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Certified Mail
Return Receipt Requested

June 12, 1997

Ron D. Johnson
Technical Group Leader
Public Service Company of New Mexico
Alvarado Square - Mail Stop 0408
Albuquerque, NM 87158

Subject: Person Generating Station - Mechanism for Reducing Post-Closure Care Cost Estimate and Releasing Financial Assurance Trust Funds

Dear Mr. Johnson:

This letter is in response to your inquiry, by letter dated May 1, 1997, regarding required procedures for releasing funds from a trust fund, established by PNM pursuant to 40 C.F.R. Subpart H (incorporated at 20 NMAC 4.1.500.), for financial assurance for post-closure care corrective action activities at the above-referenced site.

In order to release funds from a post-closure care financial assurance trust fund, the cost estimate prepared pursuant to 40 C.F.R. §264.144 must be revised to be equal to the amount remaining in the trust fund. It is Hazardous and Radioactive Materials Bureau (HRMB) policy that, unlike the post-closure care plan, the cost estimate is not incorporated into the permit and does not become a permit condition. Therefore, a change to the cost estimate does not require a permit modification.

As noted in your letter, there are two procedures available for releasing funds in a post-closure care financial assurance trust fund. Under 40 C.F.R. §264.145(a)(10), the Regional Administrator may approve a release of funds if the owner or operator demonstrates that the value of the trust fund exceeds the remaining cost of post-closure care. The Secretary of the New Mexico Environment Department (NMED) acts as Regional Administrator for New Mexico's authorized RCRA program. In order to obtain approval for a release of funds under §264.145(a)(10), PNM must submit a request letter to Benito Garcia, HRMB Bureau Chief. HRMB will review PNM's submittal and make a recommendation to the Secretary.

Include in the request letter the amount of the trust fund, the revised cost estimate, and sufficient documentation to enable HRMB to determine that the revised figure accurately

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reflects the cost of remaining post-closure care activities. Documentation should delineate all activities consistent with those described in the Post-Closure Care Permit and include the fully loaded costs of post-closure care, including the cost of labor and equipment, and should be based on third party costs. In addition to the information in PNM's most recently submitted cost estimate, include a breakdown of those costs that describes how they were determined, specifying individual activities, contractors' names, and which costs are estimated and which are based on existing contracts. HRMB may request additional information in support of the revised estimate, including an audit by a third party if necessary.

If the release of funds is approved by the Secretary, NMED will issue a letter to the trustee instructing the trustee to release to PNM funds in the amount of the reduction in the cost estimate.

40 C.F.R. §264.145(a)(11) provides for reimbursement from the trust fund if the owner or operator submits itemized bills for post-closure care expenditures to the Regional Administrator and the Regional Administrator approves the reimbursements. This submittal should also be made to HRMB. Before recommending approval of reimbursements under this provision, HRMB will require submittal of a revised cost estimate and sufficient documentation, equivalent to that required under §264.145(a)(10), to ensure that the trust fund remains adequate to cover all remaining post-closure care activities.

Please notify Carl Will of my staff at 827-1561 if you have any questions or need additional information.

Sincerely,


Robert S. ("Stu") Dinwiddie, Manager
RCRA Permits Management Program
Hazardous and Radioactive Materials Bureau

cc: Jerry Bober

file: red/PNMPS/97

track: PNMPS/date/Johnson/Dinwiddie/procedure for reducing financial assurance