



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733



JUL 12 2001

Mr. James Bearzi, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Bldg 1
Santa Fe, NM 87505

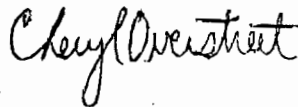
Re: Petition for Withdrawal of New Mexico's Hazardous Waste Program

Dear Mr. Bearzi:

Attached is a copy of the petition for a public hearing for withdrawal of New Mexico's authorized State Hazardous Waste program. This petition was filed by Tod Rockefeller on April 18, 2001. Region 6 has received this petition from the Office of General Counsel and plans to respond to Mr. Rockefeller as soon as the Agency has completed a review of the Petition.

In order to respond, EPA-Region 6 will be engaging in informal information gathering and conducting a review of the Petition. As part of that review, EPA Region 6 would like for your Department to review the Petition and provide the Region with any information and/or comments that you believe are relevant to the matter. Please provide any comments to Nick Stone of my staff by July 23, 2001. Should you have any questions, please feel free to contact Nick Stone at (214) 665-7226 or me at (214) 665-6785.

Sincerely,

for 
David W. Neleigh, Chief
New Mexico and Federal
Facilities Section

cc: Malcolm Woolf, OGC



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JUN - 4 2001

**BEFORE THE ADMINISTRATOR OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

)	
TOD N. ROCKEFELLER,)	
former Environmental Scientist,)	
Waste Isolation Pilot Plant (WIPP),)	
Carlsbad Area Office (CAO),)	
U.S. Dept. of Energy (DOE),)	
Petitioner-Appellant,)	New Mexico Court of Appeals
v.)	Ct. App. No. <u>99-20980</u>
)	HRM 98-04 (p)
STATE OF NEW MEXICO, NEW)	
MEXICO ENVIRONMENT)	<u>EPA I.D. No.</u>
DEPARTMENT, and PETER MAGGIORE)	NM4890139088
in his official capacity as Secretary of)	
the New Mexico Environment Department,)	
Respondent-Appellees.)	
)	

**NOTIFICATION OF NONCOMPLIANCE &
PETITION FOR A PUBLIC HEARING FOR
WITHDRAWAL OF NEW MEXICO'S
AUTHORIZED STATE HAZARDOUS WASTE PROGRAM**


COMES NOW Appellant Rockefeller and petitions the Administrator of the United States Environmental Protection Agency (EPA) to issue notification to the Appellees of a public hearing. The public hearing is to determine whether or not Appellees are administering and enforcing a state hazardous waste program which complies with the requirements of the Solid Waste Disposal Act [42U.S.C. 6901 *et seq.*] (hereafter "SWDA"). Appellant gives notification, along with 112 pages of supporting evidence, that Appellees are not maintaining compliance with the requirements of the

SWDA for the state's authorized hazardous waste program.

Appellant contends that the noncompliance of Appellees is grounds for the withdrawal of authorization of the state program. The facts as to demonstrate Appellees' noncompliance are set forth in Appellant's Memorandum in Support of Withdrawal of New Mexico's State Authorized Hazardous Waste Program filed herein.

Respectfully submitted,

Dated: April 18th, 2001


Tod N. Rockefeller, *pro se*
319 Sunnyview St.
Carlsbad, New Mexico 88220
(505) 628 - 3541
(Unlisted # due to Harassment Calls)

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**MEMORANDUM IN SUPPORT OF
WITHDRAWAL OF NEW MEXICO'S
STATE AUTHORIZED HAZARDOUS WASTE PROGRAM**

I. Purpose of the SWDA (Ch. 82 of Title 42)

A. Congressional Findings

1. The detrimental effects of mishandling waste materials in our industrial society have become very widely known. In numerous examples, the lessons learned have been very painful.
2. In response to the lessons learned, the Congress has expressed a caution within the SWDA as follows:

"The Congress finds with respect to the environment and health, that - - . . . (5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment." 42 U.S.C. § 6901(b)(5).

B. Objectives and National Policy

3. The SWDA lists 11 objectives, but 10 of these are clearly in support of one main objective.

4. The main objective of the SWDA states that:

“The objectives of this chapter are to promote the protection of health and the environment . . . by - . . . (4) assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment.”
42 U.S.C. § 6902(a)(4)

5. The Congressional findings, objectives, and national policy of the SWDA understandably express one common most important link or purpose.

6. The national policy as stated within the SWDA notes that:

“The Congress hereby declares it to be the national policy of the United States that, . . . Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.”
42 U.S.C. § 6902(b)

C. Nondiscretionary duty of the EPA Administrator

7. Any circumstances that the Administrator becomes aware of that have a significant potential negative impact upon the SWDA's main objective or contrary to the national policy above, require the corrective action of the Administrator. This is without any doubt a nondiscretionary duty.

8. Appellant's allegations, with supporting documented evidence detailed and referenced below, demonstrates Appellees' refusal to properly administer and enforce their State authorized hazardous waste program. This places human health and the environment in danger.

**II. The DOE's National Transuranic Waste Program ("NTWP")
is managed by the WIPP Project.**

9. This instant case captioned above involves the Appellees' issue of a permit to the DOE's WIPP Project to be in compliance with New Mexico's SWDA State authorized hazardous waste program.

10. The DOE's NTWP involves thousands of shipments of "mixed waste" (both radioactive and hazardous) to the WIPP repository from 23 other DOE facilities spread over 14 states across this nation. The duration of this program above will be greater than 30 years.

11. During 1/00, former DOE Secretary Richardson admitted to the New York Times that his agency, and its predecessors, had contaminated thousands of workers over the past half century.

12. It seems quite apparent that the DOE's admission above was made only because of the prior exposé done by the Washington Post of worker abuses at the DOE's Paducah, Kentucky nuclear weapons plant. E.g.: cancer types and rates of Paducah plant workers similar to the Chernobyl disaster in Russia which was reported by the Washington Post.

13. Due to the deadly nature of this "mixed waste", and also especially due to the admitted operating history of the DOE noted above, extraordinary measures must be taken in these circumstances to protect **human health and the environment** concerning the WIPP Project.

14. Knowingly false representations, cover-ups, and criminal activities can not be an integral part of the WIPP Project's hazardous waste State permit.

15. Appellant's WIPP permitting testimony provided Appellees with evidence of the DOE's alleged false representations, cover-ups, and threats to **human health and the environment**.

See Exhibit EPA - 4

III. The WIPP Project's State Hazardous Waste Permitting Proceedings

16. Appellees' WIPP Permitting Hearing Officer made a knowingly false representation to improperly dispel Appellant's entire written and oral testimony.

17. The Report of the Hearing Officer at ¶ 173, served on 9/10/99, states:

"Tod M. Rockefeller's claims that he engaged in protected whistle-blowing concerning alleged safety problems at WIPP were specifically considered and rejected by the U.S. Merit Systems Protection Board, RP No. 149 (exhibit 72, pgs. 2-3), and the U.S. Department of Labor, RP No. 150 (exhibit 73)."

18. Only 1 of 15 violations alleged by Appellant was brought up with the U.S. Merit Systems Protection Board ("MSPB") and the U.S. Department of Labor ("DOL"). This was "Violation 3" concerning the WIPP nuclear waste shipping cask, Model RH-72B. Several of the alleged "Violations" deal very specifically with the WIPP permitting proceedings, and obviously have nothing to do with prior appeals with the MSPB or DOL (emphasis added). See EPA-4 at 0002 thru 0013.

IV. Petitioner - Appellant's Appeal of the issue of the State Hazardous Waste Permit for the WIPP. Case No. 20,980.

A. Appellees' attempted Criminal Extortion

19. New Mexico's Rules of Appellant Procedure Rule 12-209.B. requires the Appellant to "pay for the record proper."

20. Appellant had applied for "Free Process" of his appeal and it had been granted by the New Mexico Court of Appeals ("NM CoA") on 12/27/99. See EPA-5 at 0013.

21. On 8/16/00 at 8:30 am, Appellant was contacted by telephone by Appellees' attorney whom had related that the Court had requested the record proper which Appellee claimed must include an additional 2,220 pages to what Appellant had outlined.

22. Appellees' attorney had very firmly relayed to Appellant on 8/16/00 that he was responsible for the cost of the production of the record proper of 2,220 pages at \$.035 per page.
23. During this telephone conversation on 8/16/00, Appellant had noted to Appellees' attorney that he had been granted "Free Process" of the appeal and that he thought that this included production of the record proper.
24. Appellees' attorney replied back to Appellant again very firmly stating that a Free Process Order includes the Docketing fee only and not for the production of the record proper.
25. On 8/21/00 Appellant received a bill for production of the record proper dated 8/19/00 three full days after the 8/16/00 conversation with Appellees' attorney. See EPA-5 at 0012.
26. Despite these circumstances and evidence presented, the Court denied Appellant's Motion to have the possible attempted extortion even investigated. See EPA-5 at 0004, 0009, and 0012 thru 0015.

B. Possible Criminal Tampering with Evidence.

27. The NM CoA denied Appellant's Motion to Include Evidence which was Inexplicably Excluded with a Memorandum Opinion filed on 1/30/01 (hereafter "1/30 Memo") which also dismissed Appellant's appeal.
28. The 1/30 Memo claims that Appellant's Motion to include the missing evidence was "Misleading the Court." See EPA-3 at 0002. This claim of the NM CoA is alleged to be knowingly false to aid Appellees in dismissing Appellant's appeal (20,980).
29. If there was any doubt or possible misapprehension about the missing five attachments listed on record proper 2030 (EPA-7 at 0008) of the appeal, this was cleared up with Appellant's very specific explanations within his Motion for Rehearing and Oral Argument served on 2/7/01

after the appeal was dismissed. See EPA-2 at 0005, 0006.

30. The Court ignored everything within EPA-2 and denied the Motion. See EPA-1.

C. Alleged Criminal Collusion and Conspiracy between the NM CoA and Appellees.

31. Due to the explanations within EPA-2, concerning the missing evidence described above, the NM CoA was certainly made aware that they had excluded this evidence under false pretenses and had violated Appellant's Fifth Amendment U.S. Constitutional right of Due Process of Law.

32. The missing evidence (EPA-7 at 0008 thru 0036) is referenced and crucial in substantiating Appellant's "Violations" 3 thru 6. See EPA - 4 at 0002, 0003, and 0006 thru 0009. These "Violations" could never be claimed to be only "conclusory allegations" or "mere conflicting testimony" which were the claims made by the NM CoA to dismiss appeal 20,980 (emphasis added). See EPA-3 at 0004.

33. Due to the content of EPA-2, the actions of the NM CoA certainly seem to demonstrate criminal collusion and conspiracy between the NM CoA and Appellees in the illegal dismissal of Appellant's appeal.

V. Dangers to Human Health and the Environment.

A. Exhibit EPA - 4 Violations 3 thru 6.

34. "Violation 3" of EPA - 4 is concerning **inadequate** compression of the O-rings of the RH-72B nuclear waste shipping cask to maintain a satisfactory **Radioactive Containment Seal**. See EPA - 4 at 0006; and EPA - 7 at 0016 thru 0022. This represents an imminent hazard or violation of knowing endangerment [42 U.S.C. § 6928(e)] of American citizens and workers.

35. "Violation 4" of EPA - 4 concerns a cover-up by the DOE of environmental **radionuclide liquid effluent monitoring errors**, in part, from the EPA. This represents possible violations of 42 U.S.C. §§ 6925(c)(3) & (d) and 6928(d)(3). See EPA - 4 at 0002, 0006 thru 0008; and EPA - 7 at 0003, 0023 thru 0026.

36. "Violation 5" of EPA - 4 involves an allegation of **faulty radionuclide air monitoring** about the WIPP Site due to omission of a "Radon cool-down" from the WIPP Environmental Monitoring Plan (EMP). This represents possible violations of 42 U.S.C. §§§ 6924(n), 6925(c)(3) & (d), and 6928(e). See EPA - 4 at 0003, 0008, 0009; and EPA - 7 at 0003, 0004, 0027 thru -29.

37. "Violation 6" entails a violation of **inadequate fire prevention controls** underground within the WIPP repository identified by Appellant and a coworker, while Appellant was a DOE employee. In worst case, **this violation could result in death of workers** at the WIPP Site similar to the death and several near fatalities which occurred at the DOE's Idaho lab in 7/98.

38. The WIPP contractor covered-up "Violation 6". This represents possible violations of 42 U.S.C. §§ 6925(c)(3) & (d); and 6928(d)(3) & (e). See EPA - 4 at 0003, 0009; and EPA - 7 at 0004, 0005, 0030 thru 0036.

B. Notification to Appellees of Serious Safety Deficiencies at the WIPP.

39. As described within EPA-6, Appellant became aware of additional safety lapses at the WIPP facility which represent **severe dangers to human health and the environment**.

40. To the best of Appellant's knowledge, information, and belief, Appellees have completely ignored this warning of danger and continued abuses of the health of workers and the environment (emphasis added).

41. The DOE has a very long admitted history of abuses of **human health and the environment** described above.

42. The safety deficiency notification directly above, where the information was obtained from an unnamed WIPP worker concerning the wrongdoing of the DOE, fits the Federal Hearsay Rule Exception and is admissible evidence. See Fed.R.Evid. Rules 401 & 402; and Rule 804(b)(6). This represents violations of 42 U.S.C. §§ 6925(d) and 6928(e). See EPA-6

VI. Conclusion

43. All of the efforts of Appellant above to honestly identify and resolve risks to human health and the environment should be embraced by Appellees NOT shunned and covered-up with alleged criminal activities.

44. Appellees have failed and refused to properly administer and enforce their authorized State hazardous waste program as described above. This is grounds for the EPA Administrator to withdraw authorization of Appellees' State authorized hazardous waste program and establish a federal program. See 42 U.S.C. § 6926(e)

VII. Prayer for Relief

45. Appellant prays that the EPA Administrator notify Appellees of a public hearing for validation of the SWDA noncompliances outlined above.

46. Upon validation of any of the 15 alleged noncompliances outlined within Exhibit EPA - 4, Appellant prays that corrective measures be taken by the EPA Administrator.

47. At a minimum, these corrective measures must involve revoking the State hazardous waste permit for the WIPP and referring the alleged criminal violations and safety deficiencies within


Exhibit EPA-6 to the United States Department of Justice for investigation and prosecution.

Notice is hereby given, in accordance with 42 U.S.C. § 6927(c), that if the EPA Administrator fails or refuses to perform nondiscretionary duties associated with this instant Notification / Petition, Petitioner-Appellant will file a citizen suit against the EPA. If a reply to this Notification / Petition is not forthcoming within 45 days after it is received by EPA, Petitioner-Appellant will assume that the agency has refused to act.

In accordance with 28 U.S.C. § 1746 and 18 U.S.C. § 1001, I declare under penalties of perjury that the above statements are true and correct to the best of my knowledge, information and belief.

Respectfully submitted,

Dated: April 18th, 2001


Tod N. Rockefeller, *pro se*
319 Sunnyview Street
Carlsbad, NM 88220
(505) 628 - 3541
(Unlisted # due to Harassment Calls)

INDEX OF EXHIBITS

Exhibit EPA - 1: New Mexico Court of Appeals ("NM CoA") 2/19/01 Order Denying

Petitioner-Appellant's Motion for Rehearing. **Page 0001.**

Exhibit EPA - 2: Appellant's Motion for Rehearing and Oral Argument served 2/7/01.

Pages 0001 thru 0021.

Exhibit EPA - 3: NM CoA 1/30/01 Memorandum Opinion Dismissing Case 20980.

Pages 0001 thru 0005.

Exhibit EPA - 4: Appellant's Memorandum in Opposition to Proposed Summary Disposition

and Motion by Stipulation . . . Five Attachments . . . are to Supplement the

Record Proper . . . **Pages 0001 thru 0018.**

Exhibit EPA - 5: Appellant's Motion to Refer Appellees to the New Mexico State Attorney

General's Office for an Investigation of Extortion served 8/28/00.

Pages 0001 thru 0015.

Exhibit EPA - 6: Appellant's Notification of Serious Safety Deficiencies served 3/6/00.

Pages 0001 thru 0003.

Exhibit EPA - 7: Appellant's 9/1/98 Sworn Waste Isolation Pilot Plant (WIPP) Project

Declaration served 9/3/98. **Pages 0001 thru 0036.**

Exhibit EPA - 8: Appellant's 3/23/99 Rebuttal to EPA outlining Violations concerning WIPP.

Pages 0001 thru 0013.

AFFIDAVIT OF SERVICE

Tod N. Rockefeller, being duly sworn, states that he mailed this true and correct copy of the foregoing Notification and Petition to:

**Christine T. Whitman
1101A
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460**

and Without Exhibits to:

New Mexico Environment Department
Susan McMichael, Richard Mertz
P.O. Box 26110
Santa Fe, NM 87502

with sufficient first class postage attached thereto on this 18th day of April, 2001.

Tod N. Rockefeller
Tod N. Rockefeller

Subscribed and sworn to before me this 18th day of April, 2001

Rebecca A. Johnson
Notary Public

My commission expires:

Feb 11, 2003

