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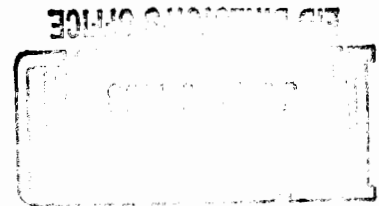
ENVIRONMENTAL IMPROVEMENT DIVISION

LARRY GORDON
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Michael J. Burkhart
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Deputy Secretary

NEW MEXICO
HEALTH AND ENVIRONMENT
DEPARTMENT



MEMORANDUM

TO: K. Jones, Deputy Director, EID

FROM: A.F. Gallegos, Policy Planning Group, EID

SUBJECT: WIPP Draft MOU between DOE and NMEID, concerns

A draft MOU between DOE and NMEID is currently being evaluated which, if agreed upon and executed, would allow the transport and storage of CH-TRU waste from RFP to WIPP without RCRA authorization for mixed waste by the State of New Mexico. The authorization under RCRA for such activity under interrim permit from the State is prevented because of an exclusion clause in NM hazardous waste statutes for WIPP wastes which must be repealed or amended to allow NM to apply for mixed waste authorization under RCRA. Although not all mixed waste to be disposed of in NM (such as LLW at IANL) is exempted from the State hazardous waste regulations, the opinion of EPA is that the WIPP site mixed wastes must be included in the regulations before NM can apply for this authorization. A concern in this regard is that this exclusion clause may jeopardize NM's current RCRA authorization under Subtitle C if not repealed, because mixed waste authorization is required by EPA for States with this type of authorization.

It is clear that DOE wishes to allow CH-TRU waste shipment to and waste implacement at WIPP by NM's acknowledgment (along with Colorado and EPA agreement) that DOE will be complying with all RCRA and NM regulations applying to the implacement of mixed waste at WIPP, until the State becomes authorized to issue an interrim permit for this purpose. It is not intended that NM regulate mixed waste activity during this time period. A precedent of this type was set in Nevada with respect to shipment of mixed wastes from RFP to NTS where the concerned agencies(DOE, (EPA, Colorado, and Nevada) agreed that such activity could be justified under the HW State regulations of Nevada. The concern about this precedent is that the Nevada regulations included mixed wastes, whereas NM state regulations do not, and in addition exclude WIPP wastes altogether. It could be construed by some individuals that the use of this precedent in using NM regulations for WIPP could be in contradiction to the exclusion clause of concern.

There are several exemptions, waivers or variances that DOE has included in the MOU of concern to NM:

- * RCRA land ban requirements
- * ground water migration monitoring requirements
- * waste classification of mixed wastes

Mixed waste waste is defined as being solid waste with a hazardous waste component and a radioactive waste component, although that waste may contain additional solid wastes of no concern to RCRA in this case. It appears that DOE in its quest to avoid actual analysis of the wastestream





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which could be potentially hazardous and uneconomical is willing to consider all waste under land ban restrictions for purposes of disposal. DOE is in the process of seeking exemption of additional treatment of land banned waste prior to disposal by first obtaining a waiver, and then securing a "no migration" exemption from EPA for this purpose. These activities are of concern to NM because it assumes that once WIPP is under State control of mixed waste that NM will also agree with this exemption without State consideration. Also, it appears that the effectiveness of the MOU probably hinges on prior approval by EPA headquarters of this exemption; hence the premature nature of MOU in this regard.

DOE is seeking to be exempted from ground water monitoring to assure compliance by using the information gained at WIPP on ground water transport to show effective containment for the contaminants making it unnecessary for such activity. Of concern here is that ground water monitoring is crucial to RCRA for the protection of ground water, and perhaps prior exemption by EPA prior to an MOU should be considered to avoid unnecessary controversy in the State.

On the positive side is that DOE is willing to operate WIPP by addressing the existing RCRA regulations for mixed waste as if it were permitted for this activity. Also, from the analysis of containment studies it appears that WIPP is over qualified for the handling and storage/disposal of mixed waste based on the isolation requirements between TRU wastes and mixed wastes. Also, DOE is not pursuing the "conflict" resolution of incompatibilities between the treatment of hazardous wastes and radioactive wastes agreed to by EPA which could ultimately compromise RCRA requirements for disposal. Finally, it is my opinion that DOE is acting in good faith to solve some very complex issues concerning mixed waste, and it is advantageous for the State to join in the effort.

cc: M. Burkhart, Director, EID