

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

November 28, 1995

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The Honorable Pete V. Domenici
United States Senator
328 Senate Hart Office Building
Washington, D.C. 20510

The Honorable Jeff Bingaman
United States Senator
703 Senate Hart Office Building
Washington, D.C. 20510

Subject: S.1402, WIPP LAND WITHDRAWAL AMENDMENT ACT

Dear Senators Domenici and Bingaman:

This is in regard to S.1402, entitled the *WIPP Land Withdrawal Amendment Act*. The referenced legislation was introduced by Senator Craig of Idaho on November 8, 1995, and is a companion to Representative Skeen's WIPP bill, H.R.1663. On behalf of Governor Johnson and the N.M. Radioactive Waste Consultation Task Force, following are our comments on S.1402.

In general, the State of New Mexico continues to question the need for substantive amendments to Public Law 102-579, the *WIPP Land Withdrawal Act of 1992*. Barely three years have elapsed since enactment of that important piece of legislation--legislation which was debated in Congress for six years and represents a unique compromise of diverse interests nationwide. Because implementation of key provisions of the 1992 Act (e.g., EPA's compliance certification process for WIPP) has only recently begun in earnest, it is too early to determine with any degree of certainty where major changes to Public Law 102-579 are warranted from a long-term cost/benefit perspective. Indeed, amendments justified on the bases of expediency and cost savings in the near term may ultimately prove detrimental to the WIPP Project over its 35-year operational life. It is also important to note that the U.S. Department of Energy (DOE) has thus far met every milestone and requirement in the 1992 Act, thereby providing an argument for maintaining the status quo at this juncture.

If Congress nevertheless proceeds with consideration of S.1402 and H.R.1663, we offer the following comments and recommendations on the proposed amendments to Public Law 102-579:

- * **EPA Regulatory Authority.** Although the Craig bill provides the U.S. Environmental Protection Agency (EPA) with more regulatory authority over WIPP than H.R.1663, it still severely limits the extent and nature of EPA's authority in comparison to that granted the agency under existing law. Significantly, various provisions in S.1402 (such as the one requiring EPA to conduct its review of DOE's WIPP Compliance Certification Application within six months of submittal--half the time now allotted to this activity by

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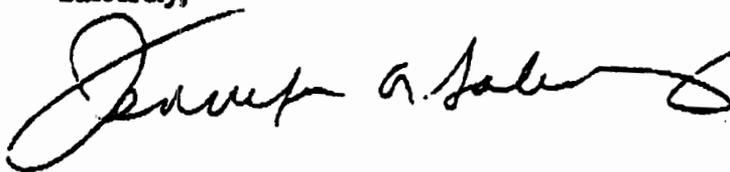
Public Law 102-579) will effectively preclude meaningful public participation in the important process of determining WIPP's suitability as a permanent disposal facility. We strongly believe EPA's current regulatory authority over WIPP should remain intact, particularly with respect to compliance with the applicable disposal standards in 40 CFR Part 191.

- WIPP Exemption from RCRA Land Disposal Restrictions. Similar to H.R.1663, the Craig bill exempts WIPP from the land disposal restrictions in 40 CFR Part 268. We remain unconvinced at this time that granting WIPP a blanket exemption from these federal *Resource Conservation and Recovery Act (RCRA)* regulations is prudent. To our knowledge, no other statute or regulation specifically addresses the potential migration of hazardous chemical constituents of the WIPP wastes over the long term. Moreover, a blanket exemption may very well undermine public trust and confidence in the overall process of determining whether WIPP is a suitable disposal facility for radioactive/hazardous "mixed" waste. To date, no documentation has been presented to the State of New Mexico indicating that compliance with the *RCRA* land disposal restrictions is unnecessary to adequately protect public health and the environment. Absent such documentation, we are compelled to support leaving the existing law unchanged.
- Disposal of Non-Defense Waste at WIPP. Both S.1402 and H.R.1663 would allow WIPP to receive transuranic radioactive waste that did not result from a defense activity. The State opposes such an amendment for several reasons. First, it is contrary to WIPP's 1979 enabling legislation, Public Law 96-164, which clearly establishes that the repository is authorized "...for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from defense activities of the United States." (emphasis added) Second, allowing the disposal of non-defense waste at WIPP will displace capacity in the repository for defense transuranic waste currently existing within the DOE complex. Finally, the provision may set an onerous precedent for the emplacement of other types of radioactive wastes--defense and non-defense--at WIPP.
- Survey and Recommendations regarding Disposal. Under existing law, two prerequisites that must be met by DOE for WIPP to open as a disposal facility are: 1) submittal of comprehensive recommendations for disposal of all transuranic (TRU) waste under its control; and 2) completion of a survey identifying all TRU waste types at all sites from which wastes are to be shipped to WIPP. S.1402 imposes these same requirements on DOE, but removes them as prerequisites to opening WIPP for disposal. We believe the recommendations and survey are of paramount importance to the planning, development, and implementation of the fledgling National TRU Waste Program and should therefore be required of DOE. However, as long as these requirements are imposed on DOE, we see no compelling reason why they must be included as prerequisites to commencement of WIPP disposal operations.

* **Decommissioning and Post-Decommissioning Management Plans.** Both S.1402 and H.R. 1663 delete the requirement that DOE prepare a WIPP "Decommissioning Plan." Existing law requires DOE to complete such a plan by October 30, 1997. The bills also eliminate this same existing deadline for DOE to complete a "Post-Decommissioning Management Plan" for the WIPP withdrawal area. We believe DOE should be required to develop both plans--and to do so in consultation with the State of New Mexico. However, because such plans will almost assuredly have to undergo many revisions prior to their implementation 35 years hence, it is not critical they be developed in the near future.

In conclusion, we respectfully request that you assess very carefully the positive and negative aspects of all proposed amendments to Public Law 102-579, the *WIPP Land Withdrawal Act of 1992*. Potential impacts on both current and future generations of New Mexicans must be considered in your deliberations on these bills. Thank you.

Sincerely,



JENNIFER A. SALISBURY
Cabinet Secretary and Chair
N.M. Radioactive Waste Consultation Task Force

c: Governor Gary E. Johnson
Honorable Joseph R. Skeen, United States Representative
Honorable Steven Schiff, United States Representative
Honorable Bill Richardson
Honorable Frank Murkowski, Chair
Senate Energy and Natural Resources Committee