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September 26, 1994

Mr. George E. Dials
U.S. Department of Energy
Manager, Carlsbad Area Office
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Dear George:

On September 15-16 I received two lengthy white papers, concerning scenario development and Salado fluid flow and transport, which were issued in connection with the September 28-29 Systems Prioritization meetings in Carlsbad.

The subjects of these volumes are much larger than DOE's schedule contemplates. Even if the period between their availability and the stakeholder meeting could be set aside entirely for review of the presentations, it would not be sufficient. But, of course, the time could not be set aside, since DOE has scheduled the following additional meetings:

- Sept. 13-15: computer code tutorial
- Sept. 22-23: DOE-EPA technical exchange
- Sept. 26-27: stakeholder forum

As a result, there were four business days (and two weekends) to review not one, but two, lengthy presentations. The time available is totally inadequate.

Further, review of these items calls for technical capabilities not available to this office. We have been discussing funding of technical reviews with DOE but have been unable to obtain any funds.

Thus, I cannot effectively participate in the SPM meetings set for September 28-29 and will not concur in any supposed consensus reached at these meetings. Further, I have seen a draft schedule for those meetings and find it hard to believe that a consensus could be reached on the manifold issues involving scenario selection in the time between 2:45 and 5:00 p.m. on September 28 and on the problems of Salado fluid flow between 11:15 a.m. and 12:15 p.m. on September 29. To set aside such brief intervals to dispose of complex scientific issues does not do justice to the scientists in Sandia and elsewhere who have labored on these

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questions, let alone the State and other interested stakeholders.

A quick review of the white papers leaves me in doubt whether it is possible even to discuss the issues effectively on the basis of the papers. (The following is not a complete response to the papers).

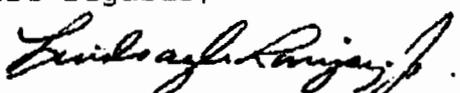
The scenario paper acknowledges the need to address scenario selection afresh. However, the review process reflected by the paper is not complete. Chapters 5-7 contain numerous screening conclusions but are expressly "limited by time constraints" and are "still in progress." (at 4-1). Numerous of the screening determinations are expressly the subject of work in progress or expected to be performed. In such posture, there is really nothing to agree to, and therefore I cannot agree to the screening resolutions in this paper. I am especially troubled by the ambiguous attitude of the paper toward the forthcoming EPA compliance criteria and the express reliance on Appendix C to the 1985 standard, which is non-binding and is known to be under reconsideration in the drafting of the compliance criteria.

The Salado paper is expressly incomplete (at 1). Further, it needs not only to be reviewed thoroughly by a subsurface hydrologist but also considered with reference to the other materials published and papers presented in this subject area. To send such a complex document to nonscientists and to ask them to read it and reach a consensus in a matter of a few days is merely a stratagem to force an artificial concurrence. I refuse to express any such agreement.

I have seen Don Hancock's letter dated September 20, suggesting a timetable for delivery of future reports. The 21 day periods he suggests may suffice for review of any single white paper (not two or more, and 21 days may not be enough to review certain subjects), but only if adequate funding for technical review is available.

It is a valid purpose to involve stakeholders in DOE's planning process. However, stakeholder involvement itself must be planned, lest it revert to the perfunctory. Our office will attend certain of the SPM meetings but will in no way be bound by the proceedings or the results in later stages of the compliance process.

Best regards,


LINDSAY A. LOVEJOY, JR.
Assistant Attorney General

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