



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

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PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

November 5, 1999

The Honorable John A. Heaton
New Mexico House of Representatives
102 South Canyon
Carlsbad, New Mexico 88220

Dear Representative Heaton:

As Secretary of the New Mexico Environment Department, I recently issued a final permit authorizing the storage and disposal of transuranic mixed waste at the Waste Isolation Pilot Plant (WIPP). Shortly after permit issuance, however, Secretary Richardson sued the Department, and equally troubling, has threatened retaliation by withholding highway funds to improve the safety of roads in this State.

WIPP is the first facility to be permitted for mixed waste disposal in this nation since the passage of the Resource Conservation and Recovery Act (RCRA). One of the requirements of the WIPP permit is that the co-operator, Westinghouse Waste Isolation Division, provide financial assurance to the State of New Mexico. Financial assurance is required to ensure that adequate funds are available to cover the costs of clean-up from environmental contamination in the event WIPP is not properly managed and closed. New Mexico's ability to ensure that WIPP has funding to properly close is critical to protect human health and the environment and could minimize, possibly even eliminate, the environmental risk to New Mexico's groundwater and other environmental media at closure.

Further, the United States Department of Energy (DOE) has a poor track record in providing States adequate funding to complete closure at other federal facilities. In fact, several States have been forced into litigation regarding this issue due to DOE's delay in meeting clean-up obligations. Unlike New Mexico, no other State has had the opportunity to require financial assurance from a DOE federal facility of this type due to the fact that most facilities began operations prior to the enactment of RCRA, although such assurances have been required of the Department of Defense.

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I do not believe it appropriate to penalize New Mexico's economy and the safety of our citizens by withholding funds, which would otherwise benefit the State, due to the fact that the WIPP permit provides environmental protection for New Mexico through financial assurance. We met with DOE representatives and discussed financial assurance mechanisms that do not require any reduction in New Mexico funding. Under federal regulations, our understanding is that Westinghouse could probably meet the corporate financial test in which a written guarantee would suffice and no funding would be required until and unless WIPP fails to perform final closure. It is therefore unclear why Secretary Richardson has threatened to withhold funds from our State. By his actions, it appears that Secretary Richardson has placed the interests of Westinghouse ahead of New Mexico's safety and environmental concerns as well as economic interests.

I appreciate your interest and concern regarding these recent developments and will continue to keep you informed.

Sincerely,

A handwritten signature in cursive script that reads "Pete Maggioro".

PETE MAGGIORE

Cabinet Secretary

pm:jdh