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File WIPP

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March 14, 2000

Mr. Brian O'Connell
NM Legislative Finance Committee
State Capitol, Room 416
Santa Fe, NM 87503

Dear Mr. O'Connell:

I am writing in response to your request for more information about the New Mexico Environment Department's permit issued to the Waste Isolation Pilot Plant (WIPP), and particularly the financial assurance guarantee.

The permit, issued October 22, 1999, requires that WIPP's private operator must provide $110 million in financial assurance for the facility. Financial assurance guarantees payment for the closure and post-closure activities required in the permit. State and federal law requires financial assurance guarantees for owners and operators of hazardous waste facilities; exemptions are allowed only for the federal government and for states. There is no exemption for private operators of federally-owned facilities. Furthermore, this Department determined that requiring a financial assurance guarantee is in the best interest of New Mexico. The DOE has an unfortunate history of significantly contaminating soil and water at its facilities. We do not want to add WIPP to the list of DOE sites with legacy wastes and cleanup costs that burden state taxpayers.

DOE appears to be in compliance with its permit, and the required financial assurance has been posted. However, DOE has chosen a trust fund as its financial assurance mechanism and has placed $20 million in this trust. This is by far the most expensive means of establishing financial assurance. Congress withheld $20 million from New Mexico's economic assistance. This year, Senator Pete Domenici's rider to the fiscal year 2000 Energy and Water Appropriations Act provided that any cost associated with the financial assurance guarantee would be reimbursed out of New Mexico's economic assistance. Potentially, Congress and Sen. Dominici could withhold federal funding for state highways for the next five to six years in order to pay for the financial assurance guarantee.

There are seven mechanisms available to the DOE for establishing financial assurance. The following list identifies those options. We expect to develop estimated costs for each mechanism by the end of the month:

<u>1. Corporate Guarantee</u> – This would require a letter from the Chief Financial Officer saying that both of the following have been satisfied: a) the company has received a favorable bond rating, and b) the company has six times the closure and post-closure (C&PC) costs ($110 million for WIPP) in tangible net worth. This instrument may not be used in combination with the other funding mechanisms. If satisfied, this instrument is essentially free, although releasing liens may

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tie up assets or creditworthiness for the company, thus inhibiting its ability to secure other work that requires a Corporate guarantee for C&PC.

2. Corporate Letter of Credit -- This is issued by a financial institution. The rate, usually 2-3 percent, is based upon many factors, including the company's relationship with the financial institution. In WIPP's case, the cost would likely be $2 to $3 million.

3. Surety Bond to Put Money in Trust Fund – A bonding company would extend a fully collaterized (secured) loan for a standby trust fund. The collateral would be provided by assets of the company, resulting in a lien. The cost is unknown at this point.

4. Surety Bond to Guarantee C&PC Costs – Again, a bonding company would extend a fully collateralized loan to fund C&PC costs in case of default. This would also require a lien placed on the company. This money would be administered by the bonding company, thus giving it some incentive to reduce the cost of C&PC. This usually has lower out-of-pocket costs than flat-out insurance, but would likely cost a bit more than the above mechanism. Actual numbers are unknown at this time.

5. Insurance - Several types of insurance products are available, from comprehensive policies to self-insurance. The cost is also highly variable. For example, a successful test of captive self-insurance (akin to the Underground Storage Tank mechanism) is essentially "free." There is a gamut of policy options, the feasibility of which depends on an underwriter's analysis of actual costs and the insurability of the policyholder.

6. Trust Fund – This is the easiest option to use, in part because the full cost of C&PC can be spread over 10 years. This option is only viable early, because as the years go by the ability to spread the cost decreases. Westinghouse could have put up $11 million this year, but chose to set aside $20 million.

7. Use of Multiple Financial Mechanisms – More than one financial mechanism can be used on a single facility. A surety bond guaranteeing C&PC Costs (Option 4) and a Corporate Guarantee (Option 1) are ineligible as components of a guarantee by multiple financial mechanisms.

I hope this helps you to understand the financial assurance guarantee and the options available to DOE and its contractor Westinghouse.

Please contact me if you have additional questions or concerns.

Sincerely,

Nathan Wade
Communications Director