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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-6-09  
 SPONSOR Heaton LAST UPDATED 2-9-09 HJM 2  
 SHORT TITLE Disposal Of Greater-Than-Class-C Waste SB \_\_\_\_\_  
 ANALYST Woods

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|------|-------------------------|------------------|
| FY09          | FY10 |                         |                  |
| NFI           | NFI  |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)  
 Environment Department (NMED)

#### No Responses Received From

Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

House Joint Memorial 2 urges the United States Department of Energy (DOE) to determine that Greater-Than-Class C (GTCC) low-level radioactive waste be added to the authorized waste forms eligible for disposal at the Waste Isolation Pilot Plant (WIPP) and that the United States Congress amend the WIPP Land Withdrawal Act to allow the disposal of greater-than-class C low-level radioactive waste at WIPP. There is no appropriation attached to this legislation.

### FISCAL IMPLICATIONS

EMNRD indicates that, if DOE and Congress were to follow the recommendations in HJM 2, there would be an increase of 5,600 cubic meters of waste and more waste shipments to WIPP, as well as, attendant expansion of the capacity of WIPP. Additionally, WIPP's Resource Conservation and Recovery Act (RCRA) permit would need to be modified. As a result, it would be necessary to extend state WIPP site monitoring requirements, WIPP shipment inspections, and oversight for those activities, increasing state expenditures. Based on prior

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experience, such increased expenditures would likely be covered by federal funding through DOE, as are all current state expenditures related to WIPP.

NMED notes that while HJM 2 has no immediate fiscal impact, HJM 2 could cause significant changes to expenditures by the State of New Mexico in the future due to increased environmental permitting activity that could be created by a proposal to dispose of GTCC waste at WIPP. However, such costs would be incurred well after FY11 because of the many years it would take for Congress to take the necessary action to amend federal law and for DOE to subsequently prepare the necessary documents that would comprise a hazardous waste facility permit application. In addition, expanding the types of waste acceptable at WIPP would increase the WIPP site monitoring requirements and WIPP shipment inspections. That would further increase the state's expenditures. Presumably, the increased expenditures would be covered by federal funding through DOE, as are all of the current state expenditures related to WIPP.

### SIGNIFICANT ISSUES

EMNRD adds that, if DOE and Congress were to follow the recommendations in HJM 2, the state's responsibilities concerning regulation and monitoring of the WIPP site, as well as monitoring of the WIPP Transportation System would expand, and laws and agreements pertaining to WIPP would need to be revised because of adding Greater than Class C (GTCC) low-level waste to WIPP's mission. EMNRD further notes that:

GTCC waste is similar to contact-handled transuranic (TRU) waste currently being placed in WIPP. The primary difference between GTCC waste and TRU waste is that TRU waste must be defense generated; GTCC waste is not defense generated. WIPP is not allowed to accept non-defense waste under the WIPP Land Withdrawal Act (Pub. L. 102-579) nor under the 1981 Agreement for Consultation and Cooperation between DOE and the State of New Mexico. As of July 2007, Sandia Laboratory projected the GTCC inventory at 5,600 cubic meters. The additional 5,600 cubic meters of waste would extend the time WIPP receives waste by six to nine months and require at least 667 more shipments to WIPP.

To date, New Mexico has opposed attempts to broaden the types of waste accepted by WIPP. The DOE has made promises to the state that WIPP will solely remain focused on defense-related TRU waste; GTCC waste is non-defense related. Transportation to and disposal of a narrow, well-defined class of waste at WIPP is governed by a myriad of laws, permits, and agreements.

Legal documents, permits, congressional legislation and agreements that would require revision before GTCC waste could be disposed of at WIPP include: relevant Federal legislation, including but not limited to Section 213 of the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96-164) and the WIPP Land Withdrawal Act (Pub. L. 102-579); WIPP's RCRA Permit issued by the State of New Mexico; the 1981 Agreement for Consultation and Cooperation between DOE and the State of New Mexico; the U.S. Environmental Protection Agency's compliance recertification based upon a revised performance assessment; numerous state and multi-state agreements regarding transportation of radioactive waste, and an ongoing Environmental Impact Statement under the National Environmental Policy Act.

EMNRD concludes by noting that WIPP's success at safely disposing of the nation's defense-related TRU waste proves that these controls and oversight measures are necessary and are working to the benefit of New Mexicans and their environment. Considerable negotiation, particularly with states, was required to produce these documents. In order for GTCC waste to be received at WIPP, Congress will need to amend existing legislation that was carefully worded to protect the interests of New Mexico and New Mexico will need to develop and negotiate new agreements. Opening up of such federal legislation could also make New Mexico vulnerable to other states wishing to have WIPP's mission expanded even further to New Mexico's detriment.

NMED advises that greater-than-class C (GTCC) is the most radioactive of the various categories of low level waste. GTCC waste is comprised of sealed sources (highly radioactive materials enclosed in metal containers), activated metals (radioactive components or decommissioned nuclear reactors), and other waste (radioactively contaminated equipment, debris, trash, and scrap metal). GTCC waste is not defense-generated, whereas transuranic (TRU) waste acceptable at WIPP must be defense-generated under federal law (i.e., the LWA). NMED further notes that:

From the Manhattan Project and Trinity Test Site to the opening of the nation's first permanent radioactive waste repository, New Mexico has a long, successful history with the DOE. That history has been based on the State's ability to trust that promises made by DOE will be honored. Any proposal to dispose of GTCC in New Mexico would break several, long-standing agreements between the citizens of New Mexico and the DOE. Before WIPP opened and continuously since that time, DOE has made promises to the State of New Mexico and its citizens that WIPP will solely remain focused on defense-related TRU waste. To DOE's credit, it has thus far remained focused on WIPP's core mission – disposal of the nation's defense-generated TRU waste. Acceptance of GTCC waste at WIPP would break that promise. Additionally, DOE has repeatedly pledged to operate WIPP in a manner that protects New Mexicans. New types of waste open the door for potentially unforeseen consequences that could adversely affect this and future generations of New Mexicans. That is why the State has steadfastly opposed attempts in the past to broaden the types of waste accepted by WIPP, including potentially dangerous tank waste.

Transportation to and disposal of a narrow, well-defined class of waste (i.e., defense-generated TRU waste) at WIPP is governed by a myriad of laws, permits, and agreements, some of which took decades to negotiate and finalize. DOE's success at safely disposing of the nation's defense-related TRU waste proves that these controls and oversight measures are necessary and are working to the benefit of New Mexicans and their environment. Considerable negotiation, particularly with states, was required to hammer out these documents.

Legal documents, permits, Congressional legislation and agreements that would require revision before GTCC waste could be disposed of at WIPP could include: relevant Federal legislation, including but not limited to section 213 of the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96-164) and the WIPP Land Withdraw Act (Pub. L. 102-579); WIPP's Hazardous Waste Facility Permit issued by the State of New Mexico; the 1981 Agreement for Consultation and Cooperation between DOE and the State of New

Mexico; the U.S. Environmental Protection Agency's compliance recertification based upon a revised performance assessment; numerous state and multi-state agreements regarding transportation of radioactive waste; and an ongoing Environmental Impact Statement addressing GTCC waste under the National Environmental Policy Act.

NMED concludes that, additionally, the DOE is poised to submit its application for renewal of its State Hazardous Waste Facility Permit to the New Mexico Environment Department (NMED) in May, 2009. In the run-up to this submittal, DOE has appropriately engaged its stakeholders and regulators (NMED and EPA) in a series of public pre-submittal meetings. In these meetings, DOE has been presumably forthright in maintaining the existing scope of WIPP's operations, including the environmental standards and monitoring programs to which it must adhere. An effort to secure authorization for disposal of GTCC waste would undermine these promises, and whatever good will DOE has sown with its regulators and watchdog groups.

### **ADMINISTRATIVE IMPLICATIONS**

EMNRD suggests that state programs associated with WIPP would be expanded in responsibility and would probably be extended by 6 to 9 months past currently projected end dates, if GTCC waste were to come to WIPP.

### **OTHER SUBSTANTIVE ISSUES**

EMNRD states: "During the regular session of the 2008 legislature, HJM 8 was introduced by Representative Heaton with almost identical language. The changed language fixed technical problems in HJM 8. In 2008, HJM8 passed the House, but action was postponed indefinitely in the Senate Rules Committee and the Senate Conservation Committee."

NMED states: "A major concern regarding HJM 2 is that it urges Congress to amend the WIPP Land Withdrawal Act. While the addition of 5,600 m<sup>3</sup> of waste to WIPP (the likely amount of GTCC waste under consideration) is of minor significance in the overall scope of the project, the opening of legislation that was carefully worded to protect the interests of the State of New Mexico and its citizens is risky. In this time of great controversy over where high-level radioactive waste and spent nuclear fuel should be stored or disposed of, opening the WIPP Land Withdrawal Act to amendment could make New Mexico vulnerable to creative problem solving on the part of Congressional members who are not as worried about the interests of New Mexico as they are about getting rid of their own state's radioactive waste."

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

EMNRD suggests that WIPP will continue to receive waste shipments as authorized under current law and existing agreements and commitments reached between DOE and the state.

### **AMENDMENTS**

None suggested by respondents.

BW/mt