



# NEW MEXICO ENERGY, MINERALS & NATURAL RESOURCES DEPARTMENT

OFFICE OF THE SECRETARY  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505  
phone: (505) 827-5950  
fax: (505) 827-1150

Jennifer A. Salisbury  
CABINET SECRETARY

June 8, 1998

## MEMORANDUM

To: Captain Mark Radosevich  
New Mexico State Police

From: Chris Wentz, Coordinator *CW*  
N.M. Radioactive Waste Task Force

Subject: WIPP LAWSUITS; WIPP OPENING DATE

In regard to the existing WIPP lawsuit (STATE OF NEW MEXICO, *ex rel.*, Tom Udall, Attorney General, *et al.*, and ENVIRONMENTAL DEFENSE FUND, *et al.*, Plaintiffs v. FEDERICO PENA, Secretary of the Department of Energy, *et al.*, Defendants, Civil Action No. 91-2929 (Consolidated)), it appears a firm schedule has been worked out for its resolution. This schedule is contained in an Order, signed by U.S. District Judge John Garrett Penn on May 29 and filed in the court for the District of Columbia on June 1. This schedule is as follows:

- On or before June 9th: Plaintiffs must file all motions in the case
- On or before June 22nd: Defendants must file any response to the motions
- On or before June 28th: Plaintiffs must file any reply to the response
- At 10:00 a.m. on June 29th: Hearing of oral arguments
- On or before July 10th: Decision by Judge Penn

In light of the preceding schedule, the above-referenced Order states that "...the Court has suggested that the defendants not ship such [non-mixed transuranic waste] prior to July 11, 1998." In my opinion, it is extremely likely that DOE-Headquarters will act conservatively and not ship any waste to WIPP prior to that specified date. In fact, I suspect that if DOE wins the lawsuit and could ship on July 11, it would delay that 1st shipment for another 2 weeks (*i.e.*, until July 25) because of the "Advance Notification" procedures negotiated with the State of New Mexico and the Western Governors' Association. Both sets of procedures require that DOE provide affected states a written, 14-day advance notice of the 1st WIPP shipment.

Another consideration that also has significant potential to delay WIPP's opening is the U.S. Environmental Protection Agency's (EPA) recent certification, which has an effective date of June 17. That EPA certification, filed in the Federal Register of May 18, 1998 (63 F.R. 27354), states that "...a petition for review of this final action must be filed no later than July 17, 1998, pursuant to section 18 of the WIPP Land Withdrawal Act of 1992." Hence, the EPA certification is likely to be challenged by its effective date of June 17, but certainly no later than July 17.

I hope this information proves useful for your meeting tomorrow in Raton. I'll pass on any other information I come across as it is received. Thank you.

c: WIPP Working Group

Visit the New Mexico WIPP Transportation Safety Program Web Site at <http://www.emnrd.state.nm.us/wipp/>

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