



**SOUTHWEST RESEARCH AND INFORMATION CENTER**  
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June 25, 1998

Secretary Mark Weidler  
 New Mexico Environment Department  
 P.O. Drawer 26110  
 Santa Fe, NM 87502-0110

Dear Secretary Weidler:

Southwest Research and Information Center (SRIC) has been actively interested and involved in the New Mexico Environment Department (NMED) permitting process for the Waste Isolation Pilot Plant (WIPP) for several years. And we have been actively involved in legal action since 1991 to protect NMED's permitting authority over WIPP.

This letter is to express concerns about NMED's current "agreement" with the Department of Energy (DOE), as stated in a letter from Mary Anne Sullivan of DOE to Susan McMichael of NMED, dated June 19, 1998. In brief, SRIC believes that NMED is without authority to enter into or enforce that "agreement," given that DOE and Westinghouse do not have a RCRA permit for WIPP, nor does WIPP have interim status. Thus, NMED may provide "advice" to DOE and Westinghouse regarding their waste characterization at Los Alamos National Laboratory (LANL). But NMED may not make a determination about whether wastes are adequately characterized until it has issued a final RCRA permit.

The issue of whether WIPP can operate without a RCRA permit is a determination being made by the U.S. District Court for the District of Columbia in State of New Mexico v. Peña, Civil Action Nos. 91-2527 and 91-2929. SRIC is a party to that case. SRIC and other parties in that proceeding have consistently argued that WIPP does not have interim status and, therefore, it cannot operate and cannot receive any wastes (nor have construction) in the absence of a RCRA permit, issued by NMED under the provisions of the New Mexico Hazardous Waste Act. NMED should publicly recognize that the court, not NMED, will make the determination as to whether WIPP has interim status and whether the facility can receive any waste without a RCRA permit.

In the absence of a permit and a Waste Analysis Plan approved by NMED, DOE cannot adequately characterize its wastes, and NMED cannot determine whether or not the wastes are adequately characterized. NMED has taken a public position in its draft permit that different waste characterization is required than what

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was included in DOE's Waste Analysis Plan. But NMED cannot make a determination that any waste stream has been adequately characterized, because it has no legal basis to do so in absence of a final permit. Without a final permit, a determination from NMED that does approve the characterization of any waste stream for disposal at WIPP would subject you and NMED to civil enforcement action, including injunctive and other relief.

SRIC does not object to NMED agreeing to conduct a "review" of information from DOE and to provide "advice" to DOE, although we believe that such a process should be open to the public. SRIC would appreciate being notified about future meetings with DOE regarding characterization of wastes at LANL or other facilities planning to send wastes to WIPP.

We look forward to your response and to participating actively in the NMED permitting process for WIPP.

Sincerely,



Don Hancock

cc: Ed Kelley  
Susan McMichael