



SOUTHWEST RESEARCH AND INFORMATION CENTER
P.O. Box 4524 Albuquerque, NM 87106 505-262-1862 FAX: 505-262-1864



September 19, 2000

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

Dear Steve,

Southwest Research and Information Center (SRIC) provides these comments regarding the class 2 permit modifications requested on July 21, 2000 to the WIPP permit to expand waste storage, eliminate audit and surveillance programs, and provide new waste characterization activities at WIPP. SRIC strongly opposes the modifications and requests that NMED deny them because the activities proposed do not protect public health and the environment.

1. The requested permit modifications do not protect public health and the environment and should be denied.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(b)(7)), NMED may deny the class 2 modification request. SRIC believes that denial is required because the request is deficient under each of the three criteria -- the request is not complete, it does not meet the requirements of RCRA and the Hazardous Waste Act (HWA), and it fails to protect public health and the environment.

Very importantly, the request is a fundamental and total reversal of the operating safety principles for WIPP incorporated in the permit application and in the permit. DOE has stated for years that the fundamental operating safety principle for WIPP is to "start clean and stay clean," and it could do so by not opening drums of waste at WIPP. On the first day of the permit public hearing, the permittees witness stated this principle emphatically.

"We never open waste containers that are received from an offsite generator.... By not opening the waste, we can eliminate the possibility of spreading contamination throughout our facility. So not opening the containers, keeping the containers sealed, is a major -- a major strategy in our protection of human health and the environment."

Testimony of Robert F. Kehrman, February 22, 1999, pp. 83-84.

Throughout the permit public hearing, it was frequently reiterated by the permittees, other witnesses, and other parties that WIPP was a disposal facility and that its essential purpose was to receive wastes from DOE facilities and to dispose of the containers underground at WIPP.



Thus, opening drums of waste or characterizing waste at WIPP was not a purpose of the facility and such activities would not take place.

WIPP has operated for less than a year under the HWA permit and during that time it has received well under 0.1 percent of its capacity, so there is not sufficient operating experience to conclude that currently permitted operations are being adequately implemented or that a major expansion of WIPP's operations is justified. Moreover, fundamentally changing the basic operating safety principle both endangers public health and the environment and calls into question a primary basis for the entire WIPP permit.

Another key element of the permit to protect public health and the environment is to keep prohibited materials from coming to WIPP. Module II.C.3 of the permit specifies that the "permittees shall not accept TRU mixed wastes at WIPP for storage, management, or disposal" certain prohibited materials including: liquids; pyrophoric materials; non-mixed hazardous wastes; chemically incompatible wastes; explosives and compressed gases; PCB concentrations greater than 50 parts per million; ignitable, corrosive, and reactive wastes; and remote-handled wastes. The modification would change Module II.C.3 so that the prohibition for management and storage of those prohibited items is eliminated. All of those prohibited items pose risks to public health and the environment and they should remain prohibited from WIPP.

Furthermore, waste characterization activities beyond acceptable knowledge are necessary to identify prohibited items to ensure that they are not shipped to WIPP. SRIC believes that to protect public health and the environment full waste characterization must be done at the storage/generator sites to ensure that prohibited items do not arrive at WIPP. The proposed modification would allow generator sites to rely on acceptable knowledge and not conduct headspace gas analysis, radiography, and visual examination activities that are required to prevent prohibited items from being shipped to WIPP. The modification request contemplates that increasing amounts of prohibited materials would come to WIPP -- see new allowance for prohibited items in Module III.A.1.a and in Attachment B-4b(2)(i). Thus, the modification request would not only allow prohibited items to arrive at WIPP, but it would allow long-term management and storage of those items, with attendant threats to public health and the environment. DOE has even suggested that a future modification could allow for disposal of those prohibited items.

An additional problem with waste characterization is the lack of adequate containment. The modification request variously mentions "bermed containment areas" (A-3), "bermed areas" (Module III.A.1.c and Attachment F-1), and "containment berms" (Attachment F-1 and M1-1c(1)). The modification request contains no detailed information and no drawings of what those containment features are, the volume or materials they will contain, what they are made of, and other needed information to ensure that there is full compliance with 40 CFR 264.175.

The proposed modification threatens public health and the environment by allowing indefinite storage of materials on the surface at WIPP, in direct contradiction to existing permit

requirements and expanding the function of WIPP from a disposal facility to a long-term storage facility. SRIC strongly opposes allowing long-term storage at WIPP. Such surface storage endangers workers and the public from the threats of leaking drums, releases of hazardous materials, including prohibited materials, and accidents.

The modification request at Item 2 would also terminate the audit and surveillance program. As specified in the permit, including in the Waste Analysis Plan (WAP) -- B-4b(1)(iii) -- the audit and surveillance program is an "important part" of the WAP. The same provision states that the audit and surveillance program "addresses all waste sampling and analysis activities, from wastes stream classification assignment through final loading of the TRUPACT-II, and ensures compliance with the SOPs and the WAP." Thus, eliminating the audit and surveillance program fundamentally changes the entire WAP. SRIC strongly opposes termination of the audit and surveillance program, which is necessary to ensure compliance with applicable provisions of the permit at generator/storage sites.

The modification request is grossly incomplete. NMED has already found the request to be complete in its denial letter for the requested Temporary Authorization, issued on September 5. Among the many incomplete aspects of the request are the following. The modification request does not provide adequate information about and justification for doing waste characterization, including opening drums, at WIPP, thus reversing the fundamental safety principle. The modification request does not identify why generator/storage sites cannot do waste characterization, as DOE has stated for years that those sites could and would do. The modification request does not provide any analysis of the risks and health effects of opening drums at WIPP, a revised contingency plan to address those risks, the much different training requirements for workers doing waste characterization, among many other deficiencies. The modification request does not provide an analysis of the health effects of bringing prohibited items to WIPP including the effects on workers, the public, and the environment from releases of prohibited items during characterization and storage activities. The modification request provides no drawings or other adequate description of the "containment berms" that would be used, and which were not included in the permit. The modification request does not provide any adequate justification for having indefinite storage at WIPP, a mission that is not contemplated in the WIPP Land Withdrawal Act (Public Law 102-579, as amended).

All of the above-described deficiencies clearly show that the requested modification does not meet HWA (and RCRA) requirements, as is necessary to approve the request.

2. The requested permit modifications are not class 2 modifications.

A. The requested modification is of a complex nature.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(b)(6)(i)(C)(2)), a modification must be treated as a class 3 modification if it is of a complex nature. The multiple aspects of the request require significant changes in virtually every part of the permit, in some cases eliminating requirements and in numerous cases causing significant changes. The complexity of

the proposal includes major changes in the Waste Analysis Plan, major changes in the waste characterization processes at the generator/storage sites and new characterization activities at WIPP, changes in handling containers upon their arrival at WIPP, new storage and characterization areas in the Waste Handling Building, new and prohibited materials coming to WIPP, among many others. The interconnectedness of the activities at WIPP require adjustments to activities at WIPP, including new training programs, new containment requirements, new traffic patterns, new contingency plans, among many others. The modification would create four new waste handling areas at WIPP -- Room 108, Room 112, West Central Storage Area, and Building 412. Exactly how those new management and storage areas will operate in relationship to other areas is not clear. The changes require a careful review of whether the modification captures all of the aspects and effects of the activities, something that can best be done with more time and a public hearing process of a class 3 modification.

B. The permittees are requesting more than a 25% increase in the WIPP Waste Handling Building (WHB) container storage capacity.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42 Appendix I, ¶F.1.a), modifications requested by the permittee "[r]esulting in greater than 25% increase in the facility's container storage capacity" are class 3 modifications. Although the permittees Table 1 classifies the storage capacity increase as less than 25%, and on page A-4 the permittees state that the increase is 1,077 cubic feet, "which is an increase of 25%," other parts of Attachment A do not support such a calculation.

For example, the modification would change Module III.A.1 to increase the WHB Unit from 33,175 square feet to 44,425 square feet. That calculates to a more than 33% increase. On page A-40, the same increase would be made to Attachment F1, and on page A-44, the same increase would be made to Attachment M1-1c(1).

The modification would change Table III.A.1 [p. A-7] to increase the maximum capacity of WHB Unit storage from 2,718 cubic feet to 3,795 cubic feet. That 1,077 cubic feet increase calculates to a 39.6% increase in that unit.

Therefore, it is clear that the permittees are requesting more than a 25% increase in the WHB container storage capacity, and NMED should find that the request does not meet the requirement for a class 2 modification.

C. There is "significant public concern" about the proposed modification.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(b)(6)(i)(C)(1)), a requested class 2 modification must follow procedures for class 3 modifications if there is "significant public concern about the proposed modification." There is very significant public concern about the modification request. In addition to SRIC, Citizens for Alternatives to Radioactive Dumping (CARD), Concerned Citizens for Nuclear Safety (CCNS), Nuclear Watch of New Mexico, and Peace Action New Mexico are all concerned about and oppose the modification. Those

organizations have more than 10,000 members and supporters, which clearly demonstrate that there is significant public concern. In addition, many other New Mexicans, as individuals, are concerned about the modification request and have expressed those concerns to SRIC, and to NMED via mail or email.

Therefore, it is clear that there is significant public concern about the requested modification. If the permittees desire to make the major modifications to the permit like those in the modification request they must submit them, and NMED must treat them as a class 3 modification, including the full public hearing requirements of 20 NMAC 4.1.901.E, 20 NMAC 1.4, and NMSA, § 74-4-4.2.H.

Thank you for your careful consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock", written in a cursive style.

Don Hancock