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REP. SKEEN PROPOSES NEW WIPP LAW

On May 17, 1995, Rep. Joe Skeen (R-NM) introduced H.R. 1663, the WIPP Land Withdrawal Amendment Act, which was co-sponsored by Rep. Mike Crapo (R-ID) and Rep. Dan Schaefer (R-CO). The bill seeks to significantly change health and safety, public participation, judicial review, and congressional information provisions of the WIPP Land Withdrawal Act (Public Law 102-579), enacted on October 30, 1992.

The Skeen bill would repeal the WIPP Act requirements for waste disposal:

1. The Environmental Protection Agency (EPA) must certify that WIPP will comply with the waste disposal standards. Such certification must be based on the EPA compliance criteria and public comment on the Department of Energy (DOE)'s application;
2. DOE must submit to Congress plans for decommissioning and for site management thereafter;
3. Congress has 180 days to consider whether waste should be brought to WIPP, after EPA's certification and submittal of required information;
4. DOE acquires two existing oil and gas leases at the site unless EPA says they are not required;
5. DOE submits to Congress comprehensive recommendations and a timetable for disposal of all DOE transuranic (TRU) wastes; and
6. DOE submits to Congress, after public notice and comment, a survey identifying all transuranic waste at all sites that are to ship wastes to WIPP.

The Skeen bill also repeals:

- * EPA's authority under the WIPP Act to make a determination that WIPP is not in compliance with any law and to require DOE to comply or to retrieve the wastes;
- * the requirement that engineered barriers be used by giving the decision to DOE;
- * EPA rulemaking requirements that include public participation and judicial review.

The Skeen bill also amends the Resource Conservation and Recovery Act (RCRA) land ban requirement by allowing mixed (radioactive and hazardous) wastes from DOE sites to be brought to WIPP without treatment or the issuance of a no-migration variance by EPA;

The Skeen bill would allow non-defense TRU waste to be brought to WIPP, even though WIPP's capacity is far less than the amount of existing DOE defense transuranic waste.

The Skeen bill states that the DOE Secretary should make a decision about waste disposal at WIPP by March 31, 1997, although:

- * final results will not be available of tests costing tens of millions of dollars now being conducted at Los Alamos National Lab and other facilities;
- * no remote-handled TRU waste would be available for at least four years after that date [those wastes constitute perhaps one-third of the radioactivity coming to WIPP];
- * a supplemental final environmental impact statement would not be completed.

WHAT'S WRONG WITH THE SKEEN BILL?

1. The bill is an implicit admission that WIPP cannot meet the EPA disposal regulations.

If, through a public process and possible judicial review, the site could meet those standards, there would be no need to change the WIPP Act in order to have WIPP open.

During the six years of congressional debate about WIPP land withdrawal legislation, a major issue was whether DOE should self-certify its compliance with EPA disposal regulations or whether another agency should make the determination. Because DOE's history of "self-regulation" has resulted in all of its nuclear weapons sites being contaminated and because every other nuclear waste disposal site is subject to another agency determining its compliance with the regulations [the Nuclear Regulatory Commission must license all disposal sites except WIPP], Congress decided that EPA must certify that WIPP complies with the disposal regulations. Such certification must be based on public comment and subject to judicial review.

Because of the technical problems with the site, the fundamental need for another agency to determine that WIPP meets the disposal regulations still exists. Eliminating those health and safety requirements will decrease the safety of the site and increase public distrust regarding WIPP and the reliability of the federal government's promises.

2. Congress needs full information about WIPP's mission before the project proceeds.

The WIPP Act sets WIPP's capacity at 6.2 million cubic feet of transuranic (TRU) waste. Less than half of that amount is currently retrievably stored and designated for shipment to WIPP. However, the volume of transuranic waste "buried" at DOE sites and the resulting contaminated soil exceeds the capacity of WIPP. Even though no new nuclear weapons are being produced (the source of transuranic wastes coming to WIPP), DOE projects that additional TRU wastes, amounting to about the capacity of WIPP, will be created over the next 27 years. Thus, there is already more TRU waste than can be disposed at WIPP, and DOE projects much more may be created, yet Congress and the public are unaware of what will be done with the additional waste and how much its management and disposal will cost.

As a matter of good public policy and prudent use of tax dollars, that information should be provided before Congress allows WIPP — which will cost at least \$6 billion, in addition to the almost \$2 billion already spent — to proceed.

3. The bill would allow WIPP to open in 1997 before wastes are ready for disposal.

DOE currently estimates that about one-third of the radioactivity to be brought to WIPP is in remote-handled transuranic (RH-TRU) waste. Even by DOE's own unrealistic schedule, no RH-TRU waste will be ready to come to WIPP for more than six years. Those wastes have not been characterized or packaged in a form so that they can be brought to WIPP, and the transportation containers have not even been designed. In addition, the WIPP design is for the RH-TRU waste to be placed in the walls of disposal rooms before the remaining contact-handled waste is emplaced.

Thus, to emplace some wastes before RH-TRU wastes are brought to WIPP will likely reduce the amount of RH-TRU that can be disposed. Such an approach would leave even more transuranic waste with no disposal location.

WIPP should not be allowed to open until all existing health, safety, and environmental requirements are met and WIPP's mission is permanently established.

Skeen boosts WIPP

Representative introduces measure to hasten site opening

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By TONI WALKER CHIRI

Current-Argus staff writer

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CARLSBAD — Rep. Joe Skeen, R-N.M., introduced a measure Wednesday to hasten the opening of the Waste Isolation Pilot Plant near Carlsbad by primarily reducing the role of regulators.

"These changes are necessary to speed up the timetable when we can ultimately bring TRU (transuranic) wastes to WIPP from DOE generator sites," Skeen said in a prepared statement. "Delays in opening WIPP already cost American taxpayers \$180 million every year plus \$400 million annually for continued storage of the waste at generator sites."

WIPP is an Energy Department project to bury plutonium-contaminated waste from the nation's defense industry 2,150 feet underground in ancient salt beds 23 miles east of Carlsbad.

"Our overall reaction," said Dennis Hurtt, spokesman for the Department of Energy's Carlsbad Area Office, "is that it's something we generally support. We think the modifications he is proposing will save taxpayers millions of dollars without any risk to their health or the environment."

The bill weakens the role of the Environmental Protection Agency assigned to review data about the WIPP's operation and determine whether the facility could store radioactive waste without harm to the public or envi-

ronment. Skeen instead proposes to allow the DOE to determine whether its facility complies with federal environmental laws.

The EPA disagrees with Skeen's view on the certification issue, as does the DOE.

"That's one part of the bill that needs to be worked out," said Hurtt. "The Secretary of Energy has made it pretty clear the department supports continuing with EPA as the primary regulator."

"The Secretary made a strong case of having an open department that people can communicate with easily, know what's going on, and move away from (DOE's) prior history of self-regulation," Hurtt said.

Larry Weinstock of the EPA's Washington office said Wednesday he had not seen

Skeen's measure. "As a general concept, EPA supports its current role and thinks it is uniquely qualified to do that (certification). Our understanding of the Secretary of Energy is that DOE should not be self-certifying."

Skeen's bill is an amendment to the Energy and Withdrawal Act that made EPA responsible for regulating many of DOE's activities concerning the WIPP.

The bill, which is to be given a number and referred to committee today, gives the EPA two months rather than a year to review a DOE compliance application demonstrating how the Energy Department would follow radioactive waste disposal standards throughout

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WIPP

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operation of the project. The measure also eliminates a 180-day waiting period following acceptance of DOE's compliance criteria application.

"Once the DOE has demonstrated compliance (with waste disposal criteria)," Skeen said, "there is no reason to sit around for six months before starting operations. This would be a ridiculous waste of taxpayer money and serves no real purpose."

Weinstock said, "two months is not enough time to come to a decision about a document of that expected size."

The DOE submitted a draft-certification application to the EPA in late March. The agency plans to continue working on the application, with recommendations from the EPA, throughout the rest of the year and submit a final application in December, said Hurtt. "That should expedite the process," as opposed to submitting a document in December that the EPA had never seen.

The bill also sets a March 1997 target date to open WIPP, a year earlier than the DOE planned. The EPA must approve WIPP before it can open for waste disposal.

"Any assistance in moving our opening schedule along quicker

would be beneficial to everybody," said Hurtt.

Don Hancock of the environmental group Southwest Research and Information Center said Skeen's proposal is nothing new. Skeen has introduced similar measures in the past.

"We think about the proposal the same as we thought about it four years ago," Hancock said. "It's not something the people of New Mexico will support, and we hope the Congress won't support it."

"We'll certainly fight it strongly," he said.

Skeen also proposes that upon the bill's passage, the state of New Mexico receive \$20 million in

WIPP impact assistance money.

"New Mexico needs this money now to begin making road improvements, constructing bypasses, conducting safety training and meeting infrastructure needs," Skeen said.

Skeen's press spokeswoman Sherry Kiesling said Skeen plans to use his influence in the Republican-controlled Congress.

"He (Skeen) will go to his Republican colleagues," Kiesling said. "They've expressed more of a willingness to have hearings and mark-ups than the previous Congress."

The bill is co-sponsored by Reps. Dan Schaefer, R-Colo., and Mike Crapo, R-Id.