



State of New Mexico  
ENVIRONMENT DEPARTMENT

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*To Santa Fe*  
*Steve*  
ENTERED  


GARY E. JOHNSON  
GOVERNOR

PETER MAGGIORE  
Secretary

VIA FACSIMILE: (202) 586-4403

October 9, 1998

1998  
RECEIVED

The Honorable Bill Richardson  
Secretary of Energy  
U.S. Department of Energy  
Washington D.C. 20585

**RE: Disposal of Non-Mixed Radioactive Waste at WIPP Prior to Approval  
of the RCRA Permit.**

Dear Secretary Richardson:

The New Mexico Environment Department has serious concerns related to the disposal of radioactive non-mixed transuranic waste at the Waste Isolation Pilot Plant (WIPP) prior to receipt of this State's Resource Conservation and Recovery Act (RCRA) permit. These concerns stem from a meeting with the Department of Energy (DOE) on September 28, 1998. At this meeting, representatives of DOE stated that the Department's current policy is to dispose of non-mixed radioactive waste at WIPP prior to the State's approval of the RCRA permit and that the State could expect future shipments from Rocky Flats Environmental Technology Site and Idaho National Engineering Laboratory. I urge you to reconsider implementation of this policy for the following reasons.

First, DOE has stated historically that no waste would be shipped to WIPP until receipt of New Mexico's RCRA permit (letter from George E. Dials to Judith Espinosa, received February 14, 1994). Furthermore, DOE stated in its RCRA permit application that all waste at WIPP would be handled as mixed waste.<sup>1</sup> Therefore, implementation of a new policy - to dispose of unknown volumes of

<sup>1</sup> For example, the permit application states, "For purposes of this application, all TRU waste is managed as though it were mixed." Revision 7, WIPP Part B Permit Application, p. A-5, lines 20-21. Additionally, the application states, "Once the WIPP facility has obtained a hazardous waste permit, the facility will be used for the permanent disposal of TRU waste, including TRU mixed waste containing hazardous constituents regulated under the HWA [New Mexico Hazardous Waste Act]." Revision 6, WIPP Part B Permit Application, p. B-2, lines 24-26.

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radioactive non-mixed waste prior to the State's permit - is a significant deviation from these previous statements and commitments by DOE.

Second, disposal of future non-mixed radioactive waste streams at WIPP prior to receipt of the State's RCRA permit will cause further delay in approval of this permit and could serve to undermine the permit. Review and analysis of future non-mixed radioactive waste streams will cause NMED to reallocate staff resources currently dedicated to approval of the RCRA permit. Therefore, DOE should expect that implementation of its policy to ship non-mixed radioactive waste to WIPP will cause significant future delays in NMED's time-line. This does not advance NMED's goal to timely permit the WIPP facility.

With regard to the potential to undermine the RCRA permit, there are regulatory, legal and technical implications if DOE disposes of non-mixed radioactive waste without a permit. The permit application is premised upon the assumption that all waste would be handled as mixed waste and that no waste would be disposed at WIPP prior to approval of the RCRA permit. DOE's determination to dispose of unknown amounts of non-mixed radioactive waste without a permit may constitute a modification to its permit application, and will further complicate the RCRA permitting process.

Finally, NMED firmly believes that this Department's role in external oversight of the WIPP facility is imperative in order to ensure comprehensive protection of the environment, human health and safety. RCRA provides comprehensive regulatory permitting requirements such as inspection, monitoring (air and groundwater), contingency plans, corrective action and enforcement to protect the environment and human health from operation of the facility through post-closure. We are unaware of similar adequate external environmental regulatory requirements applicable to the WIPP facility.

For these reasons, we strongly urge you to wait until the WIPP facility is permitted to ensure adequate protection of the environment, human health and safety, to avoid the potential for future litigation and to allow NMED to proceed with its top goal - the State's RCRA permitting process. I look forward to meeting with you to discuss our concerns.

Sincerely,



Peter Maggiore, Secretary  
New Mexico Environment Department

PM/cjm

cc w/att: The Honorable Governor Johnson