



Department of Energy
Carlsbad Area Office
P. O. Box 3090
Carlsbad, New Mexico 88221

ENTERED

February 21, 1997

Susan M. McMichael, Esq.
Assistant General Counsel
Office of General Counsel
New Mexico Environmental Department
H Building
Santa Fe, NM 87502

Dear Ms. McMichaels:

This letter responds to the question you raised in your February 11, 1997, letter to Gordon Venable of CTAC. Your inquiry pertained to whether or not the WIPP facility could accept, store, and dispose of mixed defense transuranic waste without a Part B permit from the NMED. It is clear under RCRA and through delegation of authority from the U.S.E.P.A. to the NMED that DOE and the co-operator, Westinghouse, cannot legally accept, store, or dispose of mixed transuranic waste without a Part B permit.

If EPA certifies WIPP for disposal of non-mixed transuranic waste, it may be legally feasible to dispose of this waste without a Part B permit. However, it would be my judgment that the EPA would look at and consider the certainty of DOE receiving a Part B permit prior to their certification.

I trust this answers your question. If you need further discussion on this matter, please give me a call at (505) 234-7329

Sincerely,

Cooper H. Wayman,
Legal Counsel

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