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**Congress of the United States**  
 Washington, DC 20515

April 16, 1997

The Honorable Carol M. Browner  
 Administrator  
 Environmental Protection Agency  
 401 M Street, SW  
 Washington, D.C. 20460

The Honorable Federico Pena  
 Secretary  
 Department of Energy  
 1000 Independence Avenue, SW  
 Washington, D.C. 20585

Dear Secretary Pena and Administrator Browner:

It has recently come to our attention that contrary to the WIPP Land Withdrawal Act Amendments, legislation signed into law last year, that WIPP will not open in November 1997. The situation has become increasingly disturbing and does not reflect well on either DOE's or EPA's ability to perform the job as mandated by Congress. In addition to not meeting a clearly expressed deadline, it appears the lack of achievement reflects the internal inefficiency, lack of clarity, and poor policy decisions which have plagued both agencies handling of the WIPP project. The fact that EPA and DOE cannot efficiently handle a project of such national importance, in many ways the symbol of both agencies' environmental management abilities, makes the present delays difficult to understand at times.

In addition, and contrary to the will of Congress, EPA has yet to formally notify the Congress that the WIPP time lines will not be met. EPA and DOE have known since late last year that the Agency would not complete its certification activities on time, which again could be construed as a direct rebuttal of Congressional authority.

A delay in the scheduled opening of WIPP dramatically increases the cost of cleaning up the nation's TRU waste sites. In addition, it establishes a highly undesirable precedent directly impacting on other national nuclear waste clean-up and disposal programs. It is frustrating the most technically and scientifically advanced nuclear waste disposal facility in the world, in which the construction and preparation has been substantially finished since 1992, has yet to open. Finally, a delay jeopardizes disposal agreements between DOE and various states such as Idaho, whose Governor recently wrote the President to express his grave concerns on this matter.

Respectfully,  
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A fundamental problem appears to be EPA's inability to follow its own guidelines. Primarily, 40 CFR 191 and 194 contain guidelines for the regulatory process requiring EPA to evaluate the DOE Compliance Certification Application based on "reasonable expectations", not the worst case standards currently being employed. EPA's decision to not follow its own guidelines has had serious ramifications on the review process while causing DOE to meet standards of proof far exceeding those contemplated in the original EPA guidelines.

When the WIPP Land Withdrawal Act Amendments were drafted, at EPA's suggestion, Congress distinguished between issuance of the application's completeness and the need for additional technical or clarifying information that might arise during the year-long review of the application. Specifically, Congress provided only 45 days from the date of submission of the complete application (October 29, 1996) for EPA to seek additional information from the DOE for completeness. Requests after that deadline were specifically allowed through a provision allowing the EPA "to request at any time additional information from the Secretary (of Energy) to certify, pursuant to subparagraph (B), whether the WIPP facility would comply with the final disposal regulations." Even though EPA suggested the language that draws the distinction, EPA has refused to separate the two issues, insisting that its requests for technical and clarifying information are indicative of an incomplete application. We believe this is a stalling tactic intended to delay a certification decision regarding the WIPP.

A particularly glaring case of EPA's failure to use the reasonable expectation standard while combining the completeness and technical sufficiency issues is vividly clear in the request for additional materials dealing with parameter evaluations, parameter variance determinations, and confirmatory performance assessments. In essence, EPA appears to be preparing to duplicate and rerun all of the computer codes which Sandia National Laboratories developed and perfected over the years. It is doubtful that EPA can complete the process in a reasonable time frame. In fact, duplication of DOE's previously completed work does not add to the body of knowledge which currently exists. However, it does bring to light the following question: Is EPA overfunded to the degree that it can arbitrarily expend time and resources to duplicate DOE's previously completed jobs?

We propose that the EPA evaluate the views of the National Academy of Sciences and also seek valuable insights from the Nuclear Regulatory Commission's process of making similar regulatory decisions. We strongly suggest that the two agencies clearly differentiate between completeness and technical sufficiency in any further request for the information needed for a completeness determination. In addition, EPA must follow the Congressional mandate and begin the interactive review process leading to a regulatory decision. We see no scientific, legal, or technical reasons for EPA to duplicate

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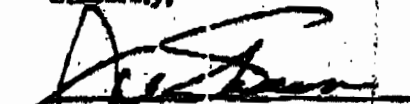
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DOE's computer codes. We do find strong and compelling reasons to follow "reasonable expectation" guidelines issued in 40 CFR 191 and 194 in reviewing the protection of human health and safety guidelines. Finally, we would ask both agencies to report to Congress the timetable for completion of the regulatory process, recognizing that it is already five months behind schedule.

We can no longer accept the ambiguous and arbitrary nature of DOE's or EPA's handling of the WIPP, particularly in light of Congress's clear intent with the WIPP Land Withdrawal Act Amendments signed into law last year. We strongly encourage both agencies to redouble your efforts to complete those activities necessary to begin receiving waste in this important disposal facility.

Sincerely,

  
JOE SKEEN  
Member of Congress

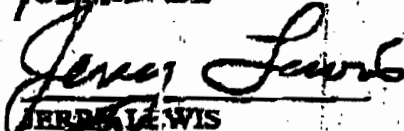
  
PETE DOMENICI  
U.S. Senator

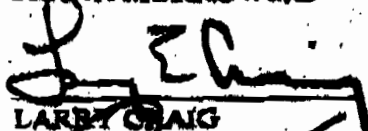
  
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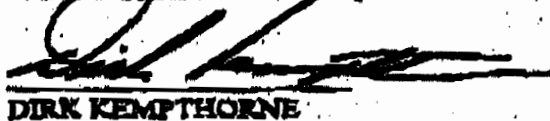
  
JOE MOIRADE

  
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JERRY LEWIS

  
LARRY CRAIG

  
DUNCAN HUNTER

  
DIRK KEMPTHORNE

  
MIKE CRAPO

  
LINDSEY GRAHAM

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