

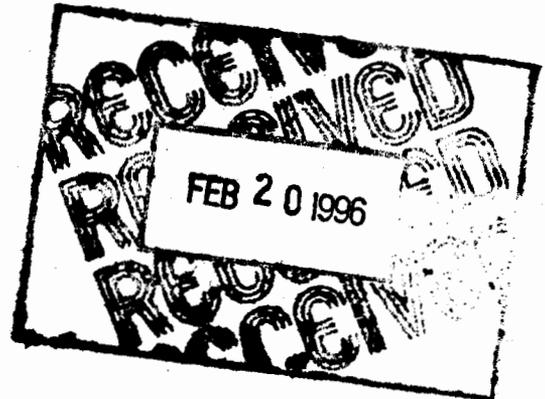


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 8 1996

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Mr. Chris Wentz, Coordinator  
N.M. Radioactive Waste Consultation Task Force  
Energy, Minerals, and Natural Resources Department  
State of New Mexico  
P.O. Box 6429  
Santa Fe, New Mexico 87505-6429



Dear Mr. Wentz:

Thank you for your November 29, 1995 letter requesting a copy of a recent EPA letter to Senator Larry Craig of Idaho. We hope the enclosed copy will clarify for you EPA's position with regard to the applicability of the land disposal restrictions to WIPP-destined transuranic mixed waste.

In your letter you also ask EPA to explain several specific statements in our letter to Senator Craig. First, you ask for an explanation for the statement that "... a No-Migration Variance is duplicative, because the WIPP is held by other statutes to a higher standard." You will note as you read the enclosed letter that this statement is not in our letter to Senator Craig, and we did not argue that one set of standards was higher or lower than the other. Our basic point, rather, was that the RCRA no-migration determination would not significantly add to the protection of human health and the environment if Atomic Energy Act and RCRA standards were met.

The second statement you cite -- that "... a demonstration of no-migration of hazardous constituents will not be necessary to adequately protect human health and the environment." -- was included in our letter to Senator Craig, and was the basis for the position we took in the letter. In our view, the greatest risk to human health and the environment associated with the WIPP is posed by the radionuclide portion of the waste, and that by compliance with the comprehensive regulatory scheme under the Atomic Energy Act (40 CFR part 191), and the extensive WIPP Compliance Criteria (40 CFR part 194), human health and the environment will be adequately protected from long-term releases of radionuclides and RCRA hazardous constituents. Furthermore, to the extent that any risks during the operational phase (e.g., accidents) specific to hazardous wastes remain, these can be addressed through RCRA permit requirements (40 CFR part 264).

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Our position can be better understood in light of the broad range of permit authority delegated to the State of New Mexico under the RCRA permit regulations, including the 40 CFR part 264 standards for "miscellaneous" units. These regulations contain performance standards that allow the State of New Mexico to issue a single permit protecting human health and the environment. For example, paragraph 264.601 of the subpart X standards require the permit to protect against "... any releases that may have adverse effects on human health or the environment due to migration of waste constituents to the ground water or subsurface environment ..." Paragraph 264.601 further protects human health and the environment by requiring "[p]revention of any releases that may have adverse effects on human health or the environment due to the migration of waste constituents in surface water, or wetlands or on the soil surface ..."

Finally, you asked for documentation supporting EPA's position. Because the State must issue a permit that provides adequate protection of human health and the environment (including substantial equivalence to the no-migration demonstration should the State deem that reasonable), and because of the protection afforded by the comprehensive 40 CFR part 191 standards, EPA did not find it necessary to perform a specific risk assessment or technical analysis on this issue defending its position.

Should you need additional information please don't hesitate to contact Chris Rhyne of my staff at 703-308-8658.

  
Michael H. Shapiro, Director  
Office of Solid Waste

Enclosure

cc: ~~Rafael Casanova, Region 6~~  
✓ Benito Garcia, NMED  
Reid Rosnick, PB  
Larry Weinstock, ORIA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

COPY FOR YOUR  
INFORMATION

SEP -- 8 1995

The Honorable Larry E. Craig  
United States Senate  
Washington, DC 20510

Dear Senator Craig:

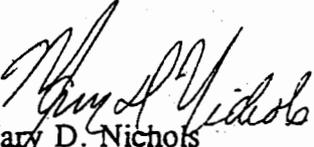
This is in response to your letter of July 18, 1995, to the Environmental Protection Agency's (EPA) Administrator Carol Browner, concerning the Waste Isolation Pilot Plant (WIPP). Included as an enclosure to this letter are the Agency's responses to the questions accompanying your letter to Administrator Browner.

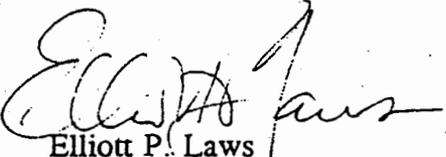
The Agency is currently reviewing the Department of Energy's (DOE) Draft Compliance Certification Application and Draft RCRA No Migration Petition, and also finalizing the WIPP Compliance Criteria (40 CFR Part 194). We intend to provide initial comments on the draft documents in October 1995 and more specific comments in January 1996. The final compliance criteria are expected to be promulgated in February 1996. The Agency is adequately staffed to accomplish our WIPP-related activities; however, potential budget cuts could impede our ability to achieve our current schedule.

We want to assure you that EPA is committed to expeditious issuance of sound, reasonable compliance criteria, and to full compliance with our other regulatory responsibilities with respect to the WIPP. Accordingly, this matter is and will remain a priority for the Agency.

Please do not hesitate to contact us if you have further questions or concerns.

Sincerely yours,

  
Mary D. Nichols  
Assistant Administrator  
for Air and Radiation

  
Elliott P. Laws  
Assistant Administrator  
for Solid Waste and Emergency Response

Enclosure



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

The Honorable Dirk Kempthorne  
United States Senate  
Washington, D.C. 20510

Dear Senator Kempthorne:

This is in response to your letter of July 18, 1995; to the Environmental Protection Agency's (EPA) Administrator Carol Browner, concerning the Waste Isolation Pilot Plant (WIPP). Included as an enclosure to this letter are the Agency's responses to the questions accompanying your letter to Administrator Browner.

The Agency is currently reviewing the Department of Energy's (DOE) Draft Compliance Certification Application and Draft RCRA No Migration Petition, and also finalizing the WIPP Compliance Criteria (40 CFR Part 194). We intend to provide initial comments on the draft documents in October 1995 and more specific comments in January 1996. The final compliance criteria are expected to be promulgated in February 1996. The Agency is adequately staffed to accomplish our WIPP-related activities; however, potential budget cuts could impede our ability to achieve our current schedule.

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Please do not hesitate to contact us if you have further questions or concerns.

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## RESPONSES TO QUESTIONS FROM SENATORS CRAIG AND KEMPTHORNE

1. Is the EPA-ORIA still planning to review and provide feedback to the DOE on their Draft Compliance Application? What is the EPA's schedule for providing initial feedback and detailed comments to DOE?

Response: Yes, the Agency is currently conducting a staff-level review of DOE's Draft Compliance Certification Application (DCCA) and we plan to issue two sets of comments. The first set of comments will provide general feedback on the technical content of the draft application; these should be completed in October of this year. The subsequent set of comments will provide a more detailed technical review on the content of the draft application; these comments should be completed in January 1996.

2. What is the current staffing level in terms of direct EPA staff and subcontractors dedicated to the WIPP? Is that level adequate to generate Final Compliance Certification Criteria for the WIPP in January 1996, and provide timely input to the DOE on their Draft Compliance Certification Application?

Response: The Agency's existing staff dedicated to the WIPP include 26 FTE within the Office of Radiation and Indoor Air (ORIA) dedicated to WIPP issues, as well as staff within the Office of Solid Waste and the EPA Region 6, located in Dallas, TX, who have been focusing on WIPP issues. ORIA currently has 22 open work assignments with four contracting firms with dollar amounts exceeding \$3,000,000. ORIA management has reviewed the staffing requirements for the WIPP project and developed a level which is believed to be consistent with ORIA's long-term staffing needs. In addition to the efforts of staff, the Agency's contractor(s) have been providing technical assistance to help with the Agency's current workload. Any proposed budget cuts to the Agency's current staffing levels may jeopardize our ability to meet the deadlines for these projects. By utilizing ORIA's current staffing levels and our contractors' expertise, the Agency hopes to provide timely responses to current and future needs of the WIPP program. The Final Compliance Criteria are expected to be promulgated in February 1996.

3. Is the EPA adequately staffed, both in number and in specific technical expertise, to make a decision regarding WIPP compliance within one year of DOE's application as required in the WIPP Land Withdrawal Act (LWA)?

Response: Yes, the Agency is adequately staffed with knowledgeable technical personnel to make a decision regarding WIPP's compliance, although we hope to add 3-4 additional staff to provide additional assurance that we can meet the deadline. However, the time frame for the Agency making this decision is not solely dependent upon Agency staffing levels. The 1992 WIPP LWA requires the Agency to certify compliance within one year of receipt of DOE's application. It is our intent to first make a completeness determination after

receipt of the application. The Agency will begin its technical review once it has determined that the application is complete. A timely review of DOE's application is largely a function of the quality of the application submitted. A clear, concise application following the Agency's suggested format, to be published as *Compliance Application Guidance Document for 40 CFR Part 194*, will expedite the review. In preparation for review of the Compliance Application, the Agency has been participating in open, jointly-held technical exchanges with the Department of Energy.

4. Does the EPA-ORIA intend to issue any technical standards for radioactive waste disposal in its 40 CFR 194 WIPP Criteria for Certification of Compliance? If so, do you believe such technical disposal standards are appropriate for, and/or consistent with the congressional intent expressed in the WIPP Land Withdrawal Act which specifically directed the Agency to
- reinstate portions of the existing 40 CFR 191 standards as promulgated in 1985 while expeditiously revising some other specific, troublesome portions and repromulgating them on an aggressive schedule, and
  - develop criteria for the EPA to use in evaluating DOE's application for certification of compliance with the 40 CFR 191 standards?

Response: No, the Agency will not issue any new technical standards in its 40 CFR Part 194 Compliance Criteria. The criteria published in 40 CFR Part 194 will provide a basis for the Department to demonstrate WIPP's compliance with the previously-issued radioactive waste disposal standards (40 CFR Part 191). By comparison, the standards published in 40 CFR Part 191 establish quantitative limits for repository performance. Thus, the Compliance Criteria will have no new numerical standards; they will simply implement the disposal standards at WIPP.

5. Does the EPA agree that compliance with the radionuclide release standards in 40 CFR 191 will reasonably assure that the Agency's environmental protection objectives are satisfied and that, given the relatively minor quantities of RCRA hazardous constituents, a demonstration of no-migration under 40 CFR 268 does not significantly contribute to those objectives?

Response: The Agency believes that WIPP compliance with the radionuclide containment standards established in 40 CFR Part 191 is an important component in meeting the Agency's environmental protection objectives. The containment standards for radionuclides, combined with the ground water protection standard, the individual protection requirements, and the assurance requirements will provide an adequate level of protection from radionuclide releases.

The Agency's view on whether a demonstration of no-migration of hazardous constituents from the WIPP pursuant to RCRA § 3004(d) would contribute any significant additional protection of human health and the environment is as follows: (1) The Agency believes that the human health and environmental hazards presented by the radioactive portion of the waste outweigh the hazards presented by the RCRA hazardous constituents portion of the waste; (2) The Agency also believes that compliance with its comprehensive regulatory scheme under the Atomic Energy Act (40 CFR Part 191), the extensive WIPP Compliance Criteria (40 CFR Part 194), and RCRA permit requirements (40 CFR 264) will also adequately protect human health and the environment from releases of RCRA hazardous constituents.

In this light, the Agency, therefore, believes that in the narrow context of the WIPP, which is subject to comprehensive regulation under the AEA, the WIPP LWA, and RCRA, that a demonstration of no migration of hazardous constituents will not be necessary to adequately protect human health and the environment.

Nevertheless, absent legislation to the contrary, EPA will continue to implement RCRA's statutory requirement banning the land disposal of hazardous waste unless such waste is treated to established levels or placed in a disposal unit that meets the standards of a no migration demonstration.