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Susan McMichael, Esq.
Office of General Counsel
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502-6110

Dear Susan:

Enclosed are copies of the State-DOE Consultation and Cooperation (C & C) Agreement concerning WIPP, the appended Working Agreement, the Supplemental Stipulated Agreement, and the various modifications of these agreements.

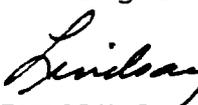
When we spoke I mentioned the topic of backfill at WIPP. The August 4, 1987 Second Modification to the C & C Agreement provides in §3 that DOE shall use "properly designed backfill" in the facility. However, DOE currently plans to close WIPP without emplacing backfill, contrary to the terms of its agreement.

I would think that the Environment Department would regard this departure from DOE's agreement as unacceptable. In my view, it is inappropriate for the Department to review DOE's Hazardous Waste Act permit application on the assumption that DOE is free to disregard its agreement in operating WIPP. Backfill serves several valid purposes, such as absorbing the impact of falling roof sections, absorbing brine, absorbing radionuclides, and reducing gas generation.

Please place a copy of this letter in the docket of the WIPP Hazardous Waste Act permit proceeding, so that this position will be in the record.

If you have any questions about this matter, I would be glad to answer them.

Best regards,


LINDSAY A. LOVEJOY, JR.
Assistant Attorney General

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