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*File WIPP - C+C amendments*

**JOSEPH GOLDBERG**  
SECRETARY  
FOR HEALTH & ENVIRONMENT

July 10, 1984

Mr. Raymond G. Romatowski, Manager  
Albuquerque Operations Office  
U.S. Department of Energy  
P.O. Box 5400  
Albuquerque, New Mexico 87115

RE: Conflict Resolution of Certain WIPP  
Health and Safety Issues

Dear Mr. *Romatowski*:

Since my appointment as Chairman of the State's Radioactive Waste Task Force I have been reviewing the negotiations between the State and the Department of Energy. I am requesting a meeting between us pursuant to Article IX of the Agreement for consultation and cooperation ("C&C Agreement") to discuss in detail the resolution of those health and safety issues involving WIPP which are in conflict. I am hopeful that through this meeting we can resolve these areas of conflict and thereby avoid the necessity of formal invocation of the conflict resolution provisions of Article IX.

Representatives of DOE and the State have been negotiating since last August over the resolution of certain continuing concerns of the State regarding WIPP. While there has been progress in resolving several of the minor issues (Post-closure Control and Compliance with Regulatory Standards), DOE's last formal response to the State indicates that we have reached an impasse on the major issues (Mission, Retrievability Demonstration and Site Characterization). I view these major issues as central and fundamental to the State's ability to conduct a meaningful independent review of the public health and safety of WIPP. Furthermore, I am concerned that there is a basic disagreement between us now as to the meaning and extent of DOE's responsibility for good faith consultation and cooperation with the State over WIPP. I believe we are approaching a critical juncture on WIPP both in its construction and in our federal-state relationship over the project. It is important that these major issues be resolved as soon as possible and in a manner that ensures that the State is able to perform creditably an independent and competent evaluation of WIPP.

I define the outstanding major issues over which we are in conflict as follows:

SCANNED



## 1. WIPP MISSION

Issue in Conflict: The State seeks a specific and numerically precise definition of the WIPP Mission in the C&C Agreement which would bind DOE to maximum levels and quantities of radioactive waste to be emplaced at WIPP, absent further congressional action. DOE's response to the State acknowledges that the current numerical limitations are only those contained in the FEIS, which could be changed and/or increased if DOE chooses to do so by a supplement to the FEIS. DOE apparently understands the statutory mission limitation for WIPP in P.L. 96-164 as flexible and capable of administrative expansion by DOE beyond the limitations contained in the FEIS. The State disagrees with DOE's interpretation of the federal statutes and therefore objects to such an administrative expansion of the WIPP Mission by DOE without further congressional authorization.

State's Position: DOE should agree contractually with the State in the C&C Agreement that the description of the TRU and HLW waste in the WIPP FEIS quantitatively defines the maximum dose rates and radionuclide concentrations of the waste to be brought to WIPP.

Proposed Solution: The State seeks either modification of Article VI of the C&C Agreement or otherwise to define clearly the Mission of WIPP by establishing a maximum numerical limitation on the level and quantities of the radioactive waste at WIPP. These limitations would be substantially similar to those contained in the FEIS. For the RH-TRU, the limitation should be 100 rem/hr surface dose rate and a concentration of 23 curies/liter. For the HLW, the numerical limitations should be a total of 40 cannisters containing 430,000 curies/cannister, with each cannister not to exceed a surface dose rate of 7,000 rem/hr.

## 2. RETRIEVABILITY DEMONSTRATION

Issue in Conflict: Although DOE has accelerated the schedule for the construction of the repository, DOE has made no similar commitment to accelerate the demonstration of retrievability of the waste to be emplaced. The State seeks the right to be present at the tests, to be notified on a quarterly basis of the estimated shipping dates of the waste, and the right to have a three-month reaction period after completion of the tests and reports thereon before each waste type is shipped to WIPP. DOE objects to these requirements.

State's Position: The State views a successful demonstration of the retrievability of the waste as one of the most critical events of WIPP in terms of the State's responsibility to evaluate independently the public health and safety of the project. The retrievability demonstration tests must not be left to the very end of the construction of the project, nor must they be carried out in a rushed manner in which the State does not have ample time to verify the results and react prior to the shipment and emplacement of the waste if the State is not satisfied.

Proposed Solution: The State seeks a guarantee either through amendment to the C&C Agreement or otherwise an early and timely retrievability test with a full and meaningful review and comment period to be completed 90 days

before any waste forms subject to the tests are shipped to WIPP. Any guarantee should also ensure that the State is present during the tests and that the State is advised on a quarterly basis of the estimated first shipping dates of the different waste forms.

### 3. CONTINUING SITE CHARACTERIZATION AND FINAL SUMMATION REPORT

Issue in Conflict: The site characterization work required to be performed by DOE under the 1981 Stipulated Agreement reached in Court remains incomplete in some areas. Progress in performing the additional site characterization studies agreed to in June of 1983 by DOE has been extremely slow. The State has received no plans or schedules for completing the recommended studies. To ensure satisfactory completion of these tests, studies and reports prior to the emplacement of any waste, the State seeks to modify the C&C Agreement to propose a review milestone for these studies and tests prior to the shipment and emplacement of the waste and the operation of WIPP. The State also requests that there be a final summation report issued by these additional studies, tests and reports, and that the State and the public have a 60-day review and comment period prior to shipment of the waste to WIPP. DOE has objected to such requirements.

State's Position: The State contends that certain questions concerning the suitability of the site remain unanswered. Specifically, the Rustler Hydrology, including the questions of recharge, discharge, water transport, solute transport, fracture or karst flow and detailed characteristics near the center of the site have not been adequately characterized. Further, the delineation of the Castile brine under the site remains unknown, and one feature, possibly indicating the presence of deep dissolution one mile north of the edge of Zone 2, remains unexplored. The State has recommended that these studies be completed by July of 1985, and that the State and general public be allowed an appropriate review and comment period on these reports, which should be considered by DOE before making a final decision on the shipment and emplacement of the waste. The State seeks a final summation report on these tests, studies and reports prior to any shipment of waste to WIPP but not prior to any further construction of the WIPP repository.

Proposed Solution: The State seeks an amendment to the C&C Agreement guaranteeing completion of these additional studies, tests and reports prior to shipment of waste to WIPP. The amendment would also guarantee that DOE would prepare a final summation report on these additional tests, studies and reports, stating DOE's overall conclusions and affording the State and public appropriate review and comment periods prior to shipment of the waste to WIPP.

### 4. DOE'S RESPONSIBILITY TO CONSULT AND COOPERATE WITH THE STATE

Issue in Conflict: The State reads Article VII of the C&C Agreement and the statutory language of Public Law 96-164 as creating a general, overriding responsibility on the part of DOE to consult and cooperate with the State in good faith and to advise the State in a timely fashion on the significant aspects of WIPP in order for the State to make an independent review of the public health and safety of WIPP. The DOE Assistant Inspector General's letter of May 10, 1984 (copy attached) states that DOE's position in this regard is that only specific, written provisions of the current C&C

Agreement define DOE's responsibility for consultation and cooperation with the State, and nothing more. That letter also recommends that the formal conflict resolution procedures of Article IX be utilized in instances where we disagree over health and safety issues, or over whether DOE has complied with its responsibility for consulting and cooperating with the State. The State understands this letter to mean that DOE now perceives that it has no general responsibility for good faith consultation and cooperation with the State, and that our C&C Agreement must be constantly updated with detailed written amendments and modifications in order to create such binding obligations on DOE.

State's Position: The State disagrees with this narrow interpretation of DOE's consultation and cooperation responsibilities under the C&C Agreement and Public Law 96-164. Because of the complexity of WIPP and disparity in information-gathering ability in favor of DOE, the Department of Energy must live up to a much broader standard of good faith consultation and cooperation if the State is to carry out properly its responsibility to independently review the public health and safety of the WIPP project.

Proposed Solution: The State seeks an amendment to Article VIII-Consultation and Cooperation, to clarify the nature and extent of DOE's responsibility to consult and cooperate with the State on WIPP.

I am eager to discuss these issues with you to determine the full extent of our present conflicts in the hope of an immediate resolution or as preparatory to submitting these issues to a formal conflict resolution procedure conducted by third parties. In addition, I would like to discuss generally with you what I perceive to be other outstanding issues that are moving toward potential conflict. These other issues include the following:

1. Early delivery of the high-level waste acceptance criteria to the State for its review and comment.
2. Engineered barriers at WIPP, whether or not mandated by EPA regulations.
3. Agreement on a classification category for components, structures and systems in the construction of WIPP equal to that required for similar nuclear facilities.
4. An early and definite schedule for completing the NEPA review for non-INEL waste to be shipped to WIPP, including transportation; agreement on appropriate standards for WIPP waste shipment containers.
5. Resolution of various transportation issues, including completion of preliminary transportation analysis report, shipping container design, and adequacy of NEPA review for transportation of wastes to WIPP.
6. Resolution of the compensation for loss of mineral resources issue.
7. Criteria for TRU waste retrieval decision.

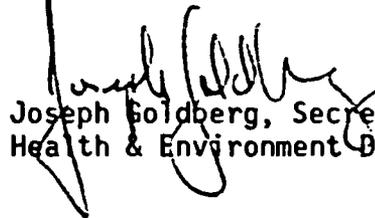
While we are not at this time seeking conflict resolution on these other issues, I believe it is incumbent that these issues be given a high priority

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for resolution within the next four months. I realize that some of these items are complex and certain aspects of them may not be entirely ripe for resolution at this time. Nevertheless, we must have a firm schedule for addressing and resolving these issues as the WIPP project continues to proceed with construction. I don't believe that either you or I should be satisfied to allow these issues to remain unresolved and unaddressed during the remainder of this year. We should use every method available to us to insure that they are in fact resolved.

I would like to meet with you concerning these matters during the period July 18 - July 20, 1984. Please have your staff contact my office to arrange for a convenient time and location for the meeting. I would suggest that at least one-half of a day be set aside for the meeting.

Very truly yours,



Joseph Goldberg, Secretary  
Health & Environment Department



Department of Energy  
Washington, D.C. 20585

May 10, 1984

RWJ

RECEIVED

MAY 14 1984

ENVIRONMENTAL  
EVALUATION GROUP

Mr. Robert H. Neill  
Director  
Environmental Evaluation Group  
320 E. Marcy Street  
P.O. Box 968  
Sante Fe, New Mexico 87503

Dear Mr. Neill:

This refers to your letter of April 18, 1984, stating your concern with our conclusion that the State of New Mexico's Environmental Evaluation Group (EEG) was being adequately informed of problems affecting the Waste Isolation Pilot Plant (WIPP) project. Our conclusion was based, in part, on Appendix B to the 1981 Agreement for Consultation and Cooperation, which was used as the standard for adequacy.

The State and the Department of Energy entered into the Agreement to consult and cooperate about the State's concerns regarding public health and safety. The Agreement established key events and associated milestones and specified time frames for State review and comment. Appendix B delineated the specific documentation to be provided by the Department to the State for review and comment.

Pursuant to Appendix B, the initial WIPP Waste Acceptance Criteria was provided to the State for comment. The Department subsequently revised the criteria to address, among other things, the potential problems from gas generation associated with PU-238 contaminated waste. It appears from your letter that you have received a copy of the latest revision. This notification of a potential problem provides the State an opportunity to review and comment on the Department's proposed solution. The Agreement provides for similar treatment of other issues, such as your concern with certification of the TRU waste shipping container.

Article IX of the Agreement prescribed specific actions that could be taken by the State to resolve conflicts associated with the State's concern over public health and safety. We recommend that this procedure be used as a basis for resolving future conflicts on matters covered by the Agreement.

We have construed your letter of April 18, to be a request under the Freedom of Information Act for a copy of the Memorandum to File from A. K. Walter, subject: Meeting With DOE Office of Environmental Compliance, September 15, 1983. Your request for this document is being processed separately.

Sincerely,



William R. Partridge  
Assistant Inspector General  
for Inspections