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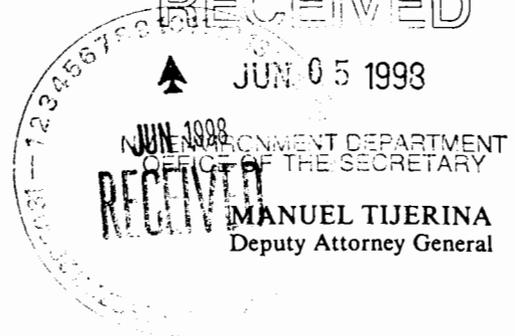
Attorney General of New Mexico

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Santa Fe, New Mexico 87504-1508

505/827-6000
Fax 505/827-5826



TOM UDALL
Attorney General

June 4, 1998

By registered mail,
Return Receipt Requested

The Honorable Federico Peña
Secretary of Energy
U.S. Department of Energy
Washington, D.C. 20585

The Honorable Gary Johnson
Governor of New Mexico
State Capitol Building
Santa Fe, New Mexico 87503

The Honorable Mark Weidler
Secretary New Mexico Environment
Department
Post Office Box 26110
Santa Fe, New Mexico 87502

Mr. Joe Epstein, General Manager
Westinghouse Electric
Waste Isolation Division
Post Office Box 2078
Carlsbad, New Mexico 88221

Re: Notice of Violations and Intent to Sue

Dear Secretaries Peña and Weidler, Governor Johnson and Mr. Epstein:

Pursuant to Section 7002 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1), and 40 C.F.R. Part 254, the New Mexico Office of the Attorney General hereby notifies you that the U.S. Department of Energy ("DOE") has violated, and is violating, RCRA and the New Mexico Hazardous Waste Act, ("HWA") 1978 NMSA §§ 74-4-1 et seq. which effectuates RCRA in New Mexico.

This notice responds to Secretary Peña's decision, dated May, 13 1998 that DOE has decided to place the Waste Isolation Pilot Plant ("WIPP") into operation to receive non-mixed (i.e., non-hazardous) transuranic waste within a matter of days. Despite having repeatedly made public commitments that it would not introduce radioactive waste of any kind into WIPP until after it had obtained a hazardous waste permit, DOE has delivered to the State a notice of shipments, indicating that the first shipment to WIPP will be made on June 19, 1998.

DOE's assertion that the waste it plans to send to WIPP in calendar year 1998 does not contain any hazardous waste is in error. DOE in March 1998 advised the Governor of the State that, subject to Environmental Protection Agency certification and

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June 4, 1998

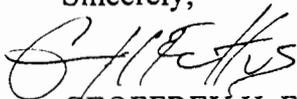
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the Secretary's approval, starting in May 1998 DOE planned to ship non-mixed waste to WIPP from the Idaho National Environmental and Engineering Laboratory ("INEEL"), the Los Alamos National Laboratory ("LANL"), and the Rocky Flats Environmental Technology Site ("RFETS"). However, although DOE has been asked to provide data supporting the assertion that truckloads of non-mixed waste are awaiting shipment at INEEL and RFETS, no data have been made available. Certain data have been furnished concerning waste at LANL, but such data do not demonstrate that the shipments referred to in the March 11, 1998 letter consist of non-mixed (i.e., non-hazardous radioactive) waste. To the contrary, DOE has no system in place to characterize transuranic waste with sufficient accuracy to determine whether hazardous wastes are present and, if present, in what amounts. Further, the LANL waste streams in issue have historically contained some hazardous wastes in amounts that cause the wastes to be RCRA-regulated, and it should be assumed that such streams are still subject to RCRA. DOE's proposed shipment of RCRA- and HWA-regulated wastes to WIPP would violate NMSA 1978, § 74-4-4.A.6 and regulations issued thereunder.

Nor will DOE's proceeding under interim status regulations comply with the law or provide sufficient protection of human health and the environment. We have demonstrated in motion papers previously filed with the District Court in the District of Columbia (Consolidated Civil Action 91-2929) that (1) conditions for obtaining and retaining interim status for WIPP are set forth in New Mexico law, NMSA 1978, § 74-4-9, and that (2) under the terms of NMSA 1978, § 74-4-9 WIPP does not have interim status, because WIPP did not submit permit applications in a timely manner after becoming subject to the requirement to do so. The consequence of either DOE's failure to gain interim status or its having lost interim status are apparent under the law. RCRA regulations require a facility that loses interim status to cease to receive waste. 40 C.F.R. §§ 265.112, 265.113, 20 NMAC 4.1.600.

The Attorney General's Office currently expects to file these claims by amending its complaint in the existing proceeding in the District Court in the District of Columbia (Consolidated Civil Action 91-2929). If you have any questions about the Notice or are interested in exploring a negotiated resolution, please contact me at (505) 827-6010 as soon as possible. We encourage the DOE to confirm its statements over the past several years that it will not introduce waste to WIPP prior to the receipt of a hazardous waste permit.

Sincerely,



GEOFFREY H. FETTUS
Assistant Attorney General

Secretaries Peña and Weidler, Governor Johnson and Mr. Epstein

June 4, 1998

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GHF:mh

Of Counsel:

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cc: Carol Browner, Administrator, Environmental Protection Agency
Gregg Cooke, Regional Administrator, U.S.E.P.A. Region VI
Janet Reno, Attorney General of the United States, U.S. Department of Justice