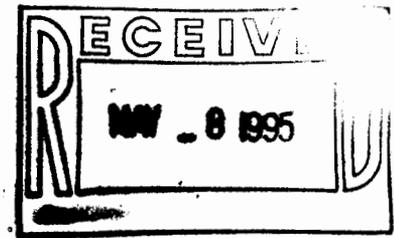


New Mexico
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

WIPP FILE

April 28, 1995



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

Subject: WIPP BIENNIAL ENVIRONMENTAL COMPLIANCE REPORT

Dear Mr. Dials:

This correspondence provides the State of New Mexico's response, in accordance with Section 9 of the WIPP Land Withdrawal Act of 1992 (Public Law 102-579), to the first WIPP Biennial Environmental Compliance Report (BECR), DOE/WIPP 94-021. Thank you for submitting the BECR within the time frame specified in the Act and for providing each affected State agency with a copy of this important document.

Our comments are divided into two categories: General Comments and Specific Comments. They reflect the input of the six New Mexico State agencies identified in the BECR as having regulatory jurisdiction over various aspects of the WIPP Project (i.e., Environment Department, Department of Public Safety, Office of Cultural Affairs/Historic Preservation Division, State Land Office, Department of Game and Fish, and the Department of Agriculture).

GENERAL COMMENTS

The State of New Mexico commends DOE for its efforts to produce a comprehensive, detailed Biennial Environmental Compliance Report for the WIPP. We are generally pleased with this first iteration of the BECR. Its format, particularly concerning the status of WIPP's compliance with applicable laws and regulations, contributes significantly to the readability of the document and makes it very easy to use. In addition, we applaud DOE's decision to address in the BECR compliance with a number of New Mexico State laws and regulations which were not specifically required by the WIPP Land Withdrawal Act (LWA) to be included in the report. The State believes this decision was a prudent one that enhances the BECR by expanding its coverage of requirements applicable to WIPP--especially those of critical interest to the State of New Mexico.

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In regard to the State's responsibilities under Section 9(a)(3) of the WIPP LWA, our interpretation of the law is that the State is required to make a determination of compliance only with respect to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.). As you are aware, the New Mexico Environment Department (NMED) is the agency that administers and enforces the EPA-approved State analog to this Act in New Mexico through its Hazardous Waste Management Regulations. The NMED has stated to us that, insofar as the WIPP Project is concerned, no known violations of these regulations have been observed during the reporting period covered in this first BECR, October 30, 1992 through March 31, 1994, excluding those which may have been the subject of previous direct correspondence from the agency. Similarly, the other affected State agencies reported that they, too, did not identify any WIPP violations of the laws, regulations or permit requirements within their respective jurisdictions over the duration of the reporting period.

Notwithstanding the preceding statements, all affected State agencies believe future iterations of the BECR should include more explicit, detailed references to correspondence, reports and other documentation of WIPP's compliance during the reporting period. The State of New Mexico recognizes most such compliance documentation will have already been submitted to the appropriate agencies by the time the BECR is published. Hence, to avoid duplication of effort, we urge DOE to be as specific as possible when discussing in the BECR documentation supporting its stated position on the status of WIPP's compliance with applicable laws, regulations, and permit requirements. This action should greatly minimize the need for affected state and federal agencies to request additional information and documentation required for a thorough evaluation of WIPP's compliance status.

SPECIFIC COMMENTS

- p. 1-3, Section 1.3.2, 2nd paragraph: Federal statutes do not "mandate" that a state become authorized to administer and enforce its own regulatory program in lieu of the federal program. Rather, federal statutes "allow" or "provide an opportunity for" states to be authorized. Moreover, the power to authorize state programs which are essentially the equivalent of their federal counterparts extends beyond that of the EPA; other federal agencies also provide for state primacy in various regulatory areas (e.g., Office of Surface Mining/U.S. Department of the Interior).
- p. 2-2, 1st paragraph: Additional information or clarification should be included here on the applicability of the Federal Facility Compliance Act (FFCA) to WIPP. Specifically, the BECR states "...WIPP is not currently subject" to the provisions of the FFCA. If site operations at WIPP do, in

fact, result in the generation of mixed waste (e.g., through an accident in the Waste Handling Building), how will the FFCA apply? It is recommended DOE expand the discussion of the FFCA and how it may apply to WIPP in the future.

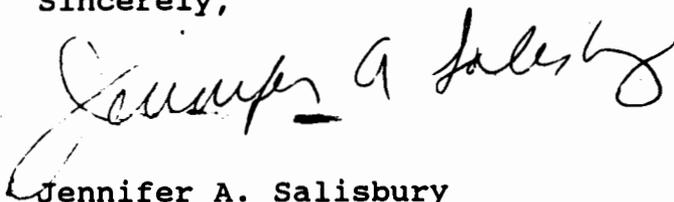
- p. 2-5, Table 2-2: As an example of what the State of New Mexico would like to see in future BECRs regarding compliance documentation, DOE should list the precise name and, if applicable, document number of the referenced "Inventory Report," the date and signatory of the correspondence transmitting the report, and to whom it was sent.
- p. 2-12, Section 2.2.2.2: This section states that the "...WIPP No-Migration Variance Petition (NMVP) was submitted to the EPA in January 1990 and revised in March 1990." This statement conflicts with the information presented in Section 2.2.2.5. The State believes the latter section provides an accurate chronology of the NMVP submittals. Clarification and consistency are required.
- p. 4-2, Table 4-1: With respect to the status of compliance with the requirement pertaining to the *Facility Emergency Coordinator*, this item should be listed as "Up To Date." The reasoning behind this recommendation is that the names of the individuals filling this Coordinator position will change throughout WIPP's operational life. This comment is also applicable to other similar cases.
- p. 5.2, 1st full paragraph: It is unclear whether 40 CFR subpart A applies to site workers as well as to members of the general public. If there are more restrictive annual dose equivalent limits that apply to workers, please reference here where in the BECR these limits are discussed.
- p. 13-1, Atomic Energy Act: The State of New Mexico strongly recommends that DOE include in this section a table that provides a detailed listing of all DOE Orders, notices, policies, directives, and regulations which apply to the WIPP Project. A corresponding, in-depth discussion of the internal DOE regulatory system should also be included. Many members of the public are not at all familiar with the DOE system and how it is implemented at government-owned, ~~contractor~~-operated facilities such as WIPP. Greater attention to this subject is warranted.
- p. 15-1, Section 15.2: Please clarify in this section that the TRUPACT-II shipping container is designed and certified for the transport of **contact-handled** transuranic wastes.
- p. 23-1, 2nd paragraph: This paragraph states "...the FWS (U.S. Fish and Wildlife Service) has determined that WIPP activities will have no adverse impacts" on five threatened

or endangered species of plants and animals that could occur at the site. Please include here the specific reference to that FWS determination. It is our understanding that determination was made in 1980. Consequently, it is recommended DOE discuss whether and when more current, up-to-date determinations will be sought from FWS.

- p. 33-2 and -3: With respect to the Emergency Management Task Force (EMTF), the N.M. Department of Public Safety notes that the EMTF is no longer active.
- p. 33-3, Section 33.2.3, last paragraph: The N.M. Department of Public Safety (DPS) notes that the State Emergency Response Commission (SERC) itself does not maintain a 24-hour notification mechanism. However, the SERC administrator is included in the primary emergency response notification list maintained by State Police Division personnel at the DPS Communications Dispatch Center Headquarters Office in Santa Fe. This Dispatch Center is staffed and operated around the clock.
- p. 34-1, New Mexico Prehistoric and Historic Sites Preservation Act: The tab for this section lists the relevant State agency as "New Mexico Department of Finance and Administration." The listing should read: "New Mexico Office of Cultural Affairs/Historic Preservation Division." The Office of Cultural Affairs is only administratively attached to the N.M. Department of Finance and Administration, and essentially operates as an autonomous agency of the executive branch of New Mexico State government.

Thank you for your efforts regarding this first Biennial Environmental Compliance Report. We remain committed to working cooperatively with you in the future to enhance this important document and make it even more useful to all interested parties.

Sincerely,



Jennifer A. Salisbury
Cabinet Secretary and Chair
N.M. Radioactive Waste Consultation Task Force

c: Mark Weidler, Cabinet Secretary
New Mexico Environment Department
Darren White, Cabinet Secretary
New Mexico Department of Public Safety
Michael Romero Taylor, Director
Historic Preservation Division/OCA
Dr. Ray Powell, Commissioner of Public Lands
New Mexico State Land Office
Gerald A. Maracchini, Director
New Mexico Department of Game and Fish
Lonnie Matthews, Bureau Chief
Bureau of Pesticide Management
New Mexico Department of Agriculture
Beth Bennington, DOE/CAO