friendlier spin on it.

Mat Johansen, an environmental manager in DOE's Los Alamos office, says, “We're doing what people do in a civilized society; we're going to court to see what a third party says. We accept and are not challenging NMED as the regulator and look forward to working with NMED on environmental issues in the future.”

Johansen points out that while DOE and the lab are suing the state, the state, by issuing the cleanup order, was the one that picked the fight.

LANL spokeswoman Linn Tytler agrees with the portrayal of the lab as the picked-on party: “The lab saw its only recourse to be the court. We were forced to do this to protect ourselves.”

In a soothingly worded op-ed in the Journal North, titled “Laboratory and Public Share Similar Values,” LANL associate director Jim Holt writes, “Every member of the Laboratory work force is a resident of the region and works diligently to ensure that nothing done at the Laboratory could harm a friend, family member or neighbor.”

But lab critics see the lawsuit as a radical attempt to undermine authority, out of sync even with DOE relations with other states.

“The lab and DOE are attacking the fundamental capacity of the environment department to regulate Los Alamos,” says Jay Coghlan, director of Nuclear Watch of New Mexico.

In fact, the legal battle pits one federal law against another: the Atomic Energy Act of 1954 and the Resource Conservation and Recovery Act of 1976.

Each law reflects its era. The Atomic Energy Act, which LANL cites in its lawsuit, was signed into law in 1954, at the height of the Cold War. 1954 was the year of a hydrogen bomb test in the Bikini Atoll and the year when Robert Oppenheimer was defending himself before the Atomic Energy Commission against charges of communism. Along with calling for an “Atoms for Peace” program, the Atomic Energy Act says that radionuclides are subject only to federal control.

RCRA is a '70s law which grew out of the environmental movement, and gained force after the revelation of the Buffalo, NY, toxic disaster called Love Canal. State laws, such as New Mexico's Hazardous Waste Act, follow the federal standards set up under RCRA and gain their authority from it. After years of resistance to RCRA from DOE, Congress amended the law in 1992 to make it explicit that DOE facilities must comply with it.

RCRA is about the size of a New York telephone directory. How it interacts with the Atomic Energy Act is open to interpretation.

One major dispute is who has authority over waste that is both radioactive and hazardous. In its lawsuit, LANL contends that DOE alone has

Jay Coghlan, director of Nuclear Watch New Mexico, hopes the state's order will lead to cleanup.



According to the General Accounting Office, from 1995 through 2001, DOE contractors passed \$291,950,052 in legal fees onto taxpayers. In the great majority of those cases, the contractor was defending itself in a lawsuit. Federal regulations provide for the reimbursement to contractors of “reasonable legal costs.”

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9 am - 10:15 am	Dr. Kristen Reidy, Director of Eye Associates on
10:15 am - 11 am	Refreshments, Free Glaucoma Visit Exhibit Area
11 - 11:45 am	Phillip Capirotti of Home Medical Alert

Noon Complimentary Luncheon

# NUCLEAR showdown

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authority to regulate "the radioactive portion of any waste mixtures."

This dual regulatory scheme makes it sound as if radioactive and hazardous waste could be separated, like plastic containers and glass bottles for recycling bins. That's not possible, of course, and that's where the disputes come in.

The state's order doesn't challenge the federal control of radioactive waste. But Bearzi says that under RCRA the state can demand testing, monitoring and reporting of radionuclides.

"The lab wants to argue that the state can't touch anything that's radioactive," Bearzi says, "but we disagree."

Several anti-nuclear and environmental groups dismiss the lawsuit as legally unfounded and say it is being used by LANL as a bullying tactic.

But at least one legal observer believes the legal issues shouldn't be so easily dismissed. "DOE is trying to chip away at RCRA. I hope DOE loses and I hope they lose big," says Ruth Prokop, a

charged with protecting human health and the environment and yet when it comes to radioactivity we're preempted."

The Paducah decision may bode ill for New Mexico's ability to enforce its order, says Prokop. "This is not some wild card the lab's throwing out there. If it was, there wouldn't have been a Paducah case."

Not everyone is convinced that the state's recent actions are on the right course. In the mid-1980s, before he started the Los Alamos Study Group, Greg Mello worked at the groundwater bureau for what was then called the Environmental Improvement Division. As a technical investigator dealing with violations of hazardous waste laws, he says he quickly learned that private industry and the lab were two separate universes. Private companies, he says, were worried about liability of violations and anxious to fix their problems.

"But the lab thought everything could and should be fixed politically," Mello says.

At one point, Mello succeeded in getting a notice of violation for the lab signed by the head of his division. To do so, he says, he had to do an end run around several more immediate supervisors who didn't want to be involved. Several of those same people later went on to jobs at LANL or DOE.

"We called it the ascension, because you could make so much more money there," Mello says. Soon after the notice was signed, an angry legislator called the office and threatened to cut the division's

budget if the states didn't back down.

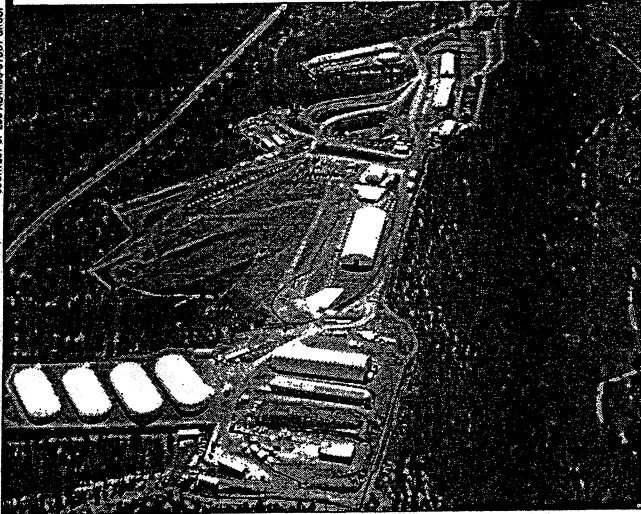
Among the anti-nuke warriors, Mello stands nearly alone in his contempt of the state's corrective action order. He believes LANL's demands for new studies of contamination will give the lab license to do nothing. Mello also points out that emphasis on cleanup of historical dump sites ignores the fact that lab operations continue to produce waste. According to Mello's analysis of DOE documents, current plans call for the lab to produce 33 drums of waste per working day for the next 68 years.

Instead of more studies, Mello says, the state should require the lab to remove contaminated sediments from canyons, stop the pumping of liquid radioactive waste into Mortandad Canyon, pump out contaminated groundwater and go after localized dumps with shovels and backhoes.

"If they're not going to do anything, then we should stop now," Mello says. "I'm not in favor of funding LANL to do nothing."

Nuclear Watch's Coghlan agrees that

COURTESY OF LOS ALAMOS STUDY GROUP



Area G contains 10.7 million cubic feet of waste, a volume equal to about 1.4 million 55-gallon drums.

consultant for the Los Alamos Study Group. "But this is a real legal question and it's a close one. It's a serious, sophisticated lawsuit."

Prokop was the top lawyer at the US Department of Housing and Urban Development during the late 1970s. She became intimately familiar with federal environmental laws after it was discovered that contamination from the former nuclear power plant, Rocky Flats, had leaked onto HUD-insured properties in Colorado.

As evidence of the seriousness of lab and DOE's lawsuits, Prokop points to last year's ruling in a case involving the Paducah, Ky. DOE uranium enrichment plant. In that case, the state of Kentucky tried to put conditions on DOE's disposal of radioactive materials in a state-permitted landfill.

DOE challenged the state's authority and both the district court and the sixth circuit court of appeals agreed. "It puts the state in an unusual circumstance," says lawyer Randall McDowell, who argued the case for Kentucky. "We're

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the state's order is "a glorified information request. Which doesn't require cleanup." But he says he is optimistic that "though the order doesn't call for cleanup, it will lead to cleanup."

Hazardous Waste Bureau chief Bearzi says, "The level of investigation is entirely appropriate given the state of knowledge. The information we have simply isn't good enough."

Ironically, the lab is using a similar argument to explain why it's contesting the state's order—that there is too much emphasis on new studies and not enough on actual cleanup.

Given the lab's track record on cleanup, says Coghlan, "they should be slapped for saying that."

Both Mello and Coghlan are leery of a letter the environment department signed with LANL just a month after the state released its draft order. The "letter of intent" with Los Alamos agrees to an "accelerated cleanup plan," devised by the lab and approved by DOE. The latter sought to control how contaminated sites are funded for cleanup by asking Congress for \$1.1 billion for an "Accelerated Cleanup Account," which would be given only to states that signed on to the letter.

Congressional critics, including New Mexico senators Jeff Bingaman and Pete Domenici, called the account a "slush fund." But last month Congress voted to authorize nearly the entire request. Congress has yet to appropriate the money.

Many watchdog groups are critical of this agreement, and contend New Mexico and other states were pressured into signing the letters by DOE. Bearzi says the letter is "only a letter. It doesn't mean we signed off on their cleanup plan. We haven't approved it and we don't intend to approve it. But if it's going to help bring in more money, then the money will indeed go to cleanup."

"The state has been bought off," Mello counters. "They're spending their resources on these Kumbaya meetings with the lab instead of on enforcement."

The state's ability to take a hard stand with LANL is on everybody's mind. In her 25 years as a lawyer, Prokop says she hasn't encountered regulators so apparently loathe to use their power as those here in New Mexico.

"It's just not a regulatory atmosphere. It's more, 'we're going to try and get them to comply,'" says Prokop. "Don't get me wrong, their intentions are very good. They just don't have the mentality of a strong regulator."

That might have changed now. But how strong a stance the state will take may also depend on whether, as governor, Bill Richardson decides to play hardball against the DOE, the agency he used to head. Richardson could not be reached for comment prior to press time.

If the state's order represents a new era of empowerment, Prokop worries that it may be coming too late. For a Republican administration bent on fighting terrorism, considering new nuclear testing and figuring out how to spy on domestic terrorists, Cold War-era thinking may be more relevant than the '70s promise of environmental protection.

"With this administration, the DOE sees their chance to get out from under RCRA," Prokop says. "They're going to take this and run with it." Whether New Mexico is up to the challenge, she says, "remains to be seen." □

The units of radioactivity displayed in this photo of cattails in LANL wetlands are milliroentgens/hour (mR/hr) on a Geiger counter. Los Alamos Study Group took this photo in the spring of 1999 in cooperation with the Natural Resources Defense Council.



COURTESY OF LOS ALAMOS STUDY GROUP

LANL announced on Nov. 18 that it had successfully cleaned up contaminated soil discovered during a utilities trenching operation in August. The cleanup was part of almost two months of work at TA 48. Crews removed nearly 150 cubic yards of soil contaminated with volatile organic compounds. According to LANL, the contaminant levels did not pose an immediate risk to the public or the environment.

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