



**From:** Maestas, Ricardo, NMENV  
**Sent:** Wednesday, December 05, 2018 1:13 PM  
**To:** Allen, Pam, NMENV  
**Subject:** FW: [EXT] Need two documents scanned before hearing  
**Attachments:** 000816.pdf; 000817.pdf

**From:** McLean, Megan, NMENV  
**Sent:** Thursday, October 18, 2018 10:49 AM  
**To:** Steve Zappe <steve\_zappe@mac.com>; Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>  
**Cc:** Kieling, John, NMENV <john.kieling@state.nm.us>; Biswell, David, NMENV <David.Biswell@state.nm.us>; Tellez, Hernesto, NMENV <Hernesto.Tellez@state.nm.us>  
**Subject:** RE: [EXT] Need two documents scanned before hearing

Hello Steve,

Please find your requested documents attached.

Thank you,  
Megan

**From:** Steve Zappe <steve\_zappe@mac.com>  
**Sent:** Wednesday, October 17, 2018 9:34 PM  
**To:** Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>  
**Cc:** McLean, Megan, NMENV <Megan.McLean@state.nm.us>; Kieling, John, NMENV <john.kieling@state.nm.us>  
**Subject:** [EXT] Need two documents scanned before hearing

Hi, Ricardo -

In developing my cross examination questions, I've identified a couple of documents in the general WIPP index that I might like to introduce as exhibits but they aren't yet scanned. Could you please have the following two documents scanned and email them to me before the weekend? Thanks!

Steve

000816	8/9/00	Peter Maggiore	NMED			Environment Dept. Can No Longer Require Financial Guarantee for Closure and Cleanup of WIPP
000817	8/9/00	Peter Maggiore	NMED	Inés Triay Joe Epstein	DOE CAO/WID	Notification that NMED cannot impose financial assurance requirements to the WIPP

181023





GARY E. JOHNSON  
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PETER MAGGIORE  
SECRETARY

PAUL R. RITZMA  
DEPUTY SECRETARY

**FOR IMMEDIATE RELEASE**  
August 9, 2000

**Contact: Peter Maggiore**  
**Phone: (505) 827-2855**  
**(505) 660-1637**

**Environment Department Can No Longer Require Financial Guarantee for Closure  
and Cleanup of WIPP**

Environment Department Secretary Peter Maggiore announced today that he is withdrawing the WIPP permit condition under which the Department of Energy's contractor, Westinghouse Electric Company Waste Isolation Division (Westinghouse), has posted 20 million dollars as part of the guarantee for cleanup at the WIPP site when it is closed. The legislation signed by the President on July 13, 2000, renders the permit conditions requiring financial assurance unenforceable. "Congress has enacted controlling legislation which states that a financial guarantee cannot be required of a federal contractor at WIPP. Therefore, earlier today I advised both the United States Department of Energy and Westinghouse that the permit condition requiring financial assurance in the WIPP permit is withdrawn and will not be enforced. The withdrawal of financial assurance provisions should once and for all remove any impediments to the State of New Mexico receiving the promised 20 million dollars in economic assistance, in the form of highway funds, that the Federal government has been withholding", said Maggiore.

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000816





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PETER MAGGIORE  
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August 9, 2000

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BY TELEFAX AND CERTIFIED U.S. MAIL

Dr. Inez Triay  
U.S. Department of Energy  
Carlsbad Area Office  
4021 Nation Parks Highway  
Carlsbad, New Mexico 88221

Joel Epstein  
Westinghouse Waste Isolation Division  
4021 Nation Parks Highway  
Carlsbad, New Mexico 88221

On July 13, 2000, President Clinton signed the "Military Construction Appropriations Act, 2001," Pub. L. No. 106-246, 114 Stat.511 (2000) which contains the following provision effecting the financial assurance requirements of the Waste Isolation Pilot Plant ("WIPP") hazardous waste permit (the "Permit") issued to the Department of Energy ("DOE") and Westinghouse Electric Company Waste Isolation Division ("Westinghouse") by the Secretary of the New Mexico Environment Department ("NMED") on October 27, 1999. Section 201 of Public Law 106-246 states:

"Funds appropriated in this or any other Act and hereafter may not be used to pay on behalf of the United States or a contractor or subcontractor of the United States for posting a bond or fulfilling any other financial responsibility requirement relating to closure or post-closure care and monitoring of the Waste Isolation Pilot Plant. The State of New Mexico or any other entity may not enforce against the United States or a contractor or subcontractor of the United States, in this or any other fiscal year, a requirement to post bond or any other financial responsibility requirement relating to closure or post-closure care and monitoring of the Waste Isolation Pilot Plant. Any financial responsibility requirement in a

000817



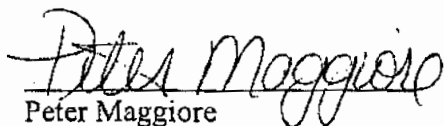
permit or license for the Waste Isolation Pilot Plant on the date of the enactment of this section may not be enforced against the United States or its contractors or subcontractors at the Plant." Pub. L. No. 106-246, 114 Stat. at 536.

A careful legal review of this new law, including a legal analysis from the New Mexico Attorney General, has convinced me that the standards and regulations upon which the Permit was based have changed and the State of New Mexico may no longer impose upon DOE's contractors the financial assurance requirements set forth in Modules II.N, II.O, II.P and II.Q of the Permit (*see also*: 40 C.F.R. §§ 264.143 and 264.145). Pursuant to 40 C.F.R. § 270.41, and in light of this clear change in the law, DOE's contractors are not required to satisfy the financial assurance requirements set forth in Modules II.N, II.O, II.P and II.Q of the Permit (*see also*: 40 C.F.R. §§ 264.143 and 264.145). Effective immediately, the financial assurance requirements set forth in Modules II.N, II.O, II.P and II.Q of the Permit (*see also*: 40 C.F.R. §§ 264.143 and 264.145) may not be enforced, are no longer effective, and are hereby withdrawn.

However, this change in the law does not effect or alter DOE's or any of its contractor's responsibility for closure, post-closure care and monitoring of the WIPP pursuant to the terms of the Permit. All other provisions of the Permit remain in full force and effect.

Respectfully,

Date 8/9/00



Peter Maggiore

Secretary

New Mexico Environment Department