



**BRUCE KING**  
GOVERNOR

April 25, 1994



**ANITA LOCKWOOD**  
CABINET SECRETARY

Mr. George Dials, Manager  
Carlsbad Area Office, U.S. Department of Energy  
P.O. Box 3090  
Carlsbad, NM 88221-3090

Dear Mr. Dials:

Thank you for including the Task Force in discussions relating to DOE options for system prioritization of Waste Isolation Pilot Plant regulatory compliance. We offer the following comments on the April 7, 1994 presentation of Dr. Paul Davis, and look forward to future opportunities to discuss the programmatic changes which have been proposed.

The New Mexico Radioactive Waste Consultation Task Force is charged by statute to negotiate with the federal government "... in all areas relating to the siting, licensing and operation of new federal disposal facilities, including research, development and demonstration, for high-level radioactive wastes, transuranic radioactive wastes and low-level radioactive wastes." [Section 74-4A-7 NMSA 1978]. In this capacity, the Task Force has reviewed many Department of Energy program initiatives designed to provide for timely initiation of disposal operations at WIPP. The most recent initiatives include: an administrative land withdrawal, plans for *in situ* testing with radioactive materials, expanded laboratory testing without *in situ* tests, and the current proposal.

When the Department of Energy elected not to proceed with radioactive materials testing at the WIPP site, New Mexico was assured by DOE the expanded laboratory testing strategy which followed was based on the best available science. This initiative would also enable DOE to apply for disposal authority from the U.S. Environmental Protection Agency two years sooner than if tests were conducted at the site.

The State has consistently supported the statements of the Secretary of Energy that a disposal decision would proceed only after sound, thorough scientific research. New Mexico has also supported the performance assessment underway at Sandia National Laboratories as an approach which could provide answers to the many outstanding questions which remain relating to the ultimate safety of WIPP, and its potential for compliance with EPA standards.

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The materials provided for our review by Dr. Davis describe a proposed new methodology. They address the CAO's desire to expend funds prudently, to achieve compliance with applicable regulations, to involve stakeholders external to DOE in the planning and design of the proposed new direction, and to provide confidence in the assessment process. These are important issues to be addressed, and we support them. However, two topics were not addressed in Dr. Davis's presentation:

1. What is the basis for DOE's commitment to a 1998 disposal decision? Is there a scientific rationale associated with this date?
2. What is the current status of DOE's earlier commitment to the best possible science in assessment of the WIPP repository?

The proposed new system prioritization method appears to be somewhat of a retreat from a performance assessment program which is widely regarded as the best possible science. The State believes it is essential to build on the scientific experience of the program to date, and to improve on the science as DOE moves toward demonstration of compliance with the regulatory standards. However, we cannot endorse the 1992 Performance Assessment for use in the proposed accelerated compliance strategy. Reference is made to "*Regulatory Issues for Waste Isolation Pilot Plant Long-Term Compliance with U.S. Environmental Protection Agency 40 C.F.R. 191B and 268*" (SAND93-0053 UC-721), which states: "**Portions of the modeling system and the data base remain incomplete, and the level of confidence in the performance estimates is not sufficient for defensible compliance evaluations**". (Page 3, Paragraph 2).

One of the justifications cited by Dr. Davis for the proposed new methodology is the "regulatory environment has recently changed." While this may be true in a general sense for WIPP, the State is not aware of a list of significant additions to the regulatory matrix since October of 1993 when DOE endorsed the expanded laboratory test plan. The only significant new regulatory development is the ongoing promulgation of 40 C.F.R. Part 194. This will provide the compliance criteria to DOE for WIPP, but will not be final until 1995. Therefore, it appears as if DOE is proposing a new systems approach which could precede, and perhaps preclude, compliance with the regulations which will have final jurisdiction over EPA's review of DOE's compliance application. We further question the assumption in the proposed approach that accelerated compliance activities will result in accrued cost savings. We hope the comments which follow will be helpful to DOE in addressing these concerns.

We understand and concur with DOE's interest in prioritizing experimental activities in a compliance-based system. However, the proposed approach may well not result in the degree of public confidence currently provided by the performance assessment program. Additionally, as the federal regulator with final jurisdiction over WIPP, the U.S. Environmental Protection Agency should be consulted for guidance concerning experiment selection. Prioritization should also be based on existing PA sensitivity analyses, quality-assured expert panel findings, and guidance from principal investigators at experiment sites. Such guidance should be carefully evaluated based on scientific need and the contributions made to demonstrating regulatory compliance, regardless of an experiment's likelihood of

enabling a 1998 disposal decision.

We commend the CAO for evaluating prioritization options and urge the existing body of good science be retained as this initiative takes shape.

The State has consistently supported decisions related to WIPP based on the best scientific and technical knowledge available to assure the safety of the citizens of the State of New Mexico. Thank you for the opportunity to provide comments. We look forward to further discussions related to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Anita Lockwood". The signature is fluid and cursive, with a large initial "A" and "L".

Anita Lockwood, Chairman

New Mexico Radioactive Waste Consultation Task Force

cc: Task Force Members  
Assistant Secretary Thomas Grumbly, U.S. DOE  
Dr. Paul Davis, Sandia National Laboratories