

NATURAL RESOURCES DEFENSE COUNCIL
SNAKE RIVER ALLIANCE
SOUTHWEST RESEARCH AND INFORMATION CENTER
TRI-VALLEY CARES
HEART OF AMERICA NORTHWEST

May 14, 2008

Secretary Samuel Bodman
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

RE: Amendment to Waste Management PEIS ROD, 73 FR 12041-12403 (March 7, 2008) and accompanying Supplement Analysis DOE/EIS-200-SA03 (February 2008)

Dear Secretary Bodman:

We write to you as organizations involved for decades in Department of Energy (DOE) nuclear waste issues, including regular participation in DOE actions under the National Environmental Policy Act (NEPA). Our organizations and members are directly affected by the proposed action of shipping up to 9,019 cubic meters of contact-handled (CH) and remote-handled (RH) transuranic (TRU) waste to the Idaho National Laboratory (INL) and to the Waste Isolation Pilot Plant (WIPP).

We ask that you withdraw the Record of Decision (ROD) on the Waste Management Programmatic Environmental Impact Statement (WMPEIS) of March 7, 2008. Before DOE undertakes the proposed action, it must conduct additional NEPA analysis because that ROD is not “adequately supported by an existing EIS.” 10 CFR § 1021.315(e).

In addition, the information in the Supplement Analysis DOE/EIS-200-SA03 (SA) is so at variance with other DOE documentation that it is not credible and casts doubt on the credibility of other DOE documents regarding TRU waste.

1. DOE has not rigorously evaluated all reasonable alternatives.

The twin functions of the Environmental Impact Statement (EIS) are to “require that agencies take a ‘hard look’ at environmental consequences, and provide for broad dissemination of relevant environmental information.” See *Robertson v. Methow Valley*, 490 US 332, 350 (1989). The discussion of alternatives is the legally required heart of any EIS. 40 CFR § 1502.14. The legally adequate EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” 40 CFR § 1502.14(a).

In the SA, DOE states that the Proposed Action is: “to ship RH- and CH-TRU waste from sites that do not have the capability to process this waste, and CH-TRU from the Hanford site that

requires special facilities for volume reduction, to INL for treatment and characterization.” SA at 2. The SA discusses no alternatives, not even the no action alternative, to shipping those wastes to INL. The alternative of using the Central Characterization Project (CCP) to characterize waste at one or more of the 14 sites included in the ROD is a reasonable alternative that is not mentioned in the SA. As of May 12, 2008, the CCP has characterized and certified 49,110 drums of waste for WIPP, and 101,383 containers have been disposed at WIPP. WTS FY08 Key Performance Data. Many of the drums certified by CCP have been at sites included in the current ROD. The CCP was created more than five years ago precisely to meet the need outlined in the current SA – to characterize wastes at “small quantity” generator sites so that those sites do not need to build expensive new facilities and to avoid the risks of transporting wastes to other sites before it can be shipped to WIPP for disposal. Using the CCP would reduce both the number of waste shipments and the distances that waste would be shipped, thereby reducing the costs and environmental impacts. Use of CCP is clearly a reasonable alternative that is not mentioned or analyzed in the WM PEIS or the SA. Thus, that alternative must be included in any adequate NEPA analysis before a ROD can be issued and the proposed action taken.

2. DOE is proposing sites that are not included in either the WM PEIS or the WIPP SEIS-II ship waste to the Idaho National Laboratory (INL) and WIPP.

The ROD and SA mention 14 sites that would ship TRU wastes to the Advanced Mixed Waste Treatment Facility (AMWTF) at INL. Seven of those sites – Babcock and Wilcox (BW in Virginia), Bettis Atomic Power Laboratory (in Pennsylvania), General Electric Vallecitos Nuclear Center (GE-VNC in California), Knolls Atomic Power Laboratory (KAPL in New York), Knolls-Nuclear Fuel Services (K-NFS in Tennessee), NRD, LLC (in New York), and Separations Process Research Unit (SPRU in New York) -- are not sites included in the WM PEIS as having TRU waste, nor are they (except Bettis) included in the WIPP SEIS-II (DOE/EIS-0026-S-2). Thus, the WM PEIS does not analyze the reasonable alternatives nor does it analyze the environmental impacts of TRU waste characterization or transportation from those sites. A federal agency may not ignore such clearly obvious NEPA obligations, and appropriate NEPA analysis must be done before a ROD can be issued and the proposed action can be taken.

3. DOE is misusing the alternatives and analyses done in the WM PEIS and WIPP SEIS-II.

The ROD and SA claim that the new proposed action is “similar” to alternatives considered and has “smaller impacts” to alternatives that it previously considered – specifically “Alternative 3” in the WM PEIS and “Alternative 2B” in the SEIS-II. However, the WM PEIS “Regionalized Alternative 3” was to consolidate “waste for treatment at four sites (Hanford, INEL, ORR, and SRS)”; Contact-handled (CH) TRU waste would be treated at Hanford, INEL, and SRS; RH TRU would be treated at Hanford and ORR. WM PEIS at S-63. Under the Regionalized Alternatives, “DOE assumed that the waste would be shipped to the closest site for treatment.” WM PEIS at S-66. By contrast, in the ROD and SA, there would be characterization and treatment done at only one site (INL) and potential treatment sites that are closer to some of the generator sites would not be used. This action is not similar to “Regionalized Alternative 3.” The “Regionalized Alternative 3” did not include shipping any RH waste to INL, so it is not at all similar to the proposed action of making 188 shipments of RH waste to INL in the ROD.

The WM PEIS did consider a “Centralized Alternative” in which one site (WIPP) would treat all CH TRU and Hanford and ORR would treat RH TRU. That “Centralized Alternative” is not the same as using INL, as is now proposed in the ROD. Thus, all of WM PEIS alternatives were different than the current proposed action and, consequently, the WM PEIS impact analysis also did not cover the site-specific and transportation impacts of the current proposed action.

The SEIS-II “Action Alternative 2B” was for 105,000 cubic meters more CH waste than is allowed at WIPP and 32,000 cubic meters more RH waste than is allowed at WIPP under the WIPP Land Withdrawal Act. Those are significant amounts of waste, and thus, that Alternative has not been selected by DOE for WIPP and is not legally allowed. Under “Alternative 2B,” only two (Nevada Test Site and Sandia) of the 14 sites in the current ROD would ship CH waste to be treated at INL; two (Lawrence Berkeley and Livermore) of the 14 sites in the current ROD would ship CH waste to Hanford for treatment, and three (Argonne, Bettis, and Paducah) of the 14 sites in the current ROD would ship CH waste to be treated at the Savannah River Site. CH waste at five sites (BW, GE-VNC, K-NFS, NRD, and SPR) in the current ROD is not included at all in that, or any other, alternative in the SEIS-II. Thus, “Alternative 2B” is not at all “similar” to having all the CH and RH waste treated at INL, which is the proposed action in the ROD. Consequently, no alternative in the SEIS-II analyzed the site-specific or transportation impacts of the proposed action in the ROD.

4. The transportation analysis in the ROD and SA is inadequate and different than either the WM PEIS or SEIS-II.

Because several sites included in the ROD were not included in the WM PEIS and the transportation impacts of shipping from sites in the East to INL were not considered in the WM PEIS, there has been no NEPA analysis of the transportation impacts of shipping waste from those sites to INL. Additionally, some (unspecified as of this date by the agency) amount of the waste included in the ROD would be shipped to INL in the TRUPACT-III, a shipping container for large size waste that has not been certified by NRC (as the ROD and SA acknowledge). Use of that shipping container was not included in either the WM PEIS or SEIS-II, so those documents did not include any NEPA analysis of using that shipping container. Thus, additional transportation analysis is required before a ROD can be issued and the proposed action can be taken.

5. The WM PEIS analysis was found insufficient in a somewhat similar circumstance.

In *WA, Columbia Riverkeeper, Heart of America Northwest, et al v. Spencer Abraham, Secretary of Energy et al*, CT-03-5044-AAM (E.D. WA, 2003), the court enjoined DOE from using Hanford as a consolidated processing site for TRU waste absent full consideration of the environmental impacts in a site-specific EIS. That court was fully aware of the WM PEIS, and the amount of waste and the number of sites involved in that case were much less than in the proposed action in the ROD, yet the court determined the WM PEIS analysis was not adequate.

6. The projected waste volumes included in the proposed action vary greatly from other WIPP documents.

The SA includes Table 1, showing the 14 sites and amounts by site, totaling 8,764 cubic meters of CH waste and 255 cubic meters of RH waste included in the ROD. At about the same time, DOE released to the Environmental Protection Agency (EPA) and the public the *Annual*

Transuranic Waste Inventory Report-2007, DOE/TRU-2008-3379 (“Report”). That Report is a major document for EPA’s recertification of WIPP. Further, the Carlsbad Field Office (CBFO) “management will use TRU waste inventory information to plan waste retrieval, treatment, repackaging, characterization, shipment, and disposal for both stored and projected wastes.” Executive Summary at 4. Therefore, CBFO, EPA, and the public expect that Report to be accurate.

However, the waste volume data in that Report varies dramatically from the SA Table 1. For example, the Report says that the total “Anticipated Volume” of CH waste from Bettis is 19 cubic meters; SA Table 1 shows 70 cubic meters of CH waste from Bettis, almost four times more than in the Report. The Report says that the “Anticipated Volume” from Livermore is 380 cubic meters; SA Table 1 shows 1,125 cubic meters from Livermore, almost four times more than in the Report.

Those widely disparate volume numbers raise significant questions about the accuracy and credibility of the SA and the Inventory, since one or the other or both are not accurate. DOE must explain to the EPA and the public which is accurate, and it must prepare its NEPA analysis based on the most accurate information. Further, DOE should withdraw the SA and ROD until it can demonstrate to the public and Congress that the data providing the basis for its actions is technically accurate.

7. Several sites are not included in the WIPP Report and may not be able to send waste to WIPP, resulting in waste from those sites remaining at INL, in violation of the Idaho Settlement Agreement.

The ROD states that waste from BW and NRD will be shipped to INL “only if that waste meets waste acceptance criteria for treatment at INL and is determined to be defense waste as required by the WIPP Land Withdrawal Act for waste to be eligible for disposal at WIPP.” 73 FR 12401, c. 2. The Report does not include BW or NRD waste. The Report also does not include CH waste from GE-VNC, Paducah, and SPRU in the “WIPP-bound” Inventory, though each of those sites is included in the ROD and SA. Thus, it is not clear that those five sites have WIPP-acceptable waste, which also raises concerns about whether waste from those sites shipped to INL would be “stranded” there, in violation of the Idaho Settlement Agreement. That possibility for the three additional sites is not analyzed in the ROD or SA. In addition, the Report includes some “Potential” waste streams from seven sites -- Bettis, Lawrence Berkeley, Livermore, Paducah, Hanford, SPRU, GE-VNC -- that are not currently allowed at WIPP and are not being included in the Recertification application to EPA. Thus, if those waste streams are included in the proposed action, they would be “stranded” at INL, in violation of the Idaho Settlement Agreement. That possibility for those waste streams is not analyzed in the ROD or SA.

The March 7, 2008, ROD must be withdrawn because it is not “adequately supported by an existing EIS.” For DOE to proceed with the proposed action, which is not included in the WM PEIS, much more NEPA analysis is required. We urge you to immediately withdraw the March 7, 2008, ROD and the SA. We ask for your response by May 30, 2008.

If you would like to further discuss this matter, please contact both Don Hancock of the Southwest Research and Information Center and Geoffrey Fettus of the Natural Resources Defense Council.

Thank you for your careful attention to this matter.

Sincerely,

Geoffrey H. Fettus, Senior Project Attorney
Natural Resources Defense Council
1200 New York Avenue, NW Suite 400
Washington, D.C. 20005
202-289-2371
gfettus@nrdc.org

Beatrice Brailsford
Snake River Alliance
PO Box 425
Pocatello, ID 83204
208-233-7212
bbrailsford@snakeriveralliance.org

Don Hancock
Southwest Research and Information Center
PO Box 4524
Albuquerque, NM 87196
505-262-1862
sricdon@earthlink.net

Gerald Pollet, J.D.
Heart of America Northwest
1314 56th Street, NE, Suite 100
Seattle, WA 98105
206-382-1014
gerry@hoanw.org

Marylia Kelley
Tri-Valley CAREs
2582 Old First Street
Livermore, CA 94550
925-443-7148
marylia@earthlink.net

CC: Jim Rispoli, EM-1
Inés Triay, EM-2