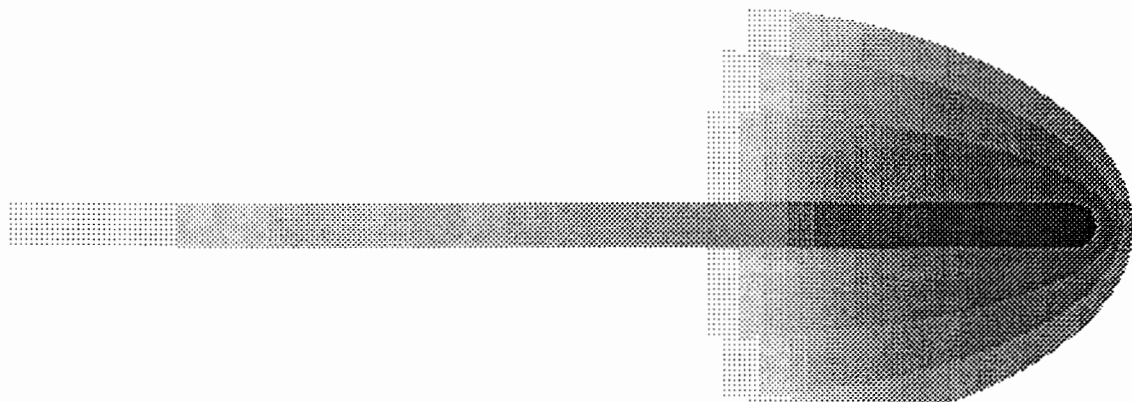


STATE OF NEW MEXICO'S
WIPP STATUS REPORT



**WESTERN GOVERNORS' ASSOCIATION
TECHNICAL ADVISORY GROUP
FOR
WIPP TRANSPORTATION**

**San Diego, CA
November 18-20, 1998**

**Chris J. Wentz, Coordinator
New Mexico Radioactive Waste Task Force**



OVERVIEW OF PRESENTATION



- ◆ STATUS OF SITE CERTIFICATIONS
 - LANL
 - ROCKY FLATS
 - INEEL

- ◆ NON-MIXED WASTE: ACTIVITIES & ISSUES

- ◆ MIXED WASTE: ACTIVITIES & ISSUES
 - RCRA PART B PERMIT

- ◆ WIPP LAWSUITS
 - RCRA (1991)
 - EPA CERTIFICATION (1998)

- ◆ IDAHO SETTLEMENT AGREEMENT

- ◆ LANL TABLETOP/DRY RUN

STATUS OF SITE CERTIFICATIONS

◆ **LOS ALAMOS (NEW MEXICO)**

- DOE AUTHORIZED LANL TO CHARACTERIZE RETRIEVABLY-STORED (LEGACY) DEBRIS TRU WASTE ON SEPTEMBER 12, 1997
- EPA AUTHORIZED LANL TO CHARACTERIZE LEGACY DEBRIS TRU WASTE IN MAY 1998
- DOE AND EPA SCHEDULED TO AUDIT LANL'S PROGRAM FOR HOMOGENEOUS (SOLID) TRU WASTE ON DECEMBER 14-18, 1998

◆ **ROCKY FLATS (COLORADO)**

- DOE AUTHORIZED ROCKY FLATS TO CHARACTERIZE RETRIEVABLY-STORED (LEGACY) DEBRIS TRU WASTE ON MARCH 26, 1998
- EPA CONDUCTED AN AUDIT/INSPECTION OF ROCKY FLATS' QUALITY ASSURANCE/WASTE CHARACTERIZATION PROGRAM IN JUNE 1998; NO MAJOR DEFICIENCIES IDENTIFIED
- EPA ANTICIPATES MAKING A DECISION ABOUT CERTIFICATION OF ROCKY FLATS NO LATER THAN MID-DECEMBER 1998

STATUS OF SITE CERTIFICATIONS

(continued)



◆ INEEL (IDAHO)

- DOE AUTHORIZED INEEL TO CHARACTERIZE RETRIEVABLY-STORED (LEGACY) HOMOGENEOUS SOLIDS, SOIL/GRAVEL, AND DEBRIS TRU WASTE ON APRIL 29, 1998
 - EPA CONDUCTED AN AUDIT/INSPECTION OF INEEL'S QUALITY ASSURANCE/WASTE CHARACTERIZATION PROGRAM IN JULY 1998
 - EPA IDENTIFIED A COMPLIANCE ISSUE CONCERNING QUANTIFICATION AND REPORTING OF URANIUM-234
 - DOE-CAO INFORMED EPA ON OCTOBER 23, 1998 THAT THE ISSUE HAD BEEN RESOLVED
 - EPA ANTICIPATES MAKING A DECISION ABOUT CERTIFICATION OF INEEL NO LATER THAN MID-DECEMBER 1998
- ◆ EPA WILL NOTIFY DOE OF ALL FUTURE SITE CERTIFICATIONS BY LETTER AND PLACE LETTER IN THE OFFICIAL AIR DOCKET (A-93-02)

NON-MIXED WASTE: ACTIVITIES & ISSUES



- ◆ IDENTIFICATION/CHARACTERIZATION OF NON-MIXED WASTE NOW UNDERWAY AT SEVERAL DOE SITES. REASON IS TWOFOLD:
 - FINAL RCRA PART B PERMIT NOT YET ISSUED BY THE STATE OF NEW MEXICO
 - DOE CHANGED ITS POSITION ABOUT NOT DISPOSING OF ANY TRU WASTES PRIOR TO ISSUANCE OF THE STATE PERMIT

- ◆ DOE POSITION CHANGED WHEN THE SCHEDULES FOR ISSUANCE OF THE EPA CERTIFICATION AND ISSUANCE OF THE RCRA PART B PERMIT BEGAN TO DIVERGE

NON-MIXED WASTE: ACTIVITIES & ISSUES



◆ **CHRONOLOGY OF EVENTS**

- MAY 21, 1998: DOE SECRETARY PENA NOTIFIES NEW MEXICO IT INTENDS TO DISPOSE OF TRU WASTE FROM LANL PRIOR TO RECEIPT OF A RCRA PART B PERMIT
- JUNE 11, 1998: NEW MEXICO DETERMINES THAT DOE FAILED TO ADEQUATELY CHARACTERIZE THE LANL WASTE STREAM (TA-55-43, Lot 1) TO DEMONSTRATE IT IS NON-MIXED TRU WASTE
- JUNE 15-17, 1998: DOE AND NEW MEXICO REACH AGREEMENT ON A SCHEDULE AND PROCESS FOR MAKING A DETERMINATION ON THE LANL WASTE
- JULY 27, 1998: DOE SUBMITS A CONFIRMATORY SAMPLING AND ANALYSIS PLAN TO NEW MEXICO
- AUGUST 26, 1998: NEW MEXICO DETERMINES THE DRAFT (ORIGINAL) PLAN IS INADEQUATE

NON-MIXED WASTE: ACTIVITIES & ISSUES

◆ **CHRONOLOGY OF EVENTS (continued)**

- SEPTEMBER 8, 1998: DOE SUBMITS REVISION 1 OF THE PLAN; NEW MEXICO SUBSEQUENTLY REVIEWS AND COMMENTS ON REVISED PLAN
- SEPTEMBER 13, 1998: DOE SUBMITS REVISION 2
- SEPTEMBER 24, 1998: NEW MEXICO APPROVES REVISION 2 OF THE PLAN
- SEPTEMBER 25-NOVEMBER 6, 1998: DOE TO PERFORM CONFIRMATORY SAMPLING AND CHEMICAL ANALYSIS OF THE LANL WASTE STREAM IN ACCORDANCE WITH APPROVED PLAN
- NOVEMBER 16, 1998: DOE PROVIDES RESULTS OF SAMPLING AND ANALYSIS TO NEW MEXICO
- STATE OF NEW MEXICO WILL THEN MAKE A “HAZARDOUS WASTE DETERMINATION” UNDER RCRA FOR LANL WASTE STREAM (TA-55-43, Lot 1)

MIXED WASTE: ACTIVITIES & ISSUES

◆ **CHRONOLOGY: RCRA PERMIT (continued)**

- JANUARY 1998: NMED DETERMINES THE APPLICATION IS “TECHNICALLY” COMPLETE
- MAY 15, 1998: NMED ISSUES A DRAFT RCRA PART B PERMIT FOR WIPP; A PUBLIC COMMENT PERIOD OF 90 DAYS BEGINS
- AUGUST 14, 1998: THE PUBLIC COMMENT PERIOD ON THE DRAFT PERMIT CLOSES
- NOVEMBER 13, 1998: NMED ISSUES A REVISED DRAFT RCRA PERMIT
 - ◆ PUBLIC COMMENT PERIOD ENDS JANUARY 18, 1999
 - ◆ PUBLIC HEARINGS SCHEDULED TO BEGIN FEBRUARY 22 (SANTA FE), CONTINUING ON MARCH 8 (CARLSBAD), AND RECONVENING IF NECESSARY ON MARCH 15 (SANTA FE)
- NMED ESTIMATES FINAL PERMIT WILL BE ISSUED BETWEEN MID-JULY AND SEPTEMBER 1999

WIPP LAWSUITS

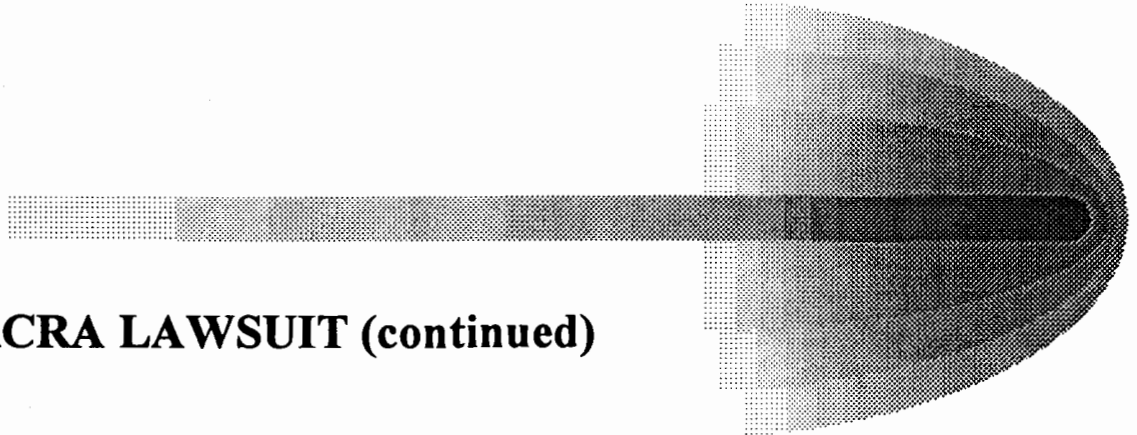
◆ RCRA LAWSUIT

- **OCTOBER 1991: LAWSUIT FILED IN U.S. DISTRICT COURT-D.C. (CIVIL ACTION NO. 91-2527)**
 - ◆ **PARTIES: STATE OF NEW MEXICO (PLAINTIFF); STATE OF TEXAS, FOUR ENVIRONMENTAL GROUPS, THREE CONGRESSMEN (PLAINTIFF-INTERVENORS); U.S. DEPARTMENT OF ENERGY (DEFENDANT)**
 - ◆ **ISSUE: ALLEDGED VIOLATION OF FLPMA (ADMINISTRATIVE VS. LEGISLATIVE LAND WITHDRAWAL FOR WIPP); ALSO NEPA, APA**

- **NOVEMBER 1991: SEPARATE LAWSUIT AGAINST DOE FILED BY SAME FOUR ENVIRONMENTAL GROUP-INTERVENORS (CIVIL ACTION NO. 91-2929)**
 - ◆ **ISSUES: WIPP LACKS "INTERIM STATUS" UNDER RCRA NOR DOES IT HAVE A RCRA PART B PERMIT**

- **NOVEMBER 26, 1991: COURT GRANTS PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**
 - ◆ **INTERIOR BARRED FROM IMPLEMENTING ITS ADMINISTRATIVE LAND WITHDRAWAL ORDER**
 - ◆ **DOE BARRED FROM PROCEEDING WITH WIPP "TEST PHASE" INsofar AS IT INVOLVES TRANSPORT OR DISPOSAL OF TRU WASTE**

WIPP LAWSUITS



◆ RCRA LAWSUIT (continued)

- **DECEMBER 1991:** THE D.C. DISTRICT COURT CONSOLIDATES THE TWO LAWSUITS

- **JANUARY 31, 1992:** COURT GRANTS PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT, MAKING THE PRELIMINARY INJUNCTION PERMANENT
 - ◆ WIPP NOT ELIGIBLE FOR "INTERIM STATUS"
 - ◆ INTERIOR SECRETARY EXCEEDED HIS AUTHORITY UNDER FLPMA

- **MARCH 1992:** DOE APPEALS THE D.C. DISTRICT COURT'S RULING TO THE U.S. COURT OF APPEALS

- **JULY 10, 1992:** U.S. APPEALS COURT RULES
 - ◆ AFFIRMS LOWER COURT'S PERMANENT INJUNCTION
 - ◆ UPHOLDS LOWER COURT'S DECISION THAT THE INTERIOR SECRETARY EXCEEDED HIS AUTHORITY
 - ◆ REVERSES LOWER COURT'S DECISION THAT WIPP WAS NOT ELIGIBLE FOR INTERIM STATUS

- **MAY 13, 1998:** CASE REOPENED BY DOE; FILING ASKS DISTRICT COURT TO CLARIFY WHETHER PERMANENT INJUNCTION IS STILL IN EFFECT

WIPP LAWSUITS

◆ RCRA LAWSUIT (continued)

- **JUNE 8, 1998:** STATE OF NEW MEXICO AND FOUR ENVIRONMENTAL GROUPS FILE MOTION SEEKING A PRELIMINARY INJUNCTION TO PROHIBIT EMPLACEMENT OF RADIOACTIVE WASTE AT WIPP
- **JULY 20, 1998:** COURT ISSUES AN ORDER SETTING SCHEDULE TO ADDRESS THE MOTION FOR A PRELIMINARY INJUNCTION
 - ◆ DOE MUST FILE A RESPONSE TO THE MOTION WITHIN 5 DAYS AFTER NMED ISSUES ITS WRITTEN DECISION ON LANL'S WASTE (TA-55-43, Lot 1)
 - ◆ STATE OF NEW MEXICO AND ENVIRONMENTAL PLAINTIFFS MUST FILE A REPLY BRIEF WITHIN 30 DAYS OF THE DOE RESPONSE
 - ◆ DATE OF ORAL ARGUMENT WILL BE SET WHEN COURT IS ADVISED OF NMED'S WRITTEN DECISION
 - ◆ DOE HAS AGREED NOT TO SHIP ANY WASTE TO WIPP UNTIL 11 DAYS AFTER ORAL ARGUMENTS
- SEVERAL KEY WIPP ISSUES SURROUNDING SHIPMENT OF NON-MIXED WASTE WON'T BE RESOLVED BY COURT UNTIL EARLY 1999

WIPP LAWSUITS

◆ EPA LAWSUIT

- FILED ON JULY 16, 1998
 - ◆ PARTIES: PETITIONERS INCLUDE STATE OF NEW MEXICO, THREE ENVIRONMENTAL GROUPS, AND A PRIVATE CITIZEN; RESPONDENT IS EPA
 - ◆ ISSUES: ALLEGED VIOLATIONS OF NOTICE-AND-COMMENT RULEMAKING; AND ALLEGED SUBSTANTIVE TECHNICAL ERRORS IN EPA'S CERTIFICATION OF WIPP

- COURT ISSUED ORDER ON OCTOBER 29, 1998, ESTABLISHING BRIEFING SCHEDULE FOR CASE
 - ◆ **DECEMBER 14, 1998**: PETITIONERS' JOINT BRIEF DUE
 - ◆ **FEBRUARY 1, 1999**: RESPONDENT'S BRIEF DUE
 - ◆ **FEBRUARY 23, 1999**: PETITIONERS' REPLY DUE
 - ◆ **MARCH 15, 1999**: FINAL BRIEFS DUE
 - ◆ **MAY-JUNE 1999**: ORAL ARGUMENT (NO DATE YET)

- LAWSUIT ON EPA'S CERTIFICATION OF WIPP WON'T BE RESOLVED UNTIL SUMMER 1999 AT THE EARLIEST

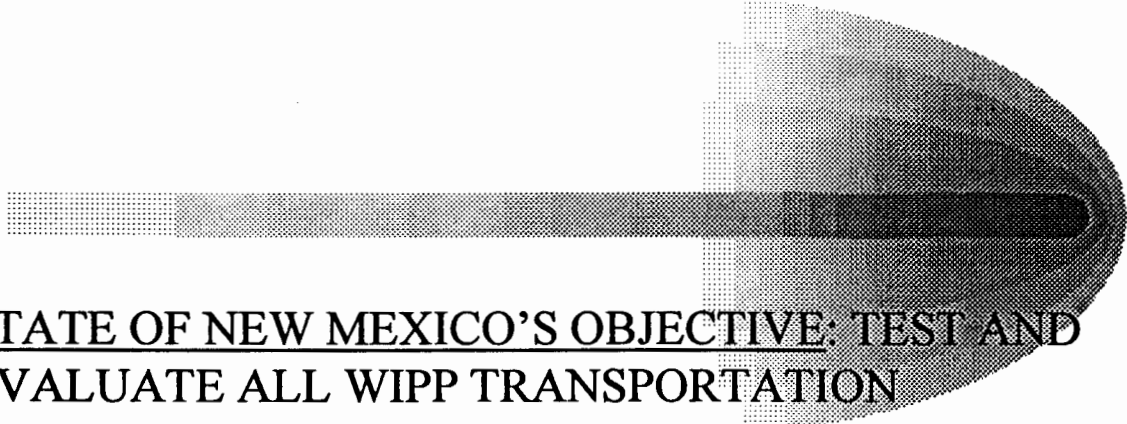
INEEL SETTLEMENT AGREEMENT

- ◆ EXECUTED OCTOBER 16, 1995
 - PARTIES: STATE OF IDAHO; DOE; U.S. NAVY
 - SCOPE: SETS DEADLINES AND VOLUME LIMITS FOR SHIPMENTS OF NUCLEAR WASTE TO AND FROM INEEL

- ◆ TRANSURANIC (TRU) WASTE AND WIPP ARE COMPONENTS OF THE AGREEMENT
 - BY APRIL 30, 1999: THE 1ST TRU WASTE SHIPMENTS FROM INEEL "...TO WIPP OR OTHER SUCH FACILITY DESIGNATED BY DOE SHALL BEGIN"
 - BY DECEMBER 31, 2002: AT LEAST 3,100 CUBIC METERS (15,000 DRUM-EQUIVALENTS) OF TRU WASTE MUST BE SHIPPED OUT OF IDAHO
 - AFTER JANUARY 1, 2003: AT LEAST 2,000 CUBIC METERS (9,677 DRUM-EQUIVALENTS) OF TRU PER YEAR MUST BE SHIPPED OUT OF IDAHO

- ◆ SOLE REMEDY FOR FAILURE TO MEET TRU DEADLINES OR REQUIREMENTS: SUSPENSION OF DOE SPENT FUEL SHIPMENTS TO INEEL
 - "DOE SPENT FUEL" DOES NOT INCLUDE NAVAL SPENT FUEL OR COMMERCIAL SPENT FUEL

LANL-WIPP DRY RUN

- 
- ◆ **STATE OF NEW MEXICO'S OBJECTIVE: TEST AND EVALUATE ALL WIPP TRANSPORTATION SAFETY PROCEDURES ("ROUTINE" SHIPMENT)**

 - ◆ **KEY PLAYERS**
 - STATE OF NEW MEXICO
 - DOE-CAO
 - WESTINGHOUSE
 - CAST
 - LANL
 - TCC

 - ◆ **TABLETOP EXERCISE: DECEMBER 4, 1998 IN SANTA FE (EOC)**
 - TO INCLUDE REPRESENTATIVES OF LOCAL AND TRIBAL GOVERNMENT ALONG THE LANL ROUTE

 - ◆ **DRY RUN: DECEMBER 9-11, 1998**
 - CVSA INSPECTION: DECEMBER 10
 - DISPATCH FROM LANL: DECEMBER 11