



Department of Energy

Washington, DC 20585

JUN 28 1996

RECEIVED

JUN 12 1996

NM ENVIRONMENT DEPARTMENT  
OFFICE OF THE SECRETARY

Permit

~~Permit~~

LANH

Red

Mr. Ed Kelley  
Director  
Water and Waste Management Division  
New Mexico Environment Department  
P.O. Box 26110  
1190 St. Francis Drive  
Santa Fe, NM 87502

Dear Mr. Kelley:

The purpose of this letter is to request that we engage in serious discussions on the two Department of Energy (DOE) proposals for mixed waste submitted to the Environmental Protection Agency (EPA) under the Hazardous Waste Identification Rule (HWIR). In addition, because there has been some confusion, we would like to address some of the concerns raised by the States in letters to the EPA commenting on the Department's proposals, and provide information to help you evaluate our proposals.

In the preamble to the HWIR (60 FR 66400, December 21, 1995), the EPA noted that the Department is interested in two reforms for mixed wastes that would exclude, after treatment; immobilized mixed debris and vitrified mixed wastes from the Resource Conservation and Recovery Act (RCRA) based on waste form performance. In the proposed HWIR, the EPA also considered a contingent management approach that would establish exit levels for mixed wastes at a chemical toxicity of 10<sup>-4</sup> cancer risk level and a hazard quotient of one (modeled at an uncontrolled site). I want to emphasize, because there seems to be some misunderstanding over this point, the Department has no proposal and is not proposing a contingent management approach for listed mixed waste. I also want to assure you that the Department intends to meet the commitments made under the RCRA, as amended by the Federal Facility Compliance Act.

The Department submitted technical data packages on its two proposals to the EPA in July and October 1995. The technical demonstration for mixed debris is based on the integrity of the encapsulated debris waste form, and the performance of RCRA toxic metals disposed of in low-level radioactive waste disposal facilities. The technical demonstration for vitrified mixed waste is based on the inherent destruction and immobilization capabilities of the technology and the final waste form performance. To ensure that vitrified wastes meet environmentally acceptable performance characteristics, the Department proposes the use of a process control strategy that includes sampling and analysis. Based on the technical data, we believe that continuing to manage the hazardous component of immobilized low-level mixed debris and vitrified mixed wastes under Subtitle C of RCRA provides no significant benefit to human health and the environment.

TL



As part of the proposal development, the Department developed cost information to ensure that the proposals are cost effective. The cost information indicates that managing immobilized mixed debris and vitrified mixed wastes in radioactive disposal facilities, as opposed to mixed waste disposal facilities, will provide significant savings; and as noted above, we believe that these cost savings can be achieved without a loss of protection to human health and the environment. The estimated cost savings from the immobilized low-level mixed debris and the vitrified mixed waste proposals are approximately \$700 million based on data compiled for the 1996 Baseline Environmental Management Report. These proposals would affect a total of about 31 percent of DOE's current and projected mixed waste inventory through the year 2070, of which 2 percent is for immobilized debris, and 29 percent is for vitrified waste.<sup>1</sup> Information on how the Department derived these cost savings estimates is included as part of the enclosed information. These percentages supersede previous estimates discussed by the Department with the States and are substantially lower primarily because estimates were refined when contingent management was excluded from consideration. In addition to cost efficiencies, another advantage to the Department's proposals is that low-level mixed debris and low-level vitrified mixed wastes could be moved more rapidly from storage to disposal because disposal capacity is more readily available for low-level waste than mixed waste.

Although the EPA identified the Department's two proposals in the proposed HWIR, the Agency would still have to initiate a rulemaking process for the Department's proposals, either as part of the HWIR or another rule, before the proposals could be promulgated. The rulemaking process would propose specific regulatory language and provide opportunities for the States and others to comment on the details of the Department's proposals. We appreciate the States' concern that DOE's proposals not contradict the recommendations of the Advisory Committee on External Regulation. We want to assure you that these proposals are not intended to circumvent external regulation, but rather to address the appropriateness of continuing to regulate certain waste under RCRA.

Most importantly, however, we know we need to work with you on the technical and regulatory aspects of these proposals. We would like to meet with the States and determine the best way to achieve the objectives of the Department's two proposals; and we will be scheduling a meeting shortly. During this meeting, we would like to discuss a

---

<sup>1</sup> These percentages reflect mixed waste from operations, environmental restoration, and decontamination and decommissioning activities which is now or is projected to the year 2070 to be managed by the Department of Energy's Office of Waste Management.

key concern with these proposals, which is how they would be implemented. We are very interested in your assessment of the technical and cost aspects of the proposals and will work with you to provide any additional information if it is necessary. If you have any questions, please contact me or Mr. Michael Kleinrock of my staff at (301) 903-7149.

Sincerely,



Stephen P. Cowan  
Deputy Assistant Secretary  
for Waste Management  
Environmental Management

Enclosure