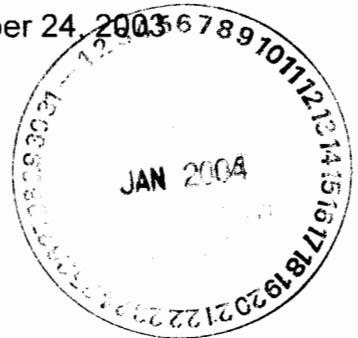


December 24, 2003

Mr. Steve Zappe  
NMED Hazardous Waste Bureau  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico, 87505



Dear Mr. Zappe:

This letter is in response to the Environment Department's proposed changes, of November 26, 2003, to the WIPP hazardous waste facility permit.

First off, it is important that I identify my employment with the U.S. Department of Energy (DOE). My comments do not represent DOE in any way, and I speak my own mind as a native and lifelong resident of New Mexico.

It saddens me to learn that the former Secretary of Energy would utilize a national issue and the position of governor of this great State to acquire attention from the media. Furthermore, using the New Mexico Environment Department (NMED) as a marionette to champion a sanctimonious idea seems unethical, and if put into effect, will result in costing tax payers billions of dollars over the next 25 years.

I strongly oppose the allowance of the proposed permit changes for several technical inconsistencies, and the overlapping of existing laws. To be more specific, the remainder of this letter is targeted to appeal to the regulators on the consistency and use of regulatory terminology and processes, as well as elaborating upon the two previous points.

#### **WIPP LAW**

Public Law 104-579 (the WIPP Land Withdrawal Act [LWA]) already prohibits the disposal of high-level waste and spent nuclear fuel at WIPP. Prior to opening, the effort in compiling the Transuranic Waste Baseline Inventory Report (TWBIR) was utilized by DOE to ensure that the LWA requirements could be met, and to substantiate the numerical estimates, and thus satisfy the regulatory criteria listed in Title 40 CFR, Part 194, Section 24. The U.S. Environmental Protection Agency (EPA) is responsible for enforcing this WIPP-specific set of requirements.

#### **TERMINOLOGY**

The very first line in the preface of the 1995 TWBIR reads, "*The information in this report summarizes the U.S. Department of Energy's (DOE) Transuranic (TRU) waste inventory, projections, and characteristics.*" A key word in that statement is the word "*projections.*" The meaning and use of this word is consistent with

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Webster's Ninth New Collegiate Dictionary (1990) which provides "*an estimate of future possibilities based on a current trend.*"

The TWBIR (1995) also provides a section with defined terminology. This is the portion of the document that all readers must understand prior to interpreting and using the data within the report. As I read it, there are five key terms to understand and apply consistently to all the waste streams. Paraphrasing the TWBIR these are:

**Stored Inventory** - The part of the TRU inventory currently in retrievable storage at the time of the last data call for inventory information is known as "stored inventory." For Revision 2, stored waste includes that waste in storage as of December 31, 1994, unless a different inventory date is indicated in the waste stream profiles.

**Projected Inventory** - The part of the TRU inventory that has not been generated but is currently estimated to be generated at some time in the future by the TRU waste generator/storage sites is known as "projected inventory." Because of the current uncertainty associated with environmental restoration (ER) and decontamination and decommissioning (D&D) waste inventory projections, the ER and D&D wastes are not included in the projected inventory, except for a few waste streams at some sites. For Revision 2, a projected inventory includes waste scheduled for generation from calendar year (CY) 1995 to 2022. "Newly generated waste" is sometimes used as a synonym for the projected inventory.

**Anticipated Inventory** - For the TWBIR, this is the sum of the stored and projected inventories, calculated as:

$$(\text{Stored Inventory}) + (\text{Projected Inventory}) = (\text{Anticipated Inventory})$$

**Scaling** - The process for adjusting, if needed, the projected inventory to the design limit (disposal inventory) of the WIPP repository is called "scaling." Chapter 3 describes the scaling process used for developing the TWBIR.

$$(\text{Stored Inventory}) + (\text{Projected Inventory (scaled as needed)}) = (\text{Disposal Inventory})$$

**Disposal Inventory** - The inventory volume defined for WIPP emplacement to be used for PA calculations is the "disposal inventory." The LWA defines the total amount of TRU waste allowed for disposal in the WIPP as 6,200,000 cubic feet (approximately 1 75,600 cubic meters).

The heart of all laws and regulations consists of defined terminology. The WIPP hazardous waste facility permit is no different. Obviously the NMED understands this with the introduction of a term "Documented Waste Inventory." Unfortunately, the NMED has provided a definition that is inconsistent with five terms from the TWBIR. The proposed permit modification inserts language into Module II stating:

"wastes that are not directly traceable to waste streams in the 'Transuranic Waste Baseline Inventory Report (Revision 2)', DOE/CAO-95-1121, December 1995, are not acceptable at WIPP unless specifically approved and listed in Table II.C.3.i below."

A scaling method was used to account for the generation of future wastes. Hence, there is not a directly traceable method of showing that a future TRU waste stream was part of the TWBIR. Nor was the report ever intended to serve as an invoice of all plausible waste streams. It did, however, serve the purpose of obtaining a large scale estimate of the waste types that WIPP could receive over the 35 year operational life.

### **CONSISTENCY**

With more than half of the TWBIR (1995) waste inventory (or disposal inventory) listed as scaled projections, the proposed modifications to the WIPP permit will impose unnecessary constraints that cannot be enforced with consistency. In NMED's definition of "Documented Waste Inventory," the words "directly traceable" are not defined, and could lead to costly interpretations that do not improve the quality of the data. The introduction of this term and possible implications will not improve human health or the environment surrounding WIPP.

Instead, the acceptance of the proposed modification will increase the time and cost required to transport waste for disposal at WIPP. The very nature of scaling the projected waste relies upon knowledge of all other waste at that point in time. As DOE gains more knowledge through characterizing newly-generated waste, they could be put into a situation where any deviation from the 1995 TWBIR is at the determination of the NMED to approve or disapprove. The EPA never intended for Resource Conservation Recovery Act (RCRA) to be enforced at this type of micro-scale. The process would require each request for a change in the waste inventory to be submitted along with the required fee (ranging from \$1000 to \$25,000). Then, at NMED's discretion, the change would be given an official classification, which directly corresponds to the fee amount and amount of time required before a decision is made. As we've seen reported in the newspapers over the past five years, it has been to the advantage of NMED to decide the classification. If more time is needed, a 30-day modification (normally a Class 1) goes up to a Class 2, which has taken anywhere between 4 to 5 months to render a decision. A Class 3 is even more cumbersome.

The proposed modification is entirely unconventional to the realm of enforcing the RCRA. I know of no other hazardous waste facility in the nation that requires its permit holders to provide, in advance, a comprehensive list of ALL the specific waste components and constituents that will be disposed of within that facility over the entire operational life. The logical inception of formal permitting was such that the facility operators could generally identify the type and nature of the waste they would be accepting for disposal. The waste characterization (and manifestation) programs are the methods by which the regulatory entity (e.g. EPA or NMED) can

inspect facilities and examine records to verify the specific quantities of each waste constituent prior to disposal. If accepted as proposed, this change will set a precedent for other hazardous waste facilities in New Mexico that is dissuasive and unfair to the waste management industry.

Does this mean that the Safety Kleen, Triassic Park, and other disposal facilities will have to submit a similar list of all waste streams they expect to dispose of over the lifetime of the facility? I would hope not, since the uncertain nature of the information is of little benefit, and comes at a great cost.

## **PURPOSE**

DOE made a point in the executive summary of the TWBIR to inform the reader that the inventory information was being gathered to provide a method of grouping similar wastes together, and to establish a waste basis allowing discussions with regulatory agencies. DOE went on to describe the specific purpose of the report as follows:

*The purpose of Revisions 0 and 1 of this report was to provide data to be included in the SNL/NM performance assessment (PA) processes. This revision of the document is also intended to support the WIPP Land Withdrawal Act requirement for providing the total DOE TRU waste inventory.*

The TWBIR was utilized by DOE to ensure that the LWA requirements could be met, and to substantiate the numerical estimates, and thus satisfy the unique criteria listed in 40 CFR, Section 194.24. As directed by Congress, the EPA is responsible for enforcing this WIPP-specific set of requirements. Additional stipulations by the State of New Mexico are not necessary.

## **CONCLUSION**

As the DOE continues to clean up the legacy sites around the nation, they will learn more about the characteristics and components of each specific waste stream, which are certain to vary from the projected estimates that are over eight years old. Requiring, as part of the permit, that DOE furnish this information in advance, and not change it, unless approved by NMED, is an unnecessarily burdensome and costly requirement. The WIPP LWA already prohibits the waste the Governor is so concerned over. Additional constraints will only slow the process of shipping approved wastes, while increasing the cost – with no added benefit to the residents throughout the state.

If this proposed modification is mandated, the tax-payers of New Mexico and across the Nation will be footing the bill for a constraining process that adds no improvement in protecting the environment or the health of NM residents. The

staff of NMED should be working to reduce the constraints of a problem that the nation is working on solving together.

Over fifty years ago, New Mexico provided the home for the work that both split the atom, and demonstrated its tremendous energetic potential. Since then, we've learned that tapping into that energy came at a cost that cannot be reversed. Let us, as a great State, continue to help serve in a responsible and effective approach to cleaning up national facilities in the safest, most practical method known to date – WIPP.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve C. Casey". The signature is fluid and cursive, with a large initial "S" and a distinct "C. Casey" following.

Steve C. Casey  
Resident of Otis, New Mexico