



Citizens Advisory Board  
Idaho National Engineering and Environmental Laboratory

**The Idaho National Engineering and Environmental Laboratory  
Citizens Advisory Board's Position on the Potential Violation of the  
April 30<sup>th</sup> Milestone under the Idaho Settlement Agreement**

---

**RECOMMENDATION**

The Idaho National Engineering and Environmental Laboratory (INEEL) Citizens Advisory Board (CAB) sees only two possible outcomes to a fast approaching deadline under the Idaho Settlement Agreement. Either the U.S. Department of Energy (DOE) is on the brink of violating a significant, legally binding milestone or the Department is about to ship transuranic waste somewhere without the benefit of public involvement in its decision to do so.

The Settlement Agreement was signed on October 16, 1995 under the auspices of the United States District Court for the District of Idaho. Signatures on the Settlement Agreement include those of Thomas P. Grumbly (on behalf of DOE), Admiral Bruce DeMars (for the U.S. Navy), and Idaho Governor Philip E. Batt. Among the various provisions in the Settlement Agreement, DOE committed to begin shipping transuranic waste out of Idaho by April 30, 1999. DOE's preferred strategy for meeting that milestone was to ship transuranic waste from the INEEL to the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico. At the INEEL CAB's January 1999 meeting, DOE-ID confirmed that DOE has made essentially no effort to identify alternatives to its preferred strategy. As a consequence, continuing challenges to the much-awaited opening of WIPP will likely preclude DOE's ability to effect its preferred strategy before April 30, 1999.

We believe that DOE's potential failure to meet an important milestone under the Settlement Agreement is a development of grave local and national significance and one that deserves our attention and consideration. As a federally chartered citizens advisory board, we feel it is our responsibility to both DOE and our fellow citizens in Idaho to make a recommendation to the federal agency we serve. On the eve of this potential violation, however, the members of the INEEL CAB find ourselves unable to fulfill what we believe to be our function.

The INEEL CAB is chartered to provide advice to DOE from various perspectives held by the citizens of Idaho. In fulfilling our charter, we frequently require information from DOE to support our deliberations. This circumstance is no exception. The Board sent a letter to Secretary Bill Richardson on January 27, 1999 that described our dilemma and requested information regarding alternative strategies for complying with the April 30<sup>th</sup> milestone. We have received no response.

Despite its efforts to open WIPP, DOE has made one grave mistake. The Department has repeatedly misunderstood and under-valued the importance of public involvement. **Preventing meaningful involvement by the INEEL CAB on this topic demonstrates that DOE persists in its failure to embrace the concept that public involvement is a legitimate and appropriate mechanism for informing its decision-making processes within a democratic political system. It also reveals an organizational inability to learn from past mistakes.**

DOE's unwillingness to respond to our request for information has crippled our ability to advise the Department. Although we are disappointed that DOE has chosen to preclude the possibility of more meaningful participation for the CAB, we stand united in making several observations about the present situation. **We offer the following observations in partial fulfillment of our duty to DOE and to our fellow citizens.**

**The INEEL CAB fully supports DOE's efforts to open WIPP and we believe that DOE has demonstrated that the facility will allow for safe disposal of transuranic wastes.** We also respect the rights of the citizens of New Mexico to manage a permitting process consistent with federal law and the interests of the state.

**The INEEL CAB has consistently advised DOE to develop contingency plans for programs that carry significant programmatic risk.** DOE has responded to our numerous recommendations to that effect by stating that development of detailed contingency plans would be too expensive under tight budgetary constraints.

For example, our recommendation on the *Draft Accelerating Cleanup: Paths to Closure* document, dated April 30, 1998, noted several conditions that we perceived as vulnerabilities in INEEL's transuranic waste program. DOE's apparent reliance on timely resolution of legal actions and issuance of a Resource Conservation and Recovery Act permit to support shipment of INEEL waste to WIPP prompted a recommendation that DOE develop contingency plans to ensure its ability to comply with the Settlement Agreement. DOE dismissed the recommendation as a choice "not to expend the considerable resources that would be necessary to develop detailed contingency plans."

**We conclude that DOE's unwillingness to develop contingency plans contributed to the potential violation of the April 30, 1999 milestone. The present situation was simply too predictable for it to be acceptable.**

**The Settlement Agreement does not require shipment to WIPP.** We believe the choice of wording that would allow shipment to an "other such facility" was deliberate.

The Settlement Agreement fell under scrutiny when its opponents argued that DOE would not uphold its commitments. Those opponents successfully petitioned to put it before Idaho voters in the fall of 1996. **In a statewide referendum, Idaho citizens demonstrated overwhelming support for the Settlement Agreement, thereby confirming the Governor's position and demonstrating their trust that DOE would not renege.**

As a federally chartered citizens advisory board striving to represent a range of perspectives held by Idaho citizens, we cannot support DOE's failure to comply with the Settlement Agreement. DOE has failed to meet too many of its past commitments to Idaho for that to be a defensible position. **The INEEL CAB cannot condone or advocate non-compliance with the legally binding Settlement Agreement.**

At its January 1999 meeting, the INEEL CAB considered developing a recommendation that DOE should implement an alternative strategy for meeting the April 30 deadline. Specifically, we discussed the possibility of recommending that DOE make a shipment of transuranic waste for interim storage until WIPP opens. We noted Rocky Flats, Los Alamos National Laboratory, and a Waste Control Specialists facility in Andrews County, Texas, as possible options. **Although we noted these possible options, we have not been able to learn from DOE if they, or any other alternatives, are indeed being considered or are viable.**

The INEEL CAB believes that the waste that would be eligible for shipment to an interim facility is presently stored in a safe and responsible manner. It is possible that alternative facilities exist that can store transuranic waste safely and responsibly. In the absence of additional information about viable alternative sites and assurances that at least one option presents no more risk to human health and the environment than that posed by leaving the waste where it is presently stored, however, the INEEL CAB cannot consider supporting an alternative strategy. **We are unwilling to support imposition of an unsafe situation on another community, just to get it out of Idaho.**

Implementation of a contingency strategy would require shipment of the waste twice, rather than once, to get it from INEEL to WIPP, potentially resulting in higher shipping and handling costs, more radiation exposure, and greater transportation hazards to workers and the general public.

Some of our members fear the remaining roadblocks to the opening of WIPP could prevent the facility from ever opening. These members feel that it would be negligent for the INEEL CAB to support shipment to a storage facility that might become a *de facto* disposal facility over time, especially if that facility is not appropriate for long term stewardship.

**The INEEL CAB cannot condone or advocate an alternative strategy for complying with the April 30<sup>th</sup> milestone without additional information.**

We recognize that a multitude of political and social pressures will come to bear on the pending events. **In light of the expected sequence of events, we are frustrated and disappointed that we cannot advise DOE on this issue.** Very few challenges faced by DOE are of this magnitude, and we would be negligent to ignore the present situation.

**We recommend that DOE allow us to serve you as originally intended—as an independent body of citizens that provide advice on issues of relevance and importance. We strongly recommend that DOE not relegate us to a role of advising only on trivial issues.**