

PPC 9489.1996(01)

UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY WASHINGTON, D.C. 20460

February 8, 1996

Mr. Chris Wentz, Coordinator  
N.M. Radioactive Waste Consultation Task Force Energy,  
Minerals, and Natural Resources Department State of New  
Mexico  
P O. Box 6429  
Santa Fe, New Mexico 87505-6429

Dear Mr. Wentz:

Thank you for your November 29, 1995 letter requesting a copy of a recent EPA letter to Senator Larry Craig of Idaho. We hope the enclosed copy will clarify for you EPA's position with regard to the applicability of the land disposal restrictions to WIPP-destined transuranic mixed waste.

In your letter you also ask EPA to explain several specific statements in our letter to Senator Craig. First, you ask for an explanation for the statement that ". . . a No-Migration Variance is duplicative, because the WIPP is held by other statutes to a higher standard." You will note as you read the enclosed letter that this statement is not in our letter to Senator Craig, and we did not argue that one set of standards was higher or lower than the other. Our basic point, rather, was that the RCRA no-migration determination would not significantly add to the protection of human health and the environment if Atomic Energy Act and RCRA standards were met.

The second statement you cite -- that ". . . a demonstration of no-migration of hazardous constituents will not be necessary to adequately protect human health and the environment " -- was included in our letter to Senator Craig, and was the basis for the position we took in the letter. In our view, the greatest risk to human health and the environment associated with the WIPP is posed by the radionuclide portion of the waste, and that by compliance with the comprehensive regulatory scheme under the Atomic Energy Act (40 CFR part 191), and the extensive WIPP Compliance Criteria (40 CFR part 194), human health and the environment will be adequately protected from long-term releases of radionuclides and RCRA hazardous constituents. Furthermore, to the extent that any risks during the operational phase (e.g., accidents) specific to hazardous wastes remain, these can be addressed through RCRA permit requirements (40 CFR part 264).

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Our position can be better understood in light of the broad range of permit authority delegated to the State of New Mexico under the RCRA permit regulations, including the 40 CFR part 264 standards for "miscellaneous" units. These regulations contain performance standards that allow the State of New Mexico to issue a single permit protecting human health and the environment. For example, paragraph 264.601 of the subpart X standards require the permit to protect against ". . . any releases that may have adverse effects on human health or the environment due to migration of waste constituents to the ground water or subsurface environment... " Paragraph 264.601 further protects human health and the environment by requiring "[p]revention of any releases that may have adverse effects on human health or the environment due to the migration of waste constituents in surface water, or wetlands or on the soil surface . . ."

Finally, you asked for documentation supporting EPA's position. Because the State must issue a permit that provides adequate protection of human health and the environment (including substantial equivalence to the no-migration demonstration should the State deem that reasonable), and because of the protection afforded by the comprehensive 40 CFR part 191 standards, EPA did not find it necessary to perform a specific risk assessment or technical analysis on this issue defending its position.

Should you need additional information please don't hesitate to contact Chris Rhyne of my staff at 703-308-8658.

Michael H. Shapiro, Director  
Office of Solid Waste

Enclosure

cc: Rafael Casanova, Region 6  
Benito Garcia, NMED  
Reid Rosnick, PB  
Larry Weinstock, ORIA

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Attachment  
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NEW MEXICO ENERGY, MINERALS  
AND NATURAL RESOURCES DEPARTMENT

November 29, 1995

Mr. Michael Shapiro, Director  
Office of Solid Waste  
U. S. Environmental Protection Agency  
401 M Street (MS #5301)  
Washington, D.C. 20460

Dear Mr. Shapiro:

Recently, Senator Larry Craig of Idaho introduced S. 1402, entitled the WIPP Land Withdrawal Amendment Act. In his statement on the Senate floor about the purpose and provisions of this legislation, Senator Craig noted the bill deletes the requirement for a No-Migration Determination and then referenced a September 8, 1995, letter he received from EPA.

He went on to say "...[EPA stated in the letter that] a No-Migration Variance is duplicative because the WIPP is held by other statutes to a higher standard." Continuing, Senator Craig quoted the following from the referenced EPA letter:

"A demonstration of no-migration of hazardous constituents [in the WIPP wastes] will not be necessary to adequately protect human health and the environment."

Based on the preceding information, I am requesting your assistance in obtaining the following:

1. A copy of the September 8, 1995 letter from EPA to Senator Craig.
2. What specifically the author of the EPA letter was referring to when stating that WIPP " . . . is held by other statutes to a higher standard." If the reference is to the disposal standards in 40 CFR Part 191, where precisely is the duplication?
3. In reference to the statement by EPA that " ... a demonstration of no-migration of hazardous constituents will not be necessary to adequately

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protect human health and the environment," any analyses, risk assessments, or other documentation supporting this contention.

In light of hearings possibly being scheduled on the Craig bill in the near future, I would greatly appreciate anything you could do to expedite a response to the preceding request for information. Additionally, I respectfully request that your Office, as well as the Office of Radiation and Indoor Air, take the appropriate steps to ensure the State of New Mexico is kept apprised of all such significant EPA correspondence concerning WIPP. Thank you.

Sincerely,

Chris Wentz  
Coordinator  
N.M. Radioactive Waste Consultation Task Force

cc: Jennifer A Salisbury, EMNRD Cabinet Secretary and Chair  
N.M. Radioactive Waste Consultation Task Force  
Mark Weidler, Task Force Member and Cabinet Secretary  
N.M. Environment Department  
Ramona Trovato, Director  
Office of Radiation and Indoor Air  
U.S. Environmental Protection Agency