

**Greater Than Class C (GTCC) Waste Draft EIS  
Citizen Action New Mexico Preliminary Comments  
April 27, 2011**

1. The Draft GTCC Report is 6 years out of date from the time of the original scoping and has numerous legal infirmities. The selection of WIPP as the alternative provides numerous opportunities for lengthy litigation.
2. A brief legal history of the Waste Isolation Pilot Plant (WIPP) is that an agreement was reached in 1981 that limited WIPP to the disposal of defense-related transuranic waste only. A subsequent lawsuit in 1991 by the State of New Mexico sought to stop shipments to WIPP. Nevertheless, Congress made the determination to proceed with WIPP via the Land Withdrawal Act of 1992, as amended. Certification of WIPP was made by the EPA in 1998 and the disposal of the first TRU waste in WIPP took place in March 1999.
3. Unless GTCC Low Level Waste is contaminated with transuranic isotopes of defense origin, i.e., non-commercial nuclear power plant operations, the Waste Isolation Pilot Plant (WIPP) cannot accept the waste. The WIPP Land Withdrawal Act provides:

SEC. 12. BAN ON HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL.

The Secretary shall not transport high-level radioactive waste or spent nuclear fuel to WIPP or emplace or dispose of such waste or fuel at WIPP.
4. Using WIPP for commercial radioactive waste storage would require amendment of the Land Withdrawal Act of 1992.
5. DOE would also be in for a battle as to whether the EPA standards put in place for Yucca Mountain disposal and radiological releases to the public (40 CFR 197) should prevail over the standards of 40 CFR 191. The EPA standards for WIPP require that the annual cumulative dose rate from any releases be less than 0.15 millisievert per year for 10,000 years after closure. The Yucca Mountain standards have several added requirements including a dose limit of 1 mSv annual exposure per year between 10,000 years and 1 million years.
6. The DOE proposal to further radioactively contaminate an impoverished minority public will bring additional litigation for environmental justice considerations.
7. A modification of the Resource Conservation and Recovery Act (RCRA) disposal permit for WIPP from the New Mexico Environment Department could receive further litigation.

8. Council on Environmental Quality regulations (CEQ 1502.4, 1508.18(b)(3), and 1508.28) and DOE implementing regulations (10 CFR Part 1021) provide clear direction for "tiering" broad program decisions, such as the identification of sites for treatment and disposal facilities for low-level, mixed low-level, and other DOE radioactive waste types. These regulations encourage DOE officials to "tier" from broader programmatic EIS documents to those with a narrower scope in order to focus on the issues ready for decisions. DOE has not met those CEQ requirements.
9. No Programmatic Environmental Impact Statement exists for nuclear waste disposal in the U.S. that would include the DOE GTCC-like waste or the commercial GTCC LLW. The treatment, storage, and disposal of commercially generated GTCC waste, along with other DOE waste types (e.g., GTCC, Special Case Waste -- SCW) that have similar hazard characteristics, must be made the subject of a programmatic analysis under the National Environmental Policy Act. The State of Nevada previously formally requested that a programmatic analysis of these waste types, based on relative waste hazards, be conducted by the DOE. Such an analysis was not performed by DOE. In terms of treatment, storage, and disposal these wastes are clearly connected in terms of agency decision making and thus must be subject to a programmatic analysis under NEPA.
10. The plan to use WIPP as a disposal site is inconsistent with the DOE Final Waste Management PEIS DOE/EIS-0200-F which did not consider GTCC or GTCC-like LLW disposal at WIPP. (P. 1-29-1-30 1.5.6 Waste Types Not Considered). Of the specific strategy options for GTCC LLW management and disposal, none of the options were reflected, or otherwise related to WIPP that would result in disposal of reactor GTCC waste at WIPP. The WM PEIS did not address the use of the Waste Isolation Pilot Plant for the disposal of GTCC or GTCC-like waste. The scope of the PEIS was limited to programmatic alternatives concerning where DOE should manage its different types of wastes. PEIS DOE/EIS-0200-F, p.1-41. No waste other than TRU was contemplated for WIPP by the WM PEIS. Even a WM PEIS supplement probably could not accomplish that given that WIPP is restricted to defense waste.
11. Section 11.18 Waste Isolation Pilot Plant of the WM PEIS states: "The only alternative being considered for the WIPP is the possible treatment of all contact handled TRUW under the TRUW Centralized Alternative." Thus, the environmental

impacts for treatment of TRUW at WIPP were not appropriately considered for the inclusion of GTCC LLW and GTCC-like LLW.

12. DOE should develop a national waste management strategy to address these waste types. Such a strategy is needed to integrate the management of these wastes as opposed to the apparent piecemeal approach that is currently being used by the Department. Such a strategy, moreover, should be assessed through a programmatic and site-specific NEPA process that addresses major federal actions that could significantly affect the quality of the human environment. This is particularly important when considering the disposal of long-lived radioactive wastes, which are not suitable for shallow land burial.

13. In designating and describing WIPP as a “deep geologic repository” (B.6.2), the GTCC EIS does not consider the issue that a deep geologic repository is defined by the NWSA for disposal of spent fuel and high level waste:

(18) The term “repository” means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system.

14. WIPP is precluded as being a deep geologic repository because it is unsuitable for disposal of spent fuel and high level waste as required for the selection of a deep geologic repository by the Nuclear Waste Policy Act at Section 122:

SEC. 122. Notwithstanding any other provision of this subtitle, any repository constructed on a site approved under this subtitle shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel.

WIPP cannot qualify as a deep geologic repository because it 1) cannot accept commercial spent fuel and 2) the salt would prevent recovery of the spent fuel.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC 2021 et seq.) requires that the States are responsible for the disposal of wastes produced by commercial applications of radiation and atomic energy. The GTCC EIS fails to address WIPP as incapable of being a recipient for receiving funds under the NWSA provision at Section 302 for provision of a Nuclear Waste Fund to pay for the commercial radioactive waste disposal activities. \$24 billion sits in the fund because

no deep geologic repository has been selected to meet the terms of the NWPA. Nearly a billion dollars of the Fund have been squandered on lawsuits because DOE has not identified a permanent solution. Department of Energy statistics show that new lawsuits and other costs could eventually push the government's legal liability to \$16.2 billion.

15. Prior to issuance of the GTCC EIS, DOE has failed to comply with the requirement of the Nuclear Waste Policy Act of 1982, 42 U.S.C. §10101 et seq., for development of one or more other deep geologic repositories. The Yucca Mountain site has failed as a deep geologic repository and Congress has not authorized a second site to be located. DOE is like a pack of fleas trying to jump from a dying dog.
16. Repeated use of the term "GTCC-like" waste throughout the document is undefined at law. DOE could adopt the NRC terminology. Then, if DOE wants to use the term GTCC as adopted by the NRC, DOE is required to first have a rulemaking procedure.
17. Issues as to WIPP waste acceptance criteria are not resolved. WIPP was licensed only for the disposal of TRUW from the defense industry, not the commercial nuclear industry. This issue is recognized when discussing West Valley NY waste (p.B-22):

It is expected that most of the GTCC-like Other Waste associated with the West Valley Site would meet the DOE definition of TRU waste. This waste might have originated from non-defense activities and therefore might not be authorized for disposal at WIPP under the WIPP LWA.

This is yet another reason WIPP cannot meet the need for a deep geologic repository.
18. This TRU waste from West Valley NY may not meet the waste acceptance criteria for disposal at WIPP as defense generated TRU waste and has no other currently identified path to disposal. (GTCC EIS pp.1-20, 2-4).
19. The DOE rejection of the Hardened On-sight Storage (HOSS) alternative is unacceptable given that this is the actual status for GTCC LLW at present and would not be outside the scope of alternatives that could be considered for an EIS, as claimed by DOE.
20. DOE must consider the reduction of nuclear waste by the possibility of no further construction of nuclear reactors.
21. The GTCC EIS does not consider the effects of temperature of the GTCC wastes proposed for disposal in relation to the physical properties of salt.