



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Hazardous & Radioactive Materials Bureau
2044 A Galisteo Street
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
(505) 827-1557
Fax (505) 827-1544



PETER MAGGIORE
SECRETARY

September 1, 1999

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

Dear Dr. Triay:

RE: Proposed Revisions to Interim Audit Report Outline

On June 16, 1999, the Department of Energy Carlsbad Area Office (DOE) submitted a proposed Interim Audit Report outline as specified in Section II.C of the Memorandum of Agreement (MOA) between DOE and the New Mexico Environment Department (NMED) dated June 17, 1999. NMED responded in a July 7, 1999 letter stating that NMED agreed with the content of the outline, but also warned that DOE would need "to provide a significantly greater level of detail in any audit report submitted for review than is currently indicated in the attached outline." Since then, DOE has submitted several proposed revisions to this outline, including one in a letter dated July 29, 1999, and another in a fax dated August 5, 1999. Upon review of DOE's August 5 proposal, NMED has determined that DOE's proposed changes to the outline are not warranted because the Interim Audit Report cannot be used to determine compliance with the WAP. Furthermore, NMED believes the Interim Audit Report outline previously agreed to in our letter of July 7, 1999 reflects the spirit and intent of the MOA, and that further changes are inappropriate.

To clarify our position regarding of the purpose of the Interim Audit Report, NMED views the submittal of any audit report prior to issuance of a final Hazardous Waste Facility Permit primarily as an opportunity to assist DOE in improving the quality and content of these reports, which will be required under the final Permit. NMED will not "approve" any Interim Audit Report nor use it to determine compliance with the Waste Analysis Plan (WAP) requirements under 20 NMAC 4.1.600 (incorporating 40 CFR §265.13) or the final Permit. In addition, the Interim Audit Report is insufficient to demonstrate compliance with the WAP as specified in proposed final Permit Condition IV.B.2.b, which states:

990901



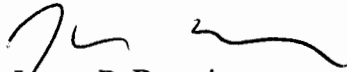
Dr. Triay, DOE/CAO
Page 2
September 1, 1999

"the Permittees shall not dispose non-mixed TRU waste in any Underground HWDU (*hazardous waste disposal units*) unless such waste is characterized in accordance with the requirements of the WAP specified in Permit Condition II.C.1. The Permittees shall not dispose TRU mixed waste in any Underground HWDU if the Underground HWDU contains non-mixed TRU waste not characterized in accordance with the requirements of the WAP."

Instead, NMED will rely upon the waste stream-specific waste characterization information provided by DOE to determine compliance with Permit Condition IV.B.2.b for all waste containers disposed in Underground HWDUs before final permit issuance. For example, NMED has already provided DOE with a preliminary evaluation of how the characterization activities for certain waste streams comply with the WAP (e.g., RFETS' RF005.01 in letter dated July 1, 1999; INEEL's IDC 300 in letter dated August 20, 1999).

If you have any questions, please contact me at (505) 827-1567, or Steve Zappe of my staff at 827-1560, x1013.

Sincerely,



James P. Bearzi
Chief

Hazardous and Radioactive Materials Bureau

cc: Paul Ritzma, NMED
Greg Lewis, NMED
John Tymkowich, HRMB
Steve Zappe, HRMB
Susan McMichael, NMED OGC
David Neleigh, EPA Region 6
Mary Kruger, EPA ORIA
Connie Walker, TechLaw
WIPP File - Red '99