



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 26, 1997

Mr. Patricio Guerrerortiz, P.E.
Public Utilities Department Director
City of Santa Fe, New Mexico
200 Lincoln Avenue
P.O. Box 909
Santa Fe, NM 87504-0909

Dear Mr. Guerrerortiz:

Thank you for your letter of January 13, 1997 expressing concern on the filtration and wastewater policies of the Interstate Nuclear Services (INS) facility in Santa Fe, New Mexico. In your letter, you note the suggested criteria for solubility of radionuclides described in the INS proposal enclosed with William Floyd's November 12, 1996 letter to me to be "grossly inadequate from our municipal perspective."

Pursuant to the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission (NRC) must assure that all Agreement State radiation control programs are adequate to protect public health and safety and also are compatible with NRC's regulatory program. However, as an Agreement State, New Mexico exercises regulatory jurisdiction over the INS facility and, therefore, the licensing decision for the facility rests with the State. New Mexico has requested technical assistance from NRC in the review of the proposed system. We have previously provided you, for your information, a copy of our response to that request (February 5, 1997 letter from P. Lohaus to W. Floyd). The results of our review have been provided to the State for their use in reaching a licensing decision. The NRC itself has no authority to make a licensing decision. Given that the NRC does not have regulatory jurisdiction, we are providing New Mexico with a copy of your letter, such that the State can consider your concerns as a part of their process in reaching a licensing decision.

In your letter, you make reference to a November 9, 1993 exchange of correspondence between the NRC and Hugh McFadden in Laramie, Wyoming. We wish to clarify that this letter from Martin Malsch of NRC's Office of the General Counsel to Hugh McFadden does not contain any explicit approval of particular actions by the City. Instead, the letter simply provides an explanation of the legal principles of preemption in the context of the Atomic Energy Act (AEA) of 1954, as amended. With limited exceptions not relevant here, the preemption issue addressed in that letter does not apply in Agreement States, such as New Mexico, where Atomic Energy Act authority of the NRC has been discontinued. In those cases, the division of responsibility between the State government and a local government is determined by State law.

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PDR STPRG ESGNM
PDR

SP-AG-19

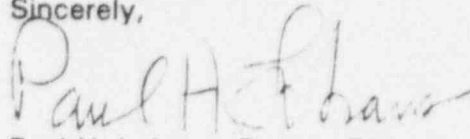
Patricio Guerrerortiz

- 2 -

MAR 26 1997

We trust that this responds to your request. If you have any questions, please contact me at (301) 415-2326.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul H. Lohaus".

Paul H. Lohaus, Deputy Director
Office of State Programs

cc: William Floyd

MAR 26 1997

We trust that this responds to your request. If you have any questions, please contact me at (301) 415-2326.

Sincerely,

Original Signed By:
PAUL H. LOHAUS

Paul H. Lohaus, Deputy Director
Office of State Programs

cc: William Floyd

Distribution:

DIR RF (7S-17)

SDroggitis

CJones

RFortuna, OI

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3/25/97

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Patricio Guerrerortiz

- 2 -

We trust that this responds to your request. If you have any questions, please contact me at (301) 415-2326.

Sincerely,

Paul H. Lohaus, Deputy Director
Office of State Programs

cc: William Floyd

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REVISIONS



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Mr. Patricio Guerrerortiz, P.E.
Public Utilities Department Director
City of Santa Fe, New Mexico
200 Lincoln Avenue
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ADDITIONAL

RATIONALE

WITH LIMITED EXCEPTIONS NOT
RELEVANT HERE, THE PREEMPTION
ISSUE ADDRESSED IN THAT LETTER
DOES NOT APPLY IN AGREEMENT STATES,
SUCH AS NEW MEXICO, WHERE ATOMIC

THESE CASES, THE
NRC HAS BEEN DISSENTING, AND A LOCAL
GOVERNMENT
THE STATE GOVERNMENT
BY STATE LAW
ENERGY ACT AUTHORITY OF THE NRC
DIVISION OF RESPONSIBILITY
GOVERNMENT

Patricio Guerrerortiz

- 2 -

We trust that this responds to your request. If you have any questions, please contact me at (301) 415-2326.

Sincerely,

Paul H. Lohaus, Deputy Director
Office of State Programs

cc: William Floyd

Distribution:

DIR RF (7S-17)

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CJones

RFortuna, OI

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Patricio Guerrerortiz

- 2 -

We trust that this responds to your request. If you have any questions, please contact me at (301) 415-2328.

Sincerely,

Paul H. Lohaus, Deputy Director
Office of State Programs

cc: William Floyd

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Patricio Guerrerortiz

- 2 -

We trust that this responds to your request. If you have any questions or have other information you believe would be of interest to us, please let us know.

Sincerely,

Paul H. Lohaus, Deputy Director
Office of State Programs

cc: William Floyd

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DATE	02/1/97	02/1/97	02/1/97	02/1/97	

OSP FILE CODE: SP-AG-19

(FYI) RLB
TJ

EXECUTIVE TASK MANAGEMENT SYSTEM

<<< PRINT SCREEN UPDATE FORM >>>

TASK # - 7S-17

DATE- 01/23/97

MAIL CTRL. - 1997

TASK STARTED - 01/23/97

TASK DUE - 02/06/97

TASK COMPLETED - / /

TASK DESCRIPTION - 1/13/97 LTR RE SOLUBILITY CRITERIA FOR LICENSED
RADIOACTIVE MATERIALS

REQUESTING OFF. - NM/PUC REQUESTER - GUERRERORTIZ WITS - 0 FYP - N

PROG. - PHL

PERSON -

STAFF LEAD - PHL

PROG. AREA -

PROJECT STATUS -

OSP DUE DATE: 2/7/97

PLANNED ACC. - N

LEVEL CODE - 1