

Attorney General of New Mexico



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March 28, 1996

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MANUEL TIJERINA
Deputy Attorney General

Kathleen M. Sisneros
Sisneros-Cooper Environmental Corporation
2420 Camino Capitan
Santa Fe, New Mexico 87505

Dear Ms. Sisneros:

Thank you for faxing to me a copy of your March 25, 1996, letter to Susan McMichael of the General Counsel's office, NMED.

Your letter raises some troubling issues. As I understand it, you are proposing to participate on behalf of DOE and the Waste Isolation Division of Westinghouse Electric (WID) in a meeting with the New Mexico Environment Department (NMED) to discuss the Notice of Deficiency that NMED issued to DOE/WID on the WIPP RCRA Part B permit application currently pending before NMED.

Based on this understanding of the facts, please be advised that it is the opinion of this office that the activities you propose would violate the State Governmental Conduct Act, NMSA 1978, Section 10-16-8(B) (1995 Repl. Pamp.). As I stated in my October 3, 1995, letter to your attorney, Marian Matthews, we believe that the current Part B permit application is a matter in which you "participated personally and substantially while a public officer" with NMED. Thus, the Act prohibits you from "representing" DOE or WID "in [their] dealings with" NMED on the matter of the pending permit application. Appearing at meetings with NMED on behalf of DOE and WID to discuss the permit application and the Notice of Deficiencies would, in our view, constitute prohibited representation of those entities before NMED.

I note that when Ms. Matthews wrote to the Secretary of State's office seeking an opinion on the propriety of your anticipated work for DOE/WID, she stated that

[Ms. Sisneros] does not anticipate that she will be asked to be a formal presenter or that she will act in a representative capacity on behalf of DOE/Westinghouse before NMED.

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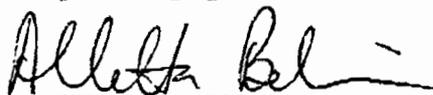
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(August 15, 1995, letter from Marian Matthews to David Harrell, Secretary of State). Now, however, you seem to be proposing just the opposite: to represent DOE/WID before NMED on the WIPP RCRA permit application.

You state that NMED has told you that it does not have a problem with your attending the NOD meeting. Regardless of what NMED may have said to you about the meeting, nothing in the Governmental Conduct Act gives public agencies such as NMED the power to waive its provisions, including Section 8(B).

I am enclosing for your information a copy of my October 3, 1995, letter to Ms. Matthews. That letter sets forth our general interpretation of the application of the Governmental Conduct Act to your situation. If you would like further clarification of that letter or this one, please give me a call.

Very truly yours,



ALLETTA BELIN
Assistant Attorney General
Director, Environment, Energy, & Telecommunications Division

cc: Marian Matthews, Esq.
Susan McMichael, Esq.