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Editor  
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VIA FACSIMILE: 823-3994

Dear Editor:

In agreeing to let the US Department of Energy dispose of its radioactive waste at the Waste Isolation Pilot Plant, the State of New Mexico brokered a good deal. The state would be WIPP's regulator. We would get millions of dollars in highway money.

WIPP is here. And DOE seems to be renegeing on its promises and taking away the highway money.

Despite promises to the contrary, Energy Secretary Bill Richardson opened WIPP before receiving the state permit, meaning there was no external regulation or state oversight.

Ironically, the state's ability to provide oversight of WIPP is largely the result of the court challenge that Congressman Richardson filed in 1991.

Now that WIPP has its permit and the state is able to provide effective oversight, Richardson is mounting a court challenge to the state's environmental protection requirements. He is threatening to withhold \$20 million annually that would pay to improve and maintain our roads.

Why is Secretary Richardson raising the stakes to this level? On almost every provision, the state permit gives DOE what it wanted. We allow DOE to put their waste in WIPP. We approved, almost without revision, DOE's mechanism for characterizing and tracking the waste. We approved DOE's operations, maintenance and closure plans.

Nonetheless, Sec. Richardson seems most concerned about a provisions of the permit that makes sure that the people of New Mexico don't inherit an environmental liability when WIPP closes and DOE leaves the state.

Specifically, the state permit requires WIPP's operators to guarantee that they are able to pay if any environmental cleanup is required. This is similar to the "financial assurance" required of

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landfills, mines, hazardous waste sites, and virtually every significant construction project throughout the country.

No other industry is allowed to routinely walk away from contaminated sites. No one else in America can escape cleanup simply by claiming their money should be spent elsewhere.

For example, the State of Washington is suing DOE, trying to get the Hanford site cleaned up. DOE has extended its cleanup goals dozens of times, claiming that there just wasn't enough money to perform the cleanup. Washington's Governor Gary Locke wrote DOE last year that, in Washington, DOE has repeatedly blamed "inadequate funding for its inability to meet" its milestones. Gov. Locke continued, "Under the circumstances, inadequate funding to address this long-standing issue is not an excuse." Washington, left with no other alternative, is suing DOE to force cleanup.

It is unfortunate that inadequate funding can be an absolute defense against DOE cleaning up. And it is a defense that DOE employs regularly.

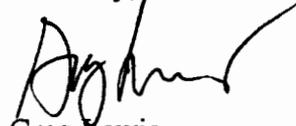
Other states support the State of New Mexico in requiring financial assurance.

Aside from making sure that WIPP doesn't turn into multi-million dollar environmental liability for the state, financial assurance accrues two added benefits. First, it gives WIPP's operators a financial stake in good environmental performance. The less environmental harm they cause, the less expensive cleanup will be. Second, it shifts the burden of securing Congressional funding for cleanup from the state to WIPP's operators.

The DOE should immediately withdraw its lawsuit against the State of New Mexico and make the strategic decision that all federal contracts take financial assurance into account. To do otherwise avoids environmental responsibilities or, at the very least, delays cleanup for decades.

If New Mexico is unsuccessful in requiring financial assurance, the country will be successful only in consolidating the problem so that it exists only in New Mexico.

Sincerely,



Greg Lewis

Director

Water and Waste Management Division