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ALSO VIA TELEFAX

February 11, 1997

Gordon Venable, CAO Technical Assistance
Contractor
101 East Mermod, P.O. Box 1270
Carlsbad, NM 88221-1270

Dear Mr. Venable:

This letter responds to your written request received by fax yesterday regarding certain information needed by the Department of Energy (DOE) in preparation for a possible public hearing for the WIPP "RCRA" permit application. The current public participation regulations under the New Mexico Hazardous Waste Regulations (20 NMAC 4.1.901) impose a burden upon the New Mexico Environment Department (NMED) to assure that all hearings are transcribed by a certified court reporter. The regulations are silent, however, regarding the issue of who bears the costs for a certified court reporter. In practice, NMED's Hazardous and Radioactive Waste Bureau has paid for court reporter costs. The Department, however, recognizes that this practice is inconsistent with other programs and in fact, due to the scarcity of resources and funds may be unduly burdensome, expensive and could add unnecessary delay. This is one of several concerns we are in the process of evaluating to determine whether to propose rulemaking for the Board's consideration to amend the current "public participation" regulations. In this regard, and to aid in our hearing preparation, we would request written confirmation as to whether DOE would be willing to pay for the costs of a certified court reporter in connection with any public hearing associated with DOE's permit application under the New Mexico Hazardous Waste Act.

In preparing for your administrative responsibilities associated with the permit hearing, we suggest familiarizing yourself with the "public participation" rules under 20 NMAC 4.1. and the permit procedure rules for permit hearings under 20 NMAC 1.4. Aside from these regulations, there are no Department written policies or guidance regarding public hearing preparation due to the legal ramifications and nature of permit hearings. The responsibility and burden of preparing for a public hearing for a permit

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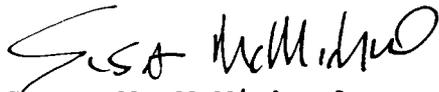


application rests with the applicant who seeks the permit. See e.g. 20 NMAC 4.1.901.E. 5 & 6.

In addition, we would like you to confirm in writing our understanding that prior to accepting transuranic mixed waste at the WIPP facility, DOE would be required to obtain a permit from NMED for the "disposal, treatment or storage of hazardous waste" under the New Mexico Hazardous Waste Act. This is necessary due to the apparent public perception that the WIPP facility may open and accept transuranic mixed waste without a permit from NMED.

We appreciate your prompt attention to this request and your concern regarding the public participation procedures for any public hearing. Finally, if you have any questions regarding the WIPP permit and/or administrative processes please contact me directly. If you are unable to reach me, feel free to contact Eric Ames, Assistant General Counsel at (505) 827-2982.

Sincerely,



Susan M. McMichael
Assistant General Counsel

cc: Cooper Wayman, CAO Counsel
Eric Ames, NMED Counsel
Steve Zappe, HRMB ✓

FAX MEMORANDUM

TO: SUSAN McMICHAEL, DEPUTY CHIEF COUNSEL, NMED
 FX: 505/827 168228
 PH: 505/827 0127
 FM: GORDON VENABLE, CAO TECHNICAL ASSISTANCE CONTRACTOR [CTAC]
 FX: 505/234 3194
 PH: 505/234 3131
 DT: 02.10.97
 RE: Request for guidance on NMED policies and practice for the retention of and payment of fees for Court Reporters at NMED hearings.

I have been assigned to support preparations for a possible public hearing regarding the WIPP RCRA permit application and anticipated draft permit currently under consideration by your agency. I would be greatly obliged for some preliminary assistance in meeting my responsibilities in this regard. I have tried to identify my current information needs in the questions below:

Under NMED rules that govern requests for and procedures preceding, during and following public hearings regarding proposed RCRA permits, it appears that such proceedings are to be recorded and transcribed by a court reporter.

- Generally Review*
1. Is it correct that NMED imposes the cost of the court reporter and transcription for the record upon the applicant?
 2. Does NMED also place the burden upon the applicant to arrange for retention of the court reporter?
 3. May we obtain any NMED written policy and/or guidance document that would assist us in meeting our administrative responsibilities, such as those involving the court reporter questions above, in preparing for the possibility of a public hearing regarding the WIPP RCRA permit application and anticipated draft permit?
 4. Are there other individuals in your agency with whom I should coordinate regarding such administrative interactions, rather than or in addition to yourself?

Again, I appreciate your attention to this request, and any other guidance that may facilitate these processes.

FXC: C. WAYMAN, CAO COUNSEL: FX@505/897 1855
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