



The Secretary of Energy
Washington, DC 20585

June 12, 1998



The Honorable Gary E. Johnson
Governor of New Mexico
Santa Fe, New Mexico 87503

Dear Governor Johnson:

I am sure you agree with me that the opening of the WIPP facility is critical to the environmental security of the Nation and that New Mexico should be proud of its pivotal role in advancing this key national interest. We at the Department of Energy (DOE) also understand that we must be vigilant about protecting the health and safety of New Mexicans and have been extremely mindful of this concern throughout the WIPP approval process.

As I indicated to you in our most recent conversation, communication between DOE and the State of New Mexico is key as we move closer to opening WIPP. As you know, DOE technical staff has met with New Mexico Environment Department (NMED) staff numerous times over the past several months. Imagine then, my shock, extreme disappointment, and concern when I received a letter from Ed Kelley, the Director of the Water and Waste Management Division for the NMED stating for the first time to either me or any of DOE's technical staff in New Mexico or Washington, that the DOE has not adequately characterized the waste stream at the Los Alamos National Laboratory, which is intended for imminent shipment to the WIPP facility.

As you know, the technical staff responsible for waste characterization at Los Alamos has met numerous times with NMED over the last several months to review the data DOE used to determine that this waste stream does not contain hazardous constituents regulated by the Hazardous Waste Act (HWA) or the Resource Conservation and Recovery Act (RCRA). My understanding was that NMED had been provided with all of the information it had asked for during these meetings and that it had not raised any significant concerns about how this waste stream had been characterized. In addition, NMED has been given copies of all the documents that were reviewed during these meetings as well as new information that Los Alamos has generated since the last of these meetings on June 1, 1998.

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I am also concerned about comments attributed to NMED in the press that suggest that NMED believes that DOE should "blend" these wastes and conduct testing on them in order to properly characterize them under the HWA and RCRA.

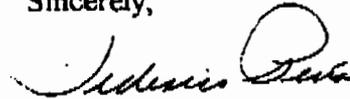
"Blending" these wastes would require DOE to grind up large amounts of materials that are contaminated with plutonium and other radioactive isotopes. This testing would needlessly expose workers to potential releases of radioactivity and is not required by either RCRA or the HWA. RCRA allows generators of waste to characterize those wastes using information about the processes that generated them and the materials used in those processes in lieu of laboratory testing. This method of waste characterization is often referred to as using "acceptable knowledge" or "process knowledge." The Environmental Protection Agency and the Nuclear Regulatory Committee (NRC) *encourage* generators of radioactive wastes to characterize their wastes using acceptable knowledge where "wastes have physical properties that are not conducive to taking a laboratory sample or performing laboratory analysis" and "increased radiation exposures are a concern." *Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste*, 62 Fed. Reg. 62,079, 62082 (1997). This guidance goes on to state that: "*RCRA regulations . . . do not require testing. Rather, generators must determine whether the waste is a RCRA hazardous waste.*" Such a determination may be made based on one's knowledge of the materials or chemical processes used. EPA's regulations are clear on this point." *Id.* at 62,082 (emphasis in the original text).

I am very disturbed by the timing of NMED's letter. As I noted above, Los Alamos has been meeting with NMED and providing them with information on waste characterization for several months. NMED did not raise any significant issues concerning the use of acceptable knowledge to characterize these wastes or the need for chemical testing of them. As you know, the opening of WIPP is critical to the cleanup of many DOE facilities located in communities throughout the Nation. It is very unfortunate that NMED delayed raising these issues until just before DOE was planning to open WIPP.

I note that the NMED spokesperson quoted in the news articles suggests that we may be able to resolve this issue quickly. In order to do so, I believe that it is essential that Secretary Weidler and NMED staff meet with DOE personnel on Monday June 15, 1998. I will be sending my personal representatives, and

technical staff from Carlsbad, Los Alamos and Albuquerque to Santa Fe to the meeting. I believe that it would be appropriate for Secretary Weidler, Ed Kelley, Benito Garcia and any other staff that NMED believes appropriate should participate. Finally, I respectfully request that you have representatives at the meeting as well.

Sincerely,



Federico Peña

cc: The Honorable Pete Domenici
The Honorable Jeff Bingaman
The Honorable Joe Skeen
The Honorable Bill Redmond
The Honorable Tom Udall, Attorney General, State of New Mexico
The Honorable Janet Reno, Attorney General of the United States
The Honorable Carol Browner, Administrator, Environmental Protection Agency
Gregg Cooke, Regional Administrator, Environmental Protection Agency
Jennifer Salisbury, Secretary of Energy, Mineral and Natural Resources Department
Bruce Twining, Manager, Albuquerque, DOE Albuquerque Operations Office
Benito Garcia, Bureau Chief, HRMB
Dr. Ed Kelley, State of New Mexico, Environment Department,