

United States Senate

February 6, 2004

The Honorable Jessie Hill Roberson
Assistant Secretary for Environmental Management
The U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Assistant Secretary Roberson:

It has come to my attention that the Department's West Valley Demonstration Project Final Waste Management Environmental Impact Statement, filed January 16, 2004, includes in option A, the disposal of TRU at the Waste Isolation Pilot Plant in New Mexico. It is my understanding that this TRU contains a mixture of fuel reprocessing wastes from fuel at the Hanford N Reactor as well as commercial fuel. I would note that the N reactor fuel is from atomic defense activities managed by the Department of Energy, while the commercial fuel is considered nondefense in origin.

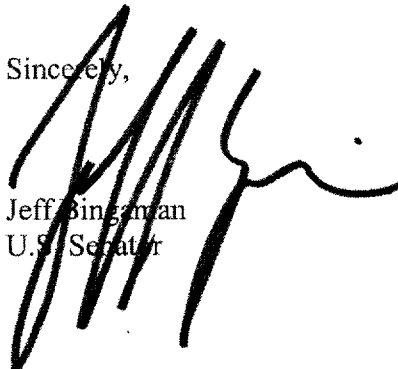
I would like to point out that the legislative history of the Waste Isolation Plant, WIPP. Public Law 96-164, section 213, states that "Notwithstanding any other provision of law, the Waste Isolation Pilot Plant is authorized as a defense activity of the Department of Energy,for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States...".

To my knowledge, the definition of the authorized activities at WIPP have not changed since that time, either in the WIPP Land Withdrawal Act, (LWA), P.L. 102-579, or the 1996 amendment to the LWA, which is found as Senate Amendment number 4085, to the Defense Authorization Act for Fiscal Year 1997. That amendment is now subtitle F of title XXXI of P.L. 104-201. I ask that you look carefully at the Congressional Record, for June 20, 1996, starting at page S6587 regarding that amendment. If one reads this record, this bipartisan amendment resulted from negotiations regarding an earlier stand-alone bill, S. 1402, submitted by Senator Craig, which authorized nondefense TRU waste at WIPP. In the amendment, the nondefense TRU waste disposal was not authorized.

The Department has correctly maintained this interpretation of law as found on public documents, such as page 2-1 of the WIPP Final Supplemental EIS, 1997, (DOE EIS-0026-S-2), where it states the definition of nondefense TRU waste is "TRU waste that is currently restricted from disposal at WIPP from the Land Withdrawal Act (LWA) because it does not result from defense activities."

I can find no legal authority for disposal of nondefense TRU waste at WIPP. Accordingly, I ask that you do not dispose the West Valley's nondefense TRU at WIPP as indicated in option A in the Department's final EIS for West Valley, which currently awaits your record of decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Bingaman', written over the typed name and title.

Jeff Bingaman
U.S. Senator