

**ENVIRONMENTAL EVALUATION GROUP**

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November 22, 1995

Mr. George E. Dials
Manager
Carlsbad Area Office
U.S. Department of Energy
P.O. Box 3090
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Dear Mr. Dials:

Thank you for your November 13, 1995 letter sending us a copy of the DOE draft policy statement on the definition of *defense waste*. The material does not explain the necessity of issuing this statement at this time. What kind of TRU waste is "WIPP eligible pursuant to the AEA, but not pursuant to the NWSA"? Unless we understand the full reason for issuing this policy statement, we do not understand why it is necessary.

1. The cover letter states the policy statement contains a definition of *defense waste*. The subsequent material is confined to transuranic waste and does not include defense low level waste, defense high level waste, nor defense mill tailings. It is not clear why the DOE National TRU Committee should be addressing non-TRU waste nor why they have authority to set policy for non-DOE waste.
2. Please identify the members of the National TRU Executive Committee.
3. The policy statement is wordy and unclear. Why would a DOE Committee be issuing policy for all TRU waste under the control of all agencies of the United States Government?
4. Why would a NASA SNAP source about to be discarded be defined as being generated by the defense activity? Similarly an Am-241 source for medical purposes at NIH? Or a plutonium powered source that had been used to transmit weather data for the Department of Commerce?



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5. Page 1. Introduction

The logic presented here is that the purposes of WIPP in the two statutes cited are different. Is this DOE's contention?

6. The sentence states that the Congress used the LWA to make a statement about wastes exempt from NRC licensing. No such statement on exemption from NRC licensing appears in the LWA. Sec. 2, Definition (21) invokes PL96-164 but does so merely to say that the term "WIPP" means the Waste Isolation Pilot Plant project. Sec. 3, references PL96-164 to reserve the land. Where is the citation? Besides the WIPP waste is not exempt from NRC transportation requirements.
7. Reference to the AEA as amended contains the identity. "The AEA provides that any atomic energy defense activity is an atomic energy defense activity." While correct, it is not particularly helpful.
8. Conclusions

The statement, "On the other hand, the AEA indicates that any atomic energy activity is an atomic energy defense activity", does not address the following.

- A) Radionuclides generated for medical applications by the DOE complex.
- B) Cs-137 sources produced by Hanford for sewage sludge irradiation.
- C) Atoms for Peace program.
- D) Non-defense activities at the national laboratories.
- E) Non-defense Pu-238 power sources.

None of these examples could reasonably be described as a defense activity and all of them contradict the Committee's contention.

9. It is unnecessary to define "atomic energy defense activity" because Congress did precisely that in the Nuclear Waste Policy Act of 1982 in defining 7 categories of atomic energy defense activities. Your Executive Summary cites the section of that Act. Hence further action to interpret the intent of Congress, as you so clearly point out, appears needless.
10. The section "Limitations" identifies HLW and commercial nuclear power industry waste as the only two nuclear wastes prohibited at WIPP. This is incorrect.

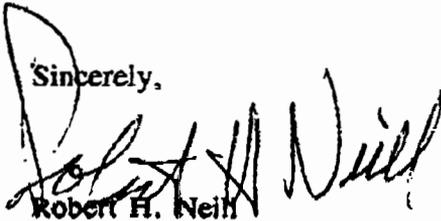
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Summary

The intent of this document appears to be to enable DOE to define any and all waste at the generating sites that meets the WIPP WAC requirements as eligible for disposal at WIPP.

The real issue to be addressed is to delineate the differences between high level waste and TRU waste. As we all know, disposal of HLW at WIPP is prohibited by law but it is unclear whether some wastes at the generating sites can be defined as TRU or HLW. We need to establish a clear technical working understanding of the differences in the two waste forms to determine eligibility for WIPP, and then have the necessary parties agree on the legal implications.

Sincerely,



Robert H. Neill
Director

RHN:LC:js:pf

cc: Cooper Wayman, DOE/CAO
Lindsay Lovejoy, Jr., NMAG
Mike Brown, DOE/CAO