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## FISCAL IMPACT REPORT

ORIGINAL DATE 3-12-07  
 SPONSOR Heaton LAST UPDATED 3-12-07 HM 89  
 SHORT TITLE WIPP Permit Modifications Stakeholders SB \_\_\_\_\_  
 ANALYST Aubel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
[www.nmenv.state.nm.us/wipp](http://www.nmenv.state.nm.us/wipp)

Response Received From  
 New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

House Memorial 89 acknowledges the leadership of the New Mexico Environment Department, and specifically its negotiating team, in developing a consensus agreement of all stakeholders for the new permitting of the Waste Isolation Pilot Plant (WIPP). The Memorial also recognizes this agreement as a significant change in WIPP’s operations “without sacrificing environmental protection for all New Mexicans.”

### FISCAL IMPLICATIONS

No fiscal impact.

The Memorial does recognize WIPP as “an economic engine in southwestern New Mexico.”

### SIGNIFICANT ISSUES

#### Background (From NMED website):

The State of New Mexico's authority to regulate the Waste Isolation Pilot Plant (WIPP) for the protection of human health and the environment is governed under the New

Mexico Hazardous Waste Act (HWA) and the Resource Conservation and Recovery Act (RCRA). Under RCRA, State programs are authorized to operate in lieu of the Environmental Protection Agency (EPA); EPA does not regulate radioactive mixed wastes in those States with an authorized program. New Mexico is authorized by EPA to issue and enforce RCRA hazardous waste facility permits under 50 Fed Reg 1515 (January 11, 1985). New Mexico implements this authority under the HWA, NMSA 1978, §74-4-1 et seq (Repl. Pamp. 2000).

On October 27, 1999, the New Mexico Environment Department (NMED) issued a final decision to grant a Hazardous Waste Facility Permit to WIPP for the storage and disposal of transuranic mixed waste.

On November 23, 2005, NMED published notice of a public comment period of its intent to approve a Class 3 PMR to the WIPP Hazardous Waste Facility Permit. The PMR, a consolidation of several previous Class 3 PMRs (remote-handled (RH) transuranic (TRU) mixed waste, Section 311 of Pub. L. 108-137, and others) is the most comprehensive proposed modification to the Permit since it was issued on October 27, 1999. The draft Permit issued today proposes to allow the receipt, management, and disposal of RH TRU mixed waste at WIPP; make significant changes to the TRU mixed waste characterization program; create a new TRU mixed waste confirmation program in response to Section 311 of Pub. L. 108-137; increase the capacities in the Waste Handling Building and Parking Area Container Storage Units; increase the capacities in the underground HWDUs, or panels, for TRU mixed waste; and change the method for demonstrating that the underground disposal rooms comply with the environmental performance standards for volatile organic compounds in response to Section 311 of Pub. L. 108-137.

On May 9, 2006, NMED concluded negotiations on May 3, 2006 with interested individuals and groups who requested a public hearing on the November 23, 2005 draft Hazardous Waste Facility Permit. These negotiations were conducted pursuant to 20.4.1.901.A(4) NMAC, which states that the NMED, in conjunction with the applicants, must respond to requests for hearings and notices of opposition to draft permits issued under the State Hazardous Waste Act in an effort to resolve those issues that gave rise to the hearing request(s).

On September 13, 2006, hearing officer Rip Harwood submitted his report to NMED Secretary Ron Curry on the Class 3 PMR and draft permit that was subject to hearing May 31 through June 9, 2006. After due consideration of all the evidence, testimony and public comment, and as set forth in the report's proposed findings of fact and conclusions of law, the hearing officer recommends that the Secretary approve the May 25, 2006 "[draft permit as changed](#)" (the result of previous negotiations among the parties) in its entirety.

On October 16, 2006, Secretary Ron Curry and Governor Bill Richardson signed the Secretary's Final Order approving the May 25, 2006 "[draft permit as changed](#)" in its entirety. The notice of this decision was served on the Permittees on October 17, 2006, making the effective date for the approved permit November 16, 2006. NMED also responded to all comments received on the Draft Permit.

WIPP Permit Process

HM 89 recounts the lengthy and intense process that led to issuance of the final permit. According to NMED, HM 89 accurately reflects the department’s success at developing consensus among the parties – who had disparate views on the facility – on important provisions of the permit. HM 89 recognizes that the permit process, led by the Department, was successful, timely, inclusive, protective and accomplished under existing law and regulation.

**PERFORMANCE IMPLICATIONS**

The permit changes expand the scope of the WIPP operations, allowing remote-handling of wastes, increasing the storage capacity, and adds a new method for demonstrating that underground disposal comply with environmental performance standards for volatile organic compounds.

The Memorial recognizes the NMED permit team of James Bearzi and Steve Zappe as well as the WIPP permit team of Kate Lynnes and Chuck Noble for their skilled and strong leadership.

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

The “best practices” of utilizing and executing a stakeholder’s consensus solution to a sensitive and significance issue will not be recognized.

MA/csd