

# U.S., States Dueling Over Dumping Grounds

▪ *Billion-dollar efforts to clean up nuclear waste have been stalled by a bureaucratic battle*

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Across the country, the Department of Energy is doing battle with states over the federal government's nuclear cleanup efforts.

In New Mexico, the Department of Energy and the contractors that run its nuclear weapons laboratories have 10

lawsuits pending against the state over state regulation of environmental cleanup.

The DOE has withheld at least \$43 million in Los Alamos National Laboratory cleanup money as the state and federal governments feud over the extent of environmental cleanup required at the lab.

Twice this year, once successfully, the DOE went to Congress, over the state's objection, to try to change laws governing the Waste Isolation Pilot Plant near Carlsbad. The changes were aimed at making it cheaper and easier to dispose of nuclear waste at WIPP.

In the most public battle, New Mexico Gov. Bill Richardson — former energy secretary — called a news conference to blast a DOE proposal to allow radioactive sludge to be sent to WIPP.

"It's about promises that were made to the citizens of New Mexico," Richardson said.

Critics note similar conflicts playing out throughout the country. Frequently, the battles involve DOE efforts to leave old buried radioactive waste in place, a lower-cost alternative to digging it up and sending it

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**Workers unpack a container of radioactive waste at the Waste Isolation Pilot Plant near Carlsbad.**

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to nuclear waste dumps.

In other cases, the battles involve the question of how much DOE will spend for ongoing monitoring of sites where waste was left in place.

In each of the cases, DOE officials have said that they are trying to rein in soaring cleanup costs and that the cleanup to be done is based on a scientific assessment of the best way to reduce environmental and public health risks associated with the waste.

"We're trying to take on some of these issues to solve them, which has to be done," said Jessie Roberson, the DOE's assistant secretary for environmental management.

## Constant conflict

In New Mexico, the environmental battles involve three Energy Department nuclear sites — Los Alamos and Sandia national labs, where cleanup programs are under way, and WIPP.

The New Mexico sites account for some \$300 million in annual spending. That is just a fraction of the \$6.9 billion spent last year nationwide on DOE efforts to clean up nuclear waste left from more than five decades of nuclear weapons manufacturing. The total cost of cleaning up the mess nationally has been estimated at as much as \$300 billion.

The critics say the DOE's hardball tactics break down a cooperative detente, in which New Mexico and other states in the past were given a say on how public health and safety were protected.

Cooperation with states is critical to getting cleanup done, said James D. Werner, a former Energy Department cleanup official who now works for Missouri's Department of Natural Resources.

Werner said previous conflicts with states made cleanup projects take longer, driving up their costs.

"Part of the dynamic that seems to be missing is 'Let's sit down and have a discussion,'" said Kathleen Trever, who manages the state of Idaho's oversight of a major DOE cleanup project there.

The biggest examples of current DOE-state conflicts are:

- Idaho went to court last year against the DOE, accusing the agency of renegeing on an agreement to remove buried nuclear waste at the Idaho National Engineering and Environmental Laboratory.

- State officials in Ohio blasted the DOE this month for a new cleanup plan at the old Fernald uranium plant. They said the plan was prepared by the DOE without state or public input, and it backs away from cleanup commitments made in the 1990s. The U.S. Environmental Protection Agency agreed, siding with the state against its sister federal agency.

- The state of Washington earlier this year sided with environmentalists and Indian tribes in litigation over a DOE plan to reclassify high-level nuclear waste so it could be left buried at the DOE's Hanford nuclear reserva-



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**Barrels of radioactive waste stacked at Los Alamos National Laboratory await shipment to the Waste Isolation Pilot Plant. Conflict over environmental cleanup at Los Alamos and other U.S. nuclear weapon sites has led to growing conflict between the Department of Energy and state governments.**

has cut off funding that the state was using to monitor the Savannah River for radioactive contamination from a DOE nuclear site upstream, in South Carolina.

State-federal conflict over the Energy Department's environmental performance at its nuclear weapons labs and factories is nothing new, and some of the current conflicts have long histories.

But critics say the problems have gotten worse as the Bush administration has tried to speed up DOE environmental cleanup and reduce its costs.

Roberson, in a telephone interview, said the issues currently causing state-federal conflict are all old, predating the Bush administration.

"It's the same issues," she said. "We're just trying to solve them."

## Suing for some say

In 1981, then-New Mexico Attorney

posed nuclear waste dump that became WIPP.

"I had to sue them when I was attorney general because they seemed to be proceeding with the construction of the WIPP site without the involvement of the state," Bingaman, now a Democratic senator from New Mexico, said in a recent interview.

The lawsuit, and subsequent federal legislation Bingaman helped write in the early 1990s, gave the state substantial regulatory authority over WIPP.

It also limited the types of waste that could be sent there, explicitly prohibiting disposal of "high-level waste," which is defined under law as waste left over from chemical processing of used nuclear fuel.

The WIPP story is one of many cases in which the DOE and states butted heads in the 1980s and '90s before coming to agreements that gave states some say in cleanup decisions.

gram shortly after Bush took office.

Roberson became the Bush administration's assistant secretary for environmental management fresh from success in managing cleanup at the troubled Rocky Flats plutonium factory near Denver.

The aggressive cleanup effort, on schedule to get Rocky Flats cleaned up by 2006, made the Colorado site a shining example of the Energy Department's cleanup program.

## Reviewing the risk

Elsewhere, however, things were not going as well.

Environmental neglect during decades of nuclear weapons design and manufacturing had left a complex and expensive mess. An official 1998 estimate put the total cost of cleanup at \$114 billion. But an analysis by Roberson's staff soon after she arrived concluded that the real cost could be as much as \$300 billion.

The Hanford Reservation, the DOE's most contaminated site, would not have been cleaned up until 2070 under the schedule Roberson inherited when she took the job.

"We have spent tens of billions of dollars but have failed to demonstrate commensurate progress towards cleanup," Roberson told Bingaman and others on the Senate Energy Committee in July 2002. "We are determined to make changes, and we are moving forward aggressively to do so."

Roberson launched a "top-to-bottom review" of the cleanup program, which resulted in a call for "an accelerated, risk-based cleanup strategy."

The review concluded that the DOE needed to revisit regulatory agreements with the states to make sure they were focused on the bottom line — reducing risk from the department's nuclear waste at the least possible cost.

Critics saw the accelerated plan differently.

"The intent of their recommendation ... appears to emphasize the potential for reducing financial costs more than increasing public health protections," Werner wrote in the Environmental Law Reporter. Werner served in the DOE during the Clinton administration.

## Unfortunate acronym

In New Mexico, the changes showed up in the form of new "performance management plans" for cleanup at the labs. They laid out the DOE's intention to speed up the work.

The same thing happened all over the country, with a DOE plan that linked \$800 million in cleanup spending to states' willingness to agree to the plans.

Critics took to calling the plans by their acronym, PMP, pronounced "pimp."

"We called this 'the slush fund' and 'the pimps,'" said Susan Gordon, head of the Alliance for Nuclear Accountability, a national coalition of activist groups.

Bingaman at the July 2002 congress-

"I, for one, have been disappointed by the \$800 million accrual fund proposed by the DOE. It could be viewed as an attempt to encourage state regulatory cleanup standards."

From the perspective of the PMPs, the DOE's plan was needed.

According to New Mexico, the PMP would leave significant work undone, including 111 barrels of waste that the DOE wanted to send to a number of polluted watersheds.

The state shot back with "action orders," which would force the DOE to set legally enforceable cleanup standards.

## No deal yet

DOE and the labs have a series of lawsuits, leaving work in limbo. DOE has promised cleanup money from the federal budget, but it would not be available until the state and the federal government reach a cleanup plan.

So far, no deal has been reached, and the money continues to pile up.

At WIPP, DOE tried to win congressional changes in federal law to restrict some of the cleanup work the state won in the 1990s.

In one case, the DOE succeeded in getting the state to restrict the state's ability to send drums of waste to the state's hazardous waste incinerator, but the state sent to WIPP.

State officials of Pete Domenici, R-N.M., DOE. Domenici initially requested language in the water appropriation bill that would put tests in question, but the legislation was passed without public health and safety provisions.

In the second case, the state was unable to get Congress to fund waste that is now categorized as "low-level" to be sent to the state, but the state refused to help DOE with the proposal would protect the health of New Mexicans.

Bingaman said that the various incidents

"It seems, more and more, that the DOE is trying to impose its will on the states," he said.

That ignores a fundamental part of getting the environmental work done, said Trever.

States must have a say in the process. Citizens are being consulted, but there is a fundamental question in how the cleanup is done, said Werner.