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 TWO FOLD:

- 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: ALLEGED 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
INEEEL 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