



## Department of Energy

Washington, DC 20585

May 18, 1998

The Honorable Tom Udall  
Attorney General  
State of New Mexico  
Bataan Memorial Building, Second Floor  
Sante Fe, New Mexico 87501



Dear Attorney General Udall:

Secretary Peña has asked me to respond to your letter to him dated April 29, 1998. The Department of Energy (DOE) recognizes your long-standing interest in the Waste Isolation Pilot Plant (WIPP), and we share your hope that we can work cooperatively with you in resolving any issues concerning the Department's decision to begin disposal of transuranic wastes at WIPP. In an effort to achieve our objective of resolving issues cooperatively, I am providing you with much of the information you requested on March 13 concerning waste characterization. I will provide you with additional information as we gather it. I also want to address the concerns you have raised about DOE's plans to send transuranic wastes to WIPP before it receives a RCRA Part B permit under the New Mexico Hazardous Waste Act (HWA).

You correctly note that the Department took the position some years ago that it would not commence disposal operations at WIPP until it received a permit under the HWA. At the same time, however, we fully anticipated that the RCRA permit would be issued in approximately the same time frame as the certification by the Environmental Protection Agency (EPA). Consistent with that objective, DOE submitted its most recent version of its permit application to the New Mexico Environment Department (NMED) three years ago in May 1995. However, DOE only just received a draft permit on May 15, 1998, and it could be many months before the Department receives a final permit. In the meantime, I am aware of no basis for questioning DOE's authority to dispose of non-mixed transuranic wastes at WIPP as soon as the EPA certification becomes effective. Moreover, Congress and the communities in which DOE stores transuranic wastes quite reasonably expect DOE to meet its obligations and commitments to open WIPP and begin placing these wastes in permanent and safe isolation now that the repository has been certified by EPA for that purpose. (Congress directed that DOE commence disposal operations at WIPP by November 1997, but that has been precluded until now by the lack of an EPA certification.)

Your second concern involves the letter that George Dials sent to Governor Johnson on March 11, 1998. This letter was sent pursuant to commitments the Department has made to the State of New Mexico, the Western Governors'

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Association and Tribes concerning the transportation of transuranic wastes through their jurisdictions. As the letter clearly states, it is nothing more than a "projected shipment schedule" and this schedule is already outdated. Shipments from LANL cannot begin until mid-June, and they could not begin from the Rocky Flats Environmental Technology Site (RFETS) or the Idaho National Engineering and Environmental Laboratory (INEEL) until the middle of July at the earliest. While EPA has certified LANL to ship wastes to WIPP, the Department has not made any decisions yet concerning shipments of transuranic wastes from RFETS and INEEL. Any such decisions would be premature until: (1) EPA completes its audits and inspections of these sites and certifies them; and (2) DOE finally determines that there is non-mixed waste at these sites that can be shipped prior to issuance of the RCRA permit.

Accordingly, the information I am sending you today relates to the waste stream at LANL that DOE has decided to send to WIPP. This waste is referred to as the "TA-55-43, combustible/noncombustible debris waste stream." There are three broad categories of information that the Department uses to characterize wastes for disposal at WIPP. "Program-level information" consists of information that the Carlsbad Area Office (CAO) uses to determine whether sites can adequately characterize and certify wastes for disposal at WIPP. Most of the documents that contain this information were included with DOE's Compliance Certification Application; if you have a copy of the application, you should already have many of them. Examples include: the Quality Assurance Program Description (QAPD); the Transuranic Waste Certification Quality Assurance Program Plan (QAPP); and the WIPP Waste Acceptance Criteria (WIPP-WAC). I have asked CAO to provide any additional information that it uses for this purpose. If you do not have a copy of the Compliance Certification Application, let me know and I will provide you with copies of the relevant portions.

The second category of information consists of "site-level information." This is the information that CAO and LANL use to characterize and certify wastes at LANL. Enclosed are the following documents containing this category of information:

1. The Acceptable Knowledge Summary Report for TA-55-43 (and four other waste stream) and copies of the documents referred to in that report with two exceptions. I believe that this is the information you requested at the April 13 meeting at LANL. The two exceptions are documents that may contain unclassified

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controlled nuclear information (UCNI); if we confirm that they do, we will make arrangements that will allow you to receive them.

2. LANL's Transuranic Waste Quality Assurance Management Plan (often referred to as the QAPjP), LANL's Transuranic Waste Quality Assurance Management Plan (QAMP) and LANL's Transuranic Waste Certification Plan.

3. The waste management procedures for TA-55 (the facility where this waste was generated) cited in the Acceptable Knowledge Summary Report and prior versions for the period when these wastes were generated.

4. The current and prior versions of the inspection and packaging procedures for transuranic wastes for the period during which these wastes were generated.

I will send you additional site-level information as we gather it.

The third category of information is "container-level information." This information consists of information that confirms that individual containers meet the requirements for disposal at WIPP. Enclosed are the following items:

1. Video tapes of the real time radiography (RTR) that was performed on the drums that originally contained this waste. In order to meet certain transportation requirements, this waste is being repackaged. Each drum contains a number of sealed plastic bags containing waste. These bags are being removed from the drums and placed into waste storage boxes. During this repackaging process, LANL notes the presence of any item that does not meet the waste acceptance criteria for WIPP and removes it from the waste stream.

2. "TRU Waste Storage Records" or "Waste Drum Reports" for each of the drums that are being repackaged. These reports contain detailed information on the contents of each drum. For example, the nature and weight of the material in each plastic bag in a drum is noted. These reports also note whether each bag (referred to as an item and given an "item id" number) contains any hazardous

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materials. Note that on the forms labeled "TRU Waste Storage Record" there is a box in the upper left quadrant of the first page labeled "Mixed Waste." If the drum does not contain mixed waste (as none of these do), the software that generates this form fills that box with gray stippling. Unfortunately, this stippling darkens when the forms are photocopied and it sometimes appears that the box is blackened.

I will send you additional information on individual containers as it is gathered. Much of this information has already been generated and will be sent to you as soon as I receive it. However, LANL is continuing to characterize individual containers, and thus some of this information is not yet available. I will send it to you as soon as it becomes available. Much of the characterization information that is not yet generated relates exclusively to the radioactive characteristics of the containers and is therefore not relevant to the HWA.

I am also sending this information and a copy of this letter to Secretary Weidler at NMED. Please call me at 202-586-6732 or my colleague, Paul Detwiler at 202-586-1371, if you have any questions about this information.

Sincerely,



Mary Anne Sullivan  
Deputy General Counsel,  
Environment and Civilian  
and Defense Nuclear Programs

Enclosures