

HARDING, SHULTZ & DOWNS

ENTERED

A LAW PARTNERSHIP OF
PROFESSIONAL CORPORATIONS

ONE TABOR CENTER
1200 17TH STREET
SUITE 1950
DENVER, CO 80202-3357
303/629-0300 FAX 303/629-1429

800 LINCOLN SQUARE
121 SO. 13TH STREET
P.O. BOX 82028
LINCOLN, NE 68501-2028
402/434-3000 FAX 402/434-3030

October 8, 1998



Peter Maggiore, Secretary
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502-6110

Dear Secretary Maggiore:

I represent the Southwest Research and Information Center (SRIC) and the Concerned Citizens for Nuclear Safety (CCNS) regarding matters related to the WIPP RCRA permit. I write now regarding the procedures for the permit hearing that were discussed at your invitation with NMED counsel and SRIC and CCNS representatives on Friday, October 2.

As you are well aware, the WIPP RCRA permit is extremely important to the health and safety of New Mexicans. It not only is a subject of substantial public interest in the state, but it also has national significance, since WIPP is a unique hazardous waste disposal facility. The hearing procedures are important parts of the RCRA permit process. Therefore, I, on behalf of SRIC and CCNS, want to state our position regarding three issues at this time, so that you may be more fully informed before decisions are made.

1. Hearing Officer. As set forth in 20 NMAC 1.4.112.B the hearing officer that you will appoint for the WIPP permit process is the person who has the responsibility to ensure a "fair and impartial" proceeding. In a matter of this complexity, the hearing officer must be appointed and be able to carry out her/his duties from the time the notice of hearing is provided.

Nevertheless, during the discussion with SRIC and CCNS on October 2, it was stated that a new request for proposal (RFP) for the hearing officer will be issued and that the selection of a hearing officer might not be made by November or December, which is the currently proposed time frame for issuance of the notice of public hearing. It was suggested that an interim hearing officer might start the process, prior to the final hearing officer being appointed.

\\WP_DATA\16019\002\00001.WPD

981006



Peter Maggiore, Secretary
October 8, 1998
Page 2

SRIC and CCNS strongly oppose a notice of public hearing being issued without the appointment of the hearing officer who is intended to conduct the entire proceeding. Very quickly after the notice is issued, the hearing officer will likely be called upon to make decisions that will shape the entire process. This includes determining issues regarding party status, pre-hearing and hearing schedule, discovery, and substantive legal issues. Thus, the hearing officer who will conduct the hearing should be making the decisions. Otherwise, these issues will likely be re-visited, with attendant delays, after the final hearing officer is appointed.

SRIC and CCNS strongly recommend that you make issuance of an RFP for the hearing officer a high priority. SRIC and CCNS strongly urge that the hearing officer for the entire case be appointed by the time that the notice of public hearing is issued.

2. Schedule. At the meeting on October 2, SRIC and CCNS were provided with a "Time-Line for Completion of the WIPP Permitting Process." The time line indicates that the public hearing will begin 60 to 90 days after the notice is issued and that the hearing length is estimated to be 30 days.

Given that the revised draft permit could be substantially different than the draft permit and given that new issues may arise from the revised draft permit, at least 120 days, and more appropriately 150 days, should be allowed before the hearing begins. Sixty to 90 days would not allow adequate time to, among other matters, review the revised draft permit, hold a prehearing conference(s), deal with preliminary issues, prepare and file technical testimony, and review all technical testimony, prior to the time the hearing begins. In addition, under the proposed time line, Christmas and New Year's (and perhaps Thanksgiving) would be encompassed in that 60-90 days, effectively further reducing the actual time available to prepare for the hearing.

As to the length of the hearing, the complexity of the permit, the number of issues, and number of parties make it likely that the hearing could extend significantly beyond 30 days.

SRIC and CCNS recommend that the notice of public hearing provide 150 days for the initiation of the hearing and allow that date to be modified by the hearing officer. As to the length of the hearing, SRIC and CCNS urge NMED in any written or public statements to state that the length of the hearing is undetermined and that some potential parties suggest that it will be longer than 30 days.

3. Hearing Location. 20 NMAC 1.4.203.D provides that the hearing location shall be in Santa Fe or in the area of the facility. Given the limited resources of NMED and other parties, SRIC and CCNS strongly recommend that Santa Fe be the location of the hearing. Nevertheless,

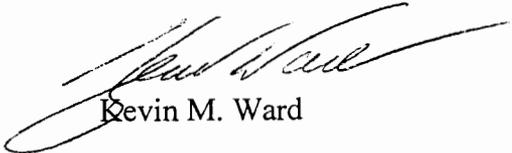
Peter Maggiore, Secretary
October 8, 1998
Page 3

because there is significant interest in the facility and the permit statewide, some accommodation should be made for such interest by providing opportunities for non-technical testimony in other cities, such as Carlsbad and Albuquerque. The specifics of such opportunities can be determined by the hearing officer, based on input of the parties.

Thank you very much for your attention to these important matters. Please feel free to contact me or SRIC and CCNS about any of these matters.

Very truly yours,

HARDING, SHULTZ & DOWNS



Kevin M. Ward

KMW:pn
cc: Don Hancock
Margaret Carde
Susan McMichael, Esq.