



January 30, 2004

Steve Zappe  
NMED  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505



RE: Agency-Initiated WIPP Permit Modification

Dear Mr. Zappe:

We support the efforts of the New Mexico Environment Department (NMED) and Governor Richardson to limit waste eligible for disposal at the Waste Isolation Pilot Plant (WIPP). Thus, we strongly support the pending agency-initiated permit modification and urge that NMED incorporate it into the permit.

WIPP is not designed to accommodate, nor is it approved under federal law (the WIPP Land Withdrawal Act of 1992, as amended) for, most of the Department of Energy (DOE) existing or future nuclear waste. The WIPP Act specifies that the land and the facility must be used exclusively for transuranic (TRU) waste from nuclear weapons production -- "generated by atomic energy defense activities." Public Law 102-579, Section 2(19). Thus, WIPP cannot be used for low-level waste disposal or high-level waste disposal.

To emphasize the exclusive nature of WIPP, the law specifically bans high-level waste: "The Secretary [of Energy] shall not transport high-level radioactive waste or spent nuclear fuel to WIPP or emplace or dispose of such waste or fuel at WIPP." Section 12.

The WIPP Act further limit the types and amount of waste, including limits on the radioactivity of TRU waste and volume limits on the capacity of WIPP. Section 7.

The WIPP Act also specifically protects the State of New Mexico's legal authority over WIPP. Section 9(a)(2)(C), Section 9(d), Section 14(a), Section 14(b).

During the five-year permitting process that resulted in NMED issuing its WIPP permit on October 27, 1999, DOE and NMED relied upon the "Transuranic Waste Baseline Inventory Report" (TWBIR) of December 1995 and June 1996 to describe all of the waste that would be coming to WIPP. The waste characterization procedures and other requirements of the permit were based on the wastes included in that inventory. A different inventory could have resulted in different waste characterization requirements or in additional wastes being prohibited, along with those materials already prohibited in the permit. Module II.C.3.

Since DOE has now indicated that it would like to bring waste to WIPP that was not included in the TWBIR, the NMED must take action. The proposed permit modification would limit waste to that included in the TWBIR. Any exceptions to that requirement must be treated as a major permit modification requiring a public hearing.

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The agency-initiated permit modification is prudent to protect public health and the environment. The modification also provides notice to the DOE that it should not contemplate bringing wastes to WIPP that are not included in the TWBIR, including high-level waste that it wants to "reclassify."

If DOE tries to bring waste to WIPP not included in the TWBIR, we urge NMED to revoke or suspend the WIPP permit, as allowed by state law. Section 74-4-4.2.D. NMSA 1978.

Therefore, we support the agency-initiated permit modification and urge it to be incorporated into the WIPP permit.

Sincerely,

Albuquerque Center for Peace and Justice  
Dorelen Bunting  
Albuquerque, NM

Citizen Action New Mexico  
Sue Dayton  
Sandia Park, NM

Citizens for Alternatives to Radioactive Dumping  
Janet Greenwald  
Albuquerque, NM

Concerned Citizens for Nuclear Safety  
Joni Arends  
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Creative Commotion: Voices for Social Change  
Coila Ash  
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Penelope McMullen  
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