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December 12, 2000

Greg Lewis  
New Mexico Environment Department  
PO Box 26110  
Santa Fe, NM 87502-6110

VIA FAX and U.S. MAIL

RE: WIPP Temporary Authorization request submitted on December 7, 2000

Dear Mr. Lewis:

Southwest Research and Information Center (SRIC) strongly opposes the requested temporary authorization and urges you to deny the request. The request does not meet the regulatory requirements and does not provide the basis for NMED to find, as is required by regulations, that the temporary authorization is justified. At best, DOE has not submitted sufficient information to justify the temporary authorization, and at worst, it has knowingly submitted false information. In either case, it is inappropriate for NMED to approve the temporary authorization.

Regulatory requirements

The regulations regarding temporary authorizations are found at 20.4.1900 NMAC (incorporating 40 CFR 270.42(e)). A request for temporary authorization must include: (1) a description of the activities to be conducted under the temporary authorization, (2) an explanation of why the temporary authorization is necessary, and (3) sufficient information to ensure compliance with 20.4.1.500 NMAC (incorporating 40 CFR 264). While DOE's request acknowledges those requirements, it does not comply with them.

DOE's request

DOE's explanation of why the temporary authorization is necessary is "[t]o prevent disruption of ongoing waste management activities" (at 6). In its background discussion, DOE elaborates by stating that "[s]ince INEEL is operating under an agreement with the State of Idaho goals for removal of TRU waste a remedy must be found to allow shipments to continue." (at 2) Leaving aside the confusing nature of that sentence, it is inaccurate. DOE has provided no information from the State of Idaho that any perceived or actual "delays" have caused or are likely to cause missing the milestones of the Idaho agreement in the next 180 days (the time period for which a temporary authorization can be issued, pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(e)(1))).

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In fact, the next potentially WIPP-related milestone in the DOE-Idaho agreement is:

By December 31, 2002, no fewer than 3,100 cubic meters (15,000 drum-equivalents) of transuranic waste shall have been shipped out of the State of Idaho. Agreement, B.1.b. (Attachment 1)

That amount of waste is approximately 360 full truckloads (of 42 drums), a number of shipments that DOE has informed Congress is less than one-year's projected shipments to WIPP (Attachment 2). Clearly, when it is more than two years until the milestone deadline and there is less than a year's worth of shipments at issue, there has been no showing that the current "delays" create a violation in meeting the Idaho Agreement milestones.


Requirements for NMED's approval of the temporary authorization

To approve the temporary authorization, NMED "must find" that it is necessary to "prevent disruption of ongoing waste management activities," since that is the sole applicable justification that DOE cites in its request. 20.4.1.900 NMAC (incorporating 40 CFR 270.42(e)(3)). However, DOE has not established that the waste management system is being disrupted because the Idaho agreement milestones will not be met. On the contrary, the ongoing waste management activities at WIPP of receiving shipments and managing wastes from various sites would not be disrupted if the temporary authorization is not approved, nor has DOE even so asserted.

SRIC has concerns about other aspects of the request, which we will submit as part of our comments on the class 2 modification. SRIC believes that it and other members of the public should have an opportunity to comment on the specific changes proposed in the modification request, prior to any approval of NMED. Approving the temporary authorization will allow DOE to implement what SRIC believes are significant changes to the waste characterization process regarding headspace gas prior to having public comment on the modification request. SRIC believes that such changes should not be approved until NMED has the benefit of full public comment on the proposed modification.

Thank you very much for your consideration.

Sincerely,



Don Hancock

cc: Steve Zappe

**SETTLEMENT AGREEMENT**

The State of Idaho, through the Attorney General, and Governor Philip E. Batt in his official capacity; the Department of Energy, through the General Counsel and Assistant Secretary for Environmental Management; and the Department of the Navy, through the General Counsel and Director, Naval Nuclear Propulsion Program, hereby agree on this 15th day of October, 1998, to the following terms and conditions to fully resolve all issues in the actions Public Service Co. of Colorado v. Batt, No. CV 91-0038-S-EJL (D. Id.) and United States v. Batt, No. CV-91-0054-S-EJL (D. Id.):

**A. DEFINITIONS**

For purposes of this Agreement, the following definitions shall apply:

1. The "State" shall mean the State of Idaho and shall include the Governor of the State of Idaho and the Idaho State Attorney General.
2. The "federal parties" means U.S. Department of Energy (DOE) and the U.S. Department of the Navy (the Navy), including any successor agencies.
3. "Treat" shall be defined, as applied to a waste or spent fuel, as any method, technique, or process designed to change the physical or chemical character of the waste or fuel to render it less hazardous; safer to transport, store, dispose of; or reduce in volume.
4. "Transuranic waste" shall be defined as set forth in the EIS, Volume 2, Appendix E.
5. "One shipment of spent fuel" shall be defined as the transporting of a single shipping container of spent fuel.
6. "High-level waste" shall be defined as set forth in the EIS, Volume 2, Appendix E.
7. "DOE spent fuel" shall be defined as any spent fuel which DOE has the responsibility for managing with the exception of naval spent fuel and commercial spent fuel which DOE has accepted or will take title to pursuant to the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq. or comparable statute.
8. "Naval spent fuel" shall be defined as any spent fuel

removed from naval reactors as a result of refueling overhauls (refueling) or defueling inactivations (defueling).

9. "Metric ton of spent fuel" shall be defined as a metric ton of heavy metal of spent fuel.

10. "Naval reactors" shall be defined as nuclear reactors used aboard naval warships (submarines, aircraft carriers, or cruisers), naval research or training vessels, or at land-based naval prototype facilities operated by the Naval Nuclear Propulsion Program for the purposes of research, development, or training.

11. "Calendar year" shall be defined as the year beginning on January 1, and ending on December 31.

12. "Mixed Waste" shall be defined as set forth in the EIS, Volume 2, Appendix B.

13. "EIS" shall be defined as the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Program Final Environmental Impact Statement issued April, 1993.

14. "ROD" shall be defined as the Record of Decision issued by DOE on June 2, 1993, concerning the EIS.

15. "INEL" shall be defined as the Idaho National Engineering Laboratory.

16. "Running Average" shall mean the total number of shipments of naval spent fuel to INEL, or transuranic waste from INEL, over any period of three years, divided by three.

17. The "Court" shall mean the United States District Court for the District of Idaho before which is pending Public Service Company of Colorado v. Baff, No. CV 91-0033-S-EJL and Unicad States v. Baff, No. CV 91-0054-S-EJL, and any appellate court to which an appeal may be taken, or with which an application for a writ of certiorari may be filed, under applicable law.

## B. TRANSURANIC WASTE SHIPMENTS LEAVING INEL

1. DOE shall ship all transuranic waste now located at INEL, currently estimated at 63,000 cubic meters in volume, to the Waste Isolation Pilot Plant (WIPP) or other such facility designated by DOE, by a target date of December 31, 2019, and in no event later than December 31, 2016. DOE shall meet the following interim deadlines:

a. The first shipments of transuranic waste from INEL to WIPP or other such facility designated by DOE shall begin by April 30, 1999.

b. By December 31, 2002, no fewer than 3,100 cubic meters (15,000 drum-equivalents) of transuranic waste shall have been shipped out of the State of Idaho.

c. After January 1, 2003, a running average of no fewer than 2,000 cubic meters per year shall be shipped out of the State of Idaho.

2. The sole remedy for failure by DOE to meet any of these deadlines or requirements shall be the suspension of DOE spent fuel shipments to INEL as set forth in Section K.1.

C. SPENT FUEL & HIGH-LEVEL WASTE SHIPMENTS LEAVING IDAHO

1. DOE shall remove all spent fuel, including naval spent fuel and Three Mile Island spent fuel from Idaho by January 1, 2033. Spent fuel being maintained for purposes of testing shall be excepted from removal, subject to the limitations of Section F.1 of this Agreement.

2. Until all of the aluminum-clad spent fuel then stored at INEL has been shipped to the Savannah River Site, the cumulative number of shipments of spent fuel from the Savannah River Site to INEL under Section D as of the end of any calendar year shall not exceed the cumulative number of shipments of aluminum-clad spent fuel from INEL to the Savannah River Site for the same period.

3. DOE shall treat all high-level waste currently at INEL so that it is ready to be moved out of Idaho for disposal by a target date of 2033.

D. SHIPMENTS OF SPENT FUEL TO INEL

The federal parties may transport shipments of spent fuel to INEL only in accordance with the following terms and conditions.

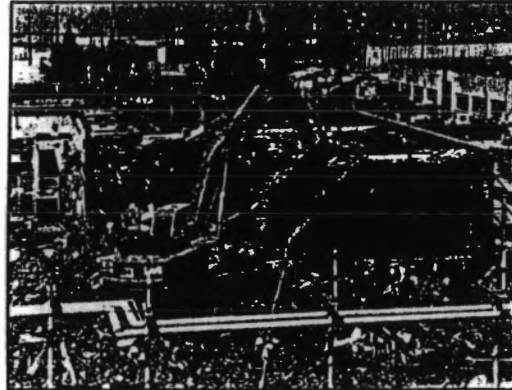
1. Shipments of naval spent fuel to INEL shall take place as follows:

a. The Navy may make only those shipments of naval spent fuel to INEL that are necessary to meet national security requirements to defuel or refuel nuclear powered submarines, surface warships, or naval prototype or training reactors, or to ensure examination of naval spent fuel from these sources. The

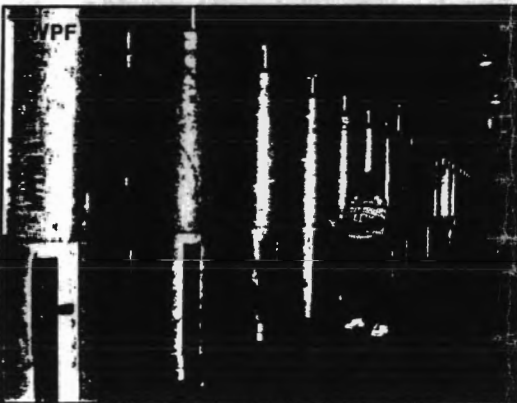
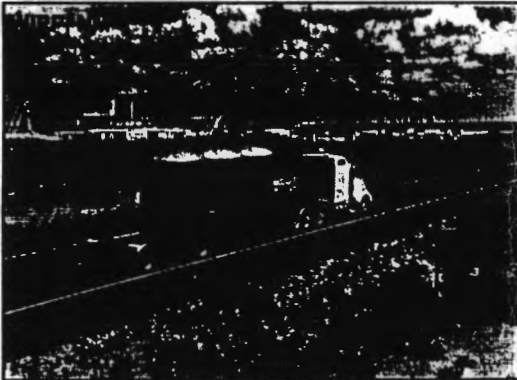
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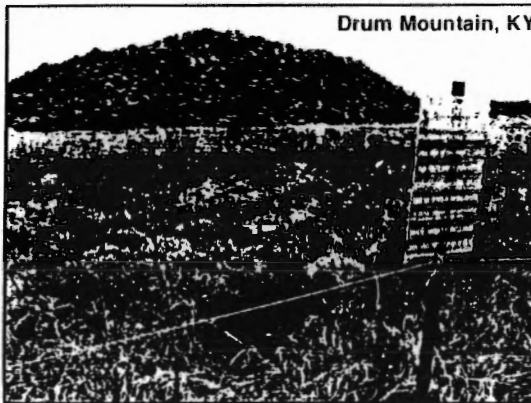
Wahluke Slope, WA



## The FY 2001 Environmental Management Budget Request *--Continuing Progress Towards Completion* February 7, 2000



Drum Mountain, KY



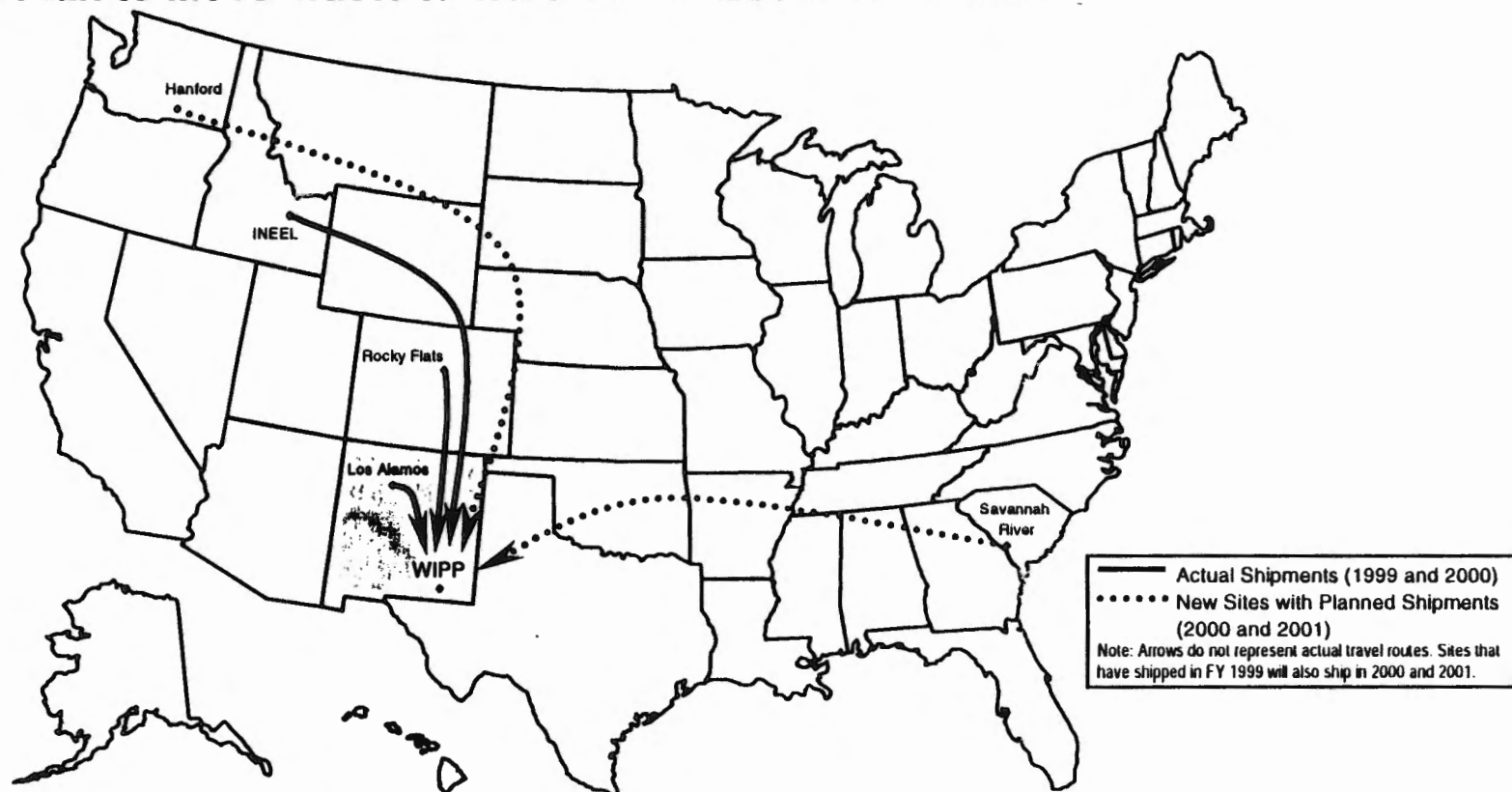
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1 of 2



# Moving Waste to the Waste Isolation Pilot Plant

**More Sites Plan to Move Waste to WIPP in FY 2000 and FY 2001...**



Site	FY 1999 Actual Shipments	FY 2000 Actual Shipments as of Jan. 2000	Projected FY 2000 Shipments	Projected FY 2001 Shipments
Los Alamos National Laboratory, NM	17	0	6	28
Idaho National Engineering and Env. Laboratory, ID	3	1	14	169
Hanford Site, WA	0	0	11	12
Rocky Flats, CO	12	11	86	270
Savannah River Site, SC	0	0	1	5
<b>Total Shipments</b>	<b>32</b>	<b>12</b>	<b>118</b>	<b>484</b>

2 of 2