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DATE: Sept. 22, 1995

TO: Benita Garcia

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FACSIMILE NO. 827-1544

FROM: Charlie de Santan

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MESSAGE:

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September 22, 1995

BY TELEFAX AND FIRST CLASS MAIL

Susan McMichael
Assistant General Counsel
Benito Garcia
Chief, Hazardous and Radioactive
Materials Bureau
New Mexico Environment Department
Post Office Box 26110
Santa Fe, New Mexico 87502

Re: Comments on the August 17, 1995 Draft Mixed Waste Site
Treatment Plans for the Los Alamos National Laboratory
and the Sandia National Laboratory

Dear Susan and Benito:

This letter will serve as our comments on the August 17, 1995 Draft Mixed Waste Site Treatment Plans for the Los Alamos National Laboratory ("LANL") and the Sandia National Laboratory ("SNL"), which the Environment Department has made available for public comment. It will also serve to confirm previous discussions I have had with Susan.

Section 4.0 of the draft Site Treatment Plans (page 17 of the draft plan for LANL; page 12 of the draft plan for SNL), which addresses mixed transuranic waste, provides that the Department of Energy ("DOE") must complete "development of treatment technologies or schedules" by December 31, 1998. This language -- specifically the words "or schedules" -- is contrary to the express terms of the Resource Conservation and Recovery Act ("RCRA"), as amended by Federal Facilities Compliance Act ("FFCA"). Section 3021(b)(1)(A)(i) of RCRA, as amended, provides that DOE must develop and submit "a plan for developing treatment capacities and technologies to treat all of the facility's mixed waste." 42 U.S.C. § 6939c(b)(1)(A)(i). Further, section 3021(b)(1)(B) of RCRA provides that the plan must contain a schedule for treatment or for developing treatment technologies. 42 U.S.C. § 6939c(b)(1)(B). (These statutory requirements are discussed in somewhat greater detail in my letter of June 19, 1995 to Susan McMichael.) The statute does not provide that the plan might merely contain a schedule for submitting a schedule, as in the August 17, 1995 draft Site Treatment Plans.

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Based on my discussions with Susan, I understand that the words "or schedules" in Section 4.0 of the August 17 drafts were unintentionally included as a clerical error, and will be deleted from the final Site Treatment Plans. Deletion of these words is necessary to comply with the terms of RCRA.

If you have any questions concerning this issue, please call me at 827-6939. I look forward to working with you in finalizing the Site Treatment Plans and compliance orders.

Sincerely,



Charles de Saillan
Assistant Attorney General
Environmental Enforcement Division