

TONY ANAYA
GOVERNOR

DENISE D. FOR
DIRECTOR

STATE OF NEW MEXICO

ENVIRONMENTAL IMPROVEMENT DIVISION

P.O. Box 968, Santa Fe, New Mexico 87504-0968
(505) 827-2990

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cc. to Larry
Gordon*

November 17, 1986

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

Dear Mr. Romatowski:

I have received your letter of November 5, 1986, in which you regret your inability to meet with me by November 10, 1986, as I requested, and propose, instead, that we meet December 5, 1986. I, too, regret your inability to meet earlier, but do agree to meet on Wednesday, December 3, 1986, at 1:00 p.m., at your office in Albuquerque.

It is my understanding that the documents requested by me under both the Consultation and Cooperation Agreement (Agreement) and the Freedom of Information Act (FOIA) will be transmitted to my office by the end of this week. I appreciate your prompt response, and will accept this delivery under the Agreement in lieu of disclosure under FOIA so long as your office also informs me of what you are not disclosing and why. I do, however, reserve the option of pursuing my rights under FOIA should I not be satisfied with the disclosure under the Agreement.

I agree that it will be useful for our staffs to meet to clarify the issues before our meeting on December 3, 1986, and I understand that the staff meeting will take place on December 1, 1986, at 9:00 a.m., in Albuquerque.

Since the tenth calendar day following our meeting on December 3, 1986, is a Saturday, I will expect your written response by December 15, 1986, as provided for in Article IX of

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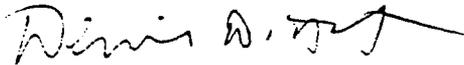


R. G. Romatowski
November 17, 1986
Page Two

the Agreement, advising the State of what action the Department of Energy contemplates regarding our concerns.

I look forward to our meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denise D. Fort".

DENISE D. FORT, Chairwoman
Radioactive Waste Consultation
Task Force, State of New Mexico

DDF:GN:deb



Department of Energy
Albuquerque Operations Office
P.O. Box 5400
Albuquerque, New Mexico 87115

Ms. Denise Fort
Chairwoman, Radioactive Waste
Consultation Task Force
P. O. Box 968
Santa Fe, NM 87504-0968

NOV 5 1986

Dear Ms. Fort:

This letter acknowledges receipt of your letter dated October 27, 1986, in which you request a meeting pursuant to the conflict resolution provision, Article IX, contained in our Agreement for Consultation and Cooperation (the Agreement) on the Waste Isolation Pilot Plant (WIPP). I appreciate your concern for the public health and safety of citizens and residents of New Mexico. As always, the Department of Energy remains committed to the resolution of safety and health issues raised by the State.

I am of course happy to meet with you to discuss your concerns, but I am surprised by the position you have taken concerning the applicability of subpart B of the Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes, especially in light of the position taken by the Environmental Protection Agency in its recent letter to Mr. Robert H. Neill on the same issue. I have enclosed a copy of that letter for your reference.

I regret that my schedule cannot accommodate a meeting before November 28, 1986. I suggest, however, that the meeting be reset for December 5, 1986, with the understanding that in the interim our staffs will meet to discuss and clarify those particular areas of health and safety that you believe to be affected by the Department's position with regard to subpart B compliance. In the meantime, since continuity in the resolution of such issues is important to both the State and the Department and this particular issue is one with long range considerations, I plan to forward a copy of this letter to the transition team for the newly-elected Governor.

By this letter, I also acknowledge receipt of your Freedom of Information Act (FOIA) request for documents. Your request has been referred to the Classification and Technical Information Division for processing. The authorizing official is Mr. Robert Y. Lowrey, Director, Classification and Technical Information Division, Albuquerque Operations Office, U. S. Department of Energy, P. O. Box 5400, Albuquerque, New Mexico 87115. You may expect a response as to the availability of the requested information directly from that office; however, because of the volume of requests received by the office, a response by the time of our meeting is unlikely. I note, however, that you have also requested the same documents pursuant to the Agreement. In the past, we have made every effort to provide the State with records pertinent to its concerns by this means, without the need for resort to the FOIA. Consistent with this past practice, I

Ms. Denise Fort

2

NOV 5 1988

propose that, in lieu of following FOIA procedures, we identify the documents responsive to your request and respond to your document request under the Agreement. This would minimize the burden of processing records through the FOIA process that are available through another avenue and expedite the production of documents to you so that you may have most of them before we meet.

Please call my office to arrange a meeting time in the timeframe mentioned above.

Sincerely,



R. G. Romatowski
Manager

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 24 1986

OFFICE OF
AIR AND RADIATION

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

Dear Mr. Neill:

This is in response to your letter of July 9, 1986, requesting replies to some questions you have on the Waste Isolation Pilot Plant (WIPP) and the plans of the Department of Energy (DOE) to show compliance with the Environmental Protection Agency's (EPA) standards for the management and disposal of high-level (HLW) and transuranic (TRU) wastes.

In general, the responses to your questions revolve around the definitions of "storage" and "disposal" as given in 40 CFR 191 Sections 191.02 (k) and (l), respectively. During the time that DOE is using the WIPP as a pilot project experiment with full capability to readily retrieve such waste, we would consider the activity to be storage. During that period the WIPP would be subject to the Subpart A provisions of the standard. At such time as DOE declares its intention to use the facility for "Disposal," without any intention of recovery, we would expect them to show that such disposal could meet the Subpart B provisions of the standard. The Subpart B provisions would not be actually in effect, however, until after the repository is closed for waste receipt and the final seals are in place.

Your three specific questions are answered below:

(1) Would EPA concur in DOE's plans to emplace TRU Waste for a period up to 5 years in WIPP prior to completing the performance assessment?

While we encourage DOE to complete a performance assessment as soon as possible, yes, we would have to accept a DOE decision to store, as defined in 40 CFR 191.02(k), the wastes in this manner without completing a post closure performance assessment. We do, of course, require DOE to comply with Subpart A of 40 CFR 191 during that period.

32

2

(2) Will EPA make a formal determination of the adequacy of DOE's performance assessment at any point in time?

Yes. We expect DOE to issue an environmental impact statement concerning the disposal, as defined in 40 CFR 191.02(1), of wastes in WIPP and at that time we would make our determination.

(3) Was it EPA's intention in 40 CFR 191 to allow DOE to emplace TRU or HLW in a repository without demonstrating compliance until the decision is made whether to retrieve?

We would expect DOE to show compliance with Subpart B of the standard at the time of the decision to "dispose" of the wastes at a repository and prior to the further emplacement of wastes for disposal.

I hope these responses clarify our positions on these issues. If you have further questions please contact me again.

Sincerely yours,

Sheldon Meyers

Sheldon Meyers, Director
Office of Radiation Programs (ANR-458)

2

TONY ANAYA
GOVERNOR

DENISE D. FOR
DIRECTOR



STATE OF NEW MEXICO

ENVIRONMENTAL IMPROVEMENT DIVISION

P.O. Box 968, Santa Fe, New Mexico 87504-0968

(505) 827-2850

October 27, 1986

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

Dear Mr. Romatowski:

Because of my concern for the public health and safety of New Mexicans, I am by this letter initiating the Conflict Resolution Procedure provided for in Article IX of the Agreement for Consultation and Cooperation entered into by the State and the Department of Energy (DOE) in conjunction with the July 1, 1981 Stipulated Agreement. It is the State's position that the Waste Isolation Pilot Project (WIPP) must comply fully with Subpart B of the Environmental Protection Agency's (EPA) Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes, 40 CFR § 191 *et seq.* (EPA Standards). The State further contends that DOE must demonstrate full compliance with the standards prior to any emplacement of radioactive waste at the WIPP facility. Full adherence to Subpart B of the EPA Standards prior to waste emplacement is crucial for the protection of both the short-term and long-term public health and safety.

From our investigation we understand that DOE contends that WIPP is not a "disposal" facility for purposes of compliance with Subpart B of the EPA Standards; and that WIPP should not be treated as a disposal facility until a decision is made in 1993 whether to retrieve emplaced waste or leave it there permanently. If DOE refuses to attempt to demonstrate Subpart B compliance prior to waste emplacement, this may subject New Mexico and its citizens, as well as surrounding states, to unnecessary risks associated with transportation, emplacement and retrieval of radioactive wastes.

On November 18, 1985, the EPA Standards became effective. These standards were promulgated in order to protect public health, safety, and the environment from the radiological hazards associated with the disposal of transuranic wastes. By their own terms, these standards are clearly applicable to WIPP. 40 CFR § 191.11.

Subpart B of these standards establishes several different types of requirements for disposal of radioactive wastes. Specifically, the Containment Requirements, at 40 CFR § 191.13, provide that a disposal system be designed to adequately contain projected radioactivity releases for 10,000 years after disposal. Second, the Assurance Requirements, at 40 CFR § 191.14, establish six types of assurances to further guarantee

R. G. Romatowski
October 27, 1986
Page Two

the long-term containment of radioactive wastes. These requirements include, among others, post-disposal monitoring, engineered barriers, and active institutional controls. In addition, these Assurance Requirements contain a prohibition against selecting a site which holds a reasonable expectation of mining for natural resources unless the "favorable characteristics" of the site outweigh the likelihood that the site will be disturbed in the future. 40 CFR § 191.14(e) Third, the Individual Protection Requirements, at 40 CFR § 191.15, establish radiation exposure limits for members of the public. Finally, the Ground Water Protection Requirements, at 40 CFR § 191.16, set standards to prevent radioactive contamination of ground water from the disposal system.

According to DOE's published estimates, (WEIB-DOE WIPP Transportation System Meeting, TRU Program Background 9/29/86) New Mexico can expect up to 6,000 shipments of Contact-handled transuranic (CH-TRU) waste into the State during the five year period from 1988 through 1993, comprising approximately 23% of the total projected CH-TRU waste emplacement of 6,200,000 cubic feet referenced in the October 1980 WIPP Final Environmental Impact Statement. (DOE/EIS - 0026 Vol. I and II) If the decision is made in 1993 that WIPP is not acceptable as a disposal site, the retrieval of the 200,000 drums and boxes may require up to ten years (WIPP DOE-069 September 1985) and a similar number of shipments through the State.

These Subpart B Standards clearly are designed to afford public health and safety protection from the very serious and long-term hazards associated with radioactive wastes. If indeed DOE has no intention of complying with these Standards until 1993, I fear that the public health and safety may be needlessly jeopardized. It is for this reason that the State insists that DOE comply fully with all Subpart B Standards prior to waste emplacement.

For these reasons, I believe that WIPP is required to demonstrate compliance with Subpart B of the EPA Standards before any waste emplacement begins in October, 1988. I, therefore, take issue with DOE's interpretation of the applicability of Subpart B of the EPA Standards.

I therefore request that you and I meet as soon as possible, and by November 10, 1986, at the latest, to discuss these concerns in detail. In order to better prepare for this meeting, we are also hereby requesting, pursuant to our rights under the Consultation and Cooperation Agreement and the Freedom of Information Act, 5 U.S.C. § 552, all documents relating to compliance with Subpart B of the EPA Standards, including but not limited to correspondence, memoranda, and other documents related to DOE's contracts with Westinghouse and Sandia National Laboratories for work involving Subpart B compliance, as well as any other memoranda, correspondence, studies, reports, written plans and schedules, and all other documents dealing with Subpart B requirements. We would request that you supply us with these documents no later than five working days before the meeting.

R. G. Romatowski
October 27, 1986
Page Three

I appreciate your prompt attention to these important matters.

Sincerely,



DENISE D. FORT, Chairwoman
Radioactive Waste Consultation Task
Force, State of New Mexico

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