



GARY E. JOHNSON  
GOVERNOR

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**

*Water and Waste Management Division*

*Harold Runnels Building*

*1190 St. Francis Drive, P.O. Box 26110*

*Santa Fe, New Mexico 87502-6110*

*Telephone (505) 827-1758*

*Fax (505) 827-0310*



PETER MAGGIORE  
SECRETARY

GREG LEWIS  
DIRECTOR

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

September 5, 2000

Dr. Inés Triay, Manager  
Carlsbad Area Office  
Department of Energy  
P. O. Box 3090  
Carlsbad, New Mexico 88221-3090

Mr. Joe Epstein, General Manager  
Westinghouse Waste Isolation Division  
P.O. Box 2078  
Carlsbad, New Mexico 88221-5608

**RE: DENIAL OF TEMPORARY AUTHORIZATION REQUEST  
WIPP HAZARDOUS WASTE FACILITY PERMIT  
EPA I.D. NUMBER NM4890139088**

Dear Dr. Triay and Mr. Epstein:

The New Mexico Environment Department (NMED) received your "Temporary Authorization Request, TRU Waste Characterization at the WIPP Facility" on July 25, 2000 as an attachment to your letter transmitting a request for a Class 2 permit modification to expand the storage capacity at WIPP under the facility's Hazardous Waste Permit. In the transmittal letter from DOE and Westinghouse (**the Permittees**) dated July 21, 2000, you stated "... DOE is requesting that the NMED issue a Temporary Authorization to allow the receipt and storage of waste at WIPP prior to final action on this modification request. The Temporary Authorization will allow DOE to initiate waste characterization activities for the purpose of assuring that the characterization equipment and processes meet the requirements of the Permit."

Under 20.4.1.900 NMAC (incorporating 40 CFR §270.42(e)), a permittee may request a temporary authorization to allow it to conduct activities necessary to respond promptly to changing conditions, without prior public notice or comment. NMED interprets this regulation to allow a temporary authorization only in situations where there is a one-time, short-term need at the facility for which the full modification process is inappropriate, or to allow a facility to initiate a necessary activity while its permit modification request is undergoing the Class 2 or Class 3 review process. See Fed. Reg. 37919 (Vol. 53, No. 188, September 28, 1988).

000904



Dr. Inés Triay  
Mr. Joe Epstein  
September 5, 2000  
Page 2

Following review of the temporary authorization request and the relevant regulations specified in 20.4.1.900 NMAC (incorporating §270.42(e)), NMED hereby denies the request for temporary authorization to receive or store waste as described in the proposed permit modification. The regulations governing approval or denial of such requests are specified in 20.4.1.900 NMAC (incorporating §270.42(e)(3)), which require that two independent criteria must be met:

- The authorized activities are in compliance with the standards of 20.4.1.500 NMAC (incorporating 40 CFR §264); and
- The temporary authorization is necessary to achieve one of five listed objectives before action is likely to be taken on the modification request.

With regard to the first criterion, NMED is currently reviewing the proposed Class 2 permit modification. Preliminary analysis indicates that the modification request is both administratively incomplete and technically inadequate compared to the standards specified in 20.4.1.500 NMAC (incorporating 40 CFR §264). Based upon this analysis, NMED cannot agree that the proposed activities comply with 20.4.1.500 NMAC.

Further, even if the proposed activities were in compliance with the prescribed standards, NMED would still deny the request because the temporary authorization fails to meet the second criterion. The regulations are intended to allow the Permittees to conduct activities necessary to respond promptly to changing or temporary conditions, but not to implement proposed permit modifications prior to public comment simply because of the Permittees' internal programmatic priorities. The justifications for the objectives identified in the temporary authorization request are refuted for the following reasons:

- To prevent disruption of ongoing waste management activities – failure to implement this temporary authorization will have no direct impact on “ongoing” waste management activities at the WIPP facility itself, because none of the sites envisioned as primary beneficiaries are currently characterizing or shipping waste to WIPP. While failure to implement this temporary authorization could impact “proposed” activities, it appears that the rationale for accepting waste for characterization is unwarranted at this time. The Permittees notified NMED on July 17, 2000 of their intent to “initiate modification activities in the Overpack and Repair Room and also in the site Generated Waste Room to allow for the installation of physical and chemical instrumentation necessary to characterize waste at the WIPP facility. These modifications include the installation of a Headspace Gas Sampling system, the construction of a containment structure to contain a Visual Examination facility, and the extension of utilities, ventilation and fire protection to accommodate these modifications.” Thus, it appears that the Permittees may install

Dr. Inés Triay  
Mr. Joe Epstein  
September 5, 2000  
Page 3

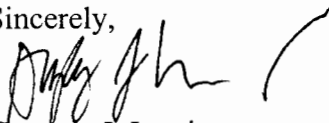
equipment, develop procedures, train operators, and test surrogate materials without having to accept waste, increase storage capacity or storage time, or create additional storage locations. Furthermore, the conclusory statement that approving this temporary authorization will reduce both cost and risk is unsubstantiated, as is the statement regarding "state agreements requiring schedules be met for waste disposition."

- To facilitate other changes to protect human health and the environment – the efforts of DOE to remove TRU waste from all defense related DOE facilities are admirable, but generalizing that the recent fires at Los Alamos, Hanford, and Idaho somehow translates into a greater risk to human health and the environment for those living adjacent to the remaining facilities is unsubstantiated. Lacking further information, NMED assumes that regulators in these other states have imposed regulatory requirements to protect human health and the environment upon facilities storing TRU and TRU mixed waste commensurate with those imposed by NMED upon WIPP through the permit.

Please note that this denial of the temporary authorization request does not prejudice NMED action on the actual modification request. This denial only means that the activities as proposed were not eligible for a temporary authorization, as explained above.

If you have any questions regarding this matter, please contact Steve Zappe at (505) 827-1560, x1013.

Sincerely,



Gregory J. Lewis

Director

Water and Waste Management Division

GJL/soz

cc: Paul Ritzma, NMED  
James Bearzi, NMED HWB  
John Kieling, NMED HWB  
✓ Steve Zappe, NMED HWB  
Susan McMichael, NMED OGC  
David Neleigh, EPA Region 6  
Connie Walker, TechLaw  
File: Red WIPP '00