

9-4-1987  
A-31-10  
(C.S. # 2)

SECOND MODIFICATION TO THE  
JULY 1, 1981 "AGREEMENT FOR CONSULTATION  
AND COOPERATION" ON WIPP BY THE STATE OF  
NEW MEXICO AND U.S. DEPARTMENT OF ENERGY

 ENTERED

The State of New Mexico ("State") and the United States Department of Energy ("DOE") hereby agree to the following modifications to the July 1, 1981 Agreement for Consultation and Cooperation, modified by the November 1984 First Modification, which forms a part thereof. These modifications are effective and binding upon the parties as of the signing of this document.

WHEREAS, the State has identified certain continuing concerns regarding: (1) surface and subsurface mining and drilling after closure of the WIPP site; and (2) the disposal of salt tailings at the WIPP site; and (3) compliance with Environmental Protection Agency (EPA), Department of Transportation (DOT), and Nuclear Regulatory Commission (NRC) regulations.

WHEREAS, DOE and the State have agreed that the following modifications address those specific State concerns and are in furtherance of, and consistent with, both DOE's responsibility for national security and for carrying out the mission of WIPP in accordance with Public Law 96-164, and the State's responsibility for the welfare of its citizens and for the safe environment of New Mexico; and

WHEREAS, these modifications are made in accordance with Article V - Modifications to the Agreement for Consultation and Cooperation; and

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WHEREAS, the parties recognize that, because of the WIPP project's long-term and significant nature, there may be additional issues and concerns which may be addressed in future modifications and which this Second Modification in no way limits the parties from raising;

NOW, THEREFORE, the parties agree to modify the July 1, 1981 Agreement for Consultation and Cooperation, as modified by the November 1984 First Modification, which is a part thereof, in the following particulars:

MODIFICATIONS TO AGREEMENT FOR  
CONSULTATION AND COOPERATION

1. Modify Article VI - WIPP MISSION by revising paragraph D. to read in its entirety as follows:

D. The DOE will not permit subsurface mining, drilling, or resource exploration unrelated to the WIPP Project on the WIPP site during facility construction, operation, or after decommissioning. This prohibition also precludes slant drilling under the site from within or from outside the site. The "WIPP site" as used here means the 4 x 4 mile (10,240 acres) area consisting of sections 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34 of Township 22 South, Range 31 East, NMPM, in Eddy County, New Mexico; Sections 16 and 32 belong to the State and the exchange of those lands between the U.S. Department of the Interior and the State is pending.

At the conclusion of the WIPP project the DOE shall dispose of any residual salt tailings extracted from the WIPP site in an environmentally acceptable manner, to be determined in consultation with the State of New Mexico.

The DOE has no present intent to reorient the underground storage area toward the northern half of Zone II, as that zone is described in the WIPP Safety Analysis Report. In the unlikely event that DOE develops plans to reorient the storage area toward the north, DOE agrees to provide all available information and analysis regarding those plans to the State for review and comment at least forty five days before making a decision to reorient the storage area. If the State, after consulting with DOE about the State's comments, believes its concerns are still unresolved, the State may request that the matter be considered under the conflict resolution procedures set forth in Article IX of this Agreement.

2. Modify Article VI - WIPP MISSION by revising paragraph E. to read in its entirety as follows:

E. 1. In carrying out this stated mission, DOE and WIPP will comply, at a minimum, with all applicable state, federal, and local standards, regulations, and laws, including any applicable regulations or standards promulgated by the Environmental Protection Agency. Compliance by way of grandfathering, variance, waiver, or exemption shall in no way prevent or stop the State from requiring any similar health and safety measures at WIPP under separate applicable authority, nor shall such compliance

prevent or stop the State from seeking conflict resolution under Article IX, herein, to resolve disputes about such health and safety measures.

2. The Final Safety Analysis Report which will be issued by DOE prior to the receipt of waste will document DOE's ability to comply with the provisions of Subpart A of the Environmental Standards of the Environmental Protection Agency for the Management and Disposal of Spent Nuclear Fuel, High Level and Transuranic Wastes (40 CFR 191, Subpart A). Upon initial receipt of radioactive waste at the WIPP, and thereafter, the DOE will comply in all respects with the said Subpart A in effect at the time.

In addition, the DOE agrees to provide the State by February 1, 1988 with a Plan describing the steps which the DOE will undertake to demonstrate compliance with the assurance requirements contained in 40 CFR 191.14 of Subpart B of the EPA standards. This Plan will contain an estimated schedule and a description of the process DOE will use to: identify needed active institutional controls, gather data for the implementation of such controls, develop and implement a monitoring plan for the underground facility, define and implement a plan for passive institutional controls, determine the barriers to be used, assess the selection of the WIPP site in view of the resources at the site, and review the recoverability of the waste for a reasonable period after disposal.

Prior to receiving more than 15 percent by volume of the transuranic waste capacity of the Waste Isolation Pilot Plant, described as 6.2 million cubic feet of transuranic waste in the Waste

Isolation Pilot Plant Record of Decision (46 Federal Register 9162, dated January 23, 1981), the Secretary of Energy shall demonstrate that the Waste Isolation Pilot Plant meets the applicable environmental standards for the disposal of radioactive waste established in Subpart B of such Environmental Protection Agency Standards (40 CFR 191, Subpart B), including the Assurance Requirements under such Subpart B, in effect at that time.

The parties are aware of the opinion issued by the United States Court of Appeals for the First Circuit in Natural Resources Defense Council, et al. v. United States Environmental Protection Agency, et al., Nos. 85-1915, 86-1096, 86-1097, and 86-1098 regarding the aforementioned 40 CFR 191 standards. While the standards are on remand to the EPA for reconsideration pursuant to the July 17, 1987 opinion in that case, DOE agrees to continue its performance assessment planning as though the provisions of 40 CFR 191 effective November 19, 1985 remain applicable.


3. DOE shall use both engineered and natural barriers to isolate the radioactive waste after disposal in compliance with the EPA Standards. The barriers shall include, as a minimum, properly designed backfill, plugs and seals in the drifts and at the entries to the panels, and plugs and seals in the shafts and drillholes.

4. The transportation of radioactive waste to WIPP shall comply with the applicable regulations of the U.S. Department of Transportation and any applicable corresponding regulations of the U.S. Nuclear Regulatory Commission. All waste shipped to WIPP will be shipped in packages which the Nuclear Regulatory Commission has certified for use.


The parties agree that all other terms and conditions of their Agreement for Consultation and Cooperation, including the Working Agreement for Consultation and Cooperation as previously modified, shall remain in full force and effect.

IN WITNESS WHEREOF, on this 4th day of August 1987, the undersigned have executed this Second Modification to their July 1, 1981 Agreement for Consultation and Cooperation, as modified by the November 1984 First Modification, in several duplicate originals.

For the STATE OF NEW MEXICO:

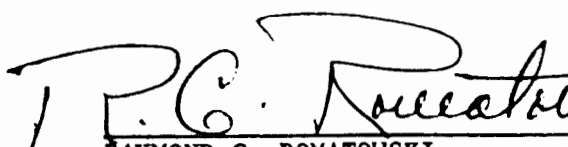


GARREY CABRUTHERS  
Governor

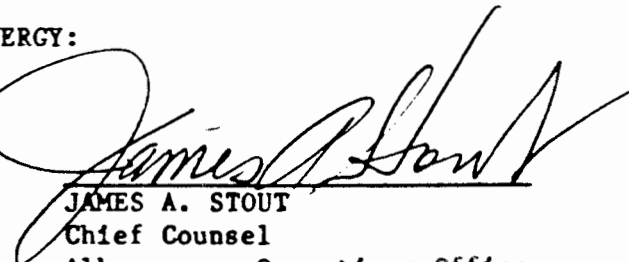


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AGREEMENT BETWEEN THE STATE OF NEW MEXICO  
AND THE DEPARTMENT OF ENERGY

WHEREAS, the State has identified the necessity of constructing a number of new roads in New Mexico along the designated WIPP transportation routes to provide relief routes around congested urban areas and away from frequently traveled existing routes;

NOW THEREFORE, the parties agree to the following amendments to the 1982 Supplemental Stipulated Agreement, which is a part thereof, in the following particulars:

The D.O.E. agrees that, with the support of the New Mexico Delegation, which support State officials will solicit in furtherance of implementing this Agreement, the D.O.E. will make a good faith effort immediately to join and support the State and its Delegation in seeking a special appropriation from Congress of an amount not to exceed \$190,000,000.00 (1987 dollars) for the purpose of assisting the State in the construction of the following new roads in New Mexico that the New Mexico State Highway Department has proposed for funding as WIPP project relief routes:

- 1) a Hobbs Relief Route;
- 2) a Los Alamos/Santa Fe Relief Route;
- 3) a Roswell Relief Route;
- 4) a Santa Fe By-pass;
- 5) an Artesia Relief Route; and
- 6) a Carlsbad By-pass (Eddy County Loop Route).

The State and the D.O.E. recognize that such funding may be appropriated over a number of years. Given the D.O.E.'s plan to start emplacing waste at WIPP in October 1988, the funding is immediately needed for construction of these relief routes before a substantial portion of the waste starts being transported on New Mexico highways.

A "good faith effort" by the D.O.E. immediately to join and support the State and its Delegation to seek these funds from Congress includes at least the following:

- 1) The D.O.E. shall submit written testimony and testify if possible in support of the above mentioned requested appropriation and authorization before the Senate and House Appropriations Committees, the Senate Environment and Public Works Committee, the House Public Works Committee, the Senate and House Budget Committees, and any other appropriate Congressional committees;

- 2) The D.O.E. shall submit written statements in favor of the above mentioned requested appropriation and authorization to all members of the New Mexico Delegation for their use;

- 3) The D.O.E. shall coordinate and cooperate with the Federal Highway Administration to enlist its support in favor of the above mentioned requested appropriation and authorization; and





4) The D.O.E. shall respond favorably in support of the above mentioned requested appropriation and authorization to inquiries from the press, the public, and others.

Signed this 4th day of August 1987.


SIGNATURES:


For the STATE OF NEW MEXICO:

  
GARY CARRUTHERS  
Governor

  
HAL STRATTON  
Attorney General

For the UNITED STATES DEPARTMENT OF ENERGY:

  
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