



Attorney General of New Mexico

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April 13, 1999

Governor Gary Johnson
Governor's Office
Capitol Bldg, 4th Floor
Santa Fe, NM 87503
H A N D D E L I V E R E D

Dear Governor Johnson,

I am writing to you to discuss the current situation regarding WIPP. DOE has made clear that, prior to the issuance of a final hazardous waste permit from the New Mexico Environment Department (NMED), DOE intends to ship waste from the Idaho National Engineering & Environmental Laboratory and from the Rocky Flats Environmental Technology Site. Moreover, DOE has indicated it does not intend to submit waste characterization data to NMED prior to such shipments. NMED is on record as opposed to both of these courses of conduct contemplated by DOE.

When I took office in January 1999, I was faced with immediate deadlines in the WIPP lawsuits. My first response was to secure extensions of those deadlines and to invite the various parties involved to meet and present their views to me. I informed DOE that I was open to substantive settlement negotiations. I also told NMED that the Attorney General's office would not take issue with NMED's determination that the debris waste from Los Alamos National Laboratory identified as TA-55-43, Lot No. 1 could be managed as non-mixed waste.

In this way, I made clear that, unlike the previous administration, my office wanted to work with NMED, not against it. I established open lines of communication between my office, NMED and DOE and welcomed NMED staff counsel to participate in the settlement negotiations that took place with DOE and the Department of Justice. In the course of those negotiations, my office crafted, with input from NMED, a settlement agreement that provided for NMED to exercise a role over the management of waste not regulated under the state's hazardous waste act as well as payment of up to \$5,000,000 for NMED to conduct audits and reviews of waste characterization performed by DOE



generator/storage sites and to maintain state representation at WIPP. Additionally, DOE was to reimburse the state for approximately \$1,500,000 in attorney fees and costs.

Issues over the scope of NMED's regulatory authority and its means of enforcement remained to be resolved.

Unfortunately, in the midst of these discussions, NMED unilaterally determined that the process was no longer worth its while. Without giving me any warning, it withdrew from participation and notified New Mexico's congressional delegation and others that a resolution along the terms contemplated would favor only DOE and cause harm to New Mexico. I did not concur with NMED's assessment of the proposed settlement agreement. Moreover, I was concerned with the viability of New Mexico's legal position in the motion before Judge Penn, which was a motivating factor in my engaging in settlement negotiations with DOE. NMED's precipitous actions gave me no viable options other than to abate the settlement negotiations and proceed with the motion for injunctive relief before Judge Penn. As a result, New Mexico lost the benefits proposed under this settlement.

Had NMED continued in the negotiations with my office and DOE a satisfactory settlement would have been attainable. As it is now, Judge Penn has ruled that WIPP has interim status. Further, even absent such status, Judge Penn has apparently sanctioned shipments of non-mixed waste to WIPP.

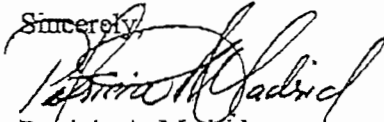
Armed with his order, DOE is moving forward with plans to ship waste from Idaho without first providing NMED with documentation as to its characterization. DOE maintains that it is under no legal requirement to provide such data prior to shipment. NMED asserts that DOE's refusal will violate the law.

From my dealings with both parties, it appears that there is a significant level of distrust existing between DOE and NMED. Moreover, each side seems convinced of the correctness of its interpretation of the law.

At this point in time I am not inclined to have the Attorney General's office seek recourse in the courts on behalf of the state to resolve this issue. New Mexico has been embroiled in litigation over WIPP for decades. I am convinced that now the best course of action is to engage an independent federal mediator with sufficient expertise in environmental regulations to sit down with representatives from my office, NMED and DOE to work out a reasonable resolution of pending disputes. I for one am willing to engage in a

constructive dialogue with impartial federal mediators. I request that you and NMED join with me in seeking the intervention of federal mediators to help resolve the outstanding issues that will arise between New Mexico and DOE prior to the issuance of a final hazardous waste permit for WIPP.

Sincerely,



Patricia A. Madrid
Attorney General

cc: Secretary Maggiore, NMED
Secretary Bill Richardson, DOE
Mary Anne Sullivan, DOE General Counsel