

ENTERED

August 4, 2003

The Honorable Pete Domenici  
U.S. Senate  
Washington, DC 20510



Dear Senator Domenici:

We strongly oppose section 310 of the Senate Energy & Water Appropriations bill, which is an unwarranted attack on the State of New Mexico's regulatory authority, would threaten public health and safety of New Mexicans, and violates promises that you made to New Mexicans at the time of the passage of the WIPP Land Withdrawal Act.

We ask you to delete section 310 when the bill comes to the Senate floor. We also ask to meet with you while you are in New Mexico during the August recess to discuss this matter.

While your specific intentions regarding the effect of section 310 are not clear from the bill language or the committee report, the language appears to eliminate, among other things, the headspace gas sampling requirement of the State of New Mexico WIPP permit. That requirement was included in DOE's permit application and supported by public comment and testimony during the 19 days of the public hearing on the WIPP permit in February and March of 1999. The transcripts and exhibits from that hearing exceed 10,000 pages and the full administrative record is hundreds of thousands of pages.

In contrast, there has been no public hearing or debate regarding section 310. DOE has not submitted the permit modification specified in the bill. The New Mexico Environment Department (NMED) has not requested that this provision be put into any bill. Nonetheless, that provision apparently is intended to take away New Mexico's authority to require headspace gas sampling and possibly other existing requirements of the Waste Analysis Plan (WAP) of the WIPP permit.

The state permit is the basic safeguard to public health and safety (as it legally must do) during the operational lifetime at WIPP, while the Environmental Protection Agency certification is to protect public health and safety after WIPP is closed. Thus, changes to key requirements of the state permit, especially including waste characterization, directly threaten the health and safety of New Mexicans. In addition to limiting the amount of volatile organic compounds, the WAP prohibits pyrophoric materials, explosives and compressed gases, chemically incompatible items, and limits free liquids. Section 310 also could be interpreted to eliminate those requirements.

Section 310 is directly contrary to requirements of the Solid Waste Disposal Act and the WIPP Act. New Mexicans and millions of people in other states depend upon those laws to protect their health and safety.

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Throughout the years of discussion and debate on the WIPP Act, you consistently maintained that the law would protect the health and safety of New Mexicans. Moreover, in your October 8, 1992 statement on the Senate floor in support of final passage of the WIPP Act, you said: "The bill also significantly enhances New Mexico's role in the oversight and regulation of the project." New Mexico's regulation is through the WIPP permit, so gutting the permit, as section 310 could do, is directly contrary to the promise of state regulation.

For those reasons and many more, we believe that section 310 should not become law. We again request that you please delete section 310 from the Energy and Water Appropriations Bill.

We also request a meeting with you in New Mexico during the August recess to further discuss this matter. Please contact Don Hancock at 505/262-1862 or PO Box 4524, Albuquerque, NM 87196 to arrange such a meeting.

Sincerely,

Don Hancock, Southwest Research and Information Center  
Jean Garcia, Chaparral Community Health Council  
Susan Dayton, Citizen Action  
Deborah Reade and Mark Doppke, Citizens for Alternatives to Radioactive Dumping  
Elaine Cimino, Citizens for Environmental Safeguards  
Mary Ann Benavidez, Colonias Development Council  
Joni Arends, Concerned Citizens for Nuclear Safety  
Coila Ash, Creative Commotion: Voices for Social Change  
Lisa B. Oppenheimer, Landfill Concerns Committee  
Penelope McMullen, Loretto Community  
Greg Mello, Los Alamos Study Group  
Stan Euston, Director of Environmental Programs, New Mexico Conference of Churches  
Jay Coghlan, Nuclear Watch of New Mexico  
Michael Guerrero, SouthWest Organizing Project  
Jaime Chavez, Water Information Network