



State of New Mexico  
**House of Representatives**  
 Santa Fe



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June 30, 2003

Mr. Steve Zappe  
 New Mexico Environment Department  
 2905 Rodeo Park Drive, Building 1  
 Santa Fe, New Mexico 87505

Dear Steve:

On May 15, 2003, the U.S. Environmental Protection Agency (EPA), Region 6, granted approval to the U.S. Department of Energy (DOE), Carlsbad Field Office, for the disposal of polychlorinated biphenyls (PCBs) in concentrations equal to or greater than 50 parts per million contaminated with transuranic (TRU) waste. This authorization allows disposal of PCB/TRU waste at the Waste Isolation Pilot Plant (WIPP), Carlsbad, New Mexico.

It is my understanding that the day after EPA issued its approval, the DOE submitted a notice (Class 1\* permit modification request) to the New Mexico Environment Department (NMED), informing NMED of EPA's authorization. The DOE requested that NMED delete specific language regarding the PCB prohibition from the WIPP Hazardous Waste Facility Permit (HWFP), and requested deletion of analytical requirements that had been imposed by NMED to assure compliance with the PCB prohibition. The NMED denied the request, stating that, in its opinion, DOE had not submitted the notice under the correct regulatory provision and had inappropriately classified the modification. The DOE responded by submitting a Class 2 permit modification package to NMED. Now, it has come to my attention that certain members of the public have suggested that removal of language from the HWFP be subjected to a Class 3 permitting process.

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Prior to EPA's approval decision, the public was allowed numerous opportunities to provide comments to the EPA. Moreover, in my opinion, the language in the WIPP HWFP that prohibits disposal of PCB contaminated TRU waste at WIPP automatically became inapplicable when EPA issued its approval to DOE. The DOE's notice was no more than an effort to accomplish an administrative change to the language in the HWFP, deleting language that had been rendered moot by EPA's decision. NMED does not have jurisdiction to grant or deny facilities the right to dispose of wastes with TSCA regulated PCB concentrations equal to or greater than 50 parts per million. NMED should delete the inapplicable language on its own initiative. In my opinion, this would be the most appropriate response by NMED.

The DOE's TRU waste disposal program should not have to suffer any additional delays or suffer additional costs to the taxpayers because the NMED refuses to delete inapplicable language from the WIPP HWFP. EPA has authorized disposal of PCB contaminated TRU waste at WIPP and this should be the end of the matter.

If you have questions, please call me at 505 302-6358 or 505 887-5983.

Sincerely,

A handwritten signature in black ink, appearing to read "John Heaton". The signature is stylized and somewhat cursive.

John Heaton