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PETER MAGGIORE
Secretary

VIA FACSIMILE: (202) 224-7371

March 26, 1999

The Honorable Pete V. Domenici
328 Hart Senate Building
Washington, D.C. 20510

Dear Senator Domenici:

On March 22, 1999 Judge Penn issued a ruling that allows the U.S. Department of Energy (DOE) to ship a waste stream called TA-55-43, lot no.1 from Los Alamos National Laboratory to the Waste Isolation Pilot Plant (WIPP). In reaching his decision, Judge Penn relied on the New Mexico Environment Department's (NMED) determination that this waste is non-mixed, meaning that it is non-hazardous waste as defined by the Resource Conservation and Recovery Act (RCRA). The DOE has begun shipping this waste stream.

After reviewing Judge Penn's decision, I called DOE's Chief of Staff, Gary Falle, and invited DOE to discuss the implications of the decision and DOE's plans in the near future for WIPP shipments. DOE has not been responsive.

Meanwhile, DOE has filed papers in Judge Penn's court stating its intention to ship waste from the Idaho National Environmental and Engineering Laboratory to WIPP. Also, various reports in the press indicate that DOE may be considering shipping waste from the Rocky Flats Environmental Technology Site. Given DOE's silence to us, yesterday NMED wrote to Secretary Richardson, asking for information on proposed DOE shipments to WIPP. Although we view the matter with some urgency, we still have no additional information.

I am writing to you and the others in New Mexico's Delegation to ask if DOE has provided your offices with information on its intentions regarding shipments to WIPP in the near future. As you may know, the New Mexico Hazardous Waste Act (HWA) and RCRA require the characterization of waste before transport, storage or disposal to determine whether the waste contains hazardous constituents. The failure to properly conduct such characterization would mean that New Mexico could not verify the nature

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of waste destined for WIPP. This would present serious consequences for the WIPP HWA permit.

Finally, I am pleased to announce that NMED's WIPP permit hearing ended this afternoon. The parties now will begin preparing recommended findings of fact and conclusions of law for submittal to the hearing officer. I will continue to look to you for your assistance and advice.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Maggiore".

Peter Maggiore
Secretary

cc: Gary Falle, Chief of Staff, DOE
Lou Gallegos, Chief of Staff, Office of the Governor