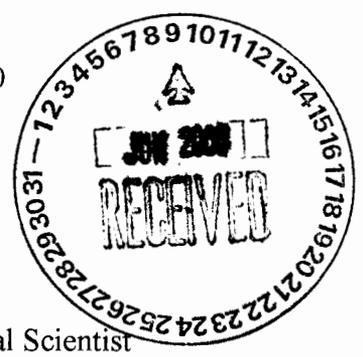


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Subject: Comments upon the Proposed Class 2 Modifications of the Waste Isolation Pilot Plant (WIPP) Permit.

There have been a rash of modifications (“Mods”) made to the New Mexico Hazardous Waste Act (“HWA”) permit issued by the New Mexico Environment Department (“NMED”) for the U.S. Department of Energy’s (“DOE’s”) WIPP permanent nuclear repository for transuranic weapons program waste. The Mods which have been made already (Class 1) are supposed to be minor like typos and an example will be discussed below. Also, several Class 2 Mods are being proposed which will also be discussed.

To objectively evaluate and comment upon these taken and proposed Mods, which concern public / worker safety and environmental integrity, three areas must be examined which are:

- I. The Permit Modification Process. Is a “Class 1” really a “Class 2” ?
- II. The Nature of the Organization (DOE) Making / Requesting Mods.
- III. Appropriateness of the Mods Considering the Prevailing Conditions and Costs.

**I. The Permit Mod Process**

The WIPP permit became effective during November of 1999, and since then there have been greater than **thirty-three Class 1** Mods made and **six Class 2** Mods proposed. Considering what the DOE had been attempting to eliminate from the draft 5/98 WIPP permit within their 8/98 comments, the Mods noted above are no surprise. Within my 1/14/99 written Technical Testimony, I had outlined the DOE’s alleged false statements and cover-ups which were all geared towards minimizing the WIPP project’s accountability and quality assurance program. Numerous documented examples were provided by myself, but the NMED Secretary Peter Maggiore choose to ignore these warnings of danger. In doing this, Secretary Maggiore has violated the NM HWA and NMSA Chapter 30. I would like not to be so critical, but I am just stating facts.



We New Mexicans are experiencing **WIPP permit Modifications by Ambush** (from a legal standpoint, similar to the illegal 'Trial by Ambush'). This is poignantly demonstrated by one of the DOE's 3/21/00 allegedly Class 1 Mods: "Text on conduct of audits revised to reflect process for correcting items during audits and for tracking deficiencies (Affected Module / Attachment: Attachment B6)." If I remember correctly when I worked within the DOE Carlsbad Area Office's ("CAO's") quality assurance team, a deficiency which is corrected on the spot does not get listed on a DOE Corrective Action Report ("CAR") and therefore is **not trended** so nothing is learned. If this is so, this Mod is dangerous and is **no** true minor Class 1 Mod ! I will include some excerpts of my 1/14/99 Technical Testimony that are related as you will see to this Mod. I had previously noted the following evaluations of the DOE 8/98 comments towards the 5/98 draft Permit for the WIPP:

**"Secondly, I wish to discuss the DOE's 8/14/98 proposal to strip the majority of the QA requirements and those to provide accountability which were part of the 5/98 draft Permit. For example, the DOE proposed the following:**

- \* **eliminate any requirement to identify "In-Process" nonconformances (Comment 20).**
- \* **elimination of NMED notification of weekly examinations which reveal indications of process changes or limits being exceeded, with a cease of shipment of that waste stream until at least a follow-up sample and waste analysis is completed (Comment 32 )**
- \* **elimination of Independent Technical Review of raw data generation/collection (Comment 48) This does not comply with DOE Order 5700.6C which the DOE assures compliance to !**
- \* **elimination of the requirement for increased sampling to be conducted if "data consistently indicates that discrepancies with "acceptable knowledge information" were identified at the site level" (Comment 60).**
- \* **elimination of providing reasons and justifications for revising Quality Assurance (QA) documents and the requirement for the revised QA document to undergo the same level of review and approval as the baseline version (Comment 61).**
- \* **elimination of the requirement for trending and trend reports to determine if similar situations exist system wide (Comment 67).**

**The DOE attempts to claim that each site is so different from one another that trending "will not add any value to the system" and "trending of audit findings will not be useful." What absurdity ! This is supposed to mean, for example, that visual inspections of waste or headspace-gas sampling and analysis of waste containers or other Data Quality Objectives at the various generator/storage sites do not share the slightest similarity ? Remember the False Statements Accountability Act ?**

**This statement by the DOE is absolutely preposterous to the point of being insulting ! Similar to the WAP Audit Checklist, this effort to eliminate Trending, one of the most important QA principles and benefits, clearly communicates the DOE's underlying objective and desire. The DOE, unfortunately, is clearly demonstrating the agency's true desire of minimizing their accountability for the WIPP Project's operations.**

**This should ring a very loud note of alarm or caution. The reason for this is because this agency has put on a powerful demonstration here that they still have such a strong desire to operate the WIPP facility like back in the good old 'Cold War' days when the DOE answered to no one ! ”**

The permit Mods of the DOE with the WIPP project are creating significant dangers for New Mexicans and thousands of other American citizens and workers which will be detailed below. But, this is nothing new for the DOE. Eg: DOE Secretary Richardson's 1/29/00 admission to the N.Y. Times of over a half-century of safety abuses of thousands of workers by the DOE and its predecessor agencies. NMED has been made well aware of these characteristics of the DOE and much more.

## **II. The Nature of the Organization (DOE) Making / Requesting Mods.**

The DOE has been responsible for severe contaminations of thousands of workers, nearby residents, and the environment at nearly, or likely, every facility that this agency operates. Clear and uncontroverted evidence of this has been presented to NMED. Here, however, two areas will be outlined below which deal specifically with the DOE's WIPP facility and its HWA permit.

### **A. Environmental Evaluation Group ("EEG") Report: An Assessment of the Flammability and Explosion Potential of Transuranic Waste, by Matthew Silva ("EEG-48").**

Within this report it is detailed that the DOE made a knowingly false representation of the nature of the nuclear waste destined for disposal at WIPP. The DOE claimed, within their Final Safety Analysis Report ("FSAR") dated 1990, that there had been only one spontaneous ignition of nuclear contaminated waste in the agency's operational history. See EEG-48 at vi. In fact, however, there had been at least 26 incidents of spontaneous fires, explosions, and container over pressurizations and failures concerning DOE nuclear contaminated waste well before the DOE published their 1990 FSAR ! See EEG-48 at vi, viii, 75, 76 & Appendix A. In addition, there are other clear discrepancies (or lies) outlined within EEG-48 of apparent false claims concerning safety made by the DOE about the agency's nuclear waste. The DOE has admitted to over a half-century of these lies noted above. This agency does nothing but lie and cover-up about issues of its mismanagement and an obvious lack of concern about safety. Is it a surprise then to expect a disaster when the DOE is operating a facility ? The DOE's safety track record is quite dismal and very clear evidence of such is firmly part of the record for the WIPP permitting process. See my Comments on the WIPP Permit Condition IV.B.2.b. dated 10/19/99.

At only one of the 23 DOE WIPP waste generator sites (at the DOE's Idaho lab) there is an estimate of **7,287 pounds of pyrophoric materials** capable of igniting spontaneously when exposed to air within this facility's nuclear waste inventory. See EEG-48 at 47. Is this fact hidden, or openly shared and completely addressed properly by the DOE ?? New Mexicans deserve a very specific answer to that question and a few more. **The DOE needs to 'come clean'**.

The DOE has intentionally failed to include this kind of critical safety data within their FSAR as demonstrated above. Hidden information like this is critically essential in evaluating the DOE's proposed permit Mods to reduce the existing safety liabilities of the WIPP facility and project. See my Technical Testimony dated 1/14/99 at 3 thru 5, for some of the DOE's prior attempts to remove safety and quality assurance requirements from the 5/98 draft Permit with knowingly false statements and representations.

B. The DOE's Admitted Perjury on 2/26/99 during the Public Hearings for the WIPP Permit.

This **admitted DOE perjury** concerns the agency's violation of the Solid Waste Disposal Act's ("SWDA's") employee protection provisions (42 U.S.C. § 6971). This perjury validates the allegations of the WIPP safety deficiencies and cover-ups of such that were made within my Technical Testimony. Once again, **this criminal violation of the DOE during the WIPP permit public hearings is fact.** As a matter of NM law, this criminal act of the DOE and the **NMED Secretary's failure to charge** the DOE **"is so basic as to require reversal"** of the NMED Secretary's 10/27/99 Final Order. See NMSA Chapter 30, Article 30-25-1. To comply with the laws of this nation and the laws of the State of New Mexico, this reversal action must be taken, otherwise the NMED and its Secretary are in apparently criminal violation of the law.

**III. Appropriateness of the Proposed Class 2 Mods Considering the Prevailing Conditions at the WIPP.**

A. The DOE is deceptively requesting a higher waste content level of Semi-volatile Organic Compounds ("SVOCs") for storage and disposal at the WIPP facility by noting a change concerning how the "accuracy" is determined to measure the SVOCs. SVOCs are obviously organic materials. It has been purported by the DOE themselves on several occasions that Volatile Organic Compounds ("VOCs") have been the most likely fuels causing reported explosions of their nuclear waste. See EEG-48 at vi, 1, 14, 28, 38 & 68.

In some instances, SVOCs are far more dangerous than VOCs. An example of this is diesel or jet aircraft fuel, which can become explosive in nature within the gaseous portion of a partially filled aircraft fuel tank. The Federal Aviation Administration ("FAA") has regulations, I believe, which require positive venting systems within aircraft which run on diesel or jet fuel to avoid such danger of explosions. Aviation gasoline is much more volatile than diesel or jet fuel and the gaseous portion of a partially filled gas tank quickly becomes over saturated and is not explosive. This is **not** the case with the less volatile diesel or jet fuel, and only time and temperature **will** cause an aircraft to develop a significant risk of an explosion if fuel tank venting is not conducted. Due to these factors, it was originally correct for the WIPP permit to classify the SVOCs the same as VOCs.

Only after actual operational data is accumulated and evaluated would a permit Mod be appropriate to increase allowable levels of SVOCs within WIPP waste only if the **actual data** supported doing so. To do otherwise (as the DOE wishes to do) is unsafe, irresponsible, and subjecting New Mexicans to unnecessary and unacceptable risks.

**B.** The DOE is requesting a Mod to reduce the sampling and testing of headspace gas of certain alleged categories of waste. Part of their request is due to the DOE's claim of "process knowledge" concerning generation of some of their waste. A shining example of the DOE's expertise in this area was demonstrated during the WIPP permitting public hearings held in Santa Fe when the DOE displayed a video tape of waste. The DOE had demonstrated a complete blunder of their ability in characterizing their nuclear waste. This issue has been brought up on several occasions along with several other issues concerning the DOE's questionable use of "process knowledge" for determining waste characterization. What the DOE **has** demonstrated is their lack of knowledge concerning their nuclear waste.

Another issue, however, must be examined along with the possibility of an increased level of organic materials within the DOE's waste either through error or the reduced sampling which the DOE is requesting. It is important to examine the nature of the DOE's waste at just one of their 23 waste generator sites described within EEG-48. At the DOE's Idaho laboratory ("INEEL"), the waste there is noted to contain over 3 ½ tons of material which can possibly spontaneously ignite or explode. See Section II.A. above. The majority of this potentially explosive waste is Thorium (6,300 pounds).

EEG-48 at 40 notes that: "Concentrations as low as 80 mg per liter (of Thorium) have been found to be explosive . . ." In order to be explosive, the Thorium metal has to be in the form of fine shavings or powder. This is fortunate, but how much of the more than three tons of this Thorium is in this potentially explosive form? Again, the DOE is going to rely on their "process knowledge"? That would be extremely dangerous, foolhardy and irresponsible, because **80 milligrams is a very small quantity (Emphasis added).**

Any responsible manager or planner (except for the DOE) **always** examines the absolute worst case scenario no matter what the probability. This is a **basic** (very basic) principle of responsible planning. Therefore, let us examine the worst case in this instance. Well . . . what do we have, 6,300 pounds of Thorium. After we complete some simple math of dividing **80 milligrams** into the total of **2,822,400 grams of Thorium**, we have the result **35,280,000 possible explosions**, of course, in worst case. I do not know about you allegedly responsible NMED managers that are supposed to protect your fellow New Mexicans, but those facts above raise my eyebrows especially with the problematic DOE 'running the show'. And you-all (NMED & DOE) are proposing to add potentially '**more (VOC) fuel to the fire**' or explosion?

### **Summary:**

What the DOE **is** planning to do is to create a **national nuclear waste sacrifice area here in Southeastern New Mexico (Emphasis added)**. The situation, however, does not have to be this way. But, it will degrade to this because the NMED Secretary will continue to ignore these comments of mine as he has done with my entire Technical Testimony and the public interest groups which are involved. The Secretary's deliberate dismissal of so many comments without any kind of a response is a violation of 20 NMAC 4.1.901.A.9.

Are the DOE bribes such as the \$ 20 Million per year for New Mexico Highway repairs (now being held hostage by the DOE) worth inflicting such harm and stripping a decent life away from your fellow New Mexicans NMED Secretary Maggiore ?

Judging by the results (or lack of) which all of my efforts have had in attempting to introduce sound science and responsible management to the WIPP project, I say beware Southeastern New Mexicans. It looks like the NMED is going to continue to ignore all of our comments concerning how to increase the safety of the WIPP project's operations. All that I can therefore recommend to my fellow Southeastern New Mexicans, is just to move away from this area as soon as you can. Otherwise, you will be forced to live with an unacceptable public nuisance concerning the irresponsibly managed WIPP project.

The aggregate of all of these numerous WIPP permit proposed and taken Mods constitute a "major modification" and a required "public hearing" for doing so is being officially requested so that information concerning all of these Mods can be obtained from the DOE for argument's sake. See NMSA 74-4-4.2.H.

**In accordance with 28 U.S.C. § 1746 and 18 U.S.C. § 1001, I declare under penalties of perjury that the above statements are true and correct to the best of my knowledge, information and belief.**

Respectfully submitted,

Dated: June 9<sup>th</sup>, 2000

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