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October 3, 1997

Mr. George Dials, Manager
Carlsbad Area Office
Department of Energy
P.O. Box 3090
Carlsbad, NM 88221

Mr. Joe Epstein, General Manager
Westinghouse Electric Corporation
P.O. Box 2078
Carlsbad, NM 88220

RE: DOE/WID Letter of September 26, 1997

Dear Messrs. Dials and Epstein,

The New Mexico Environment Department ("the Department") has reviewed your letter dated September 26, 1997, which the Department received by facsimile on September 29, 1997. DOE/WID complains that the Department's decision to rescind the completeness determination for the RCRA Part B permit application has "no legitimate basis", "undermines the integrity of the NMED review and decisionmaking process", and "calls into question NMED's credibility as the entity solely responsible for making the completeness determination". DOE/WID suggests that, instead of rescinding the completeness determination, the Department should have issued "an updated completeness determination based on the statutory and regulatory changes since the original June 1996 determination".

As an initial matter, the Department is disappointed that DOE/WID would feel it necessary to impugn the Department's integrity in this matter. Turning to the merits of DOE/WID's complaint, as previously stated in our letter dated September 26, 1997, the Department has ample basis for rescinding the completeness determination. The Department received substantial new material from DOE/WID after the completeness determination issued on June 27, 1996. Contrary to DOE/WID's assertion, some of this new material was not submitted in response to "statutory and regulatory changes" since June 1996, and therefore an "updated" completeness determination would have been inappropriate. Moreover, the Department could not have issued an "updated" completeness determination because DOE/WID has not yet submitted the information required by 20 NMAC 4.1.1103 (incorporating 40 CFR 270.14(b)(15-17)). Finally, the Department could not have issued an "updated" completeness determination because the Department does not believe that there is any regulatory basis for such an action.



The Department appreciates DOE/WID's concern regarding the Department's decision in this matter. However, the Department cannot prepare a draft permit on an incomplete application. Accordingly, as required by 40 CFR 270.10(c), the Department will determine whether the pending application is complete after reviewing the new information submitted by DOE/WID.

Sincerely,


Eric Ames
Assistant General Counsel

cc: Ed Kelley
Benito Garcia
Cooper Wayman, Esq.
Gloria Barnes, Esq.