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Inside Energy with Federal Lands

An exclusive weekly report on the U.S. Department of Energy

October 12, 1998

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SECRETARY QUESTIONS OUTSIDE OVERSIGHT

Energy Secretary Bill Richardson told DOE laboratory directors last week he doubts external regulation of the department's facilities would work effectively and said he prefers to continue DOE's traditional practice of overseeing its own activities.

A DOE spokeswoman confirmed that Richardson had expressed the concerns at the meeting in Washington Monday. Based on information he has seen so far, he is "skeptical that external regulation will work," she said.

Richardson sought from the lab directors "their views and their advice on a number of complicated and potentially costly issues" related to Nuclear Regulatory Commission oversight, the spokeswoman said. She said he "wants to take a hard look" at the need for external regulation, including studies conducted in recent years.

"We need to recognize up front that there are some facilities and sites, like those that will be cleaned up in the near future and those that conduct critical defense missions, that may not benefit from a transition to Nuclear Regulatory Commission oversight," she said.

External regulation was not on the meeting's original agenda, a source who attended the session said. The source

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DOE REJECTS NEW CALL FOR DELAY AT WIPP

DOE last week strongly rejected a suggestion by the New Mexico Environment Dept. that it postpone opening the Waste Isolation Pilot Plant until the state agency determines whether to issue a Resource Conservation and Recovery Act permit for the facility. DOE noted that NMED may not reach that decision until next July, at the earliest.

Last June, DOE announced plans to start shipping non-mixed transuranic waste to WIPP, which officials maintain does not require a RCRA permit.

"This change in NMED's position is a serious setback to the cooperative efforts that NMED and DOE have undertaken over the last five months," acting Assistant Secretary James Owendoff wrote in an Oct. 7 letter to the state agency's director, Peter Maggiore.

Owendoff cited "numerous factual and legal inaccuracies" in statements last week by Susan McMichael, an NMED official who urged DOE to postpone all shipments to WIPP until the department obtains the RCRA permit. Among them, he said, was a remark by McMichael that DOE decided only "recently" to ship non-mixed waste to WIPP before the RCRA permit is approved.

"The Department made this decision more than five months ago," Owendoff said. "NMED knew at least eight



months ago that DOE was considering this decision. More importantly, NMED confirmed on October 14, 1997, that DOE had the authority to dispose of non-mixed waste prior to WIPP's receipt of a RCRA permit."

DOE arrived at that decision, he said, "once it became clear" New Mexico would be unable to issue the RCRA permit "until long after" the U.S. Environmental Protection Agency certified that WIPP was safe for waste disposal. EPA issued its certificate in the spring.

McMichael's testimony came during hearings by the state legislature's radioactive and hazardous waste materials committee and water and natural resources committee.

In her testimony, McMichael said the state was informed of a change in DOE's plans during a meeting with department officials Sept. 28. "[W]e met with several high-level DOE officials in Washington, D.C., to express our serious concerns regarding the recent change in DOE policy to ship and dispose radioactive waste in New Mexico prior to the issuance of the State RCRA permit," she said. "DOE informed us that New Mexico should expect more shipments of radioactive waste prior to permit issuance from Rocky Flats, Colorado, and [the Idaho National Engineering and Environmental Laboratory]. DOE's position is that shipments of pure radioactive waste to WIPP is outside of New Mexico's jurisdiction."

McMichael said DOE's "policy change" appeared to be based partly on the department's obligations to meet a commitment to Idaho to ship waste from INEEL.

Owendoff referred to such obligations in his letter to Maggiore. "The department cannot postpone its cleanup obligations for more than one year while it waits for a RCRA permit, particularly in light of the legal obligations DOE faces in a number of regulatory agreements that require DOE to dispose of TRU waste," he said.

DOE's latest estimate for when it can open WIPP is January 1999. McMichael testified that estimate assumes a federal judge presiding over a lawsuit against WIPP filed by environmental organizations agrees with the department and "immediately lifts" an injunction against shipment of waste to the facility.

"If DOE waits for the RCRA permit ... , it can avoid all of these concerns," she said. "There is a real and substantial possibility that a policy decision to open WIPP without a RCRA permit will actually undermine DOE's and NMED's goal to permit the WIPP facility by jeopardizing the permit and creating a risk of future litigation."

Among McMichael's other claims was that there would be "no external regulation" of WIPP without the RCRA permit. "The only external environmental regulations to protect for the safe handling of waste, operation and management of the WIPP facility is the broad spectrum of environmental protection standards associated with a RCRA permit," she said.

But Owendoff disputed that claim, saying The Defense Nuclear Safety Board and EPA regulate many of WIPP's activities.

DOE's plan to open WIPP in January, with shipments of non-mixed waste from Los Alamos National Laboratory, assumes the department can verify to the state's satisfaction the nature of the contents. Owendoff called it "unreasonable" for NMED to suggest that DOE now delay those shipments until the state approves a RCRA permit, after DOE and the state agency have spent "hundreds of staff hours" on the effort and after DOE invested "hundreds of thousands of dollars" on sampling and analysis.

An NMED spokesman asserted DOE is the unreasonable party. "DOE wants to start shipping waste by [January], based on several rosy assumptions that EPA certifies the Rocky Flats and INEEL waste, that the sampling and analysis test confirms the waste at LANL is non-mixed and that the judge agrees with them — all by the end of January 1999. Not likely. DOE is known for coming up with timelines, missing them, and then blaming the state," the spokesman said.

Don Hancock, executive director of the Southwest Research and Information Center in Albuquerque, said the RCRA permit is one of two major hurdles DOE must clear before shipping waste to WIPP. He maintained WIPP cannot open until federal appeals court Judge John Garrett Penn lifts an injunction he ordered in 1992 barring shipments to the facility.

"We've been fighting DOE over this for a while," Hancock said. The plaintiffs say the injunction includes non-mixed waste. DOE, he added, has not submitted briefs responding to that claim.

Nevertheless, Hancock said DOE provided assurances in June that it "would not ship any waste to WIPP" until it received the RCRA permit. — *Shawn Terry*

SENATE ENERGY COMMITTEE CHIEF COUNSEL GARY ELLSWORTH WILL LEAVE the panel at the end of this year, committee Chairman Frank Murkowski announced Wednesday. Ellsworth said he plans to remain in Washington, but has not announced what he will do once he leaves the Senate.

During the committee's business meeting, Ellsworth, who has served as counsel to the panel for 18 years, was praised by both Republican and Democratic senators. Before coming to the Senate, Ellsworth was minority counsel on the House Interior and Insular Affairs Committee.

DOE AWARDED MORE THAN \$30 MILLION TO 33 CLEANUP R&D PROJECTS late last month. Researchers at 24 universities, seven DOE laboratories and six other research institutions will use the money to conduct basic science research on environmental problems at department facilities. A complete list of the projects, are available on the Internet at <http://www.em.doe.gov/science>.

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added the meeting was Richardson's first attempt to discuss scientific and engineering resources and management practices with the lab directors.

Another source familiar with the meeting said it appears DOE is moving away from complex-wide minimum standards for cleanup and from evaluating a number of issues in a complex-wide context. "Here is where outside regulatory oversight can add a lot," the source said.

DOE is conducting pilot projects with NRC at several sites throughout the department's complex. They include the Hanford Tank Waste Remediation System in Washington, the Oak Ridge complex in Tennessee and the Savannah River Site in South Carolina. A DOE spokeswoman said the next round of sites to participate in the pilot program will be announced in a few weeks. Richardson has not instructed that group to discontinue their efforts, she added.

Another source concerned with impacts of external regulation questioned why DOE would trade department jobs for NRC jobs. The source also noted that both Under Secretary Ernest Moniz and Science Director Martha Krebs have been supportive of external regulation.

"One of the problems that Richardson faces is trying to streamline department operations without cutting too many jobs," the source said. The source explained the other aspect of Richardson's dilemma is that Vice President Gore is trying to improve efficiency at agencies like DOE.

"Ultimately, Richardson must demonstrate that he is committed to cutting costs throughout the complex." The source added external regulation would "certainly make our lives much simpler because there would be fewer visits from regulators as well as less paper work."

In May, a General Accounting Office report criticized DOE's pilot program designed to explore the costs and issues associated with releasing regulation of its facilities to NRC (*IE/FL*, 25 May, 7). Then-Energy Secretary Hazel O'Leary implemented the plan in 1995 and called for ending DOE's self-regulation of its facilities over a 10-year period, beginning with legislation in 1998 setting specific timetables and guidelines for the effort.

Language in the FY-99 energy and water appropriations bill directs DOE to include the Occupational Safety and Health Administration or affected state and local authorities in all future pilot projects to determine the impacts of external regulation on various facilities. Conferees also provided funding to support OSHA participation in these pilot projects.

DOE has until February to develop legislative language detailing its final plan for external regulation.

Reid Edwards, manager of governmental relations at Lawrence Berkeley National Laboratory, said his lab is excited about the possibility of external regulation. LBNL is currently incorporating OSHA into its pilot project. Edwards also noted that there are complications regarding external regulation such as legacy waste issues and the role of OSHA.

"We still believe that there is strong support from DOE headquarters," Edwards said. He said the lab has about five to six employees responsible for regulatory activities. NRC has said if it were to regulate the lab, one of its staffers could handle the task in 16 hours a week, Edwards added. "This would be significantly less than our current DOE-related costs."

One reason why NRC could regulate the lab relatively easily is the lab does not have any nuclear facilities, he said.

DOE has said external regulation at other facilities, such as some weapons labs and production sites, will be more challenging. In addition, the department has said sites that will be shut down in the near future may never be appropriate for external regulation. Nonetheless, DOE has said it is committed to work with Congress and other agencies to explore and resolve complex technical, management and legal issues surrounding the transition to external regulation.

A Nuclear Regulatory Commission spokeswoman said external regulation is one of several issues that will be addressed by Energy Secretary Bill Richardson and NRC Chairman Shirley Ann Jackson in an upcoming meeting.

Another source close to the situation, with expertise in environment, safety and health issues, said external regulation seems to be inevitable at the department, despite Richardson's remarks. "Even with the many obstacles facing external regulation, that seems to be the direction we are heading in."

— Shawn Terry, Tarun Reddy