

February 25, 2000

VIA FACSIMILE
and Certified Mail, Return Receipt Requested

The Honorable Bill Richardson
Secretary of Energy
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Governor Gary Johnson
State of New Mexico
State Capitol Building
Santa Fe, NM 87503

Secretary Pete Maggiore
New Mexico Environment
Department
PO Box 26110
Santa Fe, NM 87502

Mr. Joe Epstein, General Manager
Westinghouse Waste Isolation
Division
PO Box 2078
Carlsbad, NM 88221

Re: Citizen Notice of Violations and Intent to Sue

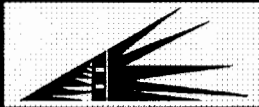
Dear Secretaries Richardson and Maggiore, Governor Johnson, and Mr. Epstein:

Pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6972, and 40 C.F.R. 254, the Southwest Research and Information Center ("SRIC") and Naomi Mattis hereby notify you that the U.S. Department of Energy ("DOE"), and the Westinghouse Waste Isolation Division ("WID") have violated and are violating, RCRA and the New Mexico Hazardous Waste Act ("HWA") N.M.S.A. 1978 § 74-4-1 et seq., which effectuates RCRA in New Mexico, at the Waste Isolation Pilot Plant ("WIPP"), near Carlsbad, New Mexico.

Southwest Research and Information Center ("SRIC"), 105 Stanford, S.E., Albuquerque, NM 87106, 505-262-1862, is a private, nonprofit educational and scientific organization, incorporated in the State of New Mexico in 1971. SRIC provides information and technical assistance to individuals and community groups in New Mexico who have direct safety, health, and economic interests in WIPP and transportation of wastes to WIPP. The organization has participated actively in public processes regarding all aspects of WIPP since the mid-1970s, and was a party in the HWA permitting process.

Naomi Mattis lives at -----, Santa Fe, NM 87505, 505-----. She lives and owns property near and travels frequently on US Highway 285, the WIPP transportation route for shipments from Colorado,

We are a non-profit organization, all donations to SRIC are tax-deductible. If you would like to help, please send a check or money-order payable to SRIC at the above address. Thank you.



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Idaho, and Washington state. The value of her property and her health and safety are directly affected by shipments of radioactive and hazardous wastes to WIPP.

This Notice is primarily in response to DOE's approval of the characterization and shipment of transuranic mixed waste from the Rocky Flats Environmental Technology Site ("RFETS") to WIPP and DOE's notification to the State of New Mexico that it intends to ship wastes from RFETS to WIPP on March 2, 2000. DOE and WID's decision to proceed with shipments of mixed waste in violation of the WIPP HWA permit, in particular Permit Condition IV.B.2.b., endangers public health and the environment and violates Subchapter III of RCRA.

Permit Condition IV.B.2.b. states:

Specific prohibition - After this permit becomes effective, (1) the Permittees shall not dispose non-mixed TRU waste in any underground HWDU unless such waste is characterized in accordance with the requirements of the WAP specified in Permit Condition II.C.1, and (2) 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.

It is uncontroverted that underground HWDU Panel 1 contains waste not characterized in accordance with the WAP. The Final Order issuing the permit so states (page 3), and that fact was clearly supported by the record of the public hearing on the HWA permit. For example, the permittees lead witness testified that the waste disposed in Room 7 of Panel 1 would not be characterized in accordance with the WAP. Tr. 221, ll. 11-14 (Kehrman). NMED's permit writer also testified that the waste from LANL was not characterized in accordance with the WAP since the WAP had not been established at the time the wastes were characterized. Tr. 2640, ll. 5-7 (Zappe).

Thus, no mixed waste can be disposed in Panel 1 and all wastes -- mixed and non-mixed -- disposed at WIPP must meet the requirements of the WAP. Therefore, disposal of mixed waste in Panel 1 is a direct violation of the WIPP HWA permit.

The DOE has stated its understanding of Permit Condition IV.B.2.b.:

DOE arguably cannot dispose of any mixed waste in WIPP in any underground panel if that panel contains non-mixed waste that has not been characterized in accordance with the waste characterization provisions of the WAP. This provision could preclude DOE for disposing of any mixed waste in Panel 1, which is only about five percent full, because DOE currently has placed in Room 7 of Panel 1 non-mixed wastes that were

disposed of earlier this year consistent with all federal laws.

United States of America v. State of New Mexico, Civ. No. 99-1280M/RLP, (D.N.M.), First Amended Complaint ¶58, filed December 27, 1999.

Despite its understanding of Permit Condition IV.B.2.b., a provision it is challenging in both federal district court and in the New Mexico Court of Appeals, Case. No. 20877, DOE and WID apparently intend to dispose of mixed waste in Panel 1.

At the public hearing for the HWA permit, the NMED permit writer was asked on cross-examination regarding Permit Condition IV.B.2.b.:

Q. (By Mr. Hancock) Is the intent of the second sentence in the specific prohibition to ensure that if any unpermitted waste is put in a hazardous waste disposal unit at WIPP, that that hazardous waste disposal unit cannot be used for permitted waste?

A. Yes.

Tr. 2634, ll. 18-23 (Zappe).

In discussing Permit Condition IV.B.2.b., the Hearing Officer stated:

And, of course, Applicants could not dispose TRU mixed waste in any Underground HWDU if the Underground HWDU already contains TRU non-mixed waste *not* characterized in accordance with the WAP.

Hearing Officer Report, p. 79 (emphasis in original).

Despite the stated intent and the specific language prohibiting the disposal of mixed waste in Panel 1 because it contains waste not characterized in accordance with the permit, DOE and WID apparently are proceeding to dispose of mixed waste from RFETS in Panel 1. Such disposal would be a clear violation of the HWA permit and a violation of RCRA.

In its Final Audit Report for RFETS, Audit Number A-00-08, DOE stated that the audit was performed to assess the ability of RFETS to characterize waste from Summary Group Category S5000 (debris wastes) to the requirements specified in the WAP. (at 4 of 21). DOE further stated that the procedures examined in the audit will be used for all other retrievably stored debris waste streams. *Id.* Thus, we understand that DOE is requesting approval for mixed waste debris waste streams to be shipped to and disposed at WIPP.

In addition, according to the Permit Application, much of the debris waste summary category at Rocky Flats is mixed waste. Volume IV,

Appendix P. Thus, unless there is other different information that is not currently available to the public, the only reasonable conclusion is that the permittees intend to ship and dispose substantial quantities of mixed waste in Panel 1.

Unless we are immediately supplied with documents demonstrating that our understanding is not correct, I expect to file suit on behalf of SRIC and Naomi Mattis. In addition to myself, other appropriate counsel may join in representing SRIC and Naomi Mattis in this matter.

Please contact me as soon as possible, if you wish to discuss the matter in further detail, or if you have any questions or concerns about this Notice.

Sincerely,

HARDING, SHULTZ & DOWNS

Kevin M. Ward

KMW/mjr

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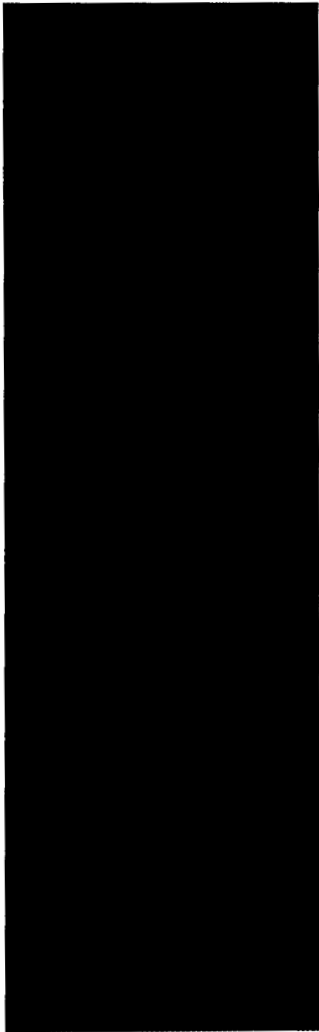
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