

MEMORANDUM OF AGREEMENT
BETWEEN THE
WESTERN GOVERNORS
and
U.S. DEPARTMENT OF ENERGY

REGIONAL PROTOCOL
FOR THE SAFE AND UNEVENTFUL TRANSPORTATION OF
TRANSURANIC WASTE

Purpose

The purposes of this Memorandum of Agreement are to enhance the safety and security of the transport of transuranic waste shipments to and from the Waste Isolation Pilot Plant (WIPP) and other transuranic waste shipments originating in or destined for the West; to facilitate communication between the Secretary of the U.S. Department of Energy (DOE), the Manager of the U.S. Department of Energy-Carlsbad Field Office (DOE-CBFO), and the Western Governors on transuranic waste transportation issues; to implement the provisions of the WIPP Land Withdrawal Act (Public Law 102-579); and to endorse the planning principles and transportation procedures contained in the "Western Governors' Association WIPP Transportation Safety Program Implementation Guide" and the Cooperative Agreement (DE-FC04-90AL65416) between the Western Governors' Association (WGA) and the DOE-CBFO. In addition, the undersigned agree to work cooperatively, through the regional planning process, to develop the planning and operating procedures for transuranic waste shipments originating in or destined for the West.

Findings

Managing the safe and uneventful transportation of transuranic waste from U.S. Department of Energy facilities to the WIPP in southeastern New Mexico is the joint responsibility of federal, state, local and tribal governments. It is also the joint responsibility of these governments to manage the safe and uneventful transportation of transuranic materials between the DOE generator and storage sites and other DOE facilities originating in or destined for the West.

The Governors adopted Policy Resolution 00-016 in 2000, which states that "the objective of the Western Governors' Association is the safe and uneventful transportation of nuclear waste from current temporary storage facilities to more suitable interim or permanent repositories."

The potential risks of transuranic waste and the complexities of transporting this waste to WIPP brought 10 Western States, the DOE and the U.S. Department of Transportation together in 1988 to establish a set of principles and procedures for achieving the objective of "safe and uneventful transportation."

In 1989, the Western Governors prepared a "Report To Congress" describing the elements of a safe and uneventful transportation program. In 1991, the WGA defined the programs and procedures necessary to achieve a safe transportation system and assigned priorities for implementing these programs and procedures in the publication "A Report To The Governors and Secretary of Energy."

The Secretary of Energy agreed with the findings presented in both reports and entered into a Cooperative Agreement with the WGA to prepare procedures for planning and operating the WIPP transportation program. Working as partners, WGA, DOE and the Western States developed a model program to plan for WIPP shipments, to prepare the Western States and local units of government to support the WIPP shipments, and to cooperatively support and operate the transportation system.

Congress recognized the benefits of a cooperative program between the States and DOE in the WIPP Land Withdrawal Act. The Act requires the U.S. Department of Energy to cooperate with and provide assistance to the States and Tribes in planning and preparing for shipments of transuranic waste to WIPP.

In 1995, the Western Governors and the Secretary of Energy signed the first Memorandum of Agreement committing to work cooperatively to implement the elements of the "WGA WIPP Transportation Safety Program Implementation Guide" (WIPP Guide). Both parties agreed to jointly support the regional planning process for the safe and uneventful transportation of transuranic waste originating in or destined for the West. These protocols were successfully utilized by DOE and the Western States in other DOE campaigns, such as Cesium and Nitric Acid.

DOE-CBFO, in a Cooperative Agreement with WGA, agreed that the WIPP transportation program will be conducted using the standards and procedures developed through the Western Regional Planning Process. This process recognizes that many of the procedures are above the minimum federal regulatory requirements, but were employed to achieve the high level of safety and shipment success since 1999. These standards and procedures are described in the "WIPP Guide" and implemented through the DOE-CBFO "WIPP Transportation Plan." The "WIPP Guide" and "WIPP Transportation Plan" are being expanded, by mutual agreement, to include the movement of remote handled transuranic waste and procedures for the transportation of transuranic waste by rail.

WGA, the Western States and DOE-CBFO periodically review the "WIPP Guide" and the "WIPP Transportation Plan" to ensure the objectives of the Western Governors' policy resolution, the provisions of this Memorandum of Agreement, and the WIPP transportation program are met. The Western Governors, through WGA, and DOE-CBFO negotiate and concur on changes to the "WIPP Guide," which are then incorporated into the "WIPP Transportation Plan." DOE-CBFO and its contractors follow the "WIPP Guide" and "WIPP Transportation Plan" in transporting transuranic waste to WIPP.

DOE-CBFO has as one of its primary functions the National TRU Waste Program, which is charged with planning and coordinating the shipment of transuranic waste between generator and interim storage sites, and to the WIPP facility. The Assistant Secretary for Environmental Management who sets the policy for the transuranic waste program, will work through the regional planning process to develop the planning and operating procedures for transuranic waste shipments originating in or destined for the West.

The WIPP Guide

The "WIPP Guide" defines the following elements of the safe transportation program:

Accident Prevention

- High-Quality Drivers and Carrier Compliance
- Independent Inspections
- Bad Weather and Road Conditions
- Safe Parking During Abnormal Conditions
- Advance Notice of Shipments
- Access to Information on Shipment Status

Emergency Preparedness

- Mutual Aid Agreements
- Emergency Response Plans and Procedures
- Training and Retraining
- Emergency Response Equipment
- Medical Preparedness

Security

- Route Designation
- Public Involvement and Information
- Program Evaluation

DOE-CBFO completed the first shipment to the WIPP facility on March 26, 1999, and as of the origination date of this Memorandum of Agreement, has safely completed more than 1400 shipments from five DOE sites to the WIPP facility. DOE-CBFO has used these procedures in developing the WIPP Transportation Plan and transportation operating procedures. Additionally, DOE-CBFO's contractors have incorporated these procedures into their management and operating procedures. In part, it has been these procedures and the cooperative planning process which has produced the exemplary safety record of the WIPP program and its extraordinary acceptance by the public and elected officials.

On September 11, 2001, the United States was attacked by foreign terrorists which changed the perception of threats to radioactive material shipments in this Nation. In order to address these threats and facilitate communication between the Western States and DOE, the Assistant Secretary for Environmental Management and the Western Governors agree to work cooperatively to coordinate security planning, communications and response to threats with DOE transuranic waste shipments.

Principles

The Secretary of Energy and the Chairman of the Western Governors' Association, on behalf of their organizations, pledge to each other the following:

1. The undersigned reaffirm the objective of the U.S. Department of Energy and the Western Governors to be the safe and uneventful transportation of transuranic waste from generator and temporary storage facilities to more suitable treatment, storage and permanent disposal facilities, including the WIPP facility in New Mexico.
2. The undersigned hereby endorse the Western Regional Planning Process as embodied in a Cooperative Agreement (DE-FC04-90AL65416) between the U.S. Department of Energy-Carlsbad Field Office and the Western Governors' Association as the most appropriate mechanism for addressing the safe and uneventful transportation of transuranic waste shipments originating in or destined for the West.
3. The undersigned endorse the standards, principles and procedures contained in the "WGA WIPP Transportation Safety Program Implementation Guide" and "WIPP Transportation Plan" for conducting transuranic waste shipments, originating in or destined for the West, not including shipments within the same DOE site or other transuranic waste shipments as agreed to between DOE and the states. The "WIPP Guide" and "WIPP Transportation Plan" are to be living documents reflecting the continuing agreements and actions taken by the Western Governors' Association, the Western States and the U.S. Department of Energy, as part of the regional planning process.
4. The undersigned commit to work cooperatively to identify and implement appropriate security procedures for the safe and uneventful transportation of transuranic waste shipments. The U.S. Department of Energy - Carlsbad Field Office, Western Governors' Association and the Western States agree to cooperatively work to coordinate the planning, preparedness and response to security related activities involving the shipment of transuranic waste originating in or destined for the West.
5. The undersigned agree to continue a dialogue on other anticipated U.S. Department of Energy shipments originating in or destined for the West, including advance notification of spent nuclear fuel shipments, Highway Route Controlled Quantity Shipments, high volume shipping campaigns, or other high visibility shipments as agreed to by the parties.

Implementation of Principles

To implement these principles, each Western Governor will:

1. Reaffirm his or her continued support for the safe transportation of TRU waste and operation of WIPP as being paramount to the expeditious cleanup and disposal of TRU waste from DOE facilities in the West and other parts of the country;

2. Agree to negotiate in good faith with DOE-CBFO the continued use of standards and procedures in the "WIPP Guide" for the safe and uneventful transportation of transuranic waste originating in or destined for the West;
3. Appoint to the WGA WIPP Transportation Technical Advisory Group, a Governor's representative, who shall be responsible for representing the Governor and state in developing and implementing principles, procedures, and agreements between the Western States and the U.S. Department of Energy as they address the safe and uneventful transportation of shipments of transuranic waste;
4. Appoint a policy and a security representative(s) to the WGA WIPP Transportation Technical Advisory Group, to coordinate activities with the U.S. Department of Energy for the transportation and protection of transuranic waste shipments originating in or destined for the West; and
5. Provide copies of this Memorandum of Agreement to western state agencies with instructions to coordinate their planning, programming, and procedural development processes for shipment of transuranic waste with the designated state representative.

To implement these principles, the Secretary of Energy will:

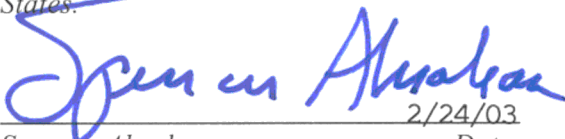
1. Conduct transuranic waste shipments through the Western States, in accordance with the protocols contained in the "WIPP Transportation Safety Program Implementation Guide" and WIPP Transportation Plan, not including shipments within the same DOE site or other transuranic waste shipments as agreed to between DOE and the states;
2. Participate in and support the WGA regional planning process through the Cooperative Agreement;
3. Agree to provide to Governors, through the WGA, early notification of planned shipments of transuranic wastes originating in or destined for the West;
4. Designate the manager of the Carlsbad Field Office as the Secretary's representative to the WGA WIPP Transportation Technical Advisory Group;
5. Appoint a Security representative to the WGA WIPP Transportation Technical Advisory Group to coordinate activities between the U.S. Department of Energy and the Western States for the protection of transuranic waste shipments originating in or destined for the West.

Annual Review and Affirmation

The "WIPP Guide" and "WIPP Transportation Plan" and their procedural components will be mutually reviewed by WGA, the Western States, and the DOE-CBFO annually to ensure both documents continue to meet the objective that all transuranic waste shipments are "safe and uneventful." The WGA WIPP Transportation Technical Advisory Group and the manager of the Carlsbad Field Office will annually provide assurances to the Western Governors and the Secretary of Energy that the "WIPP Guide" and "WIPP Transportation Plan" represents the mutually agreed to standards, principles and procedures for conducting transuranic waste shipments.

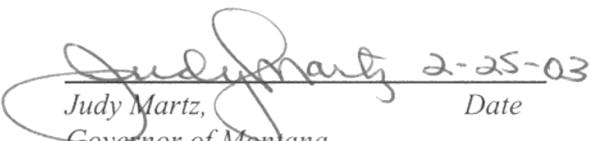
Notwithstanding the above provisions, this Memorandum of Agreement shall not be binding on U.S. Department of Energy shipments of nuclear weapons, nuclear weapons components, and special nuclear materials made for purposes of national security, as authorized by the Atomic Energy Act or shipments to Yucca Mountain authorized under the Nuclear Waste Policy Act.

This Memorandum of Agreement is to be reviewed and reaffirmed by the Western Governors and the Secretary of Energy within one year following the election of a new President of the United States.



Spencer Abraham
Secretary of Energy

2/24/03
Date



Judy Martz,
Governor of Montana
Chair, Western Governors' Association

2-25-03
Date