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FEB 2 1996

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*for review [unclear]*  
**RECEIVED**  
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NM ENVIRONMENT DEPARTMENT  
OFFICE OF THE SECRETARY

Ed Kelley, Director  
Water and Waste Management Division  
New Mexico Environment Department  
1044-A Galisteo Street  
P. O. Box 26110  
Santa Fe, NM 87502

Dear Mr. Kelley:

Enclosed please find the information you requested regarding the pending WIPP Land Withdrawal Amendment Act legislation.

It was a pleasure to see you last week in Santa Fe. I hope we can get together more informally soon.

Sincerely,

*George E. Dials*  
George E. Dials  
Manager

Enclosure

cc w/enclosure:  
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INTERIOR

# Congress of the United States

## House of Representatives

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TO: Jim Otto

FROM: Joe Skeen

SUBJECT: \_\_\_\_\_

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NUMBER OF PAGES: COVER + \_\_\_\_\_

IF YOU HAVE ANY QUESTIONS ABOUT THIS COPY, PLEASE CALL:

\_\_\_\_\_ AT \_\_\_\_\_

**H. R. 1663**  
**A BILL TO AMEND THE**  
**WASTE ISOLATION PILOT PLANT (WIPP)**  
**LAND WITHDRAWAL AMENDMENTS ACT (LWAA)**

**SEC. 1 SHORT TITLE AND REFERENCE**

**Purpose**

State the title and clarify the references within the Land Withdrawal Act Amendment (LWAA).

**SEC. 2. DEFINITIONS**

**Purpose**

Delete the definition of the "test phase" and "test phase activities".

**Background**

Since one of the principal purposes of the LWAA is to delete the test phase obligations and requirements, these definitions will no longer be needed.

**SEC. 3. TEST PHASE AND RETRIEVAL PLANS**

**Purpose**

To delete all activities related to the preparation, review, and approval of these plans.

**Background**

In the LWA, Congress specified EPA involvement in the planning aspects of the test phase. This was accomplished by requiring the Administrator to review specific planning documents prepared by the Secretary and to approve them as being relevant and satisfactory. This was specifically targeted at DOE's activities involving testing with radioactive waste at the WIPP. Since this testing has been cancelled, the plans are no longer needed.

**Impacts**

In as much as this section only deletes requirements related to the underground tests at WIPP, and the DOE has already decided to cancel these tests, there is no impact of this section.

**SEC. 4. TEST PHASE ACTIVITIES**

**Purpose**

This change removes the prerequisites for initiating the test phase and retains those aspects that are

applicable to the disposal phase. These latter topics include the RH study and the biennial performance assessment report.

### **Background**

The specific deletions include the following:

- Authorization to conduct the test phase. This is no longer needed since the DOE has dropped plans for such activity.
- Requirement for EPA to issue final disposal regulations. This requirement has been met by the EPA.
- Terms of no-migration determination be met. Since this determination is for the test phase, this requirement is no longer needed.
- Test phase and retrieval plans be approved. These have been dropped since the plans for the test phase have been cancelled.
- Emergency response training. The approvals and certifications required by this section have been obtained by the DOE.
- Safety certification. This required a test phase final safety analysis report which is no longer needed since the test phase has been cancelled.
- Room stability plan and review. This activity was completed, however, the level of room stability was specific to the test phase activities and is not needed for the disposal operations.
- Waste quantities limitations. These are no longer relevant.

### **Impacts**

In as much as this section only relates to Test Phase requirements, and specific items that have already been completed (Emergency Response Training, room stability review), there is no impact of this section.

## **SEC. 5. DISPOSAL OPERATIONS**

### **Purpose**

Delete requirements that are not necessary as prerequisites for beginning disposal operations.

### **Background**

There are several prerequisites in the LWA that are no longer needed and do not contribute to WIPP safety. Specifically:

- The 180 day waiting period is deleted. Once the DOE has demonstrated compliance, there is no reason to "sit around" for 6 months before starting operations. This could be considered wasteful since the WIPP costs the taxpayers on the order of 16 million dollars a month.

- There should be no reason for the DOE to rush into the acquisition of these leases. The process of evaluating if they pose any risk, and then evaluating alternatives can be time consuming. The DOE needs to be allowed the time to manage this issue in a realistic manner.
- The recommendations and comprehensive study of all TRU waste is not needed since it is also being addressed under other mandates such as the Federal Facilities Compliance Act (FFCA) and the DOE's Programmatic Environmental Impact Statement (PEIS).

#### **Impacts**

- Avoidance of approximately \$90 Million in operational expense during waiting period.
- Elimination of two redundant reports, saving approximately \$1 Million.

### **SEC.6. ENVIRONMENTAL PROTECTION AGENCY DISPOSAL STANDARDS**

#### **Purpose**

This change streamlines the review process by the EPA for the DOE's initial compliance determination, changes recertification to review, and clarifies the engineered/barriers language.

#### **Background**

By changing the certification process, the LWAA accomplishes two things. First, it reduces the duplicative activities that the two agencies were preparing to perform. For example, both the DOE and the EPA were examining similar data in detail and developing and running similar complex numerical models. Only one such activity is needed by the DOE. The EPA's role is to be one of a reviewer. Second, it reduces the time required for agency action.

#### **Impacts**

- Elimination of approximately 1 year EPA review time and DOE/EPA negotiation time--savings approximately \$5 Million @ EPA and DOE.
- Acceleration of disposal decision from December 1997 to March 1997 avoids approximately \$90 Million in operational expense at WIPP during review period.

### **SEC. 7. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS**

#### **Purpose**

Reiterate the need for the DOE to comply with applicable environmental laws and to provide an exemption for the land disposal regulations with regard to TRU mixed waste. Remove the need for a biennial report on compliance to be submitted to the Administrator for review. Removal of the penalties for non-compliance, including retrieval.

#### **Background**

Ever since 1986, the DOE has been subjected to dual regulation with regard to the radioactive waste it generates at its facilities. The radioactive components are covered by the Atomic Energy

Act (AEA) and Nuclear Waste Policy Act (NWPA) and the hazardous (chemical) components are covered by the Solid Waste Disposal Act (SWDA) as implemented by the Resource Conservation and Recovery Act (RCRA).

The situation at the WIPP is somewhat more complex, however. Two parts of the RCRA apply to the WIPP. The operating standards found in 40 CFR at Part 264 and the Land Disposal Restrictions found at Part 268. In addition, the management and storage standards of 40 CFR Part 191, Subpart A also apply. This amounts to triple regulation.

The DOE has shown that meeting the requirements of the 191 and 264 standards can be done in a complementary manner in which public health and the environment are protected as defined by those regulations. The standards in 268, on the other hand, impose significantly more stringent standards, which constitute overprotection, and create inconsistencies between the regulatory programs. For example, in order to satisfy Part 191 safety requirements, drums of TRU waste must be vented to avoid the build up of explosive gases that result from the interaction of radiation and other materials in the container. However, in order to meet the no migration standard in Part 268, the containers must be sealed. While the DOE has shown the technology exists to meet both regulations, the cost is estimated to be in the hundreds of millions to billions of dollars over the lifetime of the facility.

After closure and for the long-term, Part 268 and Part 191 apply. Both require similar considerations and are being handled in the same manner using a performance assessment. The principal difference is that the Part 268 standards impose unrealistically stringent performance requirements at a point that is over two thousand feet below the surface. Here, as before, the DOE is proceeding with a demonstration of compliance, however, the program involves expensive tests and experiments aimed at understanding long term gas generations mechanisms, predicting those mechanisms for 10,000 years, and determining compliance. The program for compliance with 191, on the other hand, assesses the risks from a number of forces and agents that may act on the disposal system and will lead to an adequate level of protection from radionuclides which will, incidentally, apply equally to the hazardous waste components.

In summary, the change in the LWAA recognizes that the requirements in Parts 264 and 191 are sufficient to provide protection of human health and the environment for waste disposed in the WIPP facility and for that reason, these waste are being exempted from the requirements of Part 268.

The second major portion of this section of the LWAA deals with the Biennial Environmental Compliance Report (BECR). The DOE has produced one such report under the LWA and submitted it to the EPA. What has happened is that the receiving organization within the EPA does not have the expertise to review and determine compliance to the many laws and regulations included. Furthermore, such a determination, if it is made, would be duplicative, since the DOE has already been required to deal with the agency with specific authority each of the many laws and regulations included. The LWAA therefore mandates that the DOE continue to comply with these regulations, however, the requirement for a separate review by the EPA has been deleted.

Any needs for remedial plans or actions and other enforcement will be between the DOE and the agency with the statutory authority for any particular law or regulation.

### Impacts

- No impact on health and safety or environmental protection.
- DOE saves cost of preparing final no-migration variance petition - Approximately \$500 Million
- Eliminates the potential for precedent setting permitting actions by EPA (based solely on WIPP political concerns) that would be costly and burdensome to the industry.
- Eliminates preparation of biennial environmental compliance report - approximately \$100 Thousand every 2 years or \$1.5 Million during WIPP's lifetime.
- Obviates the potential for DOE to be required to undertake extremely costly remedial action (measured in hundreds of millions of dollars) for failure to comply with statutes not relevant to isolation of wastes in the WIPP.

## SEC. 8. RETRIEVABILITY

### Purpose

This deletes the retrievability requirements and in place provides a firm target date for the opening of the WIPP facility.

### Background

WIPP needs a firm opening date. Many programs at the generator sites hinge on the opening of the WIPP. Without a firm date, generators have to select other uses for limited resources. With a statutory opening date, generators can begin planning such activities as waste identification, characterization, and packaging for WIPP.

### Impact

Facilities that have long-lead times can be started with reduced schedule risk. This in itself will save millions of dollars in that currently projected slow waste availability rates will accelerate once the WIPP is a reality.

## SEC. 9. ~~RETRIEVABILITY~~ DECOMMISSIONING

### Purpose

Deletes the decommissioning plan requirement and removes the time limit for submittal of the post decommissioning land management plan.

### Background

The LWA included these "hammers" to assure the DOE make progress toward addressing the post operational aspects of the facility. Since the first of these requirements is, for the most part required

by the disposal standards, it is duplicative. Therefore, it is removed. The second requirement is retained. However, the best time to prepare the plan may be at some time other than the one mandated by the LWA. Consequently, the LWAA allows the DOE to exercise its judgement on when such a plan should be prepared.

#### **Impacts**

- Because DOE is likely to prepare a decommissioning plan for its own use, the deletion of the requirement in 13(a) does not have an appreciable direct impact to WIPP.
- The deletion of the requirement to consult with the Department of Interior may avoid some unnecessary duplication of responsibility.

### **SEC. 10. ECONOMIC ASSISTANCE AND MISCELLANEOUS PAYMENTS**

#### **Purpose**

Authorizes economic assistance payments to be made directly to the state rather than through DOE.

### **SEC. 11. NON-DEFENSE WASTE**

#### **Purpose**

Authorizes the disposition at WIPP of an additional small amount of transuranic waste which is under the control of the DOE.

#### **Background**

The DOE currently has in its control a small amount of non-defense DOE transuranic waste (about 6,200 cubic meters). This waste is similar to the defense generated transuranic waste currently slated for WIPP. This change will allow for the orderly disposal of this waste without affecting the overall WIPP capacity limit.

104th CONGRESS  
1st Session

S. 1402

To amend the Waste Isolation Pilot Plant Land Withdrawal Act and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

November \_\_\_\_\_

Mr. Craig

---

A BILL

To amend the Waste Isolation Pilot Plant Land Withdrawal Act and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE AND REFERENCE.**

(a) **SHORT TITLE.** -- This Act may be cited as the "Waste Isolation Pilot Plant Land Withdrawal Amendment Act".

(b) **REFERENCE.** -- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Waste Isolation Pilot Plant Land Withdrawal Act (Public Law 102-579).

**SEC. 2. DEFINITIONS.**

Section 2 is amended by striking paragraphs (11), (13), (16) and (19).

## **SEC. 7. REQUIREMENTS FOR COMMENCEMENT OF DISPOSAL OPERATIONS**

Section 7(b) is amended --

(1) by striking "REQUIREMENTS" and inserting "REQUIREMENT",

(2) by striking "The Secretary" and all that follows and inserting:

"The Secretary may begin the disposal phase after the completion of the Administrator's review and certification under section 8(d) that DOE's application reasonably addresses the final disposal standards."

## **SEC. 8. SURVEY AND RECOMMENDATIONS REGARDING DISPOSAL**

At the end of section 7, insert the following new subsections--

"(c) **RECOMMENDATIONS REGARDING DISPOSAL.**--Within 3 years of enactment of this Act, the Secretary shall submit to Congress comprehensive recommendations for the disposal of all transuranic waste under the control of the Secretary, including a timetable for the disposal of such waste. The recommendations shall provide for compliance with all agreements entered into by the Secretary regarding the disposal of transuranic waste stored at Department of Energy facilities. If the Secretary has completed other reports or timetables which contain information required by this subsection, the Secretary may incorporate the reports into the recommendations by reference.

"(d) **SURVEY.**--Within 3 years of enactment of this Act, the Secretary shall complete, with notice and an opportunity for public comment, a survey identifying all transuranic waste types at all sites from which wastes are to be shipped to WIPP, and--

"(2) Reasonableness of the Application--If the Secretary's application provides a reasonable, scientifically sound approach to determining compliance with the final disposal standards;

"(3) Quality of the Application--If the Secretary has provided in the application objective evidence of quality. The Administrator shall determine that the Secretary prepared the application using a recognized national nuclear quality standard;

"(4) Result of the Application--The Administrator shall determine if the bounding assumptions made by the Secretary in assessing long-term performance of the WIPP disposal system are reasonable and that any conditions imposed are technically feasible."

(b) Section 8(d) is amended by striking "DISPOSAL REGULATIONS.--" and inserting "CERTIFICATION.--"

(c) Section 8(d)(1) is amended--

(1) in subparagraph (A) by striking "Within 7 years of the date of the first receipt of transuranic waste at WIPP, the" and inserting "The",

(2) by amending subparagraph (B) to read as follows:

"(B) CERTIFICATION BY ADMINISTRATOR.--Within 6 months of receipt of the application under subparagraph (A) the Administrator shall review the application for compliance with the final disposal regulations. The application shall be deemed certified 6 months after receipt of the application by the Administrator unless the Administrator disapproves the application according the criteria set forth in subsection (c). The

## **SEC. 10. ENGINEERED BARRIERS**

Section 8(g) is amended to read as follows:

**"(g) ENGINEERED AND NATURAL BARRIERS, ETC.--**The Secretary shall determine whether or not engineered barriers or natural barriers, or both, will be required at WIPP to comply with regulations published as part 191 of 40 C.F.R."

## **SEC. 11. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS**

Section 9 is amended--

(1) in subsection (a)(1)(C) by inserting after "et seq.)" the following: ", except that the Secretary shall not be required to comply with the requirements of 42 U.S.C. 6924(d)",

(2) in subsection (a) by striking "IN GENERAL.--(1)" and renumbering subparagraphs (A) through (H) as paragraphs (1) through (8) respectively,

(3) in subsection (a) by striking paragraphs (2) and (3),

(4) by striking subsections (b), and (c), and

(5) by redesignating subsection (d) as subsection (b) and inserting after "7401 et seq.)" the following: ", except that the Secretary shall not be required to comply with the requirements of 42 U.S.C. 6924(d)".

## **SEC. 12. RETRIEVABILITY.**

Section 10 is amended to read as follows:

### **"SEC. 10. DISPOSAL OF TRANSURANIC WASTE.**

"It is the intent of Congress that, after the completion of the Administrator's review and certification under section 8(d), the Secretary will begin the disposal phase no

November 20, 1995

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

From: Chris Wentz *CW*

Subject: S. 1402, WIPP LAND WITHDRAWAL AMENDMENT ACT

On November 8, 1995, Senator Larry Craig (R-Idaho) introduced a companion bill (S. 1402) to Congressman Joe Skeen's WIPP legislation, H.R. 1663. The Craig bill is co-sponsored by Senators J. Bennett Johnston (D-Louisiana) and Dirk Kempthorne (R-Idaho). Following is a section-by-section summary of Senator Craig's legislation, also entitled the *WIPP Land Withdrawal Amendment Act*. Noted in the summary (by underline) are the differences between the Craig and Skeen bills.

### SECTION 1. Short Title and Reference

- \* Cites bill as *WIPP Land Withdrawal Amendment Act (WIPP LWAA)*.
- \* Clarifies that, unless otherwise expressly provided, the bill amends or repeals provisions in the *WIPP Land Withdrawal Act of 1992 (WIPP LWA)*, Public Law 102-579.

### SECTION 2. Definitions

- \* Repeals the definitions of "No-Migration Determination," "Retrieval," "Test Phase" and "Test Phase Activities" in Section 2 the 1992 *WIPP LWA*. The Skeen bill does not repeal the definitions of "No-Migration Determination" and "Retrieval."

### SECTION 3. Acquisition of Existing Oil and Gas Leases

- \* Amends Section 4(b)(5)(B) by providing the Secretary of Energy--as opposed to the EPA Administrator--the authority to determine whether DOE must acquire two existing oil/ gas leases within the WIPP withdrawal area in order to achieve regulatory compliance. The Skeen bill does not repeal Section 4(b)(5)(B) of the 1992 WIPP LWA, but eliminates acquisition of the two leases as a prerequisite to the commencement of disposal operations at WIPP.

#### **SECTION 4. Test Phase and Retrieval Plans**

- \* Repeals Section 5, entitled "Test Phase and Retrieval Plans," of the 1992 *WIPP LWA*. By repealing this section, the DOE would no longer be required to prepare these plans. [Note: DOE made a determination in October 1993 that it would not perform experiments using actual radioactive wastes at the repository. This eliminated any "Test Phase" at WIPP and, consequently, the need to prepare corresponding plans.]

#### **SECTION 5. Test Phase Activities**

- \* Amends Section 6, entitled "Test Phase Activities," of the 1992 *WIPP LWA* by repealing provisions which stipulate requirements to be met by DOE before the Test Phase could begin. The Skeen bill contains this same amendment.
- \* Retains a provision in the 1992 *WIPP LWA* requiring DOE to conduct a study of remote-handled waste and its effect on WIPP's long-term suitability as a permanent repository. Skeen's bill does the same. [Note: This study, entitled *Remote-Handled Transuranic Waste Study*, DOE/CAO 95-1095, October 1995, had already been completed when S. 1402 was introduced.]
- \* Unlike the Skeen bill, Craig's legislation deletes the requirement that DOE publish a biennial WIPP Performance Assessment report during the Test Phase. [Note: This report was not prepared as scheduled in 1994 due to DOE's cancellation of the Test Phase at WIPP. See "Note" under Section 4 summary, above.]

#### **SECTION 6. Non-Defense Waste**

- \* Amends Section 7(a) of the 1992 *WIPP LWA* by adding new language which allows WIPP to accept transuranic (TRU) radioactive waste that did not result from a defense activity. The repository's current capacity limit of 6.2 million cubic feet of TRU waste remains unchanged. Skeen's bill also allows for the emplacement of non-defense waste in WIPP.

#### **SECTION 7. Requirements for Commencement of Disposal Operations**

- \* Repeals in its entirety Section 7(b) of the 1992 *WIPP LWA*. The section proposed for repeal lists six conditions which must be met for WIPP to receive waste for permanent disposal. The Skeen bill repeals this same subsection.

- \* The Craig bill substitutes the following for the deleted provisions: “The [DOE] Secretary may begin the disposal phase after completion of the [EPA] Administrator’s review and certification under Section 8(d) that the DOE’s application reasonably addresses the final disposal standards.” Skeen’s legislation does not include the preceding language or anything similar.

## **SECTION 8. Survey and Recommendations regarding Disposal**

- \* Includes at the end of Section 7 a provision requiring DOE to submit to Congress, within three (3) years of enactment of the Craig bill, comprehensive recommendations for the disposal of all TRU waste under DOE’s control. [Note: In the 1992 *WIPP LWA*, DOE submittal of these recommendations is a prerequisite that must be met to commence disposal operations at WIPP.] The Skeen bill deletes the requirement that DOE develop and submit such recommendations.
- \* Includes at the end of Section 7 a provision requiring DOE to complete, within three (3) years of enactment of the Craig bill, a survey identifying all TRU waste types at all sites from which wastes are to be shipped to WIPP. [Note: In the 1992 *WIPP LWA*, DOE completion of this survey is a prerequisite that must be met to commence disposal operations at WIPP.] The Skeen bill deletes the requirement that DOE conduct such a survey.

## **SECTION 9. Certification**

- \* Repeals Section 8(c) of the 1992 *WIPP LWA*, entitled “Issuance of Criteria for Certification of Compliance with Disposal Regulations.” In its place, the Craig bill substitutes four general criteria to be used by EPA in reviewing DOE’s compliance certification application submitted in accordance with disposal standards under 40 CFR Part 191: 1) Completeness of the Application; 2) Reasonableness of the Application; 3) Quality of the Application; and 4) Result of the Application. New language is added that limits the EPA Administrator’s review of the WIPP compliance application to “...consideration of [DOE’s] methods used in compiling the application.” S.1402 explicitly states that EPA “...shall not conduct an independent evaluation of [DOE’s] analyses used to evaluate long-term disposal system performance.” EPA can disapprove the WIPP application “...only if the [EPA] Administrator finds through a preponderance of the evidence in the record that the [DOE] Secretary has failed to adequately address long-term environmental and human-health related risks.” [Note: Skeen’s legislation does not amend provisions of the 1992 *WIPP LWA* requiring issuance of

**WIPP Compliance Criteria.** EPA has been in the process of developing the requisite Criteria for over two years; it recently announced the final WIPP Compliance Criteria will be issued in February 1996.]

- \* Amends Section 8(d) of the 1992 *WIPP LWA* by requiring EPA to conduct its review of DOE's WIPP compliance certification application within six (6) months of submission. The application will be deemed certified unless the EPA disapproves it within that six-month period in accordance with the four general criteria specified above. [Note: Under existing law, EPA has one year to act on DOE's compliance application.] **The Skeen bill removes most of EPA's regulatory authority over WIPP, providing the Agency only two months for review and comment on the DOE application.**
  
- \* Amends Section 8(d) of the 1992 *WIPP LWA* by providing for incremental submission by DOE of the final version of the chapters of its WIPP compliance certification application. EPA is required to review each chapter and provide any comments within forty-five (45) days of receipt. Also, EPA is prohibited from rejecting DOE's final WIPP compliance application on grounds not raised in the incremental review of the chapters "...if the [EPA] Administrator knew or could have reasonably anticipated the grounds for the rejection" prior to submission of the completed application. **Skeen's legislation does not provide for incremental submission of DOE's application.**

## **SECTION 10. Engineered Barriers**

- \* Amends Section 8(g), entitled "Engineered and Natural Barriers," of the 1992 *WIPP LWA*. This section currently requires DOE to use both engineered and natural barriers, and waste form modifications, at WIPP to the extent necessary to comply with the applicable disposal standards. The substitute language in the Craig bill is intended to clarify that DOE--as opposed to EPA--is the one that determines whether such engineered and natural barriers are required for WIPP's compliance with the disposal standards in 40 CFR Part 191. Skeen's bill provides similar clarification.

## **SECTION 11. Compliance with Environmental Laws and Regulations**

- \* Amends Section 9(a)(1)(C) of the 1992 *WIPP LWA* by exempting WIPP from the Land Disposal Restrictions contained in the federal Solid Waste Disposal Act, 42 U.S.C. 6924(d). DOE would no longer be required to submit to EPA for approval a No-Migration Variance Petition for the WIPP disposal phase. Skeen's bill similarly provides for this exemption.

- \* Repeals Sections 9(a)(2) & (3) of the 1992 *WIPP LWA*. The section to be repealed requires DOE to submit to EPA and the State of New Mexico every two years documentation of WIPP's continued compliance with certain specified laws, regulations, and permit requirements. DOE provided the first such documentation in its *WIPP Biennial Environmental Compliance Report*, DOE/WIPP 94-021, October 1994. The Skeen bill does not repeal this provision.
- \* Repeals Section 9(b), entitled "Determination of Noncompliance during Test Phase," of the 1992 *WIPP LWA*. See "Note" under Section 4, above. Skeen's bill also repeals this subsection.
- \* Repeals Section 9(c), entitled "Determination of Noncompliance during Disposal Phase and Decommissioning Phase," of the 1992 *WIPP LWA*--the same as Skeen's bill. The section to be repealed currently provides EPA the authority to ensure WIPP's compliance with applicable environmental laws and regulations during facility operations and closure. If EPA determines WIPP is not in compliance, the agency is then required to request a remedial action plan from DOE. If such plan is not submitted by DOE or is found, by rule, to be inadequate, the WIPP project can effectively be terminated.
- \* Amends Section 9(d), entitled "Savings Provision," of the 1992 *WIPP LWA* by clarifying that WIPP is exempt from complying with the referenced Land Disposal Restrictions. The section proposed for amendment clarifies that the authorities granted to EPA and the State of New Mexico under the *WIPP LWA* are in addition to their respective enforcement authorities under existing law. The Skeen bill would repeal this subsection in its entirety.

## **SECTION 12. Retrievability**

- \* Repeals Section 10, entitled "Retrievability," of the 1992 *WIPP LWA*. In its place, the Craig bill substitutes the following language: "It is the intent of Congress that, after the completion of the [EPA] Administrator's review and certification under Section 8(d), the [DOE] Secretary will begin the disposal phase no later than June 30, 1997. Skeen's bill calls for the DOE to make a decision about WIPP's suitability as a disposal facility by March 31, 1997.

## **SECTION 13. Decommissioning of WIPP**

- \* Repeals Section 13(a), entitled "Plan for WIPP Decommissioning," of the 1992 *WIPP LWA*. This section currently requires DOE to prepare a

decommissioning plan for WIPP by no later than October 30, 1997. The Skeen bill also repeals this subsection.

- \* Amends Section 13(b), entitled "Management Plan for the Withdrawal after Decommissioning," of the 1992 *WIPP LWA* by eliminating the current deadline (*i.e.*, October 30, 1997) for preparation of this plan. Skeen's legislation similarly amends this subsection.

#### **SECTION 14. Savings Provisions**

- \* Amends Section 14 of the 1992 *WIPP LWA* by clarifying that WIPP is exempt from the Land Disposal Restrictions contained in the federal Solid Waste Disposal Act, 42 U.S.C. 6924(d). The Skeen bill provides a similar exemption, but did not amend this section of the *WIPP LWA*.

#### **SECTION 15. Economic Assistance and Miscellaneous Payments**

- \* Amends Section 15(a) of the 1992 *WIPP LWA* by authorizing the annual appropriation of \$20 million dollars *directly* to the State of New Mexico, instead of funneling these payments through DOE. In addition, S.1402 would have the annual appropriations commence upon enactment of the *WIPP LWAA*. Skeen's legislation contains the identical language.

c: Task Force Cabinet Secretaries  
Task Force WIPP Coordinators  
Sarah Lee, EMNRD/OFS  
Heidi Snow, EMNRD/OFS  
Les Swindle, EMNRD/OFS