

WE'RE NOT WIPP-ED YET!

Activism in Court May Stop WIPP

By Concerned Citizens for Nuclear Safety

As the Department of Energy (DOE) continues to insist on May of this year as its projected opening date for WIPP, a coalition of citizens' organizations and attorneys are increasingly voicing their concerns. CCNS is part of this coalition and is involved in intense legal research on how best to take aim at WIPP's many legal Achilles' heels.

It would seem not so much a matter of whether DOE, EPA, and/or the NMED (New Mexico Environmental Department) will find themselves subject to litigation, but rather when and how. The possibilities for lawsuits are as numerous as the deficiencies in both WIPP's physical structure and the safety certification of the plant operations. While several factors could still influence and alter the legal mechanisms available to stop WIPP, there are certain areas of contention which are sure to wind up in court.

For starters, one possible lawsuit would challenge DOE's failure to comply with the National Environmental Policy Act or NEPA. Under the Act, DOE is required to evaluate WIPP design and transportation problems and to adequately consider alternatives to permanent, underground disposal. In January, DOE endorsed WIPP over all other proposed alternatives. CCNS and other groups have asked a District Court Judge to order DOE to withdraw this decision until the agency has published an integrated Environmental Restoration and Waste Management Environmental Impact Statement, a document in which DOE would have to document its plan for restoration of nuclear weapons facilities across the country. Only after such plans are in place can DOE know how much and what kind of waste it has. DOE can then evaluate whether WIPP adequately addresses the problem of nuclear weapons waste.

The last time DOE confronted the question of whether WIPP was the right course of action for long-term disposal of nuclear waste from weapons production was in its original Environmental Impact Statement (EIS), published in 1980. Should the judge agree to the coalition's request, WIPP's opening would effectively be delayed. If the judge should not agree, the coalition will challenge the SEIS II (Supplemental Environmental Impact Statement, on

WIPP's operational phase) as incomplete and inconclusive.

Another opening for litigation would be to challenge EPA's certification that WIPP is able to hold radioactive waste for 10,000 years. Under the WIPP Act of 1992, EPA is obligated to consider all scenarios that could threaten WIPP's ability to isolate waste. DOE has refused to consider some scenarios that would cause the plant to violate EPA's safety standards. Under the WIPP Act, EPA is the agency responsible for regulating DOE's activities in regards to WIPP. Despite its role as independent regulator, EPA has chosen to accept DOE's self-limitations on its scientific analysis of WIPP. This is not only bad science, it defeats the entire purpose of independent regulation.

Other litigation would challenge NMED's failure to comply with the New Mexico Hazardous Waste Act and the federal Resource Conservation and Recovery Act, or RCRA ("Rick-rah"). The federal Act requires NMED to issue a permit for hazardous waste to be stored in New Mexico, and to place safety conditions on the kind of waste that it accepts and how this waste is disposed of within the state. NMED has issued no such permit to date. Only a draft permit has been seen by the public. This draft permit was issued several years ago and did not address a full-scale operational phase. NMED's permit is important because it addresses such issues as worker safety, equipment and elevator safety, air filters and emergency procedures.

DOE has asserted its right to open WIPP immediately after EPA issues its certification and before NMED issues its Hazardous Waste Permit. At present, NMED is not ready to issue a permit for WIPP. Before doing so, the agency will conduct trial-type public hearings on a draft permit, possibly this summer. DOE claims that EPA's certification alone is sufficient to allow them to send radioactive waste that is not contaminated with other hazardous materials. But the state permit is WIPP's only operational permit. Opening WIPP without certifying compliance with state-mandated safety regulations would undermine state authority and operational safety.

If you have questions or would like more information about nuclear safety issues, or are interested in helping to stop WIPP, please contact CCNS. 107 Cienega, Santa Fe, NM 87501, or 505-986-1973. — Margret Carde and Robynn James

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