

1 PROCEEDINGS
2 SEPTEMBER 25, 2002

3
4

5 HEARING OFFICER: Okay. We are going to
6 open these hearings right now.

7 Before we get started, I'm going to read a
8 statement about the procedures that we are going to
9 follow and a little background on why we are here.

10 So, good morning. I want to welcome you
11 to the U. S. Environmental Protection Agency's public
12 hearing to receive oral testimony on our proposed
13 alternative provisions to the criteria for the
14 certification and recertification of the Waste
15 Isolation Pilot Plant's compliance with the disposal
16 regulations.

17 I am Frank Marcinowski. I'm Director of
18 EPA's Radiation Protection Division. I will serve as
19 the Presiding Officer of today's hearing.

20 I'd also like to introduce the other EPA
21 panel members.

22 This is Betsy Forinash; she's Director of
23 the Federal Regulations Center and responsible for the
24 day-to-day oversight of the WIPP project and
25 development of this proposed action.

1 And Keith Matthews is an EPA attorney
2 working with us on the WIPP project.

3 Now, let me briefly describe our reason
4 for being here.

5 In 1992, Congress established EPA as the
6 regulator of the WIPP site. We set disposal
7 regulations in '93, requiring radioactive waste
8 disposal facilities, such as the WIPP, to perform
9 safely for thousands of years into the future.

10 In '96 we followed these general standards
11 with more specific compliance criteria for the WIPP
12 site itself. We use these criteria to determine
13 whether the WIPP complies with our radioactive waste
14 disposal regulations.

15 In October of '96 EPA received DOE's
16 Application and immediately began its review.

17 On May 18th, 1998, we certified that the
18 WIPP met our disposal regulations and could safely
19 contain transuranic waste.

20 This decision was based on our independent
21 technical evaluation of DOE's plans for the WIPP and
22 on public input.

23 Since that time, EPA has conducted many
24 independent technical reviews and inspections of the
25 WIPP and DOE's transuranic waste facilities around the

1 country to verify continued compliance with our WIPP
2 disposal regulations and with the conditions that we
3 established for the WIPP certification.

4 Based on nearly four years of oversight of
5 the WIPP's operation we have determined that several
6 changes should be made to our criteria to improve the
7 effectiveness and efficiency of our oversight.

8 The most significant of these changes is
9 to revise the procedures for approving DOE's waste
10 characterization programs.

11 The proposed changes are intended to
12 provide EPA more control and flexibility to schedule
13 and conduct inspections of the waste characterization
14 programs at DOE's waste generator sites.

15 These alternative provisions would not
16 change the technical approach EPA uses during these
17 independent inspections and does not lessen the waste
18 characterization requirements the site must meet to
19 demonstrate compliance.

20 In fact, we believe that these changes
21 will provide equivalent or improved oversight of waste
22 characterization activities.

23 We will continue to enforce the waste
24 characterization requirements to ensure that DOE's
25 waste characterization programs are properly

1 implemented. And the proposed alternative provisions
2 will give us flexibility to focus our oversight
3 efforts on the most important waste characterization
4 activities at a given site.

5 We are also clarifying and updating
6 several other provisions and we will accept comment on
7 any of the changes that we propose.

8 Now, for the process that we will follow
9 in this hearing: No one will be sworn in. There is
10 no Cross-Examination. The speakers will be asked to
11 present their testimony and not expect a response from
12 the panel members. We are here to listen to your
13 comments. We will respond to all comments received
14 after the public comment period closes.

15 We have a Court Reporter present whose job
16 it is to produce a verbatim transcript of today's
17 proceedings. So it is important that we get a clear
18 and uninterrupted records.

19 If you have a written comment copy of your
20 statement, we will be glad to accept it when you are
21 called to testify.

22 I ask all speakers to identify themselves
23 for the Court Reporter, spell their names, speak
24 slowly and clearly and stop if either the Court
25 Reporter or I signal a halt.

1 Of course, it may be necessary for the
2 Court Reporter, members of the panel or I to ask some
3 clarifying questions of the speakers.

4 Individuals are allowed five minutes to
5 testify. Individuals representing organizations such
6 as citizens' groups are allowed 10 minutes to testify
7 as stated in the Federal Register notice announcing
8 the public hearings.

9 Speakers not registered in advance may
10 register at the table outside the door and will be
11 scheduled to testify.

12 We will use a timer that operates similar
13 to a traffic light. The time-keeper will start the
14 timer, a green light will appear when you have two
15 minutes. The yellow light will go and you should
16 begin closing your remarks. When your time has
17 elapsed the light will turn red and I will ask you to
18 stop.

19 As I mentioned earlier, we will gladly
20 accept written comments today or you can submit them
21 to the official EPA docket up until December 9th,
22 2002. That means that anything you do not get to say
23 today or anything you want to say in response to what
24 somebody else says may be submitted in writing for our
25 consideration.

1 Comments can be submitted electronically,
2 by mail or by fax.

3 We consider all comments equally, whether
4 oral or written.

5 Please see the information table or refer
6 to the flyer that was passed out on your way in for
7 docket locations, hearing ground rules.

8 A transcript of today's proceedings will
9 be available for review at the docket in a few weeks.

10 Again, EPA's purpose today is to solicit
11 comment only on the proposed alternative provisions
12 published in the Federal Register on August 9th. So
13 we ask that you confine your comments and remarks to
14 that topic.

15 I want to thank you for taking the time to
16 testify and we look forward to hearing from you.

17 At this point in time, we do not have
18 anybody registered to make a statement.

19 Is there anybody here who wishes to make a
20 statement at this point in time?

21 (Show of hands.)

22 MS. ARENDS: Yes, my name is Joni Arends.
23 I'm the waste programs director for Concerned Citizens
24 for Nuclear Safety, which is based here in Santa Fe.

25 What I was asking is, is you address one

1 of the points for the revision; are you going to be
2 addressing the other three points?

3 HEARING OFFICER: Not in this statement,
4 no. They were addressed in the Federal Register.

5 MS. FORINASH: We would be happy to take
6 any comments you have.

7 MS. ARENDS: Well, I didn't have time to
8 go look at the regulations themselves in order to make
9 comments, so I was hoping that there would be
10 something here that would refresh my memory about what
11 those regulations say.

12 HEARING OFFICER: There was no intent to
13 give a presentation today, just a brief opening
14 statement. And what we touched on was the primary
15 provision that we are changing in the regulation
16 itself. But any and all of them are open for comment.

17 MS. ARENDS: Well, let me start with my
18 comments then.

19 HEARING OFFICER: Okay. And just before
20 you get started, since there is no one else registered
21 at this point, we are going to forego the time limit
22 at this point and you can take as much time as you
23 wish.

24 MS. ARENDS: Okay. So, let's talk about
25 the notice, first of all. I've met with you, and with

1 you, and I've said my e-mail address is this. The
2 notice went to our general account and I didn't see
3 the notice that the hearing was happening today. If I
4 wouldn't have seen the notices in the newspaper I
5 wouldn't have seen that. That's number one with
6 respect to notice.

7 Number two is that I understand you spoke
8 with Don Hancock at Southwest Research and Information
9 Service Center and he explained that this was not a
10 good month to have these hearings because the comment
11 period doesn't end until December 9th we had hoped
12 that you would listen to what Don said.

13 I just want to give you a little preview
14 of what I've done in the last two weeks and how come
15 I'm not prepared today.

16 Last week we had the Alliance for Nuclear
17 Accountability meeting in Richland, Washington for
18 five days.

19 The WIPP modifications, the seven
20 modifications, the comments are due next Thursday for
21 seven modifications. There's probably this many
22 (indicating) documents.

23 We've had a proposal for a modern pit
24 (sic) production facility here in New Mexico with the
25 possibility of it being located either at LANL or at

1 WIPP.

2 We have had comments due yesterday -- no,
3 on Monday -- on changes to NEPA that would involve the
4 work that we do with the DOE sites in New Mexico.

5 And then comments on DOE's plan for
6 long-term stewardship are due next Monday.

7 So this is not a good time to have a lot
8 of public participation because our focus is in other
9 areas.

10 I understand that Don suggested that to
11 you; that this wouldn't be a good time. And you can
12 see from the turn-out that what he said was correct.

13 Now, DOE has called recently to say when
14 would be a good time for us to hold a meeting about
15 the chemical and metallurgical research building at
16 LANL. And I suggested a time. And we had people that
17 showed up, because it wasn't in conflict with other
18 things.

19 So when the activists in New Mexico -- or
20 the environmentalists in New Mexico say, this is not a
21 good time, it's good for the federal agencies to
22 understand that and to say okay.

23 Okay. So with regard to public confidence
24 issues with regard to the certification --
25 recertification process, I hope that you have received

1 a copy of the EEG's report, No. 83, with regard to the
2 identification of issues relevant to the first
3 recertification of WIPP.

4 Do you have a copy of this?

5 MS. FORINASH: I haven't seen it yet. I
6 understand that it just recently went out.

7 MS. ARENDS: And it's available at
8 www.eeg.org. And you can print out the entire
9 document.

10 They've made references to some of CCNS'
11 concerns with regard to the first certification,
12 specifically with respect to the computer programs.

13 CCNS is very disappointed with regard to
14 DOE's declining to do what they said they were going
15 to do with respect to the computer programs for the
16 modeling. I can go into more specifics about that.

17 They want to know how the EPA is going to
18 address DOE stepping back from promises that they have
19 made with regard to these computer programs.
20 Specifically with regard to the fluid injection models
21 you said the FMT model for the solubility. Let me
22 quote this report. The DOE was considering the use of
23 a more widely used code EQ 3/6 for recertification.
24 However, the DOE has apparently reconsidered its
25 decision and is planning on using the FMT.

1 Now, CCNS had a lot of problems with
2 regard to this solubility model in the past. And you
3 can look at our previous comments.

4 But there's a lot of concerns with regard
5 to the various states at which plutonium can be at, at
6 the State 4 or the State 5 or the State 6, the use of
7 the thorium 4 solubility where it's consistently
8 higher than the plutonium for solubility.

9 So CCNS would recommend that EPA demand
10 that the EQ 3/6 model be used instead of this old FMT
11 model.

12 Did you have a question or a comment?

13 HEARING OFFICER: No. I was just
14 clarifying something.

15 MS. ARENDS: And I know that these aren't
16 directly to the issues that the comments are supposed
17 to be directed to, but we don't see you very often.

18 HEARING OFFICER: That was what I was
19 discussing with Keith, is that they weren't directly
20 related to this action, should we have them on the
21 record or should we discuss them with you.

22 MS. ARENDS: No, they should be on the
23 record because these are important issues to the
24 people of New Mexico. If I'm the only person that
25 shows up today or if there's two or three other

1 people, these are all very important for you to hear
2 about the concerns for the people of New Mexico.

3 HEARING OFFICER: Okay.

4 MS. ARENDS: And with regard to this
5 process.

6 Okay. So then, with regard to the fluid
7 injection. EEG has a new map of the increased number
8 of wells in the WIPP facility, in the vicinity of the
9 WIPP facility.

10 Especially with regard to the possibility
11 of this new model being used as part of the modern pit
12 facility EIS that's going to be made, it's important
13 that the right model be used.

14 So CCNS again would recommend that we need
15 to assess the potential flow paths in the Salado based
16 on documentation of other fluid injection events.
17 Because there's increased -- since you certified WIPP
18 in the first place, there were ten wells in 1993. Now
19 there's 33. So that's a three-fold increase in the
20 number of wells in that area, which may potentially
21 impact. So EPA needs to look at that.

22 Then also EPA needs to look at the
23 solution mining issues with regard to the increase in
24 new ways of extraction of the minerals in terms of
25 dissolving the salt in order to store natural gas and

1 other natural minerals from that area in those kinds
2 of things that may cause new pathways into the WIPP
3 site.

4 So on Page 15 of this report there's a map
5 of the potash. You can see all the potash around the
6 WIPP site.

7 This is an issue that CCNS has been
8 concerned about for 14-and-a-half years.

9 Okay. Then the whole issue about the
10 water level increases in the Culebra. That's a really
11 important issue to find out where that source of water
12 is coming from. Is it coming from a leaky pipe
13 somewhere from one of the activities that takes place
14 around the WIPP site?

15 That issue really needs to be known and
16 figured out before the recertification begins -- or in
17 that process because that data is used for the
18 calibration of the Application Transmissivity (sic)
19 Fields. If that's wrong, then the whole premise is
20 going to be wrong or the whole observation conclusions
21 are going to be wrong.

22 Also, there needs to be a mass balance
23 done of the Culebra in order to find out what will
24 happen over that 10,000-year period or the 9,995-year
25 period, at this point.

1 Also, an analysis of the non-random waste
2 im-placement because as we know now it's not random.
3 We know where the drums are. They are coming from
4 certain shipments. They are going down into the waste
5 site and they're being im-placed (sic).

6 So the Monte Carlo analysis that was done
7 needs to be adjusted so that we know that it's not
8 non-random im-placement.

9 Okay. CCNS has a question about what
10 happens if DOE's Application is incomplete. We also
11 wanted to find out who the technical advisors are to
12 EPA with regard to the computer modeling and also the
13 chemists that will be working the solubility issues.

14 Then with regard to -- for the first
15 point, the alternative provisions -- I think it's the
16 second point, revise the approval process in 194.8 for
17 waste characterization processes. I understand that's
18 for the 30 years, an audit would be certified for 30
19 years.

20 Is that that point?

21 HEARING OFFICER: That's not the intent.
22 That's not what it's set up to be.

23 MS. ARENDS: Well, with regard to the
24 waste characterization audits, and I'm sure you are
25 aware of DOE's plan to limit the number of audits the

1 New Mexico Environment Department will be conducting.
2 I believe that's a modification that's up for review
3 right now.

4 This concerns us that the federal agency
5 won't have as much oversight, what appears to us to be
6 as much oversight, looking at the audits, conducting
7 the audit process and providing oversight.

8 We have an example of the Idaho shipments
9 with regard to the fact that Idaho was shipping more
10 than 50 shipments from INEEL to WIPP with improperly
11 certified waste. That was of concern. That is
12 something that we think there should be more oversight
13 and more audits of these processes.

14 One thing that we've recently learned is
15 that there is a really high turn-over of employees at
16 the various sites. That is cited in Roger Nelson's
17 presentation to the radioactive and hazardous
18 materials committee of the New Mexico State
19 Legislature, talking about the high turn-over of
20 employees at the various sites.

21 That presents problems with training.
22 That presents problems with consistency, all of those
23 different kinds of things. So we need to have people
24 eye-balling what's going on.

25 We also have to recognize the issue that

1 we are dealing with the new waste. We are dealing
2 with the waste that DOE sorta-kinda knows what's in
3 the drums.

4 And as we get further in the process, as
5 we go down the road 20 years we are going to be
6 dealing with the old waste. There's less records. We
7 need to make sure that we have the avenues to be able
8 to keep a good eye on what DOE is doing.

9 If WIPP is supposed to work, we have to
10 make sure that there's not prohibited items in the
11 site. We need to know what's in the drums. Those are
12 the guarantees that DOE made to the citizens of New
13 Mexico. We need to ensure, EPA needs to ensure that
14 the wrong stuff isn't going into WIPP; that will
15 challenge the integrity of the site.

16 The other point is that in 1992 Congress
17 said that EPA would have enough money to do the
18 necessary regulations. So instead of changing the
19 regulations and lessening the regulations, change is
20 okay. Lessening the requirements of the regulations,
21 that's of concern.

22 Instead of putting energy into changing or
23 lessening the regulations, energy should be going
24 towards going to Congress and asking for more money or
25 going to DOE and saying, Congress, you know, do the

1 route so that Congress allocates more money for the
2 work that you are doing on the WIPP site.

3 We have to go back to the premise of the
4 promises that DOE and the Congress made to the
5 citizens of New Mexico. One of CCNS' strongest points
6 to you is to ensure that those promises are kept. I
7 know that's a big responsibility in this day and age
8 with the \$2 trillion deficit and all of these new
9 things we are up against. But this is a project
10 that's going to go on for a long time and we need to
11 ensure that shortcuts aren't being made.

12 We don't have enough data. We don't have
13 enough information to be able to start saying that we
14 are going to reduce the number of audits.

15 Okay. Then with regard to the minor
16 changes, we've already gone through the minor changes
17 issues with the New Mexico Environment Department.

18 One of the minor changes was for the
19 provision for B2B (sic) which is now before the New
20 Mexico Supreme Court in a suit filed by Southwest
21 Research and Information Center.

22 So we need more comment time. We need to
23 make sure that the notices get to the people with
24 regard to any minor changes.

25 We move to request a 60-day comment period

1 for minor changes so that we do have time. I mean,
2 New Mexico is getting hit on all sides by all sorts of
3 proposals for new waste dumps, new facilities, all of
4 these different kinds of changes, and EPA needs to be
5 aware of those things. I mean, you could foresee a
6 whole project where we would have the modern pit
7 facility at WIPP. We would have WIPP. We would have
8 transportation. We would have expanded operations at
9 Los Alamos, expanded operations at Sandia, plus even
10 the possibility of making the RTG batteries with the
11 plutonium packs and then setting up a space station
12 down in White Sands, which is a proposal that's on the
13 table. I mean, there's a big emphasis on
14 consolidating the nuclear weapons complex in New
15 Mexico.

16 Okay. Then there's another point with
17 regard to the performance management plan for WIPP.

18 Are you familiar with that document?

19 MS. FORINASH: I'm sorry, not immediately,
20 no.

21 MS. ARENDS: Okay. So this is the
22 Performance Management Plan for WIPP. This is a
23 Carlsbad field office document dated July 2002.

24 This document talks about bringing waste
25 to WIPP in an accelerated manner in order that other

1 DOE sites can accelerate their clean-up.

2 So this document lays out more waste to
3 WIPP in the next five years than what was anticipated.
4 And so I don't know how you are going to incorporate
5 this into your process but CCNS would request that you
6 do incorporate this into your process. This is pretty
7 much in the ballpark in line with the other PMP's as
8 of this July date for the rest of the complex.

9 So there's PMPs for LANL, for Idaho, for
10 Hanford, Rocky Flats, Fernald, Savannah River, the
11 majority of the sites that will be sending waste to
12 WIPP and will be accelerated.

13 So there's a possibility that there will
14 be more than 35 shipments a week to WIPP under this
15 plan if it gets approved by Congress.

16 So this recertification needs to take that
17 into account. That goes into the whole issues of the
18 solubility of the plutonium, the spalling and then the
19 non-random im-placement at the site, which are really
20 big, important issues with regard to that.

21 Then just to go back to the modeling
22 issue, I know that DOE's probably cry-babying to you
23 that they don't have enough money or they can't do
24 this more advanced computer modeling. But you have to
25 know that LANL just purchased a new \$6 million super

1 computer that will be right out there with the big
2 blue, or whatever it's called. I mean, in terms of
3 its capacity. Sandia also has big computers that they
4 could do this work for you that's necessary.

5 Then also, with regard to the computer
6 programs, it's important to have an uncertainty
7 analysis. There's new methods that have been
8 developed in the last five years with regard to
9 uncertainty and to be able to attach a number to the
10 uncertainty associated with these computer models.
11 CCNS would like to see those numbers.

12 Then in the Federal Register in the second
13 column on the first page, EPA states that the proposed
14 changes do not lessen the requirements complying with
15 the compliance criteria. So CCNS would like to ensure
16 that those are not lessened.

17 Then also, we have a comment with regard
18 to the dockets; that the dockets aren't all in one
19 place for review. In Santa Fe we have two of maybe
20 three dockets, so the 98-49 is not available in Santa
21 Fe. We would have to go to Albuquerque to be able to
22 review that.

23 And then with regard to a statement in the
24 Federal Register on Page 57190 in that first column
25 there's a statement with regard to EPA's continued --

1 monitors the continuing -- the continued compliance of
2 the WIPP facility.

3 So there's three things that have come up
4 recently that I don't know if you're aware of, but one
5 of them is these INEEL shipments. There's a lot of
6 concerns with respect to the accidents, the new
7 accidents that have happened.

8 While we appreciate that DOE suspended
9 shipments on 9/11 we do still have concerns about the
10 escort issues with regard to these shipments.

11 Then also, the citizens over in Las Vegas,
12 New Mexico, have concerns about the trucks stopping in
13 Romeroville at a Texaco station because it's not a
14 secured site. They have concerns about the trucks
15 piling up there three trucks at a time, affecting the
16 community that's right there. The citizens in Las
17 Vegas have asked for the radiation monitoring
18 equipment over there. It concerns us with regard to
19 the fact that we've heard reports out of Las Vegas
20 that sometimes there can be four shipments in 40
21 minutes coming through. The concern is that the
22 transcom checks the status of the trucks every 15
23 minutes. So if there was an accident and the other
24 truck wasn't aware of the accident involving, let's
25 say, the first truck, it would come plowing down the

1 road and then we would have a double situation here.

2 So we would request more time in between
3 the trucks on our roads because we have the situation
4 in New Mexico where 80 percent of the emergency
5 responders along the route from Raton down to WIPP are
6 volunteers. So we don't have a big HAZMAT (sic) team
7 that can run out there and respond to these accidents.
8 If there's four trucks in 40 minutes, we could have a
9 big pile-up.

10 So if you have any power over the
11 shipments, if you could look into that, that would be
12 very helpful for the folks, some of the concerns of
13 the people out along the routes.

14 So I think that completes my comments.

15 Do you have any questions?

16 HEARING OFFICER: Anybody?

17 (No response.)

18 HEARING OFFICER: I have no questions,
19 Joni.

20 MS. ARENDS: Okay.

21 HEARING OFFICER: I want to thank you for
22 coming here and giving a statement.

23 If you think of something else you want to
24 say at any time, just let us know and we will let you
25 go back on the record.

1 MS. ARENDS: Okay. CCNS will submit
2 written comments that will probably be closer to the
3 deadline.

4 HEARING OFFICER: That would be great.

5 MS. ARENDS: Okay. Thank you.

6 HEARING OFFICER: Thank you again.

7 Okay. At this point in time since we have
8 no one else in the audience or on the schedule to
9 testify, we are going to recess until such time as
10 someone else shows up or the scheduled speaker shows
11 up at 1:00 o'clock. Okay?

12 (Whereupon, a brief recess was
13 taken.)

14 HEARING EXAMINER: All right. We are
15 going to open up the hearing again for testimony.

16 Just as a reminder, the way the process
17 works here, we are not swearing anyone in. There is
18 no Cross-Examination. The speakers will present their
19 testimony and not expect a response from the panel at
20 this time. We are here to listen to your comments.

21 We will respond to all the comments we've
22 received after the comment period closes.

23 Given that there's no one immediately
24 scheduled behind you, the time restrictions that were
25 listed in the Federal Register notice, we will forego

1 those for now. For the time being you can have as
2 much time as you'd like to speak.

3 MS. READE: You shouldn't say that.

4 HEARING EXAMINER: That's what we're here
5 for.

6 And if you'd introduce yourself and give
7 your name to the Court Reporter, we'd appreciate it.

8 MS. READE: Okay. My name is Deborah
9 Reade. I represent -- I'm Research Director for
10 Citizens for Alternatives to Radioactive Dumping.
11 Their acronym is CARD.

12 I just have a couple of logistic points to
13 make first. One is if you come back and have hearings
14 in Santa Fe again, you might consider having them at a
15 hotel that has free parking. There's actually quite a
16 few in town that have that, including a hotel run by
17 Picuris Pueblo just down the street, that's very nice
18 and elegant. And then one down on Cerrillos Road
19 where DOE often has their hearings, the Courtyard at
20 Marriott. Both of those have free parking. Although
21 the Cerrillos one is quite so central and near me.

22 The other thing is that this hearing comes
23 in a period of time when we are totally overloaded
24 with numerous activities that we must testify to,
25 write comments on and address.

1 I believe that Don Hancock did mention to
2 you all that it would be better to have this hearing
3 after the middle of October because of all these
4 activities that are going on.

5 I think that, for one thing, it is -- the
6 facts that there are so many activities proceeding in
7 this state, actually it's happening all the time,
8 really. It's particularly bad right now. But every
9 single week there's some type of testimony that has to
10 be given, some type of comments that have to be
11 addressed.

12 Frankly, to deal with all of these things
13 in an adequate way, a minimally adequate way, I should
14 be working full-time at this. Instead I am a normal
15 citizen. I have a full-time job. I'm running a
16 business. I have two kids. I cannot possibly give
17 full-time attention to this.

18 For instance, for these comments today, as
19 you saw, I was reading this at the last minute. I'm
20 not going to have time to write written comments for
21 CARD. I mean, this is going to have to be it.
22 Because, as I said, there's constant activity in the
23 state.

24 I think this is indicative of the fact
25 that there's too much being proposed for this state.

1 There's WIPP, there's LANL, there's numerous waste
2 dumps, there's all types of activities going on. They
3 are constantly modifying the WIPP operations permit,
4 the RCRA permit for WIPP. For instance, we just came
5 through a Class III RCRA hearing, a Class III
6 modification RCRA hearing that lasted almost a week.

7 We have RH, a Class III modification
8 coming up, a Centralized Confirmation Facility Class
9 III coming up. We have seven modifications that are
10 Class II that require comments coming up just next
11 week.

12 We have the -- the LANL operating permit
13 is supposed to be issued in the middle of October.
14 The Correction Action Order for LANL, we just had
15 comments on that about a month ago.

16 There are constant problems with DOE's
17 quick to WIPP and promoted activities that they are
18 discussing that need comments on.

19 We had the BSL-3 (sic) up here that needed
20 to have comments on; that was some time ago, however.

21 I mean, every single week there are
22 comments or testimony that really should require
23 several weeks of preparation, reading and writing and
24 all of this. It's an impossible task. There is too
25 much being put into our state. WIPP is part of that

1 and all these modifications on WIPP are part of that.

2 I think that you cannot look at either
3 these criteria or the rest of the oversight that you
4 do on WIPP out of the context of the fact of all these
5 numerous things that are going on at this time. So
6 that is my other point.

7 I think that although it's unlikely that
8 you are going to get the 800 people that we used to
9 turn out for these hearings in the old days, you
10 probably will get a few more people if you coordinated
11 this in a manner so that there just wasn't so much
12 going on at the same time. Whether that's possible
13 with all the things that are being stuck into this
14 state, I don't know.

15 But again, as I say, you should look
16 seriously at the fact of why are there so many things
17 going on in this state that require this level of
18 public comment and is that too much, really, for one
19 area and one state to deal with.

20 On these particular points here, although
21 I find the term acceptable knowledge to be rather
22 odious because I consider it to be unacceptable
23 knowledge, we don't have any particular problem with
24 that name change from process knowledge to acceptable
25 knowledge. It would be nice if there were some other

1 term because, as I said, we don't really consider that
2 the knowledge is always acceptable.

3 The electronic submission I think is also
4 -- we don't have any problem with that because I think
5 it gives a lot more flexibility to people as long as
6 you continue to allow paper submission and provide
7 paper materials.

8 I do see that eventually a lot of agencies
9 are moving to what might end up being only electronic
10 back and forth. I think this could be a problem
11 because there are still significant portions of this
12 country that are not hooked into the Internet or have
13 very -- have a difficult time dealing with it or do
14 not have computers.

15 This is particularly a problem in that
16 it's my understanding that the computer ownership and
17 Internet connection is concentrated in the White
18 portion of America and that therefore minorities may
19 be under-represented if we go to a purely electronic
20 form.

21 So I'm assuming that you are not planning
22 this now, but this is something to consider in the
23 future if you go more and more into this electronic
24 reporting. That's something to keep in mind.

25 Then the other two points are what we

1 consider to be more serious. We are concerned because
2 some of these times that you are cutting the comment
3 period down to 30 days, you know, it's coming down
4 from 120 days, it appears, to 30 days in some of these
5 instances. I think that 30 days is way too short.
6 Again, this is particularly true because of this
7 problem of the numerous things that we must comment
8 on. If I only have 30 days, I can barely deal with
9 this as it is now. If you start to throw a lot of
10 stuff at us that only has a 30-day comment period,
11 it's going to be impossible. You might as well just
12 not have the public comment at all because as a member
13 of the public we are not going to be able to have
14 enough time with all these numerous other things that
15 are continually going on to look at it. That's just a
16 fact of life.

17 If you want public participation, you have
18 to make it possible for the public to participate.
19 You can't have something on paper that looks just
20 great but then the reality is that it's impossible to
21 adequately participate. I don't feel that I'm
22 adequately participating now because I haven't been
23 able to really study this as well as I would have
24 liked.

25 Another thing is that you talk about

1 making -- streamlining this for minor changes. The
2 problem is that we've already had difficulties with
3 the RCRA permit where the definition of what a minor
4 change is has been open to interpretation. What the
5 public has considered to be a minor change, I believe
6 that -- what the public believes to be a minor change
7 may not be the same as what DOE believes to be a minor
8 change or even what you all consider to be a minor
9 change. DOE has a history of submitting, under the
10 RCRA permit, what they consider to be Class I
11 modifications which fit in this sort of category. As
12 one of the RCRA regulators said, if you have to think
13 about it, it's not a Class I. I would hope that that
14 would be the criteria here if you do go to this type
15 of change. If you have to think about it at all, it's
16 not a Class I -- or it's not a minor change.

17 The problem is that DOE has taken, for
18 instance, the last hearing we had on the DAC, Drum Age
19 Criteria, started off as -- we ended up having a Class
20 III modification process with a hearing on it. It
21 started off as a Class I modification. DOE just
22 thought, well, let's just put this in; we don't have
23 to think about it. So that can show the problem,
24 where here is something that was a Class III, required
25 a whole week of hearings, had major changes to various

1 multiple parts of the permit and yet DOE considered it
2 at one point to be a Class I.

3 That's not the only instance of that. In
4 terms of the base-line review that you want to have,
5 instead of looking at each waste stream, I think there
6 could be some problems with that in that if you have a
7 base-line review and that's it for the site, period, I
8 really think that it should be reviewed more
9 frequently than that. I know that you are going to be
10 having inspections. But I think that looking at their
11 program, you should do that at some period of time,
12 yearly, every two or three years, something like that,
13 so that you can make sure that you are fully reviewing
14 this and that the public has an opportunity to look at
15 this periodically, not just once every 35 years.

16 Perhaps when you do that base-line review,
17 you can then look and see if there are waste streams.
18 I think you have a provision here for that. At that
19 time you can say, well, really, these waste streams
20 need to be looked at individually.

21 I think that you talk about making things
22 more flexible. This is a word that DOE has used
23 frequently in the RCRA context and it generally means
24 less; less oversight, less review.

25 We are in the situation right now where

1 the Department of Energy through their Los Alamos
2 National Lab manager, University of California, they
3 have filed a lawsuit which potentially could remove
4 all RCRA oversight from mixed waste at all DOE
5 facilities nationwide.

6 But particularly, they are starting now
7 with LANL. They are trying to claim that the state
8 should have no oversight over LANL and should not be
9 able to tell them what to do at all. Only the Atomic
10 Energy Act should regulate it. This is yet to be
11 decided but the potential here is enormous. That
12 would leave you all -- although there are some
13 protections in the LANL withdrawal act against this,
14 evidently, the potential -- it's not clear whether
15 that would protect us, whether that would keep RCRA
16 oversight of WIPP.

17 There is a possibility if DOE pushed this
18 far enough and if they won their various lawsuits,
19 that we would lose all state oversight over WIPP.
20 That would leave EPA as the only agency overseeing
21 WIPP besides DOE self-regulation.

22 I find the idea that you are trying to
23 lessen, in my opinion, lessen criteria or lessen
24 review, lessen oversight, particularly at this time
25 when we are faced with losing all state oversight of

1 all DOE facilities, I find this to be very disturbing.

2 I think that, if anything, DOE needs more
3 oversight rather than less. They are continually
4 pushing the envelope to try to get -- characterization
5 is very expensive for them; they don't want to have to
6 do it. I think that you have to keep a very tight eye
7 on these guys because they are going to try to slide
8 things through. If you are not looking at them except
9 once every 30 years or every five years or whatever,
10 with this base-line review, this is a potential
11 problem. We could be faced with you being the only
12 ones that are going to be protecting us from what I
13 consider to be their shenanigans.

14 I guess that is my testimony. Thank you
15 very much.

16 HEARING OFFICER: Okay. Thank you,
17 Deborah.

18 Is anybody else in the audience willing to
19 testify at this point?

20 (No response.)

21 HEARING OFFICER: If there is no one else
22 wanting to speak at this point, I guess we will take a
23 recess again until another speaker does arrive.

24 (Whereupon, a brief recess was
25 taken.)

1 HEARING OFFICER: Okay. Just before we
2 get started, I wanted to briefly mention some of the
3 procedures again as we come out of this recess.

4 So you all know, no one is going to be
5 sworn in here. There's no Cross-Examination. We are
6 going to ask you to present your testimony and not
7 expect a response from the panel at this time. We are
8 here to listen. We'll respond to all the comments
9 received after the comment period closes.

10 Again, as earlier today, we are going to
11 forego the time limits, so you can speak for whatever
12 time you want, and that's for all speakers here today.

13 So I think with that, Steve Casey, if you
14 just give your name for the Court Reporter and let's
15 get started with your testimony.

16 MR. CASEY: Great. My name is Steve
17 Casey. I'm representing Westinghouse Tru Solutions.
18 I'll just start right in with the comments.

19 Overall general, we felt EPA is headed in
20 the right direction and we highly commend them with
21 progressive thinking by updating the criteria for
22 certifying and recertifying the Waste Isolation Pilot
23 Plant. We think it's something definitely needed and
24 will have to occur from time to time as things change.

25 My first comment has to do with the

1 definition of minor alternative provision. In our
2 opinion, we feel that this doesn't have enough
3 criteria or definition specifics to identify what is
4 minor and what is an alternative provision as the
5 former definition stands. Similar circumstances with
6 the word significantly different. It's a term that
7 has to be defined by the agency. Therefore, it's at
8 the peer discretion of EPA's interpretation as to what
9 falls into the minor category and what does not.

10 Minor issue, in our opinion -- not a major
11 one, but one worth mentioning. On the .6 alternative
12 provisions, we felt overall that it's a great step in
13 the right direction by delineating two portions, one
14 that could be ruled on in a minimal amount of time and
15 another portion that fit all other categories.

16 Under the .8 proposed changes, a portion
17 of the suggested change that we have a disagreement
18 with is the portion that suggests we utilize the
19 annual change report mechanism listed in 194.4(B)4.
20 And that's to cover the activities and changes
21 occurring at the generator sites.

22 Considering that the certification was
23 provided to the WIPP facility certifying that its
24 suitability for long-term deep geologic disposal of
25 radioactive waste, the .8 is kind of an odd duck in

1 that one. We realize it came along with a
2 certification at that time and was proposed when the
3 proposed cert came out.

4 One of the particular areas where we are
5 having trouble seeing how it correlates back to the
6 certification of WIPP is .8(B)3. There's particular
7 language in there suggesting that 194.4(B) be utilized
8 as a mechanism for determining whether or not these
9 sites, if they don't remain in compliance, what
10 actions to take.

11 The language there seems to indicate that
12 EPA will be reviewing their records, their
13 documentation and any measures that is utilized at
14 that site to determine whether or not they comply. If
15 they do not, the language indicated in the proposed
16 change indicates that one of the potential outcomes of
17 that is turning to the .4 mechanism, which is specific
18 to WIPP, and taking actions as far as resolving
19 deficiencies.

20 That's a significant issue in our opinion.
21 It's one that could jeopardize the WIPP facility
22 certification. In other words, we feel that if a
23 single generator site is problematic, all the other
24 generator sites shouldn't have to pay a penalty
25 because that one facility is not in compliance. So we

1 are suggesting that the agency reexamine what's being
2 proposed there, possibly remove language.

3 Another alternative is -- this is
4 something that may have connectivity to high-level
5 waste -- is establishing approval and certification
6 procedures and criteria separate to the 194 rule and
7 have it apply in a more global sense to both
8 high-level waste and transuranic waste for any
9 geologic facility. I realize that won't happen in
10 this ruling, but it's something in the future we
11 suggest the EPA consider.

12 As far as the .12 and .13 changes, again
13 we are in favor of those. We think that's a great
14 step in the right direction, getting away from massive
15 paper printing and publishing of tremendous amounts of
16 materials that will be used to assess compliance,
17 whereas we could utilize more electronic media.
18 That's definitely a good thing.

19 One note that we were hoping would be
20 considered is the exact specification of how many
21 applications are to be submitted as well as the exact
22 specification of references. We are recommending that
23 that be left open for negotiation between EPA and DOE
24 and not specified in the regulations or as an
25 alternative specified in guidance documentation. And

1 let that one remain open, depending on the need as
2 determined by the agency.

3 All other changes -- I'm sorry, I didn't
4 rehearse this very well -- all other changes here we
5 feel are, again, a step in the right direction. We
6 think this will really help the generator sites be
7 able to demonstrate adequate compliance and it will
8 give the public a better opportunity to provide
9 comment on the potential ruling or potential
10 certification that those sites will endure as opposed
11 to the comment period being prior to the actual
12 inspection. We feel that's a win-win for everyone.

13 In conclusion, I'd just like to thank you
14 for the opportunity to provide comments. That's all.

15 HEARING OFFICER: Okay. Well, thank you.
16 Thanks for taking the time to come out and give us
17 those comments. I guess you don't have anything in
18 writing at this point?

19 MR. CASEY: I'd be happy to provide a disk
20 of what I have.

21 HEARING OFFICER: I would suggest -- the
22 comment period is open until December 9th and you can
23 submit them at any point before the close of that
24 period.

25 MR. CASEY: Okay.

1 HEARING OFFICER: Okay. Great. I guess
2 we are still waiting for Mr. Rick Lass. I guess right
3 now we will just hold on until he's ready and then
4 we'll start up again when he comes back.

5 (Whereupon, a brief recess was
6 taken.)

7 HEARING OFFICER: Okay. We are going to
8 start again. Mr. Rick Lass, are you ready? Again,
9 if you could just state your name and spell it for the
10 Court Reporter.

11 MR. LASS: Okay. It's Rick Lass, L-a-s-s.
12 I'm the Green Party candidate for State Representative
13 in District 48 in New Mexico. I'm going to keep it
14 pretty brief.

15 I've been testifying before the EPA and
16 the DOE regarding WIPP for many years now and I'm
17 still not satisfied that the public is really being
18 heard by either of these agencies. Nor am I convinced
19 that public safety is the major concern of the EPA
20 regarding WIPP.

21 My stance is that the EPA needs to really
22 get tough with DOE. Waste characterization and the
23 openness of DOE to tell us what's really going on need
24 to be strengthened by EPA and not made more flexible
25 as your proposed changes claim. I think that's the

1 key thing that you as EPA need to be working on.
2 Transportation hasn't come up yet,
3 although there have been two accidents to date that we
4 have been told about. I think the emergency
5 management training in the states and in the
6 localities and municipalities and the counties, more
7 money needs to be spent on that and I hope that's what
8 you'll do.

9 The reason I came today is because I read
10 last week that WIPP is being considered for nuclear
11 pit production and I think that's totally
12 unacceptable.

13 Years and years and years went on with DOE
14 promising repeatedly that WIPP was simply going to be
15 a storage site for waste. Now we brought that up and
16 they said, no, no, we will never do anything like that
17 there. Here we are only, not even three full years
18 after it's opened and they are talking about making it
19 into a production facility.

20 I think I can speak for everyone in the
21 Green Party when I say that only when we stop
22 producing nuclear weapons and nuclear waste can we
23 honestly address the problem of contamination. To
24 continue to produce this is wrong. We have problems
25 with contamination of our air, our land and our water,

1 right up here in Los Alamos. I'm sure in 20, 30 years
2 we'll be finding it near Carlsbad.

3 I think the foremost item on EPA's agenda
4 should be to honestly say nuclear waste is dangerous
5 to people and it's dangerous to our planet. DOE and
6 the administration need to stop producing nuclear
7 weapons.

8 So I thank you for your time and I hope
9 you will seriously consider my comments.

10 HEARING OFFICER: Thank you, Mr. Lass.

11 Thank you for coming out and providing the comments.
12 Thank you.

13 At this point we have no one else signed
14 up to provide testimony and there doesn't appear to be
15 anybody in the audience who hasn't been here before
16 and spoken or given an opportunity to speak.

17 So I think we will recess again until
18 another person shows up willing to testify. So we are
19 in recess for now.

20 (Whereupon, a brief recess was
21 taken.)

22 HEARING OFFICER: It's now about 8:00
23 o'clock in the evening. We haven't had a speaker
24 scheduled since about 4:00 o'clock this afternoon nor
25 has any walked in since then.

1 At this time we are going to close the
2 hearings; so these hearings are now closed.

3 (Whereupon, the hearing in the above
4 matter was adjourned.)

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