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Judge Won't Block Waste From N.M.

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WASHINGTON (AP) - A federal judge refused today to block the shipment of radioactive waste to a permanent federal disposal facility in New Mexico, opening the way for the first waste shipments possibly within days.

The state of New Mexico and four environmental groups had asked U.S. District Judge John Garrett Penn to issue an injunction preventing the Energy Department from transporting 36 containers of waste to the facility near Carlsbad, N.M., until the state issues a hazardous waste permit.

But Penn, in declining to grant the injunction, said the state and other plaintiffs had not demonstrated that "they will suffer irreparable injury" if the shipments are sent now, nor that had they shown "a likelihood of success" in blocking the shipments, altogether.

The Energy Department had argued the wastes, although radioactive, did not contain toxic chemicals covered by the state's hazardous waste law and that the facility has been deemed safe and ready to operate.

Energy Secretary Bill Richardson has said he considers the Waste Isolation Pilot Plant near Carlsbad as safe and ready to accept so-called "transuranic" radioactive wastes.

The department has notified New Mexico officials that it planned to begin shipments March 26, pending a favorable ruling by Penn. A department source, speaking on condition of anonymity, said shipments are expected "within days."

There was no immediate comment from New Mexico officials.

The first shipments involve 36 drums of radioactive waste from the Los Alamos National Laboratory, also in New Mexico.

Transuranic waste destined for WIPP is radioactive waste left over from federal weapons production, such as clothing, tools, rags and other contaminated material.

New Mexico officials had maintained that the shipment should be held off until the state's Department of Environment issues a hazardous waste disposal permit. The state also argued that WIPP, as the disposal facility is commonly known, was not fully licensed to accept waste until the state action.

But Penn said the Los Alamos waste, although radioactive, does not fall under federal or state hazardous waste laws because it does not contain toxic chemicals subject to those laws. Penn also ruled that a 1992 injunction against opening the site did not apply because it pertained to a "test phase" long since passed.

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Justice Department lawyers argued in a hearing before Penn on March 12, that the WIPP facility had been approved by the federal Environmental Protection Agency, and that the Los Alamos shipments were "non-mixed" waste, meaning they did not contain toxic chemicals subject to a state hazardous waste permit.

"If you can bring in the waste before the permit, we might as well not have a permitting process," Lindsay Lovejoy, the state's deputy attorney general, told the judge at the hearing.

To allow shipments now, he argued, would disrupt the permit process.

While Penn's decision to turn down the injunction request involves only the Los Alamos shipments, federal officials have said they hope a favorable ruling also will open the way for shipments of waste to WIPP from a DOE facility in Idaho.

"WIPP is ready to open," Richardson told a Senate hearing last week. He said he was "troubled and dismayed" by the state Department of Environment's "lack of interest in certifying" the facility.

The Energy Department as part of a consent agreement with Idaho has promised to begin taking transuranic waste from its Idaho facility by the end of April.

Richardson has said if he can't ship the Idaho waste to WIPP he will have to find someplace else to put it. Kevin Ward, an attorney representing four environmental groups, has indicated that they may ask the court to block the Idaho shipments, even if the Los Alamos shipments are allowed to go forward.

The groups joining New Mexico in seeking an injunction from Penn, concerning the Los Alamos shipments, were the Natural Resources Defense Council, the Environmental Defense Fund, the Concerned Citizens for Nuclear Safety in Santa Fe, N.M., and the Southwest Research and Information Center in Albuquerque, N.M.