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MESSAGE:

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MORE WASTE AT WIPP

By Don Hancock

Thousands of New Mexicans remain highly concerned about health, safety, and environmental problems at the Waste Isolation Pilot Plant (WIPP), the world's first nuclear waste repository. They continue to strongly oppose various proposals of the Department of Energy (DOE) and their contractor, Westinghouse, to weaken health and safety requirements and to expand WIPP's mission and the types of waste allowed. They are also concerned about the uneven performance of the New Mexico Environment Department (NMED), the regulatory agency which decides what changes can be made in the operating permit and how to enforce the provisions of the permit. Moreover, WIPP has not met DOE's own promises to Congress, which nonetheless in November rewarded WIPP by increasing its funding by 16 percent above the president's budget.



Dr. Iola Trigg, DOE WIPP Manager, (right) discusses permit modification issues with NMED officials at a November 20 meeting at WIPP. Jim Brantley of Concerned Citizens for Nuclear Safety is at left. Phil Gregory of the Institute for Regulatory Science is also pictured.

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JUST SAYING "NO" TO WIPP EXPANSION

More than one thousand individuals sent cards and organizations representing several thousands sent detailed comments opposing the proposed expansion of WIPP by the September 27 comment deadline. More than 98 percent of the commenters overwhelmingly opposed the change in the permit, which would allow DOE to ship waste that is not fully characterized (examined) and to open some waste drums at WIPP. The people urged the New Mexico Environment Department (NMED) to deny the request. In addition, the New Mexico Attorney General's Office, the Environmental Evaluation Group, and the U.S. Environmental Protection Agency (EPA) also identified numerous major deficiencies in the request.

Among the many inadequacies of the request were:

- It constitutes a total reversal of the operating safety principles that require WIPP to "start clean and stay clean," including never opening drums in order to prevent spreading contamination throughout the facility.
- It does not demonstrate that the changes would minimize the possibility of releases, as required by regulations.
- It does not ensure that waste will be adequately characterized before it can be shipped to WIPP, as required by regulations.

While these fundamental deficiencies should result in NMED denying the request, it could instead issue a Notice of Deficiency to allow DOE and Westinghouse to address the problems. In such a situation, NMED implicitly would be supporting the expansion, although it could provide some additional restrictions on how the changes would be implemented. As of December 17, NMED has announced neither a decision to deny nor issued the deficiency notice.

AND SAYING "NO" TO REMOTE-HANDLED WASTE

While some DOE officials like to describe WIPP as being for "low-level" waste and "trash-gloves and booties," the facility is for transuranic (plutonium-contaminated) waste, so low-level waste is prohibited. But DOE also wants to bring waste that is so highly radioactive that it must be "remotely handled" by machines to prevent dangerous exposures to people. Such RH waste is prohibited by NMED in the operating permit, and by EPA in its certification of WIPP for contact-handled waste.

However, DOE has always included RH waste in its plans, and the federal law (WIPP Land Withdrawal Act of 1992) allows such waste at WIPP. So DOE has been saying for

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months that it would be asking NMED and EPA to permit such waste. Citizens have consistently said that such waste should not come to WIPP unless it can meet all of the characterization requirements that other wastes must meet, something that DOE does not intend to do.

In the Budget Submission to Congress in April, DOE said that it would send the RH modification to NMED by August 2001. Because of strong objections to the draft request, DOE has now decided that it cannot submit the modification until the summer of 2002, at the earliest.

WHAT NMED IS DOING ABOUT OTHER PERMIT CHANGES

Mixed waste prohibited in Panel 1

On April 25, 2000, after secret discussions with DOE, NMED changed a major provision of the WIPP permit with no public notice or opportunity for public comment and a hearing. The permit provision stated that mixed waste (containing both chemical and radioactive contaminants) could not be disposed in an underground panel if that area contains non-mixed waste not characterized according to the permit. Panel 1, the first seven rooms at WIPP, was used for 44 shipments of non-mixed waste before November 26, 1999, when the permit became effective. So the provision prevented any mixed waste from being disposed in Panel 1.

While citizen groups supported the provision, DOE objected and sued NMED in both federal and state courts to have it removed from the permit. DOE was so concerned about the prohibition that it did not ship any mixed waste until September 2000. On May 1, 2000, SRIC and two citizens, Dan Mark and Wayne Gibson, filed suit in the New Mexico Court of Appeals, asking the court to rule that it was not legal to change the provision without a public hearing.

Briefs were been filed in the case, and the court requested oral argument by lawyers from SRIC and NMED two times (a very unusual procedure). If the Court rules in SRIC's favor, at least 149 of the first 462 shipments to WIPP would have been illegally emplaced in Panel 1. The Court's decision could occur at any time.

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Faced with strong opposition to inadequate permit modification requests, such as those that would dramatically reduce the time required to sample landfill gas, permit digital radiography, allow 10-drum overpacks, and increase storage capacity and allow waste characterization at WIPP, NMED has either denied the requests, or DOE has withdrawn them. Some of the changes have been or are being reintroduced, as have some of the "minor" modifications that NMED has rejected.

But NMED has approved some modifications, such as allowing landfill gas sampling through vents, a modification citizens strongly opposed. And DOE will be submitting many more changes in 2002.

Citizens have strongly criticized several aspects of the modification process. DOE has submitted more than 100 modification requests, often to change permit provisions that DOE itself proposed! The large numbers of changes is overwhelming to citizens and to NMED. The problem is exacerbated by DOE frequently submitting other modifications while related changes are still being considered. As a result, SRIC and other citizen groups for months have asked DOE to agree to schedule its major modifications once a year or for NMED to require such a procedure. At the meeting on November 20 (see photo), DOE's WIPP Manager agreed to submit all modifications at two times during 2002, which should improve the process.

WIPP IS WELL BEHIND SCHEDULE AND OVER BUDGET

Since March 26, 1999, when the first shipment arrived, WIPP has been open for about 33 months, or about 8 percent of the 35-year lifetime that DOE says is needed to replace 175,600 cubic meters of waste. (For many years DOE claimed it could be done in 25 years). But so far only about 17 percent (approximately 3,000 cubic meters) of the capacity has been brought to WIPP. DOE is also behind the slower schedules it has given to Congress. In the budget request submitted in 2000, it said it would dispose of 1,204 cubic meters in the fiscal year ending September 30, 2000 and 3,450 cubic meters in the following fiscal year. In reality, about 370 cubic meters came in FY2000 and 1,940 cubic meters in FY2001. So while DOE has received the repeated funding for WIPP, it is shipping only about half what it promises Congress. For this year, Congress approved \$28.1 million more than the president's budget request.

Indeed, it also appears that the Westinghouse contract sometimes rewards the company for poor performance. In the case of the permit modifications, Westinghouse gets a payment when the request is given to NMED. So when a request is denied or withdrawn, and essentially the same modification is submitted two or three times (as has happened), Westinghouse apparently receives additional funds. SRIC has asked for specific information about this practice, which DOE has not yet provided. 