



# CCNS

*Concerned Citizens for Nuclear Safety*

June 12, 2000

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JUN 2000  
RECEIVED

Mr. Steve Zappe  
New Mexico Environment Department  
2044A Galisteo Street  
Santa Fe, NM 87505

Re: Comments on Proposed Department of Energy Class II Modifications  
to the Operating Permit for the Waste Isolation Pilot Plant

Dear Mr. Zappe:

Concerned Citizens for Nuclear Safety (CCNS) submits the following comments with regard to Department of Energy (DOE) proposed Class II modifications to the operating permit for the Waste Isolation Pilot Plant (WIPP) issued by the New Mexico Environment Department (NMED) under the New Mexico Hazardous Waste Act.

Because of DOE's timing in submitting its first two sets of proposed Class II modifications and the fact that the discussion at the May 18, 2000 public meeting included both sets of proposed modifications, there has been some confusion as to the deadline for comments. CCNS heard that the deadline for both sets of comments may be set for June 26, 2000. As a result, CCNS made several attempts last week to clarify the deadline with NMED. Despite several phone calls to NMED and stopping by and speaking with John Keiling, as of Friday June 9 there was no clear answer as to the deadline. CCNS requests that in the future the deadline for comments is clearly stated.

The following Class II modifications are unacceptable to CCNS:

1. **Changes in determining how many waste containers must be opened for visual examination (the "miscertification rate").** DOE must visually examine a certain percentage of containers to double check their other methods of certifying what is in the containers of waste (X-raying the drums, checking records, etc.) The number of containers opened is determined by how many were certified incorrectly in the past ("miscertified"). The permit requires containers to be examined on a "waste stream" basis. There are hundreds of waste streams of different types of wastes. DOE wants to base examination on only three large "summary category groups" - homogenous solids, soils/gravels, and debris wastes. This would substantially reduce the amount of visual examination and significantly increase the likelihood that prohibited items like corrosives and explosives would be disposed at WIPP.

DOE has not demonstrated its ability to properly characterize waste. At the permit hearing, DOE demonstrated its ability to certify waste by showing a video of a container of debris waste that DOE records characterized as sludge or homogenous solids.



CCNS reiterates the questions asked at the May 18, 2000 public meeting:

1. How many industries regulated by NMED use a miscertification rate?
2. How many of these industries are allowed to use large summary category groups for its waste streams, such as DOE is proposing?
3. How many containers has DOE visually examined so far?
4. What is the miscertification rate for these containers?
5. What is the total number of containers that DOE is proposing to emplace at WIPP?
6. What is the ratio between the total number of containers that DOE is proposing to emplace at WIPP and the number of containers that DOE has inspected so far?
7. Is this ratio statistically representative of the total number of containers that DOE is proposing to emplace at WIPP?
8. Does it make scientific sense for NMED allow for the modification of the miscertification rate when so few containers have been checked?

CCNS strongly opposes DOE's proposed modification to change the miscertification rate.

Testimony at the permit hearing revealed that DOE has a history of miscertifying 58% of containers under requirements that were substantially the same as those in the final permit. In this instance, DOE had visually examined 100% of those drums. DOE has not proved itself with respect to the miscertification rate. There is no true miscertification rate under actual permit conditions. NMED should retain the 11% miscertification rate on a waste stream basis until DOE has proved that its methodology and analysis is protective of human health and the environment. This will take at least one year, and possibly longer.

DOE has argued that the driver for the proposed change is economics - waste is generated as a result of the visual examination process. Economics should not come before human health and the environment. DOE should be required to prove itself before any change is made in the miscertification rate. It is too early in the process for this modification to be made.

**2. Modification to headspace gas sampling requirements for some waste types.** The proposed modification would allow DOE not to sample for volatile organic compounds (VOCs) in the headspace of containers if information about the waste generating process shows that the waste does not contain VOC-related hazardous wastes. This modification is unacceptable because there is actually very little historical information in the records on the hazardous part of the waste.

For example, there is missing information about what is in the containers. As was presented at the permit hearing by DOE and the Environmental Evaluation Group, for the contact-handled waste, approximately 15% of the radionuclide content is unknown. For the remote-handled waste, approximately 80% of the radionuclide content are unknown. Records on a waste stream may indicate there are no VOCs, when they are in fact present in the waste. Again, DOE must prove itself before this proposed modification is made. Time is required to determine if the records do indeed match what is found in a waste stream. NMED should require DOE to take the time to show that the records do match what is found in the containers.

CCNS accepts the following four Class II modifications:

- 1. Alternate method for groundwater testing.** Instead of measuring gross alpha and beta radiation in water samples taken to see if WIPP is leaking, DOE proposes measuring specific radionuclides that are at WIPP like plutonium and americium. CCNS agrees with the proposed alternate method for testing groundwater.
- 2. Change to allow flexibility in sampling for volatile organic compounds (VOCs) in homogeneous waste.** CCNS agrees with the proposed change for sampling VOCs in homogeneous waste by allowing DOE to take one large sample instead of three small samples.
- 3. Change allowing no sampling for VOCs in the headspace of containers if the waste was thermally processed.** CCNS agrees with the proposed modification to allow no sampling for VOCs in the headspace of waste containers if the waste was thermally processed. Heating the waste to a high enough temperature will cause all the VOCs to evaporate.
- 4. Revise the accuracy acceptance criteria for cresols and pyridine.** CCNS agrees with the revision to correct the permit to reflect that cresols and pyridines are semi-volatile organic compounds (SVOCs), no VOCs as stated in the permit. This modification would substitute the correct data.

**Class I Modification.** CCNS submits the following comments with regard to DOE's Class I modification to Section IV.B.2.b to the WIPP permit, which was approved by Secretary Maggiore in late April 2000. Class I modifications are minor changes on the level of typographical errors or the names of personnel, phone numbers, etc. No public comment is allowed on Class 1 modifications and the public is not even informed of them until after they are approved.

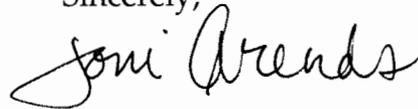
DOE shipped transuranic waste to WIPP before receiving a permit from the New Mexico Environment Department (NMED). Unpermitted waste was disposed of at WIPP but that waste did not pass permit regulations. The waste was "self-regulated" by DOE. The final permit, which became effective on November 26, 1999, contained a condition which prevented putting permitted waste that had been approved under the permit in the same rooms with the unpermitted waste.

During the original permit hearings the Hearing Officer considered Section IV.B.2.b of the permit to be "...the most controversial and provocative issue raised in the proceeding." and said "...that it...is necessary to protect public health and the environment, is beyond serious dispute." NMED itself also stated that this condition was necessary to protect human health and the environment. There was extensive testimony on this condition from all sides. Secretary Maggiore requested a special response from the Parties in order to clarify and interpret the proposed permit language for Section IV.B.2.b.

The language of the Class 1 modification is exactly the same language as that previously proposed by DOE during the original permit hearings and rejected by NMED at that time. Now, even though the delay until new rooms in Panel 2 are available will only be a few months, NMED has approved this very controversial change as a Class O modification - putting it on the same level as a typo - with no public participation, comment or even notification that DOE had submitted it. The process for such a major change is unacceptable. CCNS is opposed to changing the language of Section IV.B.2.b. Because of the importance and controversial nature of this section, the Secretary's approval of this change as a Class I modification must be withdrawn. The modification to Section IV.B.2.b must be reclassified to a Class III modification with full public notification and comment.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Joni Arends". The signature is written in black ink and is positioned above the printed name and title.

Joni Arends  
Waste Programs Director