



Steve Zapp

State of New Mexico
ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT
Santa Fe, New Mexico 87505



March 8, 1995



MEMORANDUM

To: Distribution (see next page)
From: Chris Wentz, Co-Coordinator *CPW*
N.M. Radioactive Waste Consultation Task Force
Subject: **PROPOSED MEETING ON THE WIPP BIENNIAL ENVIRONMENTAL COMPLIANCE REPORT: 1:30 P.M. ON APRIL 4, 1995**

At the end of October 1994, the Carlsbad Area Office of the U.S. Department of Energy (DOE) sent to each of your agencies a copy of the WIPP *Biennial Environmental Compliance Report*. Preparation of this DOE report was mandated under Section 9(a) of the federal WIPP Land Withdrawal Act of 1992 [Public Law 102-579]. A copy of that referenced section is enclosed for your review.

In essence, DOE was directed to submit to the State of New Mexico and the U.S. Environmental Protection Agency (EPA) documentation of WIPP's compliance with certain laws, regulations, and permit requirements listed in the WIPP Act. The Biennial Environmental Compliance Report (BECR) is DOE's documentation of WIPP's compliance. In addition, it is important to note the BECR appears to go far beyond what is required in the WIPP Act with respect to its coverage of State of New Mexico laws, regulations, and permit requirements as well as those federal laws, regulations and permit requirements for which the State has primacy. This is a double-edged sword in that it makes the report more comprehensive, but creates some confusion about a "determination" the State must make.

In regard to that determination, the WIPP Act also provides the following directive: "The [EPA] Administrator or the State, as appropriate, shall determine not later than 6 months after receiving [the Biennial Environmental Compliance Report] whether the [DOE] Secretary is in compliance with the laws, regulations, and permit requirements..." listed in the WIPP Act. It appears from my reading of the Act that the State may only be required to make a determination about WIPP's compliance with the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) In any event, the deadline for EPA and the State to make their respective determinations is April 30, 1995.

VILLAGRA BUILDING - 408 Galisteo
Forestry and Resources Conservation Division
P.O. Box 1948 87504-1948
827-5830
Park and Recreation Division
P.O. Box 1147 87504-1147
827-7465

2640 South Pacheco
Office of the Secretary
827-5950
Administrative Services

950305

For the preceding reasons, I have tentatively scheduled a meeting for 1:30 p.m. on Tuesday, April 4, 1995, in the 2nd floor conference room of the New Mexico Energy, Minerals and Natural Resources Department (2040 S. Pacheco Street in Santa Fe). The purpose of the meeting is to discuss the relevant provisions of the WIPP Act, briefly review the BECR, and attempt to reach consensus on the proposed approach to the State's handling of the issue. It is important for each agency on the Distribution List below to have a representative in attendance.

If you cannot locate the 3-inch-thick copy of the BECR in your agency, you can try calling Mr. Joe Willis with Westinghouse (DOE's Management and Operations contractor for WIPP) at 505/234-8190 in Carlsbad to obtain another.

Please don't hesitate to contact me at 827-5950 in Santa Fe if I can provide any additional information, directions to our Department building, or clarification of the issues discussed herein. Thank you.

c: Jim Firkins, Task Force Co-Coordinator

Distribution List:

Mr. Mark Weidler, Cabinet Secretary
N.M. Environment Department (NMED)

Dr. Ed Kelley, Director

Water and Waste Management Division, NMED

Mr. Benito Garcia, Bureau Chief

Hazardous and Radioactive Materials Bureau, NMED

(original BECR sent to former NMED Secretary Judith Espinosa)

Mr. Keith Lough, Bureau Chief
Emergency Management Bureau
N.M. Department of Public Safety

Mr. Michael Romero Taylor, Director
Historic Preservation Division
N.M. Office of Cultural Affairs

Dr. Ray B. Powell
Commissioner of Public Lands
N.M. State Land Office

Mr. Gerald A. Maracchini, Director
N.M. Department of Game and Fish (NMDGF)

Mr. Bob Wilson, Habitat, Environment & Lands Division, NMDGF
(original BECR sent to former NMDGF Director Bill Montoya)

Mr. Lonnie Mathews, Bureau Chief
Bureau of Pesticide Management
N.M. Department of Agriculture

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Waste Isolation Pilot Plant Land Withdrawal Act”.

4 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Land withdrawal and reservation for WIPP.
- Sec. 4. Establishment of management responsibilities.
- Sec. 5. Test phase and retrieval plans.
- Sec. 6. Test phase activities.
- Sec. 7. Disposal operations.
- Sec. 8. Environmental Protection Agency disposal regulations.
- Sec. 9. Compliance with environmental laws and regulations.
- Sec. 10. Retrieval.
- Sec. 11. Mine safety.
- Sec. 12. Ban on high-level radioactive waste and spent nuclear fuel.
- Sec. 13. Decommissioning of WIPP.
- Sec. 14. Savings provisions.
- Sec. 15. Economic assistance and miscellaneous payments.
- Sec. 16. Transportation.
- Sec. 17. Access to information.
- Sec. 18. Judicial review of EPA actions.
- Sec. 19. Technology study.
- Sec. 20. Statement for purposes of Public Law 96-164.
- Sec. 21. Consultation and cooperation agreement.
- Sec. 22. Buy American requirements.
- Sec. 23. Authorizations of appropriations.

5 SEC. 2. DEFINITIONS.

6 For purposes of this Act:

7 (1) ADMINISTRATOR.—The term “Adminis-
8 trator” means the Administrator of the Environ-
9 mental Protection Agency.

10 (2) AGREEMENT.—The term “Agreement”
11 means the July 1, 1981, Agreement for Consultation
12 and Cooperation, as amended by the November 30,
13 1984 “First Modification”, the August 4, 1987
14 “Second Modification”, and the March 18, 1988
15 “Third Modification”, or as it may be amended after

1 (g) ENGINEERED AND NATURAL BARRIERS, ETC.—
2 The Secretary shall use both engineered and natural bar-
3 riers, and waste form modifications, at WIPP to isolate
4 transuranic waste after disposal to the extent necessary
5 to comply with the final disposal regulations.

6 **SEC. 9. COMPLIANCE WITH ENVIRONMENTAL LAWS AND**
7 **REGULATIONS.**

8 (a) IN GENERAL.—

9 (1) APPLICABILITY.—Beginning on the date of
10 the enactment of this Act, the Secretary shall com-
11 ply with respect to WIPP, with—

12 (A) the regulations issued by the Adminis-
13 trator establishing the generally applicable envi-
14 ronmental standards for the management and
15 storage of spent nuclear fuel, high-level radio-
16 active waste, and transuranic radioactive waste
17 and contained in subpart A of part 191 of title
18 40, Code of Federal Regulations;

19 (B) the Clean Air Act (40 U.S.C. 7401 et
20 seq.);

21 (C) the Solid Waste Disposal Act (42
22 U.S.C. 6901 et seq.);

23 (D) title XIV of the Public Health Service
24 Act (42 U.S.C. 300f et seq.; commonly referred
25 to as the “Safe Drinking Water Act”);

1 (E) the Toxic Substances Control Act (15
2 U.S.C. 2601 et seq.);

3 (F) the Comprehensive Environmental Re-
4 sponse, Compensation, and Liability Act of
5 1980 (42 U.S.C. 9601 et seq.);

6 (G) all other applicable Federal laws per-
7 taining to public health and safety or the envi-
8 ronment; and

9 (H) all regulations promulgated, and all
10 permit requirements, under the laws described
11 in subparagraphs (B) through (G).

12 (2) PERIODIC OVERSIGHT BY ADMINISTRATOR
13 AND STATE.—The Secretary shall, not later than 2
14 years after the date of the enactment of this Act,
15 and biennially thereafter, submit documentation of
16 continued compliance with the laws, regulations, and
17 permit requirements described in paragraph (1) to
18 the Administrator, and, with the law described in
19 paragraph (1)(C), to the State.

20 (3) DETERMINATION BY ADMINISTRATOR OR
21 STATE.—The Administrator or the State, as appro-
22 priate, shall determine not later than 6 months after
23 receiving a submission under paragraph (2) whether
24 the Secretary is in compliance with the laws, regula-

1 tions, and permit requirements described in para-
2 graph (1) with respect to WIPP.

3 (b) DETERMINATION OF NONCOMPLIANCE DURING
4 TEST PHASE.—

5 (1) DETERMINATION BY ADMINISTRATOR.—If
6 the Administrator determines at any time during the
7 test phase that the WIPP facility does not comply
8 with any law, regulation, or permit requirement de-
9 scribed in subsection (a)(1), the Administrator shall
10 request a remedial plan from the Secretary describ-
11 ing actions the Secretary will take to comply with
12 such law, regulation, or permit requirement.

13 (2) CONSEQUENCES OF NONCOMPLIANCE.—If—

14 (A) a remedial plan is not received from
15 the Secretary within 6 months of a determina-
16 tion of noncompliance under paragraph (1); or

17 (B) the Administrator determines, by rule
18 pursuant to section 553 of title 5, United
19 States Code, that a remedial plan requested
20 under paragraph (1) is inadequate to bring the
21 WIPP facility into compliance;

22 then the Secretary shall implement the retrieval plan
23 under section 10 and the decommissioning and post-
24 decommissioning plans under section 13, and, fol-
25 lowing implementation of such plans, the land with-