



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

AUG 12 4 1989

HAND-DELIVERED

Mr. Richard Mitzelfelt
Director
New Mexico Environmental Improvement Division
P.O. Box 968
Santa Fe, NM 87503-0968

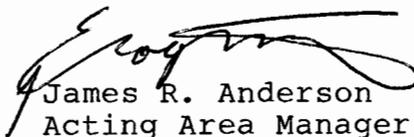
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Dear Mr. Mitzelfelt:

Enclosed are additional comments prepared by the Department of Energy and the University of California regarding Draft RCRA Permit No. NM0890010515-1.

Also enclosed is a fact sheet submitted by DOE entitled "Answers to Questions Regarding the Department of Energy's Regulation of Radioactive Waste." This fact sheet responds to concerns raised by the public at the public hearing held July 18-20, 1989, but which are irrelevant concerning the grant or denial of the RCRA permit. DOE requests that this fact sheet also be made part of the public record.

Sincerely,


James R. Anderson
Acting Area Manager

Enclosures

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PUBLIC HEALTH DIVISION
DIRECTOR'S OFFICE



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**ANSWERS TO QUESTIONS REGARDING THE DEPARTMENT OF ENERGY'S
REGULATION OF RADIOACTIVE WASTES**

During the public hearing concerning the Department of Energy's draft RCRA operating permit, the public asked several questions regarding DOE's authority to regulate itself regarding radioactive waste, as well as independent oversight of DOE's activities. Although these questions are not relevant to the grant or denial of the permit, DOE is taking this opportunity to answer those questions

EVOLUTION OF THE DEPARTMENT OF ENERGY

The Atomic Energy Act of 1954 (AEA), 42 United States Code (USC) Sections 2011 through 2296, created the Atomic Energy Commission (AEC) and authorized it to produce "special nuclear material." In 1959, Congress amended the AEA to establish programs for controlling radiation hazards. The amendment created the Federal Radiation Council to guide federal agencies in establishing radiation standards. The Federal Radiation Council was abolished in 1970; its functions were transferred to the Environmental Protection Agency.

In 1974, the Energy Organization Act, 42 USC 5801 through 5891, abolished the AEC and delegated its function to the Energy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission (NRC). ERDA took on the non-regulatory function of the AEC, including the weapons program. The NRC was given the AEC's licensing and regulatory authority over commercial uses of atomic energy. The NRC was not authorized to regulate ERDA nuclear weapon activities, except for high-level radioactive waste disposal, 42 USC 5842. The Department of Energy Organization Act, 42 USC 7101 through 7375, transferred the functions of ERDA to the Department of Energy.

REGULATION OF RADIOACTIVE WASTE

RCRA expressly excludes "source, special nuclear, and by-product material" as defined in the AEA from its regulations, 42 USC (27);

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such materials are subject only to regulation by DOE or NRC. DOE has several orders dealing with the handling of its radioactive materials or waste, including the following:

DOE Order 1540.2 Hazardous Material Packaging for Transport

DOE Order 1540.3 Base Technology for Radioactive Material Transportation Packaging Systems

DOE Order 5480.2 Radioactive Waste Management

DOE Order 5480.3 Safety Requirements for the Packaging and Transportation of Hazardous Materials, Hazardous Substances, and Hazardous Wastes

Independent Oversight of DOE Activities

42 USC 2286 establishes the independent Defense Nuclear Facilities Safety Board. The Board is to be composed of five members appointed from civilian life by the President. The members are to be respected experts in the field of nuclear safety. No member of the Board may be an employee of, or have a significant financial relationship with, the Department of Energy or any of its contractors. President Bush nominated five nuclear energy experts to the Board in July, 1989.

The Board is to review standards relating to the design, construction, operation, and decommission of defense nuclear facilities of the DOE. This includes DOE orders, regulations and requirements. The Board is to recommend to the Secretary of Energy specific measures which should be adopted to protect public safety and health. The Board may also investigate events or practices at DOE defense nuclear facilities which the Board has determined may adversely affect public health and safety.

Point of contact for questions regarding DOE environmental practices.

If any member of the public has a question regarding activities at the Los Alamos National Laboratory, or regarding general DOE environmental practices, please contact Jim Phoenix at (505)667-5288, or Lisa Cummings at (505)667-4667. If they are unable to answer a specific question, they will be able to obtain the information.