

July 5, 2002

Secretary Peter Maggiore
New Mexico Environment Department
Santa Fe, NM



VIA FAX - 827-2836 and U.S. Mail

Dear Secretary Maggiore:

We strongly urge you to postpone the public hearing currently scheduled for August 26, 2002 on the WIPP permit modification regarding Drum Age Criteria (DAC). The hearing should be postponed because the permitting process remains "broken," and NMED must help "fix" it, since DOE has not done so. If the public hearing proceeds, a bad situation will become the worst that it has ever been, something that you have the power to prevent.

For more than 18 months we have been discussing with you our concerns about the WIPP modification process. You have expressed to us -- and to the Department of Energy (DOE) -- your concerns and frustrations with the process. At our meeting on July 26, 2001, you told us that Dr. Inés Triay had assured you that the process would be greatly improved and that future permit modifications would be of high quality and that there would be substantive public involvement before the modifications were submitted.

Those DOE promises have not been fulfilled. The meetings on permit modifications held by the Institute for Regulatory Science (RSI) have not been satisfactory to the public, and we believe even NMED and DOE officials have been dissatisfied with at least some of them. Nonetheless, over the next two months, NMED and the public are faced with an unprecedented barrage of permit modifications to review and comment on at the same time that the DAC hearing preparations must be completed, if the hearing proceeds on August 26. That overly burdensome schedule has been created by DOE, which is the only entity with the resources to benefit from the situation. While the regulations (40 CFR 270.42(b)(5)) prescribe a 60-day comment period for the class 2 modifications that DOE has just submitted, you have full legal authority to postpone the August 26 hearing. We request that the hearing be postponed at least until the comment periods on the class 2 modifications and the class 3 remote-handled waste modifications are over. Preferably, and as we've previously suggested, the DAC and other Class 3 modifications should be consolidated into one public hearing.

In addition to the proposed modifications, we and other members of the public will likely also be involved in other technical matters related to WIPP -- for example the proposed EPA decision on PCBs -- in addition to important regulatory matters related to Los Alamos and Sandia. We take our responsibilities and opportunities for public participation seriously, but the current schedule for the permit modifications will ensure that effective public involvement will not occur.

Had DOE fulfilled its promises or had it responded to our request to Dr. Triay to agree to postpone the August 26 hearing, this request would not have been necessary. But she flatly refused our request. She said that "NMED's plate is empty" so that the department shouldn't have any difficulty dealing with all these matters.

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While DOE is apparently unconcerned about overloading the public (and NMED), it is still apparently very willing to have schedules changed to its convenience. A current example, we understand, is that rather than responding to the Notice of Deficiency regarding the Centralized Confirmation Facility (CCF), DOE will ask NMED for an extension on the 30-day response period that was provided.

We do not object to DOE having more time to respond to the NOD. However, we also believe that our request for postponement of the August 26 public hearing is fully justified.

Thank you for your very serious consideration of our request. We would be glad to meet with you to further discuss these matters.

Sincerely,

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CARD

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