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Keith E. McKamey, POC/WIPP Off. 505-234-8984; Fax 505-887-5871

December 20, 1995

Att: Mr. Chris Wentz, Coordinator
New Mexico Radioactive Waste Consultation Task Force
c/o N.M. Energy, Minerals & Natural Resources Department
Office of the Secretary
2040 S. Pacheco Street
Santa Fe, NM 87505

via facsimile,
followed by U. S. Mail

SUBJECT: Comments on Revision 1 of the Proposed Joint Powers Agreement on Management of the WIPP Withdrawal Area

The attached comments regarding the above-described agreement were developed by the New Mexico Environment Department DOE Oversight Bureau. They are provided for the purpose of communicating technical concerns and recommendations and do not represent regulatory positions of the New Mexico Environment Department.

Rev. 1 Proposed Joint Powers Agreement	NMED/DOE-OB/WIPP COMMENTS
Page 1, para. 1, ...the New Mexico Environment Department (NMED), represented by its Hazardous and Radioactive Materials Bureau and DOE Oversight Program;	Strike - represented by its Hazardous and Radioactive Materials Bureau and DOE Oversight Program - The DOE Oversight Bureau (Bureau not Program) and Hazardous and Radioactive Materials Bureau both report to the Director of the Water and Waste Management Division and the Secretary of the NM Environment Department.
Page 4, para. 2, ...which provides for State emergency response and environmental protection, restoration, and monitoring oversight of the WIPP...	Replace para. 2 with the current job definition (ref. AIP, p. 1,3) ...which helps to assure that activities at DOE facilities are protective of the public health and safety and the environment through environmental oversight, monitoring, emergency response, and public awareness of the WIPP and other DOE facilities in New Mexico, and
Page 12, para. g, Mining and Oil & Gas Activities, ...encroach upon the WIPP... The DOE is an offset owner to all oil and gas leases adjacent to the WIPP withdrawal area boundary and will exercise the right to provide input on proposed activities of adjacent offset operators requesting an exception to applicable EMNRD Oil Conservation Division rules and regulations.	Does this really mean that DOE is to ensure that mining and oil & gas activities do not encroach upon the WIPP or should it state encroach within WIPP. The intent of the this provision is to insure that mining and oil and gas activities do not interfere with or affect the safe disposal of Radioactive waste at WIPP. The authority by which DOE is an offset owner is unclear. Include a citation from which ownership is derived. Add a period after ...adjacent offset operators. Delete - requesting an exception to applicable EMNRD Oil Conservation Division rules and regulations. Since DOE is an offset owner, they should be able to exercise the right to provide input on <u>all</u> proposed activities of adjacent offset operators.

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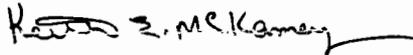


<p>Page 13, para. g, Mining and Oil & Gas Activities, sub. para. 1A: Forward to the EMNRD Oil Conservation Division, within...</p> <p>Page 14, para. g, 1B: Forward to the EMNRD Mining and Minerals Division, within...</p> <p>Page 15, para. g, 2A & C: Forward to the SLO Oil ...; Forward to DOE..</p> <p>Page 17, para. g, 2D: Include the following as a Special Condition of Approval...</p>	<p>Forward to the EMNRD Oil Conservation Division and NMED, within... Add NMED to the list.</p> <p>Forward to the EMNRD Oil Conservation Division and NMED, within... Add NMED to the list.</p> <p>Include NMED for receipt of all mining and drilling applications or permits.</p> <p>Add paragraph (v). Require the operator to prove that all hydraulic fractures and injection/disposal wells are in zone and remaining in zone by requiring tracer elements in all hydraulic fracturing fluids and periodically in injection/disposal wells</p>
<p>Page 20, para. g, Mining and Oil & Gas Activities</p>	<p>Add Paragraph g 5. DOI/BLM agrees to: Paragraph 2D (i) through (v above) needs repeating for Federal Trust Lands. It currently does not assign any responsibility to the appropriate Federal authorities responsible for Federal Trust Lands.</p>
<p>Page 20, para. g, Mining and Oil & Gas Activities</p>	<p>Add paragraph g 6: Lease owner will require the operator/leasee, within one mile of the Land Withdrawal Boundary, to allow DOE and NMED to monitor hydraulic fracturing fluids, drilling fluids, and ground water well fluids to detect radiation resulting from an unlikely breach of the repository. Both DOE and NMED are responsible to protect the citizens of New Mexico. The AIP Agreement and the Scope of Work requires comprehensive environmental monitoring, and public awareness as part of their job duty. What better way could the DOE and NMED protect the environment and inform the citizens but through the monitoring of the primary activities surrounding WIPP.</p>
<p>Page 22, para. i, Environmental Restoration and Reclamation</p>	<p>NMED agrees to monitor restoration and reclamation activities to insure that DOE is complying with all rules and regulations. Add this as paragraph 2 to go with paragraph 1</p>

I compliment the efforts in the Joint Powers Agreement which will require all involved agencies to work together. I would like to suggest that you circulate the enclosed matrix to each agency for their input.

Should you require clarification regarding any of the comments you should call me at 505-234-8984.

Sincerely,



Keith E. McKamey
Program Manager, DOE Oversight Bureau/WIPP

Enclosures: Notification Matrix

cc: Mr. Neil S. Weber, DOE Oversight Bureau Chief
Mr. Benito Garcia, NMED, Hazardous and Radioactive Waste Bureau
Mr. Kent Hunter, DOE Assistant Manger, POC

Proposed Notification Matrix (Irrespective of Regulatory Reporting)
DOE/WIPP & State MOU and/or Land Management Implementation Plan

Activity	Energy, Minerals & Natural Resources Department	New Mexico Environment Department	Office of Cultural Affairs	Department of Game and Fish	New Mexico State Land Office
NEPA Category 1					
NEPA Category 2					
NEPA Category 3		☞ NMED			
Fencing/Posting Cattle Guards					
Live Stock Tanks		☞ NMED			
Oil and Gas Leases/New Permits	☞ OCD	☞ NMED			
Oil/Gas Permit Modification	☞ OCD	☞ NMED			
Mining Leases/ New Permits		☞ NMED			
Road Construction					
Road Maintenance					
Surface Disturbance/Earthwork		☞ NMED	☞		
Utilities Construction		☞ NMED			
Utilities Maintenance		☞ NMED			
Stormwater/NPDES		☞ NMED			
Sewage Disposal		☞ NMED			
Land Treatment/ Sludge		☞ NMED			
Drinking Water Supply		☞ NMED			
Solid Waste Management Units (Landfill etc.)		☞ NMED			
Clean-up/ Remediation		☞ NMED			
Reclamation/ Restoration	☞ NMEMNR	☞ NMED			
Groundwater Well Construction/Abandonment		☞ NMED			
Decommissioning		☞ NMED			
Passive Markers		☞ NMED			

☞ - Lead Agency (permitting and lead agency may be same, but not necessarily)

☞ - Support Agency (irrespective of regulatory reporting requirements)