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January 26, 1994

Mr. James A. McWhinney
Program Manager
Department of Energy
Waste Isolation Pilot Plant Project Office
P.O. Box 3090
Carlsbad, New Mexico 88221

Dear Mr. McWhinney:

This letter is in response to your July 2, 1993 proposal to the Hazardous and Radioactive Materials Bureau (HRMB) concerning the minimization of waste associated with aerosol can usage. HRMB has reviewed the proposal and has the following response.

In your letter there is a request for the "concurrence of NMED that puncturing and draining the cans for this pilot program does not constitute treatment requiring a permit under Part XI and that management of the wastes derived from this activity in the vicinity of the surface tool crib does not violate the "at or near the point of generation" requirements for satellite accumulation or Part III."

The proposal discusses empty aerosol cans under 40 CFR Section 261.7(b)(1)(iii)(A), however no reference is made to the applicability of 40 CFR Section 261.7(b)(3), which addresses containers having held an "acute hazardous waste". If none of the aerosol cans have held an acute hazardous waste, HRMB concurs that this activity, as described in your letter, will not require a permit.

WIPP has determined, and the HRMB concurs, that the contents drained from the aerosol cans is a hazardous material governed by Resource Conservation and Recovery Act (RCRA) regulations. Under the provisions of 40 CFR 262.34, the accumulation of hazardous waste as defined by 40 CFR 261 Subparts B, C, and D, at a non-permitted operation is limited to:

1. accumulation periods of less than 90 days
2. accumulation of hazardous waste less than 55 gallons.
3. accumulation of acute hazardous waste less than 1 quart.

Additionally, 40 CFR 262.34 dictates the documentation and container labeling required for each container used to accumulate hazardous waste. 40 CFR 262.34 also requires the operation to comply with the following 40 CFR sections:

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James A. MeWhinney
January 26, 1994
Page 2

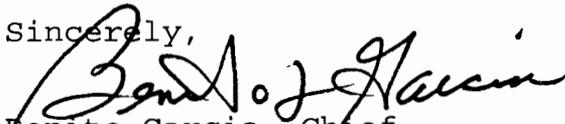
268.7 Determination of Hazardous Waste
265.16 Personnel Training
265 Subpart C Preparedness and Prevention
265 Subpart D Contingency Plan
265 Subpart I Use and Management of Containers.

If the accumulation exceeds 90 days, 55 gallons of hazardous waste, or 1 quart of acute hazardous waste a permit is required for the operation as a storage facility.

The proposal also does not clearly explain where in relationship to the surface tool crib the empty aerosol cans are generated. If the empty aerosol cans are generated below-ground and are moved above-ground then this proposal is inconsistent with 40 CFR 262.34(c)(1) which states no permit is needed if the hazardous waste accumulates "in containers at or near any point of generation...". In this case the surface tool crib does not appear to qualify as a satellite accumulation point for aerosol cans generated below-ground.

Should you wish further information or require clarification on this letter, please contact Mr. Steve Alexander of my staff at (505) 827-4313.

Sincerely,



Benito Garcia, Chief
Hazardous and Radioactive Materials Bureau

cc: Barbara Hoditschek, HRMB
Ed Horst, HRMB
John Parker, HRMB
Steve Alexander, HRMB