

548600



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



July 15, 1992



Mr. Robert H. Neill, Director  
Environmental Evaluation Group  
7007 Wyoming, N.E., Suite F-2  
Albuquerque, NM 87109

Dear Mr. Neill:

The Department of Energy (DOE) has reviewed EEG-50, "Implications of Oil and Gas Leases at the WIPP on Compliance With EPA TRU Waste Disposal Standards." Several issues raised in EEG-50 are misleading, incomplete or incorrect and subject to misinterpretation. This letter addresses only our general concerns and is not intended to be a detailed response to your report. A detailed response will be provided in the near future. In general, we believe the report should be revised and reissued.

Our first concern is the report's implication that, because DOE is self regulated with regard to compliance with 40 CFR Part 191, therefore we are not responsible to any external regulator in the context of institutional controls at the Waste Isolation Pilot Plant (WIPP). WIPP is regulated by the Environmental Protection Agency (EPA) and by the State of New Mexico Environment Division (NMED). DOE has obtained a No-Migration Determination (NMD) from the EPA for the Test Phase and will have to obtain another NMD for disposal. In addition, WIPP has applied for a Resource Conservation and Recovery Act (RCRA) Part B permit from the NMED. The Disposal Phase closure plan developed for these WIPP permitting activities will require review and approval by both these regulating agencies. The active and passive institutional control measures will be critical components of that closure plan.

The report's allegation that knowledge of the leases and well for hydrocarbon extraction were "lost" for several years is misleading. These leases and the well have not been overlooked. They are properly recorded and filed with state and federal authorities. This documentation is on file in the appropriate Bureau of Land Management (BLM) offices. As you are aware, continuing dialogue and informational exchange has taken place with the BLM regarding these leases in recent years. In fact, pursuant to agreement between the BLM and DOE, the BLM advised DOE in late

920704



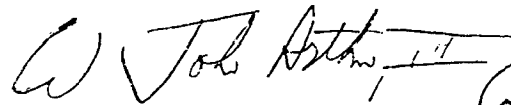
1981 of the application to drill beneath Section 31 below the 6000-foot level and sought DOE comments regarding the application. That notice and comment process remains in place today.

In order to not unnecessarily limit the lessees' rights to develop oil and gas or the State's royalty income, the United States did not condemn the mineral rights located below 6000 feet in Section 31. Those mineral rights may only be accessed by directional drilling from locations outside the land withdrawal area. In Section 31, no one has the right to explore or extract in the area from the surface to a depth of 6000 feet. In the other fifteen sections of the land withdrawal area, no exploration or extraction rights exist. This is clearly stated in the Memorandum of Understanding with the Department of Interior's Bureau of Land Management.

The limitation of 6000 feet provides a sufficient margin of facility protection. The presence of the James Ranch #13 well has been thoroughly reviewed by DOE and EPA and has been determined to not pose any safety or technical issues.

As will be further discussed in our detailed response to EEG-50, the DOE believes that current policies and programs adequately preserve the integrity of WIPP. If you have any questions regarding this matter, please contact Les Gage of my staff at 845-5983.

Sincerely,



W. John Arthur, III  
Project Director  
WIPP Project Integration Office



cc:

C&C File  
J. Bickel, OESP, AL  
K. Griffith, OCC, AL  
L. Gage, WPIO  
M. Daugherty, WPSO  
R. Anderson, SNL, AL  
L. Woodard, BLM