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# WIPP missed deadline for applying for waste tests

By JOSH MARGOLIN  
Current-Argus staff writer

There is no question that WIPP will not be allowed to receive waste until the nuclear repository is granted a hazardous materials permit under the New Mexico Hazardous Waste Act, state officials said this morning.

Officials at the Waste Isolation Pilot Plant have been saying all along that the dump will only require "interim status" to test samplings of nuclear waste. But a lawyer for the New Mexico Environment Department said today that WIPP's first application for the initial status was nearly two years late so the facility cannot have interim status as a matter of law.

"You do not grant or deny interim status," said NMED attorney Gini Nelson. "The agency may acknowledge or make a statement about it. We made a preliminary determination that the submittal was not made under state law. WIPP did not make it with the 'Part A' on time."

The "Part A" application is where a mixed hazardous-nuclear waste site asks for permission to accept small amounts of waste for testing and research by regulating agencies.

Nelson said that application was due in 1989 after the state legislature removed a 2-year-old exemption that said WIPP was not subject to the hazardous waste act.

WIPP, according to official correspondence obtained by the Current-Argus, submitted the application on Jan. 22, 1991 because project officials believed the regulations, and the time limits, did not apply to the facility

until July 11, 1990.

Prior to July 1990, Nelson said, NMED's non-enforcement of its own regulations could have misled WIPP into thinking its hazardous waste oversight was being done solely by the U.S. Environmental Protection Agency.

"It is a very regrettable state of facts," Nelson said. "It is complex and they (EPA) do it in stages. So what people say is that authorization happened in July 1990."

Referring to the entire scenario as "weird" and "confusing," Nelson said just because neither NMED nor EPA were enforcing hazardous waste regulations at WIPP for a certain time period does not mean they weren't binding.

Nelson admitted WIPP might have a legal case because of the non-enforcement. She quoted a legal principle that says if a rule is not enforced long enough, people have a right to believe it will never be enforced.

WIPP sources have said they were not late with the application because it was submitted within the statutory six months following the July 1990 authorization of NMED by EPA.

That, said Nelson, would be accurate.

"If there was no state law giving NMED the ability to enforce mixed waste regulations until July 1990 the dates are OK," she said.

The contention reiterated constantly by WIPP officials is that EPA, in correspondence since July 1990, has repeatedly said the site is eligible automatically for interim status.

"To the extent that state interim status mirrors federal interim status requirements, WIPP would have been eligible for interim status on July 25, 1990," wrote EPA Dallas office Regional Counsel George Alexander in an Aug. 20, 1991 letter to NMED waste operations director Kathleen Sisneros.

Nelson said, however, as long as the state is authorized by EPA to regulate something, the agency's opinion holds no procedural importance. Because once EPA authorizes the state that means the agency feels that the local regulations are strong enough that the U.S. Resource Conservation and Recovery Act need not be invoked.

And later on in his letter, Alexander confirms that while EPA disagrees with the NMED's determination, the federal agency is staying out of this debate.

"EPA expresses no opinion as to interim status under state law," wrote Alexander, who said this morning that his letter speaks for itself.

As a result of the tardiness of the interim status application, NMED spokesman John Geddie said Wednesday it will probably be about 11 months before waste could move to the desert site 26 miles southeast of Carlsbad.

Geddie said the project would have to go through the permitting phase and that requires two sets of public hearings and a permit drafting procedure.

Energy Department officials have refused to comment for two days on the entire question of their options and views regarding NMED's determination that interim status was not, and will not, be granted to WIPP.

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