



Department of Energy
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ENTERED

40 CFR 191
FILE

JUN 30 1983

Honorable Tommy Araya
Governor of New Mexico
Santa Fe, NM 87505

Dear Governor Araya:

This letter is to advise you of my decision to proceed with Full Facility construction of the Waste Isolation Pilot Plant (WIPP) Project. This decision is based on the extensive work performed over the past eight years by the U.S. Department of Energy (DOE) which includes field and laboratory investigations and analytical studies conducted to assess suitability of the WIPP Site. These investigations and studies have received thorough technical reviews from the Environmental Evaluation Group (EEG) and others such as the National Academy of Sciences (NAS), and a final review by the State and public during the comment period on WIPP-DOE-161, "Summary of the Results of the WIPP Site and Preliminary Design Validation Program."

We have carefully reviewed and considered the State and public comments on WIPP-DOE-161. Our detailed response to these comments is contained in the following documents:

1. WIPP-DOE-173, "DOE Responses to the Public's Comments on 'Summary of the Results of the Evaluation of the WIPP Site and Preliminary Design Validation Program' (WIPP-DOE-161)."
2. WIPP-DOE-174, "DOE Responses to the State of New Mexico's Comments on 'Summary of the Results of the Evaluation of the WIPP Site and Preliminary Design Validation Program' (WIPP-DOE-161)."

The EEG is to be commended for their thorough technical review. As you are aware, the EEG evaluation of the WIPP Site concludes that the site is safe for the permanent disposal of transuranic waste. The EEG noted, however, that DOE should make certain commitments prior to the start of construction to perform additional technical studies. Of the 12 geotechnical studies recommended by the EEG, nine are part of the continuing DOE research and development program and in some cases, preliminary results of those studies have been discussed with the EEG. We agree with the EEG recommendation to conduct the remaining three studies. As noted by the EEG, completion of these studies is not necessary for a determination of WIPP Site acceptability prior to the initiation of construction.

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The following information addresses the remaining issues raised in your letter of May 31, 1983, in the order in which you presented them:

With regard to whether an Environmental Impact Statement (EIS) supplement is necessary, the Council on Environmental Quality regulations require an agency to prepare a supplement to an EIS if the agency makes substantial changes or there are significant new circumstances or information relevant to environmental concerns. Since the SPDV and other site validation activities did not result in significant new information relevant to environmental concerns, DOE has determined that a supplement to the Final Environmental Impact Statement (FEIS) on WIPP is not required. We stand ready for comments to continue to identify new information and changes. If any of these analyses indicate a significant change in environmental impact from that described in the FEIS, we will proceed with the process of supplementing the FEIS.

Next let me address your request to eliminate certain waste handling capabilities because of your concerns about the high level waste (HLW) experiments and the disposal of transuranic (TRU) waste with a surface dose rate above 100 rem per hour. DOE has considered conservative scenarios of bounding accident conditions which lead us to conclude that the site is suitable for defense HLW experiments and that additional "worst case" scenarios will not modify the results of these analyses. The remote-handled transuranic waste canister surface dose rate criteria remains at 100 rem per hour as contained in our document WIPP-DOE-069, "TRU Waste Acceptance Criteria for the Waste Isolation Pilot Plant," (WAC). The source of your concern perhaps is the fact that we are modifying the design to develop a facility with conservative handling capabilities. We are making this modification to assure that the public and the site worker health and safety is not compromised. Please be assured that we have not, to date, allowed exceptions to the WAC and would not do so without first performing the necessary safety analyses and having prior consultation with the State. Therefore, there is no reason to eliminate high level waste handling criteria from the design parameters of the Waste Handling Building.

We have previously agreed that retrievability of high level waste should be demonstrated prior to emplacement of experimental high level waste. In the Consultation and Cooperation Agreement with the State signed on July 1, 1981, DOE agreed that such demonstrations will be conducted prior to the start of WIPP operations and that the State will be given prior notification of the demonstrations.

WIPP will meet all applicable federal and State standards. It is our intent to comply with applicable Environmental Protection Agency (EPA) standards. However, it is premature to discuss the details of compliance with proposed standards that may change significantly before they are finalized. I note that in responding to Mr. R. Neill's letter of March 4, 1983 concerning the proposed standard, 40 CFR 191, Mr. Glen

Sjoblom of the EPA indicated it is the EPA's position that the standard would apply to WIPP only if it is determined to be a permanent disposal facility, rather than a test facility.

In view of this position taken by EPA, it is unnecessary to postpone full construction of WIPP pending availability of a final EPA standard. We stand by our commitment to full compliance with applicable standards and anticipate thorough discussions with the Environmental Evaluation Group after final EPA standards are issued.

The release of radioactivity due to human intrusion in search of mineral resources has been extensively studied by both DOE and the State. The results of these studies have consistently shown that such intrusion would not result in a threat to public health and safety.

With regard to potential mineral resource revenue losses to the State, it is not clear that any major revenue losses will be incurred since significant mineral extraction will be permitted in the vicinity of the WIPP Site. Although this issue does not require resolution prior to a decision to proceed with the construction of WIPP, we look forward to future discussions with the State concerning this matter.

With respect to the remaining issues discussed in your letter, Secretary Hodel has responded to your request for DOE's support to bring WIPP under the State "veto" and NRC licensing requirements of the Nuclear Waste Policy Act, and your request to support a Congressional prohibition of permanent disposal of high level wastes in WIPP.

The DOE has abided by, and will continue to abide by, our agreements with the State. We have performed all the field and analytical studies and prepared all the reports required by our agreements. It is our firm resolve to continue to consult and cooperate with the State of New Mexico to assure that the best interests of the people of New Mexico and the nation are served and that the challenge of disposing of defense related nuclear wastes is met in a positive, constructive manner.

We appreciate the contribution to this decision provided by your office and other State agencies and look forward to continuing the effective consultation and cooperation between our Department and the State of New Mexico.

Sincerely,



R. G. Romatowski
Manager

2 Enclosures:
WIPP-DOE-173
WIPP-DOE-174