

October 12, 1993

Ms. Marilyn Stone
Environmental Restoration and Waste Management
U. S. Department of Energy
1000 Independence Ave, SW
Washington, DC 20585-0002

Dear Ms. Stone,

The Department of Energy (DOE) has listed in conceptual site treatment plans (CSTPs) treatment options available to DOE at DOE sites in the nation. The New Mexico Environment Department received a copy of Table A that DOE intends to submit as an attachment to the CSTPs.

The National Governors Association has asked that states review the sections of the Table A that reference their state. In addition, states were asked to submit written comments directly to the appropriate DOE field staff regarding corrections or confirmations for all information for the sites in their state.

As Secretary of the New Mexico Environment Department I would like to comment on the RCRA hazardous waste status of the Los Alamos National Laboratory (LANL) Controlled Air Incinerator (CAI).

The CAI was constructed between 1974-75 and ~~was~~ therefore qualifies as an existing hazardous waste management facility under 40 CFR 260.10. The unit was permitted for hazardous waste incineration in 1989.

New Mexico received authorization from the Environmental Protection Agency (EPA) to regulate the hazardous component of mixed waste under RCRA on July 25, 1990. On January 24, 1991 LANL submitted the Part A of the hazardous waste permit application for continued operation of mixed waste units at LANL. This document was intended to satisfy the interim status requirement to submit a Part A within 6 months of EPA's delegation of mixed waste authority to the State of New Mexico (Section 270.10 (e) (1) (i)). The CAI unit was part of this submittal.

The Environment Department however does not consider the submittal of a Part A application for mixed waste the correct regulatory



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option for the CAI unit. Since the unit was permitted, interim status ended on the date of permit issuance and interim status is no longer available for the unit. Authorization to continue to manage mixed waste in the CAI falls under HWMR Part IX, ^{section} 40, CFR Part 270.42 (g) permit modification regulations which require a permit modification request for newly listed or characterized waste.

On July 3, 1986, EPA published a Federal Register Notice clarifying that mixed waste is a hazardous waste. In authorized states such as New Mexico mixed waste becomes a hazardous waste in the State upon EPA's delegation of authority (July 25, 1990 for New Mexico). Since NMED issued the CAI permit prior to obtaining mixed waste authorization from EPA, current permit conditions of the permit do not apply to mixed waste. The decision that the CAI permit does not apply to mixed waste was upheld by a court decision in New Mexico vs. Watkins, 969 F2d 1122, 1132 (D.C.C.r. 1992).

Since LANL has not submitted ^a ~~this~~ modification request to date, the CAI unit is not permitted or authorized to incinerate mixed waste. LANL may submit a permit modification request to add mixed waste stream(s) to the wastes specified in the permit. Incineration of mixed waste in the CAI unit would be authorized upon the effective date of permit modification issuance by NMED.

Please modify "Table A" to reflect LANLs CAI as not available for incineration of mixed waste. If you have any questions concerning this letter, please feel free to call me at (505) 827-2850.

Sincerely,

↑ until permit NM0890010515-1 is modified

Judith M. Espinosa
Secretary
New Mexico Environment Department

cc: Kathleen Sisneros, Director, W&WW
Benito Garcia, Bureau Chief, HRMB
John Thomasian, NGA