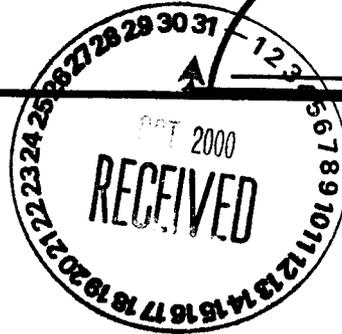
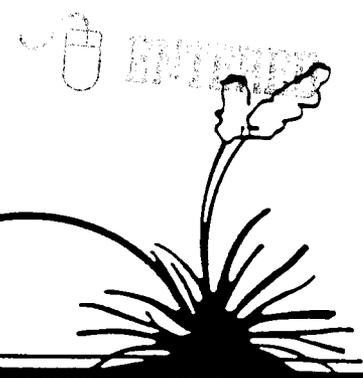


CARD

Citizens For Alternatives To Radioactive Dumping

144 Harvard SE, Albuquerque, New Mexico 87106
(505) 266-2663

300pe



Dear Friend,

Enclosed is a copy of the second amended complaint in CARD's WIPP lawsuit. We are asking that you help us out if you can by providing feedback on how you would formulate arguments with regard to the NEPA claims herein. We have also filed proposed third and fourth amended complaints. However, the judge has not ruled as to whether we can proceed with those amended complaints and the deadline for filing our motion on the NEPA issues is currently November 16, 2000. We are hoping to have a draft of our arguments regarding the second amended complaint ready by November 10, 2000 and we will send a copy of the draft to you for further feedback, if you can help us.

We would also like to ask you to provide suggestions to our proposed settlement for this case that would be helpful in obtaining the results from the DOE that are necessary to shut down WIPP if possible and, if not, operate the facility in as safe and ecological manner as possible.

We know your time is precious and valuable and we don't mean to unduly impose upon you. However, the results of these upcoming legal junctures might affect our years of work and our ability to shut WIPP down or maintain some meaningful oversight of the project in the future.

Sincerely,

John McCall and Janet Greenwald

001031



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

CITIZENS FOR ALTERNATIVES
TO RADIOACTIVE DUMPING,
BETTY RICHARDS, and BOB
GASTON,

99 AUG -6 PM 3:08

Richardson
CLERK - DISTRICT COURT

Plaintiffs,

No. CIV 99-321 MV/WWD

vs.

WILLIAM B. RICHARDSON, United
States Secretary of Energy, UNITED
STATES DEPARTMENT OF ENERGY,
CAST TRANSPORTATION, INC., and
WESTINGHOUSE ELECTRIC
COMPANY,

Defendants.

Second
AMENDED COMPLAINT

Plaintiffs Citizens for Alternatives to Radioactive Dumping "(CARD)", Betty Richards and Bob Gaston, through their undersigned attorneys, allege the following as their Amended Complaint. *Second* Plaintiffs request a jury trial on all findings of fact.

I. PRELIMINARY STATEMENT

1. This is a Complaint for declaratory and injunctive relief and mandamus alleging violations of the National Environmental Policy Act ("NEPA") and the state action of public nuisance. Plaintiffs request that the Court order Defendants to cease shipping waste to the Waste Isolation Pilot Project ("WIPP") and to cease emplacing waste at WIPP. Plaintiffs further request that the Court declare unlawful and set aside or enjoin the Record of Decision issued on January 23, 1998 by Defendant Department of Energy ("DOE").

2. On January 23, 1998, DOE announced that it would use WIPP for disposal of transuranic ("TRU") waste accumulated in storage since 1970 and to be generated over the next 35 years. The WIPP is a mined repository located 2,100 feet below the surface in an ancient salt deposit near Carlsbad, New Mexico.

3. On March 26, 1998, WIPP opened and began receiving waste.

4. Plaintiffs seek judicial review of DOE's Record of Decision pursuant to the Administrative Procedures Act, 5 U.S.C. §702.

5. This claim arises from DOE's violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., and regulations implementing NEPA promulgated by the President's Council on Environmental Quality, 40 C.F.R. § 1500 et seq. in approving WIPP for TRU waste disposal.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C., Section 1346 (civil action against the United States). The Court has supplemental jurisdiction over the state action of public nuisance pursuant to 28 U.S.C., Section 1367.

7. The relief requested is authorized under 28 U.S.C. § 2201 (declaratory relief) and 28 U.S.C. § 1361 (mandamus) and under New Mexico state law.

8. Venue is proper in this Court under 28 U.S.C. § 1391.

III. PARTIES

9. Plaintiff CARD is a citizens group with about 1000 members and supporters throughout New Mexico, including in southern New Mexico where WIPP is located. CARD is

dedicated to educating the public on the environmental effects of radioactive projects, and particularly WIPP. For the past twenty years, CARD has researched and disseminated information on WIPP. Also, it has commented on and mobilized citizens to comment on the various proposals and statements published by DOE and its regulatory agency, the Environmental Protection Agency. Particularly relevant to this case, CARD and its supporters have submitted hundreds of comments and scholarly papers at DOE hearings for response to the WIPP environmental impact statements.

10. Plaintiff Betty Richards is a resident of Carlsbad, New Mexico.

11. Plaintiff Bob Gaston is a resident of Carlsbad, New Mexico.

12. Defendant William B. Richardson is the Secretary of Energy and is charged by law and regulations with the responsibility for complying with the terms of NEPA. Plaintiff is suing him in his official capacity.

13. Defendant DOE is a department and agency of the United States. The DOE is charged with the responsibility to construct and plan for the operation of the WIPP.

14. Defendant Cast Transport Inc. is a corporation doing business in New Mexico. Defendant Cast is a truck transport company that is presently moving the TRU waste to the WIPP site.

15. Defendant Westinghouse Electric Company is a corporation doing business in New Mexico. Defendant Westinghouse constructed and operates the WIPP site.

IV. STANDING

16. Plaintiffs have standing to pursue this action.

17. Plaintiff CARD and the individual Plaintiffs have been adversely affected by the actions of DOE complained of in this Complaint. Defendants' failure to comply with NEPA has denied Plaintiffs the opportunity for meaningful public comment and participation in the decision of DOE to approve the transportation to and introduction of radioactive and toxic wastes into WIPP. Further, the educational and environmental advocacy purposes of CARD have been thwarted by the lack of access to detailed environmental information and analyses which an adequate environmental impact statement would have contained.

18. The individual Plaintiffs and members and supporters of CARD own, own businesses on, live near, work on, farm, travel along, and otherwise use and enjoy for recreational, aesthetic and other purposes the lands which would be placed at risk by the disposal of radioactive wastes at WIPP, and by accidents occurring during the transport of these wastes to WIPP. These persons face a significant risk of exposure to radiation as a result of releases into the air, water, and soil both at the WIPP site in New Mexico and along transportation routes. These persons face a significant risk of negative impacts on human health and well-being, property values, business opportunities, agricultural sustainability, and recreational interests.

V. FIRST CLAIM: VIOLATION OF NEPA

19. This claim is against Defendants Richardson and DOE.

20. The National Environmental Policy Act requires all agencies of the Federal Government to prepare a "detailed statement" on "every recommendation or report on proposals for ... major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). The detailed statement, known as an Environmental Impact Statement ("EIS") must disclose the "environmental impact of the proposed action" and any "irreversible or

dedicated to educating the public on the environmental effects of radioactive projects, and particularly WIPP. For the past twenty years, CARD has researched and disseminated information on WIPP. Also, it has commented on and mobilized citizens to comment on the various proposals and statements published by DOE and its regulatory agency, the Environmental Protection Agency. Particularly relevant to this case, CARD and its supporters have submitted hundreds of comments and scholarly papers at DOE hearings for response to the WIPP environmental impact statements.

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irretrievable commitments of resources which would be involved in the proposed action should it be implemented." Id.

21. Regulations of the Council on Environmental Quality ("CEQ") promulgated pursuant to NEPA require that the EIS "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a).

22. As part of the NEPA review process, the DOE prepared an EIS and two Supplemental Environmental Impact Statements (SEIS-I and SEIS-II). The SEIS-II relies, in analyzing the environmental impacts of WIPP, on DOE's original Compliance Certification Application ("CCA") prepared pursuant to 40 C.F.R. Part 191 submitted in October, 1996.

23. The three EIS's, separately and together, and particularly the SEIS-II, are inadequate as a basis for agency decision.

24. The DOE has not set forth in its Environmental Impact Statement or either of its two Supplementary EIS's sufficient information for Plaintiff CARD or the public to make an informed evaluation of WIPP. Nor do the EIS's set forth sufficient information for DOE to fully consider the environmental factors involved and make a reasonable decision.

25. The Environmental Impact Statements submitted by DOE do not comply with the Regulations of the Council on Environment Quality. Among other things, the statements fail to: (a) rigorously explore and objectively evaluate all reasonable alternatives; (b) succinctly describe the environment of the WIPP site due to failure to conduct the necessary testing of the site; (c) fully discuss the environmental impacts of the alternatives including the proposed action; and (d) fully discuss the means to mitigate adverse environmental impacts.

26. In addition, the environmental impact statements submitted by DOE fail to adequately assess and consider comments submitted by Plaintiff CARD and other members of the public.

27. Specifically, the SEIS-II, including the CCA, is inadequate in that it fails to consider the feasibility of alternative disposal sites, particularly sites which do not present the risks of human intrusion that are presented by the WIPP site, which is surrounded by extractable natural resources. For example, the SEIS-II does not consider building at each of the TRU waste generating sites, safe, monitored, long-term storage facilities from which waste can be retrieved, while actively funding and pursuing treatment and disposal options other than WIPP.

28. Also, the SEIS-II, including the CCA, is inadequate in its analysis of the geology and possible release scenarios, including the following:

a. The SEIS-II does not adequately analyze the geology of the site, partly due to the failure to test for the existence of karst in the Rustler Formation. Karst is a geological system of rainwater infiltration and dissolution of underground rocks. Flowpaths resulting from karst processes which discharge to the accessible environment have not been analyzed in SEIS-II.

b. The SEIS-II significantly underestimates roof-fall due to subsidence and successive slab detachment of the Salado Formation layers above the proposed repository, and consequent seepage of brine into the repository.

c. The SEIS-II incorrectly discounts the effects of fracturing of the Salado Formation due to build-up of gas pressure within the repository and the potential for release of radioactive brine following fracturing.

d. The SEIS-II completely fails to consider certain intrusion scenarios and inadequately considers others which could result in increased pressure and breaching of the

repository. Among the intrusion scenarios inadequately considered are water flooding, brine and other fluid injection, air drilling and abundant drill holes in the region adjacent to the WIPP site and beneath it.

e. The SEIS-II also fails to consider that any injection drill hole at or around the repository can leak at any intermediate level due to failure of the casing for other reasons and cause fracturing that could extend to the repository. Completely surrounding the repository are abandoned and presently operating oil and gas wells. Whether these wells and future wells are properly sealed or not, each well provides a potential pathway for contaminants to escape, given the propensity of rocks around the well to hydrofracture.

f. The SEIS-II fails to consider adequately the effects of potash mining above the repository. This would induce more subsidence above the McNutt horizon and cause fractures which would breach the Rustler.

g. The SEIS-II fails to adequately study the Castile Brine hydrology below the WIPP site. This is a serious omission because this formation contains inter-connected, extremely high-pressure brines that could, through fracturing or through an intrusion scenario, invade the repository, become radioactive, and discharge to the surface or outside the WIPP site.

h. The SEIS-II improperly uses techniques of data averaging and extrapolation such as the Monte Carlo Method as a substitute for measured data and in order to eliminate data that would show impermissible releases of radioactivity and environmental impact.

29. In addition to the problems with the SEIS-II listed above, the SEIS-II is inadequate in the following respects:

a. The SEIS-II understates the risk of transportation of transuranic waste.

Notably, no consideration is given to the consequences of intentional interference with the shipping of waste.

b. The SEIS-II fails to adequately consider that minority and low-income populations will bear a disproportionate share of high and adverse environmental impacts from activities at WIPP.

c. The SEIS-II fails to study and calculate the demographic makeup of populations living, traveling and working along the transportation route. Contrary to summary statements in the SEIS-II, minority and low-income populations will potentially bear a disproportionate share of high and adverse environmental impacts from waste transportation activities.

d. The SEIS-II fails to accurately characterize the waste that is to be emplaced at WIPP, thus rendering calculations of environmental impacts and human exposure impossible.

e. The SEIS-II fails to analyze the environmental impacts of non-defense waste either at sites where the waste is presently stored nor at WIPP. The SEIS-II fails to analyze whether the volume of non-defense waste to be stored at WIPP will impact the repository's ability to hold defense waste. The SEIS-II fails to accurately characterize the non-defense waste to be stored at WIPP, thus rendering calculations of environmental impacts and human exposure impossible. The SEIS-II fails to analyze the environmental impacts of transporting non-defense waste. The SEIS-II fails to analyze the alternatives to storing non-defense waste at the WIPP site.

f. The SEIS-II fails to consider a practical, economical manner of retrieving the waste should that become necessary after emplacement.

g. The SEIS-II fails to consider safety deficiencies at the WIPP facility.

30. The DOE Record of Decision was made in reliance on false information and developed without an effort in objective good faith to obtain accurate information.

31. The Defendants' decision to permit the disposal of radioactive waste at WIPP violates NEPA and the CEQ regulations and is therefore arbitrary, capricious, and otherwise not in accordance with law contrary to APA, 5 U.S.C. § 706(2)(A).

32. The Defendants' decision to permit the disposal of radioactive waste at WIPP is in excess of statutory jurisdiction, authority, and limitations; and without observance of procedure required by law.

VI. SECOND CLAIM: PUBLIC NUISANCE

33. This claim is brought against all Defendants.

34. Defendants have knowingly participated in the creation and development of the WIPP site and in the process of transporting materials to the WIPP site.

35. The WIPP site and the related transportation system are dangerous to the public health of Plaintiffs and the citizens of New Mexico because of the potential injurious release of hazardous materials in New Mexico.

36. The WIPP site and related transportation system are dangerous to the public safety of the Plaintiffs and citizens of New Mexico because of the dangers of transporting materials, particularly along the Santa Fe "bypass" and through the community of El Dorado, that have the potential for injurious release of hazardous materials in New Mexico.

37. The opening of the WIPP site and the transport of shipments thereto is a violation of and interference with the exercise and enjoyment of the public right of New Mexicans to be

protected from transport and storage of hazardous and radioactive wastes.

38. Defendants are not in compliance with all lawful authority for undertaking the aforementioned acts.

39. Defendants' proposed actions are a further public nuisance because they are in contravention of Article II, Sections 3, 4 and 18 of the New Mexico Constitution.

40. The aforementioned dangers exist, particularly, in the County of Eddy, the WIPP site location.

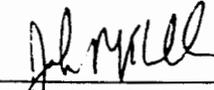
VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff CARD requests that the Court grant the following relief:

1. Declare that DOE violated NEPA, the CEQ regulations and the APA in its decision to permit the disposal of radioactive waste at WIPP.
2. Set aside the SEIS-II because it violates NEPA and the CEQ regulations.
3. Grant a permanent injunction enjoining Defendants from placing any waste at WIPP because WIPP and the related waste transport are public nuisances.
4. Grant an injunction enjoining Defendants from placing any waste at WIPP until it fully complies with NEPA and the CEQ regulations.
5. Award Plaintiff the costs of litigation, including reasonable attorney's fees, as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412.
6. Grant other such relief as deemed just and proper by the Court.

Respectfully submitted.

NATIONAL LAWYERS GUILD,
NEW MEXICO CHAPTER

By: 

John McCall
Attorney for Plaintiff
310 Harvard SE #2
Albuquerque, NM 87106
(505) 268-1998

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**CITIZENS FOR ALTERNATIVES
TO RADIOACTIVE DUMPING et al.,**

99 AUG -6 PM 3:09

Plaintiffs,

John McCall
CIV No. 99-321 MV/WWD
CLEARING HOUSE

vs.

BILL RICHARDSON, et al.,

Defendants.

CERTIFICATE OF SERVICE

I CERTIFY that on August 6, 1999, I sent copies of Plaintiffs' Amended Complaint to: John W. Zavitz, U.S. Attorney's Office, P.O. Box 607, Albuquerque, NM 87103-0607; Earl Potter, Potter, Mills and Bateman, P.O. Box 1208, Santa Fe, NM 87504-1208; and Sheila E. Brown, Los Alamos National Laboratory, 2995 Calle Cerrada, Santa Fe, NM 87505-5393 by U.S. Mail.

John McCall

JOHN MCCALL
Attorney for Plaintiffs
310 Harvard SE #2
Albuquerque, NM 87106
(505) 256-1998

Honorable William W. Deaton
United States Magistrate
US District of New Mexico
Suite 670
333 Lomas NW
Albuquerque, New Mexico 88001

RE: CARD vs. Bill Richardson, et al.; Civ. No. 99-321 JC/WWD
Settlement Conference Letter

Dear Judge Deaton:

This letter is in regard to the Settlement Conference set for November 14, 2000. I am writing in regard to settlement negotiations and evidence to be presented at trial.

First off, my clients are willing to reach a settlement of the issues in this case provided certain concerns they have about the WIPP project are addressed.

I. Background and introduction of case

Secondly, I would like to review the history and posture of our case. The Plaintiffs were originally co-plaintiffs with the State and Southwest Research and Information Center in a lawsuit contesting the EPA certification of WIPP that was filed under the APA in the D.C. Circuit Court of Appeals. That case was begun by New Mexico Attorney General Tom Udall and was inherited by Patricia Madrid. She abandoned the litigation in the D.C. Circuit Court of Appeals just prior to oral arguments and subsequent to briefing. CARD filed this case prior to the first shipment of waste from Los Alamos to WIPP and a hearing on the request for injunction was held in front of Judge Vasquez who requested testimony on the alleged improper characterization of waste to be shipped to WIPP. Plaintiffs were unable to provide expert testimony at the time because an acceptable expert witness could not be made available on such short notice and it is extremely difficult to find scientists who will testify against the Department of Energy (DOE). The public nuisance complaint in the case was amended to include the NEPA claim and the Plaintiffs have requested the opportunity to present evidence on the first two environmental impact statements prepared for WIPP to show that they were based on inaccurate and/or false information.

II. Evidence and settlement proposals related to each major issue raised in CARD's complaints.

A. Karstic geology at the WIPP site

Plaintiff CARD and independent scientists who have worked as volunteers or contractors to CARD have spent over 20 years researching the geology of the WIPP site and CARD has made the geological inadequacy of the site its primary focus. According to a geohydrologist who worked for Sandia National Laboratories, Dr. Lawrence Barrows, then a contractor with the DOE overseeing geological and hydrological investigation, the DOE contracted with Los Alamos National Laboratories to determine if WIPP could meet EPA standards if karst existed at the WIPP site. The Los Alamos report concluded that the site would not meet standards if karst exists at the site. Many geologists have studied the WIPP site, however we know of no geologist who has spent the time and energy examining the karstic nature of the site more than Doctor Richard Phillips. Dr. Phillips has poured over the entire record of the various hearings held regarding WIPP and has repeatedly testified about the problems, particularly related to karstic geological features, at WIPP. He has also tracked the histories and careers of various scientists, well drillers, and other personnel involved with the WIPP project, including their stances on various scientific issues and their work on specific aspects of the project research. Dr. Phillips has identified scientists who have provided foundational information for the WIPP site selection and has correlated this information with their relationships to the Department of Energy and Sandia Labs to identify a consistent pattern (which is confirmed by Dr. Robert Anderson, retired professor at UNM's Geology Department and former lead scientist for the DOE's site selection process) eliminating scientists who have provided information that indicates there are unfavorable geological conditions at the currently selected WIPP site.

Specifically, as to CARD's NEPA complaint CARD will show in its brief and with evidence that the DOE has made every attempt to minimize or deny the presence of karst at the WIPP site and the arguments presented in this regard at the administrative hearings on this issue. The DOE has failed to adequately respond to CARD's comments and the comments of a large number of independent scientists in this regard. Specifically, CARD has pinpointed tell-tale signs of karst based on the research done by the DOE and asked for an explanation of these signs of karst. The DOE has not addressed these questions. CARD and the other plaintiffs feel that the WIPP site must be shut down because the waste will be irretrievably trapped in the caves at WIPP (due to cave-ins) and the karstic features of the site will allow the radioactive and hazardous waste to migrate rapidly into the Pecos River Basin. This is the great flaw of the WIPP site location, as the studies CARD has evaluated show such a scenario could occur in relatively few years. These studies factor in the true rate of ground water flow at WIPP.

CARD's concerns have been recently echoed in a report completed for the DOE by Dr. Carol Hill. _____ Her report, which is not in the administrative record, re-iterates concerns about karst that have been presented previously to DOE by Doctors Richard Phillips, David Snow, Robert Anderson, and Lawrence Barrows. It is unfortunate that the DOE has taken so long to address this issue. According to our information, this report was motivated in part by a flow of water of several gallons/minute down the WIPP exhaust shaft (this water flow can be verified by the state's Environmental Evaluation Group). This water appears to come from the Dewey Lake Redbeds formation, a formation which, DOE says in its reports, does not contain an aquifer. This underground stream has been causing radiation monitors to fail. Dr. Hill's report leaves a large amount of room for questions regarding karst at the WIPP site and CARD believes a settlement of this lawsuit must address those issues.

Settlement Proposal

CARD and the other Plaintiffs propose to resolve this aspect of the case if the DOE will perform an inexpensive test for karst at the WIPP site. This test, which has recently become available for less than \$30,000.00, should be dispositive of the karst issue. CARD asks furthermore that the test be performed under the supervision of independent scientists and that CARD have decision-making power over the selection of this scientific oversight committee and that it include Dr. David Snow and Dr. Roger Anderson who have both worked for the DOE and independently on WIPP. This committee will make recommendations about the budget for administration of the test and the test or tests themselves, and this budget will be honored by the DOE. CARD further proposes that the Environmental Impact Statement should be re-written to include information obtained from the new tests and that the WIPP site should be shut down if it is located, as we assert, in an area of karstic geological features. CARD also requests that, if the tests show signs of karst as predicted, the DOE institutionalize the independent panel of scientist to continue further investigation of karst and fund such a panel with two million dollars for administrative and scientific support.

B. Demographics and the impact of WIPP on racial and cultural minorities.

CARD will show that WIPP and the WIPP route are located primarily within low-income communities and communities of color and that these groups, along with citizens in Mexico, face the greatest dangers from hazardous and radioactive releases from the WIPP site or due to accident. The DOE failed to do any serious studies of the impact of WIPP on minorities and low-income communities and CARD's initial evaluations indicate that these groups are certainly bearing much more than 50% of the transportation dangers to WIPP. Concerns about environmental racism or injustice have not

been addressed by the DOE in any significant way. Neither have concerns about compliance with NAFTA and other treaties with Mexico.

Settlement Proposal

CARD proposes to settle this claim by agreeing to the creation of an independent panel of social-scientists appropriately funded who will conduct a demographic study of the WIPP site and the WIPP route to determine the dangers to racial and cultural minorities and low-income communities and also the communities who will be affected if the project leaks its radioactive burden into the Pecos River.

C. Evaluation of alternatives to WIPP

CARD will present evidence and argument that the DOE has not properly evaluated the alternatives to WIPP. The DOE has not calculated the long-term comparative costs and health effects of above ground, monitored, retrievable storage close to each generator site in bunker-like buildings as opposed to the costs of WIPP. CARD also requests the same evaluation be performed as to long-term environmental impacts. It is becoming increasingly obvious that the radioactive waste can be broken down or neutralized by new scientific processes that have been inadequately funded, in part due to WIPP and other large corporate projects undertaken by the DOE.

Settlement Proposal

CARD proposes to settle this issue by asking that an independent commission, funded appropriately, be created to study the impacts of alternatives as compared with the current project, including long-term, above ground, monitored retrievable storage as mentioned above. Such a study should consider the impact of successfully funding the projects currently aimed at eliminating or remediating the long-term dangers of radioactive and hazardous wastes. Such a study should also include an evaluation of ways to mitigate the dangers of WIPP that have not been fully studied.

D. Problems with waste characterization

One of the greatest problems with WIPP has been the failure to properly characterize the waste to be shipped from the nation's various DOE facilities. One instance is the original shipments to WIPP from Idaho National Laboratories which were characterized as mixed waste and then re-characterized as radioactive waste only. CARD has contacted a technician at Los Alamos Laboratories who has information and photographs demonstrating that the waste at Los Alamos was often not properly characterized because the machines used to examine the waste were not working properly when the drums were passed through them.

Settlement Proposal

CARD proposes that the waste that has not been sent to WIPP be re-evaluated and characterized and that this process be overseen by an independent commission that is adequately funded to ensure that no mis-characterized waste will be placed at WIPP or any other site for storage or disposal. This is essential to ensure that the dangerous combinations of waste are not inadvertently placed together or at the site. CARD is opposed to characterization at the WIPP site due to the danger of shipping uncharacterized waste which has exploded in transit in the past. DOE has recently requested that WIPP's state permit be modified to allow this.

E. Problems with future intrusion around the WIPP site.

The DOE has not addressed serious concerns raised about current and future mining and drilling activity at the WIPP site. These activities cannot be controlled over the course of 10,000 years, yet the effects of radioactive releases remain a danger for many thousands of years.

Settlement Proposal

CARD asks that the DOE re-evaluate the potential dangers of intrusions at the WIPP site. This evaluation should include looking at the various studies cited by the State of New Mexico and Southwest Research and Information Center in previous discussions of this issue. Settlement of this issue would involve the re-evaluation of updated information on drilling and mining in the area of the WIPP facility, including current trends in drilling and mining technology and the siting of oil gas wells and potash mining.

F. Safety concerns with WIPP and working conditions at the site.

Recent concerns brought to CARD's attention indicate that the conditions at the WIPP site are unsafe, particularly for workers involved in classification or examination of waste sent to the facility. Besides the fact that the waste sent to the WIPP site has not been properly characterized prior to shipment or sufficiently examined upon receipt when it reaches the site, the process for examining the waste on-site is apparently not safe for the workers and workers have been or are in danger of exposure to radiation and other hazardous substances.

Settlement Proposal

CARD proposes to settle this issue by requiring the implementation of another independent commission, appropriately funded, to evaluate the

conditions of workers at WIPP. This commission should provide access and protections for "whistle blowers" concerns to be independently investigated by an unrelated neutral party.

G. Retriveability and cleanup concerns

The evidence of DOE's inability to cleanup and maintain many of the nation's nuclear and hazardous waste sites clearly supports concerns about the future of the WIPP site. The DOE has a long, colored and problematic history with the Rocky Flats site a few hundred miles north of New Mexico and right outside of Denver. Recent reports by the GAO show that 109 DOE sites will never be able to be cleaned up to the point of their return to public use.

Settlement Proposal

CARD proposes that the wisdom of previous discussions about these issues be implemented.

H. Guarantees that no high level waste be sent to WIPP.

I. Overall concerns about the Department of Energy's record of safety at its sites.

Settlement Proposal

CARD proposes that a \$10,000,000 foundation fund be established for grassroots groups working on safety and environmental concerns regarding Department of Energy (DOE) facilities. Funds would be managed and granted to grassroots groups by an agreed upon foundation. The funds would be used for:

- (1) Educating and training citizens who live in communities where DOE sites are located, proposed, or would possibly affect, about the history of DOE projects and status of current and proposed projects, including problems involved.
- (2) Independent scientific research regarding safety concerns at DOE sites and the dispersion of this research to the public domain.
- (3) Creation of a *Citizen's Guide to DOE Sites in the US* in the form of a web-site to which groups can contribute work and be linked to, including a library of information on work done by grassroots groups located in areas with DOE projects. This guide would also be available for distribution in hard copy.

III. CONCLUSIONS

Sincerely,

John McCall
Attorney for Plaintiffs