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State of New Mexico
ENVIRONMENT DEPARTMENT

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 24, 2001

Dr. Inés Triay, Manager
Carlsbad Field Office
Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Mr. Joe Epstein, General Manager
Westinghouse Waste Isolation Division
P.O. Box 2078
Carlsbad, New Mexico 88221-5608

**RE: NMED RESPONSE TO REQUEST FOR RECONSIDERATION OF TEMPORARY
AUTHORIZATION DENIAL
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Dr. Triay and Mr. Epstein:

NMED has received a December 28, 2000 clarification letter from the Department of Energy's Carlsbad Field Office (CBFO) providing additional information regarding NMED's December 22, 2000 rescission of the temporary authorization (TA) which NMED had previously granted. This TA would have allowed the Idaho National Engineering and Environmental Laboratory (INEEL) to use the revised drum age criteria (DAC) proposed in CBFO's December 7, 2000 Class 2 permit modification request. This clarification letter requested NMED to "reconsider the rescission (sic) of the TA and reinstate the TA and/or provide written concurrence that the direction provided by Mr. Zappe on December 22, 2000 is acceptable."

Based upon the information in your letter, NMED still believes that the Permittees failed to demonstrate the necessity of implementing the TA at INEEL. As NMED's rescission letter stated, "the permittee must demonstrate that NMED should approve the proposed modification immediately because the facility cannot wait until action is taken on the modification request at the conclusion of the public comment period," particularly when implementation would occur without the benefit of public comment or notice. Therefore, NMED will not reinstate the TA.

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With regard to the direction provided by Mr. Zappe, NMED notes that the WIPP Hazardous Waste Facility Permit directly regulates the WIPP facility, and not the waste characterization activities at generator/storage sites. Permit Condition II.B.1 states:

“... The Permittees may only receive TRU mixed waste from those sites which comply with the applicable requirements of the Waste Analysis Plan (**WAP**) specified in Permit Condition II.C.1 and Permit Attachment B, as required by 20 NMAC 4.1.500 (incorporating 40 CFR 264.13(a)) and as verified through the Permittees' Audit and Surveillance Program specified in Permit Condition II.C.2.”

NMED's interpretation of this requirement is that generator/storage sites are free to characterize their waste in a manner consistent with conditions imposed by their state regulators, but WIPP may only receive waste that has been characterized in compliance with the requirements of the Permit for management, storage, and disposal. Therefore, NMED concurs with CBFO's imposition of conditions on generator storage/sites such that any waste characterized employing a DAC other than what is currently in the Permit cannot be shipped to WIPP.

If you have any questions regarding this matter, please contact Steve Zappe of my staff at (505) 827-1557.

Sincerely,

Gregory J. Lewis
Director
Water and Waste Management Division

GJL:soz

cc: James Bearzi, NMED HWB
John Kieling, NMED HWB
Steve Zappe, NMED HWB
Susan McMichael, NMED OGC
David Neleigh, EPA Region 6
Connie Walker, TechLaw
File: Red WIPP '01