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October 27, 1986

R. G. Romatowski, Manager
Albuquerque Operations Office
U.S. Department of Energy
P. O. Box 5400
Albuquerque, New Mexico 87115

Dear Mr. Romatowski:

Because of my concern for the public health and safety of New Mexicans, I am by this letter initiating the Conflict Resolution Procedure provided for in Article IX of the Agreement for Consultation and Cooperation entered into by the State and the Department of Energy (DOE) in conjunction with the July 1, 1981 Stipulated Agreement. It is the State's position that the Waste Isolation Pilot Project (WIPP) must comply fully with Subpart B of the Environmental Protection Agency's (EPA) Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes, 40 CFR § 191 *et seq.* (EPA Standards). The State further contends that DOE must demonstrate full compliance with the standards prior to any emplacement of radioactive waste at the WIPP facility. Full adherence to Subpart B of the EPA Standards prior to waste emplacement is crucial for the protection of both the short-term and long-term public health and safety.

From our investigation we understand that DOE contends that WIPP is not a "disposal" facility for purposes of compliance with Subpart B of the EPA Standards; and that WIPP should not be treated as a disposal facility until a decision is made in 1993 whether to retrieve emplaced waste or leave it there permanently. If DOE refuses to attempt to demonstrate Subpart B compliance prior to waste emplacement, this may subject New Mexico and its citizens, as well as surrounding states, to unnecessary risks associated with transportation, emplacement and retrieval of radioactive wastes.

On November 18, 1985, the EPA Standards became effective. These standards were promulgated in order to protect public health, safety, and the environment from the radiological hazards associated with the disposal of transuranic wastes. By their own terms, these standards are clearly applicable to WIPP. 40 CFR § 191.11.

Subpart B of these standards establishes several different types of requirements for disposal of radioactive wastes. Specifically, the Containment Requirements, at 40 CFR § 191.13, provide that a disposal system be designed to adequately contain projected radioactivity releases for 10,000 years after disposal. Second, the Assurance Requirements, at 40 CFR § 191.14, establish six types of assurances to further guarantee

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the long-term containment of radioactive wastes. These requirements include, among others, post-disposal monitoring, engineered barriers, and active institutional controls. In addition, these Assurance Requirements contain a prohibition against selecting a site which holds a reasonable expectation of mining for natural resources unless the "favorable characteristics" of the site outweigh the likelihood that the site will be disturbed in the future. 40 CFR § 191.14(e) Third, the Individual Protection Requirements, at 40 CFR § 191.15, establish radiation exposure limits for members of the public. Finally, the Ground Water Protection Requirements, at 40 CFR § 191.16, set standards to prevent radioactive contamination of ground water from the disposal system.

According to DOE's published estimates, (WEIB-DOE WIPP Transportation System Meeting, TRU Program Background 9/29/86) New Mexico can expect up to 6,000 shipments of Contact-handled transuranic (CH-TRU) waste into the State during the five year period from 1988 through 1993, comprising approximately 23% of the total projected CH-TRU waste emplacement of 6,200,000 cubic feet referenced in the October 1980 WIPP Final Environmental Impact Statement. (DOE/EIS - 0026 Vol. I and II) If the decision is made in 1993 that WIPP is not acceptable as a disposal site, the retrieval of the 200,000 drums and boxes may require up to ten years (WIPP DOE-069 September 1985) and a similar number of shipments through the State.

These Subpart B Standards clearly are designed to afford public health and safety protection from the very serious and long-term hazards associated with radioactive wastes. If indeed DOE has no intention of complying with these Standards until 1993, I fear that the public health and safety may be needlessly jeopardized. It is for this reason that the State insists that DOE comply fully with all Subpart B Standards prior to waste emplacement.

For these reasons, I believe that WIPP is required to demonstrate compliance with Subpart B of the EPA Standards before any waste emplacement begins in October, 1988. I, therefore, take issue with DOE's interpretation of the applicability of Subpart B of the EPA Standards.

I therefore request that you and I meet as soon as possible, and by November 10, 1986, at the latest, to discuss these concerns in detail. In order to better prepare for this meeting, we are also hereby requesting, pursuant to our rights under the Consultation and Cooperation Agreement and the Freedom of Information Act, 5 U.S.C. § 552, all documents relating to compliance with Subpart B of the EPA Standards, including but not limited to correspondence, memoranda, and other documents related to DOE's contracts with Westinghouse and Sandia National Laboratories for work involving Subpart B compliance, as well as any other memoranda, correspondence, studies, reports, written plans and schedules, and all other documents dealing with Subpart B requirements. We would request that you supply us with these documents no later than five working days before the meeting.

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I appreciate your prompt attention to these important matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denise D. Fort".

DENISE D. FORT, Chairwoman
Radioactive Waste Consultation Task
Force, State of New Mexico

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