

Pnm91

State of New Mexico

ENVIRONMENT DEPARTMENT

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October 31, 1991

Ms. Elaine Beckett  
Public Service Company of  
New Mexico  
Alvarado Square  
Albuquerque, NM 87158

RE: Boiler Cleanout Wastes/Coal Combustion Wastes  
San Juan Generating Station - NMD069424323  
Reeves Generating Station - NMD330010326

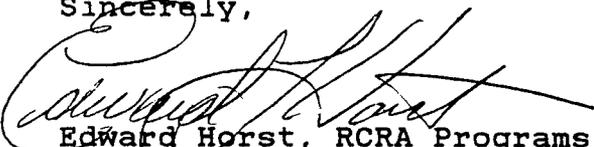
The Hazardous and Radioactive Materials Bureau (HRMB) of the New Mexico Environment Department (NMED) issued a request for information letter to the Public Service Company of New Mexico's San Juan and Reeves station requiring sampling, analysis and reporting of chromium concentrations in Cell 1 of the North Evaporation Ponds. The letter further stated that past actions taken by PNM at these sites (disposal of boiler clean-out solutions) may have caused these units to have become RCRA regulated.

HRMB has reconsidered this situation, and now considers that PNM was operating at the time under the reasonable assumption that the HRMB would take the same position as that taken by the U.S. EPA and as explicated by the EPA in the so called "Dietrich Letter". HRMB concludes that it cannot maintain that the units in question could have become RCRA-regulated units as the result of past actions which were performed by PNM under the reasonable assumption of their legality since this assumption was supported by EPA documentation. For HRMB to conclude otherwise would be tantamount to a retroactive application of new regulations, since HRMB has only recently designated as hazardous wastes those coal-combustion wastes which are TC characteristic and are not specifically included in the §261.4(b)(4) exemption. EPA has clearly demonstrated that no regulation should be retroactively applied.

The October 2, 1991 §74-4-10.1.E request for information is therefore rescinded.

If you have any questions regarding this matter, please contact Dr. Bruce Swanton of my staff at (505) 827-4300.

Sincerely,

  
Edward Horst, RCRA Programs Manager  
Hazardous and Radioactive Materials Bureau

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