

0059
Permit

Joey

1/22/93
1/22/93

This summary was developed prior to the recent Court of Appeals decision regarding interim status at WIPP. It may not reflect the current position based on the WIPP case. Therefore, what is attached is not complete because we've not factored in the Court of Appeals decision.

Please call if you have any questions. 505-667-0820.

Alice Rose

Interim
Status
"MIXED
WASTES"



15339

TU/TO

NMED has indicated that the Laboratory does not have interim status for mixed waste units legally due to a perceived untimely submittal of the Part A portion of the Resource Conservation and Recovery Act (RCRA) permit application for mixed waste. The Laboratory submitted the Part A within the timeframe established by the Environmental Protection Agency (EPA), but NMED suggests the submittal was delinquent for 2 reasons. First, NMED asserts that regulatory requirements terminate a RCRA unit's legal operability by November 8, 1992 if a portion of the application was not submitted by November 8, 1988. The second issue set forth by NMED is based on a Part A submittal date established by a recent court decision regarding the Waste Isolation Pilot Project (WIPP). The Laboratory believes, based upon EPA's interpretations, that neither of these issues are valid.

As you may be aware, RCRA requires that a facility meet certain deadlines to continue operation of units that treat, store or dispose of hazardous waste. One of these deadlines requires that the owner/operator submit the Part A portion of the RCRA permit application by November 19, 1980 for those units in existence at that time. This, along with a notification submittal, allowed a facility to continue legal operation under what is known as interim status until such time as an operating permit was issued or denied by the governing regulatory authority. However, significant confusion existed for several years regarding EPA's regulatory authority over waste containing both a hazardous waste and a radioactive waste component (mixed waste). Because a radioactive waste subject to the Atomic Energy Act (AEA) enjoys a specific exemption from RCRA, it was unclear whether the EPA or the AEA could exercise regulatory authority over mixed waste. Consequently, it was equally unclear whether the Part A submittal should include mixed waste units.

The Laboratory submitted a Part A application to the EPA by the 1980 deadline and stated in that transmittal that, due to the confusion with regard to regulatory authority, mixed waste units were not included. This notification was used to preserve the Laboratory's right to interim status for mixed waste until some resolution was reached establishing regulatory authority. EPA did not respond regarding the need to include mixed waste.

In an effort to clarify its authority, EPA published two Federal Register notifications on July 3, 1986 and September 23, 1988. Among other provisions, these publications established the need for states to apply for authority from EPA to implement a RCRA program inclusive of mixed waste. This confirmed that the states had no authority under RCRA at that time to regulate mixed waste. State (rather than federal) law could, however, apply. Not only is state law regulating mixed waste absent in New

Mexico statute, but a requirement exists for the State to be equivalent to, and no more or less stringent than the federal RCRA program. Presumably, if EPA did not regulate mixed waste until July, 1986, it would have been more stringent for New Mexico to do so prior to 1986.

The September 1988 notice also described when waste handlers would be required to submit permit applications. Implicit and explicit in this notice was an acknowledgement that EPA considered mixed waste newly regulated and the subject of significant regulatory change (see enclosed letter from EPA to Department of Energy Headquarters, April 27, 1992). As a newly regulated waste, the submittal dates for permit applications changed from the 1980 deadline. Under the RCRA statute, a unit handling newly regulated waste can be granted interim status after the 1980 Part A application submittal deadline and continue to operate if the application is submitted within 6 months of the regulatory change.

The Laboratory submitted the Part A application (January 1991) within six months of EPA's delegation of authority for mixed waste to the State of New Mexico which we consider to be the regulatory change triggering the 6-month timeline for submission of a Part A application. The Laboratory's submission of a Part A application six months from the regulatory change subjecting mixed waste units to RCRA should have maintained the Laboratory's eligibility for interim status. (In fact, NMED proceeded to treat the Laboratory as if it had interim status when it submitted this document and performed two inspections for compliance with interim status standards.)

If a facility is ineligible for interim status due to an untimely submittal of the Part A, it cannot legally operate without first being issued an operating permit. In fact, when RCRA was reauthorized in 1984, new requirements limited the period under which a facility could enjoy interim status if it had not submitted the operating portion of the RCRA permit application (Part B). Specifically, if a facility did not submit the Part B by November 8, 1988, interim status would terminate on November 8, 1992. The Laboratory did not submit the Part B for mixed waste by the November 1988 deadline because the State had insisted it had no authority for mixed waste until a 1989 correspondence. That letter claimed authority existed by July, 1986 via State law that was not even promulgated until 1989 and not clearly relevant to mixed waste.

NMED based its position on regulatory language that was later clarified by EPA to be applicable only to those units that had interim status on the date the regulation was promulgated, November 8, 1984. Because the Laboratory could not have been granted interim status by that date, the

provision would not be applicable. When NMED was informed of EPA's clarification, the State changed its approach again. NMED now contends that, based on the WIPP decision, they had state authority for the hazardous waste component of mixed waste since 1980.

Although the State of New Mexico was not delegated authority for mixed waste until July, 1990, and had no apparent interim state law that applied, they have now claimed that, based on the WIPP decision, they have regulated the hazardous component of mixed waste since 1980. The WIPP decision held that because RCRA regulated the resultant mixture of hazardous and solid waste since 1980, the combination of hazardous and radioactive waste would also be subject to RCRA since that time. This opinion is contradictory to all previous written correspondence between the Laboratory and NMED. Several attempts were made by the Laboratory to involve the State in mixed waste issues and the repeated response received from State officials was that they did not have authority to regulate mixed waste. Only once (1989) did they suggest that State law applied as of July 3, 1986, coincidentally the date EPA chose to establish its own authority. Now that the WIPP decision theoretically moves the State's authority back to 1980, NMED is suggesting that we did not apply for interim status within the allowable timeframe and would therefore be ineligible for interim status.

GARREY CARRUTHERS
Governor

CARLA L. MUTH
Secretary

MICHAEL J. BURKHART
Deputy Secretary

1190 St. Francis Drive
Santa Fe, New Mexico 87503

NOV 22 11 45 AM 1988

MAIL

J. Chasney
11/25



November 16, 1988

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Harold E. Valencia
Area Manager
U.S. D.O.E. Area Office
Los Alamos, NM 87544

RE: NM 0890010515

Dear Mr. Valencia:

The Environmental Improvement Division (EID) Hazardous Waste Bureau (HWB) staff has reviewed your letter of May 20, 1988 to Michael Burkhart concerning the Los Alamos National Laboratory's (LANL) proposal to construct a low level/mixed waste incinerator. LANL's stated preference is to construct the mixed waste incinerator "and meet the interim status requirements," rather than to construct a low-level incinerator and "treat the mixed waste in the same manner as hazardous waste and apply for an operating permit later on for treatment of mixed waste."

LANL's position is that EID cannot regulate a mixed waste incinerator until the U.S. Environmental Protection Agency (EPA) authorizes New Mexico to administer the RCRA mixed waste program. This is correct as regards the State's EPA-authorized RCRA program, but it is not correct as regards State requirements independent of the State's EPA-authorized RCRA program. The document your letters refer to is inapplicable because it relates to EPA requirements for States seeking authorization to administer the RCRA mixed waste program in lieu of EPA in their states. It says nothing about independent State requirements for mixed waste facilities prior to EPA authorization to administer RCRA requirements, except to state that, "(i)n the interim, however, any applicable State law applies." See the EPA July 30, 1987 State Program Advisory #2, at page 3.

Mr. Harold E. Valencia
November 16, 1988
Page Two

If LANL proposed to build a new mixed waste incinerator, there are New Mexico Hazardous Waste Act (HWA) requirements independent of RCRA that LANL will need to comply with. EID regulates the hazardous waste portion of mixed waste. EID would "treat the mixed waste in the same manner as hazardous waste," and require an operating permit for its treatment. EPA has denominated July 3, 1986 as the date for a mixed waste facility to be in operation, or under construction by, in order to be able to qualify for RCRA interim status. Thus, under both RCRA and the HWA, an incinerator not in operation or under construction by July 3, 1986 cannot qualify for interim status. Thus, the construction of a new mixed waste incinerator would be regulated as the construction of a new hazardous waste unit. Your staff has previously discussed with Mr. Crossman the permitting requirements for a new hazardous waste unit.

These are State law requirements independent of any Federal RCRA requirement. They are beyond the scope of the federally approved RCRA program at this time, but they are lawful requirements all the same. The State requirements for mixed waste are, however, equivalent to RCRA mixed waste requirements, with the exception of mixed waste processed and certified for emplacement at WIPP. Thus, satisfaction of State requirements will also satisfy Federal RCRA requirements if and when EPA authorizes New Mexico to administer the RCRA mixed waste program in New Mexico.

In summary, if the proposed incinerator is to be used solely as a radioactive waste incinerator, the hazardous waste regulations would not apply. If hazardous waste is also to be incinerated, whether mixed or unmixed with radioactive waste, the hazardous waste regulations will apply. If LANL intends for hazardous wastes, whether mixed or unmixed, to be treated at a low level incinerator, LANL could facilitate the overall permitting process by so planning in the design, testing and monitoring under the applicable radioactive waste regulations.

Finally, I understand that the Air Quality Bureau responded by separate letter on November 7, 1988 regarding the New Mexico Air Quality Control Act permitting requirements for the proposed incinerator.

Mr. Harold E. Valencia
November 16, 1988
Page Three

EID appreciates your efforts to keep EID informed on this issue. If you have any questions please feel free to write or call Mr. C. Kelley Crossman on my staff at 827-2923.

Sincerely,



Richard Mitzelfelt
Director

RM/GN/pv

cc: Janie Hernandez, EPA (6H-HS)
C. Kelley Crossman, HWB, EID
Gini Nelson, OGC, HED
Dr. Kirkland L. Jones, Deputy Director
Jack Ellvinger, Chief, Hazardous Waste Bureau
Cubia Clayton, Chief, Air Quality Bureau
Benito Garcia, Chief, Community Services Bureau
Neil Weber, Chief, Special Waste Bureau



Alice Smith

Department of Energy
Albuquerque Operations
Los Alamos Area Office
Los Alamos, New Mexico 87544

MAR 13 1989

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Richard Mitzelfelt
Director
N. M. Environmental Improvement Division
1190 St. Francis Drive
Santa Fe, New Mexico 87503

Dear Mr. Mitzelfelt:

Your letter to me dated November 16, 1988, regarding the regulation of mixed waste raises several issues about which the Department of Energy (DOE) would appreciate clarification.

The letter asserts that the New Mexico Environmental Improvement Division (EID) has independent state authority to regulate mixed waste prior to its being delegated authority to administer the Resource Conservation and Recovery Act (RCRA) mixed waste program by the Environmental Protection Agency (EPA). This position is contrary to that taken by EID in a letter from Jack Ellvinger to me dated April 22, 1987, and in a letter from Michael Burkhart to me dated September 9, 1987, copies of which are enclosed. In Mr. Burkhart's letter, he rejected DOE's application to amend its permit to include mixed waste stating:

"As you are aware, the state has not yet adopted regulations for mixed wastes, nor is the state authorized to regulate mixed wastes. Mixed wastes will remain subject to EPA authority until the state assumes that responsibility."

To DOE's knowledge, there has been no substantial change in the situation as described by Mr. Burkhart. The State has not yet adopted mixed waste regulations, nor has it assumed responsibility or received authority from EPA to regulate mixed waste. Under these circumstances, DOE is concerned about EID's arbitrary reversal of its position and the lack of consistency that such actions represent.

According to EPA's July 30, 1987, State Program Advisory #2, only relevant and applicable state law can regulate a mixed waste handler prior to EPA's delegation of mixed waste authority to the state. The July 3, 1986, date noted in your letter is a federal compliance date and not a state requirement. EID is attempting to use a federal rather than a New Mexico State law as a compliance obligation. EID can establish its requirements, such as a date for interim status qualification, but it must do so in accordance with acceptable procedures which provide notice and an opportunity for comment.

Mr. Richard Mitzelfelt

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You further assert that EPA considers the July 3, 1986, date to be that date by which a facility must be in operation, or under construction in order to qualify for interim status. According to EPA's clarification statement in the Federal Register notice of September 23, 1988, (Vol. 53, No. 185), that statement applies only to states without base program authorization. A facility treating, storing, or disposing of mixed waste, or a facility at which construction commenced by the effective date of authorization of the state's mixed waste program by EPA, may qualify for interim status, provided it meets other applicable state requirements.

You state in your letter that the New Mexico requirements for mixed waste are equivalent to RCRA promulgated regulations specific to mixed waste. You state also that LANL will need to comply with New Mexico Hazardous Waste Act requirements that are independent of RCRA. It is impossible for us to determine what these requirements are and if they are, in fact, equivalent because they have never been published. EID may not impose unwritten requirements for which no notice or an opportunity for comment has been provided. Additionally, DOE would appreciate knowing to what specific requirements EID is referring. In any case, the New Mexico Hazardous Waste Act prohibits such requirements if they are more stringent than EPA regulations.

DOE would also appreciate knowing from what source the quote is taken which states that EID would "treat the mixed waste in the same manner as hazardous waste."

DOE will comply with all applicable state and federal requirements. However, DOE is concerned that New Mexico's attempt to regulate mixed waste is premature and lacks legal basis. I would appreciate knowing your position on the issues raised in this letter.

Sincerely,

Original Signed by
H. E. Valencia

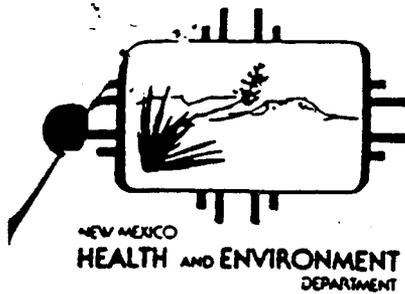
Harold E. Valencia
Area Manager

3 Enclosures

bcc:

A. Tiedman, ADS, MS A120
K. Hargis, HSE-8, MS K490
J. Themelis, Director, EHD, AL

LTP:DML(3)



Post Office Box 968
Santa Fe, New Mexico 87504-0968
ENVIRONMENTAL IMPROVEMENT DIVISION
RICHARD MITZELFELT
Director

GARREY CARRUTHERS
Governor
Carla Muth
Secretary
Michael Burkhart
Deputy Secretary

1. *J. L...*
2. *J. Burkhart*

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

April 28, 1989



Mr. Harold E. Valencia
Area Manager
U.S. Department of Energy Area Office
Los Alamos, New Mexico 87544

Re: NM 0890010515

Dear Mr. Valencia:

This letter responds to your letter dated March 13, 1989 requesting clarification of my letter dated November 16, 1988 regarding Environmental Improvement Division ("EID") regulation of mixed waste. You contrast my letter with Mr. Burkhart's September 9, 1987 letter and Jack Ellvinger's April 22, 1987 letter as demonstrating "EID's arbitrary reversal of its position and the lack of consistency that such actions represent."

Your recent letter continues to address RCRA regulation of mixed waste, and not the applicable State law regulation of mixed waste prior to authorization to administer and enforce a RCRA program in lieu of the federal government. It is obvious that if the State did not already have independent authority, it could not be eligible for authorization for the federal RCRA program. As part of the application process, the State must submit to EPA an Attorney General's statement certifying that the State has the necessary authority to regulate the hazardous components of mixed waste as hazardous waste. See, for example, EPA's State Program Advisory #2 enclosed with your letter of May 20, 1988, and referred to again in your letter of March 13, 1989, at the bottom of page 2, where it articulates program revision requirements. While EID will shortly apply for authorization to regulate mixed waste pursuant to the federal RCRA program, in the interim EID has State authority to enforce all provisions of the Hazardous Waste Act ("HWA").

Mr. Burkhart's and Mr. Ellvinger's letters referred to the State's federally-authorized RCRA program and not to the

Mr. Harold E. Valencia
April 28, 1989
Page 2

independent State authority to regulate mixed waste. EID's evaluation of available enforcement resources and priorities at the time of Mr. Burkhardt's and Mr. Ellvinger's letters, coupled with the substantial confusion and uncertainty regarding RCRA regulation of mixed waste at the time, resulted in an administrative decision not to enforce that State authority independent of the federally-authorized program. EID's current evaluation is that EID will enforce the independent State authority. This decision, while reflecting a change, is not arbitrary. It is, in fact, necessary to protect public health, safety and the environment. If the State does not regulate the hazardous waste component of mixed waste, nobody will, because EPA is not authorized to regulate mixed waste in a base program-authorized State, such as New Mexico. Mixed wastes are not currently subject to EPA authority in New Mexico.

Your allegation that EID is seeking to "impose unwritten requirements for which no notice or an opportunity for comment has been provided," is totally incorrect. My letter states that "State requirements for mixed waste are, however, equivalent to RCRA mixed waste requirements," not that "the New Mexico requirements for mixed waste are equivalent to RCRA promulgated regulations specific to mixed waste," as you state in your March 13th letter. No mixed waste specific regulations will be adopted under either the State or the federal hazardous waste programs. Legal authority to regulate is statutory, and EID's state authority is the HWA.

July 3, 1986 is the required date under State law by which mixed waste facilities must have been in existence in order to qualify for interim status. Effective April 7, 1989, HWA, Section 74-4-9 states:

Any person owning or operating a hazardous waste facility who has met the requirements for interim status under 42 U.S.C. 6925 shall be deemed to have interim status under the Hazardous Waste Act.

Thus, if a facility would have interim status under federal law, it will have interim status under State law. EPA has established July 3, 1986 as the applicable date for mixed waste facilities. See the September 23, 1988 Federal Register Clarification of Interim Status Qualification Requirements for the Hazardous Components of Radioactive Mixed Waste, at page 37046. Thus, regarding EPA's State Program Advisory #2, if LANL, after compliance with applicable State law, has a mixed waste facility under construction or in operation at the time the State gets authorization for the federal RCRA program, that facility may qualify for RCRA interim status. The critical point is that the prior construction and/or operation of that facility must have been pursuant to State law.

Mr. Harold E. Valencia
April 28, 1989
Page 3

Regarding your question in the second to last paragraph of your letter, I refer to the first paragraph of my November 16, 1988 letter; and page 2 of your letter to Michael Burkhart dated May 20, 1988 where you discuss options for permitting LANL's proposed mixed waste facility, i.e., "[t]he first option is to treat the mixed waste in the same manner as hazardous waste and apply for an operating permit later on for treatment of mixed waste." Emphasis added.

In closing, I would like to emphasize that my discussion has been limited to the the Hazardous Waste Act and the regulations promulgated thereunder. There may be separate issues under the Clean Air Act and the regulations which would need to be addressed should LANL proceed with construction of the subject incinerator.

I trust this further clarification is helpful. EID appreciates your assurance that DOE will comply with all applicable state and federal requirements. If you have any further questions, please write or call Mr. C. Kelley Crossman on my staff at 827-2923.

Sincerely,


RICHARD MITZELFELT
Director

cc: Janie Hernandez, EPA (6H-HS)
C. Kelley Crossman, EID, HWB
Gini Nelson, OGC, HED
Dr. Kirkland L. Jones, EID Deputy Director
Jack Ellvinger, EID Hazardous Waste Bureau Chief
Cubia Clayton, EID Air Quality Bureau Chief
Benito Garcia, EID Community Services Bureau Chief
Neil Weber, EID Special Waste Bureau Chief
Michael Brown, EID District II Manager

[ltvalencia.lnl]

DEPARTMENT

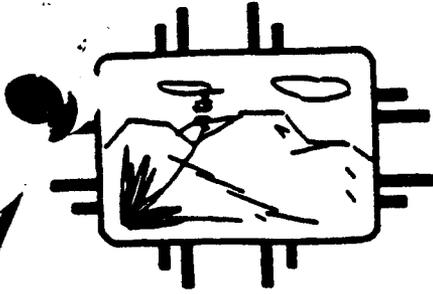
GARREY CARRUTHERS
Governor

Post Office Box 968
Santa Fe, New Mexico 87504-0968

LARRY GORDON
Secretary

HAZARDOUS WASTE SECTION
(505) 827-2929

CAROL MUTH
Deputy Secretary



NEW MEXICO
HEALTH AND ENVIRONMENT
DEPARTMENT

April 22, 1987

Mr. Harold E. Valencia
Area Manager
U.S. Department of Energy
Los Alamos, NM 87544

Re: Storage of Mixed Waste
NM 0890010515

Dear Mr. Valencia:

In response to your letter of April 10, 1987, the EID can not, at this time, either approve or disapprove the storage or handling of mixed radioactive and hazardous wastes. Your proposed storage method appears to be adequate but, in the absence of regulatory criteria we are unable to provide a definitive response to your request. We would advise that you store the stringers in accordance with NRC guidance until the final ruling on mixed waste jurisdiction is promulgated.

We do suggest that you perform EP Toxicity tests on unirradiated samples of the stringers to confirm the actual status. We would appreciate receipt of the test results when they become available.

If you have further questions please call Mr. C. Kelley Crossman on my staff at 827-2923.

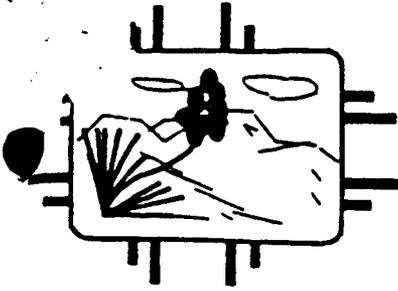
Sincerely,

Jack Ellvinger
Program Manager

cc: Susan Stark, EPA (6H-HS)

No Response Required

FAP



NEW MEXICO
HEALTH AND ENVIRONMENT
DEPARTMENT

Post Office Box 968
Santa Fe, New Mexico 87504-0968

GARREY CARUTHERS
Governor

LARRY GORDON
Secretary

VALENCIA

DISPOSITION

J. Plummer

CARLA L. MUTH
Deputy Secretary

September 9, 1987

Mr. Harold E. Valencia
Area Manager
DOE Los Alamos Area Office
Los Alamos, NM 87544

RE: Revised Part A
NM 0890010515

Dear Mr. Valencia:

Your request of August 17, 1987, to modify your RCRA Part A hazardous waste permit and Part B permit application is denied. New Mexico Hazardous Waste Management Regulations, Section 302.C.3.b. clearly states that justification for a change must be submitted with the revised Part A form. No justification for the increases of capacity was presented.

In addition, several questions about the entries on the forms must be resolved.

EPA Form 3510-1:

- 1) Item II.A. In what way does LANL qualify as a publicly owned treatment plant? LANL is neither a state nor a municipality.
- 2) Item VIII. A. The name entry differs from that in item III. What is the correct name for your installation?
- 3) Item VIII. C. What is the operator's status code? No entry was made.
- 4) Item X. B. There is no permit number for the UIC program yet item II.H. indicates a UIC program exists. Is this an unregulated or unregistered activity?

EPA Form 3510-3:

- 1) There is no explanation for the 405-fold increase in storage requirements (S01).
- 2) The addition of surface impoundments without groundwater monitoring and meeting the technical guidance criteria for impoundments cannot be done without adequate documentation.

related mixed words



Harold Valencia
September 9, 1987
Page 2

- 3) The major increase in tank storage needs to be explained and justified.
- 4) Item IX owner certification is unsigned and undated.

This proposed major expansion of the quantity of hazardous wastes will have a major impact on the RCRA part B permit. If DOE wishes to modify the application to include these new quantities and processes, the application must be revised to fully incorporate quantities, processes and procedures appropriately.

As you are aware, the state has not yet adopted regulations for mixed wastes, nor is the state authorized to regulate mixed wastes. Mixed wastes will remain subject to EPA authority until the state assumes that responsibility.

Therefore, we ask that you continue to separately report on the Part A forms the RCRA wastes and the Mixed RCRA - radioactive wastes.

If you have any questions, please call Mr. C. Kelley Crossman at 827-2923.

Sincerely,

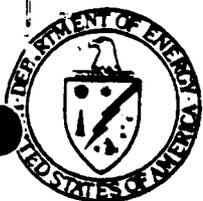


Michael J. Burkhart
Director

MJB/CKC/aw

cc: Tanga Winkle, EPA (6H-HS)
Kirkland L. Jones, Deputy Director, EID
Jack Ellvinger, Program Manager, HWMS

Bar



Department of Energy
Albuquerque Operations
Los Alamos Area Office
Los Alamos, New Mexico 87544

MAY 20 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Michael Burkhardt, Director
Environmental Improvement Division
P. O. Box 968
Santa Fe, NM 87504-0968

Dear Mr. Burkhardt:

This letter provides information in response to your letter, dated 29 March 1988, regarding the Department of Energy (DOE) budget projections for a new incinerator at the Los Alamos National Laboratory (Laboratory). The DOE appreciates your interest in this important project and is pleased to provide you additional information.

While the Federal Facilities Information System Pollution Status Report indicates the Laboratory will construct a new production incinerator for hazardous waste, this description is not totally accurate. Several years ago, the Laboratory carefully evaluated the generation of low-level radioactive waste and decided that a facility to treat and reduce the volume of low-level radioactive waste was needed. With this in mind, the Laboratory pursued and obtained funding for a new production incinerator. However, as the Laboratory continued to evaluate other waste sources including mixed waste (radioactive and chemical constituents) and hazardous waste, it became apparent that the most cost effective approach would be to include capabilities for treatment of these wastes in the design of the new production incinerator.

Following a discussion with Mr. C. Kelley Crossman of your staff on 18 March 1988, it was determined that construction and operation of a new hazardous waste incinerator would require a two-phased permit. The first phase would be a partial permit allowing construction of a new hazardous waste unit as required under Section 302.A.1.c [Code of Federal Regulations (CFR), Title 40, Part 270.10(f)]. The second phase would permit the operation of the unit as specified by Section 301.A [40 CFR 270.1(c)]. As you reiterated in your letter, review of the application for the construction phase of the permit could take at least one year and, therefore, impact the schedule dictated under the low-level waste program.

Because of the urgency of moving towards better treatment of low-level radioactive, mixed, and hazardous waste and because of the time constraints for Environmental Improvement Division (EID) review, other options were evaluated. In a recent meeting with Mr. Crossman on 4 May 1988, personnel from the Laboratory discussed the possibility of construction of a low-level radioactive waste incinerator that would later be evaluated and permitted for operation of a hazardous waste treatment unit. As a low-level waste incinerator, compliance with Section 302.C.3.b requiring approval for construction of a new hazardous waste unit would not be required at this time.

The DOE has also reviewed the Environmental Protection Agency (EPA) guidance memorandum, dated 30 July 1987, from Bruce Weddle, Director of Permits and State Programs Division, Office of Solid Waste to Resource Conservation and Recovery Act (RCRA) Branch Chiefs, Regions I-X regarding "State Program Advisory #2-RCRA Authorization to Regulate Mixed Wastes" (Enclosure). This memorandum clarifies that "mixed waste handlers are not subject to RCRA regulation until the State's program is revised and approved by EPA to include this authority." As the State of New Mexico has not yet been delegated this authority, mixed waste handlers in New Mexico would not currently be subject to RCRA requirements. This memorandum also states that, pursuant to RCRA Section 3005(e)(1)(a)(ii), a facility may qualify for interim status provided the mixed waste treatment, storage and/or disposal unit(s) exists on the date a state is authorized to regulate mixed waste and the facility submits a Part A application within six months of this date.

In light of this memorandum, it appears that there are two options for permitting the mixed waste component. The first option is to treat the mixed waste in the same manner as hazardous waste and apply for an operating permit later on for treatment of mixed waste. The second and preferred option is to construct the incinerator as a low-level radioactive/mixed waste incinerator and meet the interim status requirements.

We believe that several advantages would be provided by having a mixed waste incinerator with interim status. For example, although hazardous waste could not be destroyed in the incinerator without an operating permit, a mixed waste incinerator would enable DOE to perform the activities necessary to complete the hazardous waste permit application process (i.e., a trial burn) in a more timely manner. In addition, DOE is cognizant of EID's concern regarding the storage of mixed waste at the Laboratory. An incinerator with broad mixed waste capabilities and interim status would assist DOE in minimizing mixed waste storage needs.

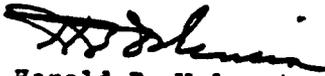
The DOE would like to pursue the latter option and begin construction of a low-level/mixed waste incinerator within the next six months. We will be happy to provide information including plans and designs for this facility as they are developed. However, application for a hazardous waste operating permit or a major modification to the Part B permit would be submitted at a future, more appropriate time.

Mr. Michael Burkhart

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The DOE hopes this approach meets with EID approval and provides an acceptable solution to all the issues discussed above. We will continue to provide information as indicated and would appreciate a response at your earliest convenience. If you should have any further questions regarding this matter, or would like to meet with us for additional discussion, please contact Donna M. Lacombe of my staff at 667-5288.

Sincerely,


Harold E. Valencia
Area Manager

Enclosure

cc:

- A. Tiedman, LANL, ADS, MS-A120
- J. Puckett, LANL, HSE-DO (AI #58), MS-K491
- M. Martz Emerson, LANL, (HSE8-88-231-1, AI #30 5/9),
HSE-8, MS-K490
- R. Koenig, LANL, HSE-7, MS-E518
- A. Davis, Region VI, EPA, Dallas, Texas
- C. K. Crossman, EID, Santa Fe, New Mexico
- E. Nunez, Chief, P&FM Branch, LAAO