

**Attorney General of New Mexico**

**PATRICIA A. MADRID**  
Attorney General

**STUART M. BLUESTONE**  
Deputy Attorney General

29 January 2004

Mr. Steve Zappe  
New Mexico Environment Department  
Hazardous Waste Bureau  
2905 Rodeo Park Drive, Building E  
Santa Fe, NM 87505



Re: WIPP Hazardous Waste Act permit; proposed agency-initiated modification, issued November 26, 2003

Dear Mr. Zappe:

This letter submits comments by the Water, Environment, and Utilities Division of the New Mexico Attorney General's Office concerning a proposed modification to the Hazardous Waste Act permit for the Waste Isolation Pilot Plant (WIPP), issued by the Environment Department ("NMED") on November 26, 2003. The proposed modification would limit waste eligible for disposal at WIPP to the inventory identified when the permit was originally issued.

In this situation, our comments on the proposal are as follows:

1. We support the proposed modification for the reasons set forth in NMED's Public Notice and Fact Sheet.
2. It should also be noted that the WIPP Land Withdrawal Act, Pub. L. No. 102-579, contains an express prohibition on the transportation to, emplacement in, or disposal at WIPP of high-level radioactive waste or spent nuclear fuel:





## Attorney General of New Mexico

**PATRICIA A. MADRID**  
Attorney General

**STUART M. BLUESTONE**  
Deputy Attorney General

29 January 2004

Mr. Steve Zappe  
New Mexico Environment Department  
Hazardous Waste Bureau  
2905 Rodeo Park Drive, Building E  
Santa Fe, NM 87505



Re: WIPP Hazardous Waste Act permit; proposed agency-initiated modification, issued  
November 26, 2003

Dear Mr. Zappe:

This letter submits comments by the Water, Environment, and Utilities Division of the New Mexico Attorney General's Office concerning a proposed modification to the Hazardous Waste Act permit for the Waste Isolation Pilot Plant (WIPP), issued by the Environment Department ("NMED") on November 26, 2003. The proposed modification would limit waste eligible for disposal at WIPP to the inventory identified when the permit was originally issued.

In this situation, our comments on the proposal are as follows:

1. We support the proposed modification for the reasons set forth in NMED's Public Notice and Fact Sheet.
2. It should also be noted that the WIPP Land Withdrawal Act, Pub. L. No. 102-579, contains an express prohibition on the transportation to, emplacement in, or disposal at WIPP of high-level radioactive waste or spent nuclear fuel:

“Sec. 12 The Secretary shall not transport high-level radioactive waste of spent nuclear fuel to WIPP or emplace or dispose of such waste or fuel at WIPP.”

The Land Withdrawal Act should be viewed as additional support for the proposed modification.

The State of New Mexico (the “State”) has a specially defined role under the Land Withdrawal Act. See Pub. L. No. 102-579, at Sec. 4(a)(consultation with State on land use); Sec. 4(b)(consultation with State on management plan); Sec. 6(b)(submission of performance assessment report to State, comment and response); Sec. 8(e)(conflict resolution process as to compliance application); Sec. 9(a)(2, 3)(documentation of compliance with Solid Waste Disposal Act submitted biennially to State; determination by State); Sec. 9(d)(savings clause as to State authority); Sec. 14(b)(savings clause as to clean air and hazardous waste laws); Sec. 15(economic assistance); Sec. 16(g)(State advisory group on emergency response); Sec. 17(a)(access to information on health, safety, environmental issues); Sec. 17(b)(State authority to carry out and publish analyses); Sec. 21(savings clause as to Consultation and Cooperation Agreement, Supplemental Stipulated Agreement).

Given the special role accorded to the State in the Land Withdrawal Act, the State should be regarded as entitled to enforce the prohibition contained in Section 12 of that Act. Given the public discussion by DOE of the possibility of shipping “reclassified” high-level waste to WIPP for disposal, it is entirely appropriate for the State to restrict waste entering WIPP to such waste as was originally intended for, and identified by DOE as eligible for, disposal at WIPP in accordance with the terms prescribed by Congress.

So doing, the State may wish to refer to the prohibition in Section 12 of the Land withdrawal Act as addition support for its action.

We request that these comments be considered by NMED in reviewing and acting upon the proposed modification.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lindsay A. Lovejoy, Jr.", written in a cursive style.

LINDSAY A. LOVEJOY, JR.  
Assistant Attorney General

LALJr:lajr