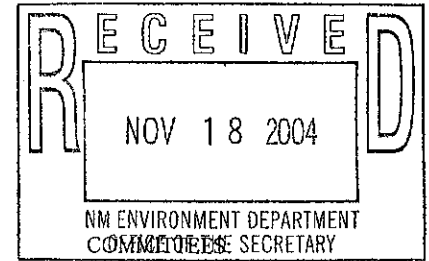




State of New Mexico
House of Representatives
 Santa Fe

November 17, 2004



NM ENVIRONMENT DEPARTMENT
 COMMITTEE SECRETARY
 Appropriations & Finance
 Energy & Natural Resources
 Printing & Supplies

JOHN A. HEATON
 Majority Caucus Chairman
 D-Eddy County
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INTERIM COMMITTEES:

- Radioactive & Hazardous Materials (Vice Chair)
- Legislative Education Study Committee (Advisory)
- Legislative Finance (Designee)
- Economic & Rural Development
& Telecommunications (Advisory)
- Legislative Health & Human Services (Advisory)
- Legislative Health Subcommittee (Advisory)
- Redistricting (Advisory)

Ron Curry
 Secretary of Environment
 P.O. Box 26110
 1190 St. Francis Dr.
 Suite #N4050
 Santa Fe, New Mexico 87502

Dear Secretary Curry:

I would like to ask you to use caution during the Department of Environment's (NMED) efforts to issue a hazardous waste permit modification concerning radioactive materials in tanks formerly managed as high level waste (HLW). The NMED has proposed requiring a class 3 permit modification to authorize disposal of TRU waste in tanks that have previously been managed as HLW. The Radioactive and Hazardous Materials Committee believes this is unnecessary and will severely slow the process by which these wastes are removed from the envirosphere and disposed of safely in a permanent, deep geologic repository.

As you know, HLW is defined by virtue of its origin. HLW is the highly radioactive material remaining after the initial reprocessing of spent nuclear fuel. The state recognized early on that WIPP should never be used to dispose of HLW and incorporated a prohibition on HLW in the Consultation and Cooperation (C&C) Agreement in 1981. In addition, the 1992 WIPP Land Withdrawal Act (LWA) also specifically included this prohibition on HLW. Therefore, NMED's agency-initiated permit modification to prohibit HLW at WIPP is superfluous.

You are aware that DOE has identified certain tanks at its Hanford and INEEL sites that have not been commingled with HLW over the years. These non-HLW tanks have been managed the same way as tanks containing HLW. Now that all of the tanks are being cleaned and their contents stabilized and prepared for permanent disposal, it is prudent to recognize that those wastes in tanks that do not contain HLW should be treated and evaluated for disposal at WIPP. The prohibition in the C&C Agreement and LWA against HLW is adequate to ensure that only TRU waste meeting the WIPP waste acceptance criteria will be disposed of in WIPP.

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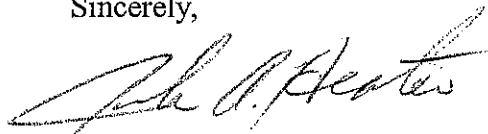


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NMED proposes to conduct a formal class 3 permit modification each time a waste stream (from tanks that were formerly managed as HLW) is identified. This will unnecessarily waste significant time and resources. NMED already reviews individual waste stream profile forms. There is no need to go through the laborious and highly charged process of a class 3 permit modification when the waste stream profile form would clearly identify whether a tank waste stream was HLW or TRU waste.

The Radioactive and Hazardous Materials Committee strongly recommends that NMED withdraw its agency-initiated modification and deny the class 2 permit application that DOE submitted as part of the settlement negotiations for considering waste formerly managed as HLW. The existing provisions of the permit already allow the NMED the ability to ensure that HLW is not disposed of at WIPP.

Sincerely,

A handwritten signature in cursive script, appearing to read "John A. Heaton".

Representative John A. Heaton, Chair
Radioactive and Hazardous Materials Committee

JH:sv