



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502

OFFICE OF GENERAL COUNSEL
PHONE: 505-827-2990
FAX: 505-827-1628

MARK E. WEIDLER
SECRETARY
EDGAR T. THORNTON, III
DEPUTY SECRETARY

October 15, 1997

Mr. George Dials, CAO Manager
P.O. Box 3090
Carlsbad, NM 88221

Joseph L. Epstein
Westinghouse WID
P.O. Box 2078
Carlsbad, NM 88220

Dear Mssrs. Dials and Epstein:

This responds to your letter received yesterday requesting reconsideration of our decision to rescind the completeness determination. We have determined not to rescind our decision based upon the reasons previously stated in our September 26, 1997 letter. You state that you "disagree" with our prior letter which explained that the "completeness determination relates solely to whether the Department of Energy/Westinghouse Waste Isolation Division (DOE/WID) supplied the Department with all necessary information to satisfy the appropriate information requirements set forth in the Hazardous Waste Act and regulations." Our rescission is consistent with RCRA and case law. See 40 CFR 270.10(c)(application is complete when Director determines that the application and information requirements are completed to his satisfaction; In the Matter: Star Enterprise, USEPA RCRA Appeal No. 92-9 (determinations of incompleteness grounded in a comparison between the information and data supplied by applicant and information requirements under RCRA). The technical adequacy of the application, on the other hand, is unrelated to the "completeness determination." NMED will address the technical adequacy of the application in the draft permit.

Further, we understand that DOE/WID have "concluded" that WID is exempt from financial responsibility requirements under the HWA. We have determined, however, that DOE/WID is required to submit this information pursuant to the Hazardous Waste Act and regulations (40 CFR 270.10(c) and 270.14 and .15). As previously requested, please provide us the proper financial assurance information as required under 40 CFR 270.14(b)(15)(16) and set forth in 40 CFR 264.140. Prompt receipt of this information will enable us to review it and issue a draft permit.

971024



Mr. George Dials, CAO Manager

Page 2

October 15, 1997

Finally, you have requested a meeting regarding financial assurance. We do not believe a meeting as you have suggested is appropriate if the purpose of the meeting is to discuss your "disagreement" with NMED. However, if you have any questions or need information regarding submittal of cost estimates and financial assurance mechanisms please contact Greg Starkenbaum at (303) 763-7188.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Kelley".

Ed Kelley, Director
Water and Waste Management Division

cc: Benito Garcia
Susan McMichael
Cooper Wayman
Gloria Barnes