

*Comments by*

*Nuclear Watch of New Mexico*

*on the*

*Proposed Class 2 Modifications to the  
Waste Isolation Pilot Plant (WIPP) Hazardous Waste Permit*

*Submitted to the  
New Mexico Environment Department*

*September 26, 2000*



**Nuclear Watch of New Mexico** strongly recommends that the New Mexico Environment Department (NMED) deny the application for Class 2 modifications to the State WIPP permit submitted by the U.S. Department of Energy ("applicant") on July 19, 2000. These proposed modifications constitute major changes to WIPP's mission in that onsite waste characterization and increased aboveground storage capacity would be allowed. The regulation that controls Class 2 modifications gives NMED only two stark choices, that is to either approve or deny the application. 40 CFR § 270.42(b). The following reasons support our recommendation to deny the application.

1. The onsite waste characterization activities proposed for WIPP significantly change its mission from a disposal-only facility to a disposal and storage facility (on the latter, both in terms of duration of time and capacity). The requested modification would eliminate the specified 60-day storage limit for the Waste Handling Building, to be replaced with "the same storage limitations that already exist at other hazardous waste storage, treatment and disposal facilities both within New Mexico and throughout the United States." This is entirely too vague and easily subject to future change. It could ultimately allow indefinitely timed storage at WIPP, which is contrary to the facility's mission as defined by Congress in the 1992 WIPP Land Withdrawal Act. It would also be contrary to the original State WIPP permit, which went into effect only last November 26. Any such change in WIPP's mission is inappropriate for revision as Class 2 modifications. All major changes should be subject to recorded public debate that allows for cross-examination, as required by State regulations.

2. The proposed waste characterization activities will result in long-term storage at WIPP that will be potentially dangerous for workers and the environment. At the State hearings on the original permit, the applicant was unable to verify the contents of even one waste sample from its acceptable knowledge records. If the applicant was so incapable at the hearings (which are legal public record), how can we expect that errors will not occur in evaluating acceptable knowledge documentation during the thousands of shipments to come? Under the applicant's proposal, it would follow that wastes that are now prohibited



from underground disposal could nevertheless be transported across the country in violation of Nuclear Regulatory Commission transportation standards. It further follows that those wastes could then be stored indefinitely aboveground at WIPP. Because the proposal does not address inevitable mistakes that will be made by the applicant, it does not specify what will happen to wastes that are found to be in violation of WIPP's Waste Acceptance Criteria. [And, to stress the obvious, those mistakes will be discovered only after wastes have already arrived at WIPP!] In our view, this is sufficient reason alone for denial. Sadly, there is yet more.

3. Any RCRA permit requires a Waste Analysis Plan (WAP). NMED is required to verify the applicant's disposal activities while relying on the WAP data submitted by the applicant. Under the State permit, the WIPP WAP is a complex system that requires each generator site to determine what wastes are suitably characterized for disposal at WIPP, what cannot be disposed of, and criteria for discerning the difference. The WAP requires the generating sites to have quality assurance plans, audits and surveillance plans, as well as acceptable knowledge data.

A seemingly small change to the complex structure of the WIPP WAP undermines the whole system and threatens its integrity. If the applicant is no longer doing WAP activities at the generator sites, how can NMED then verify WIPP disposal activities? One can only imagine that volumes of often-erroneous acceptable knowledge documentation would have to travel from each site to WIPP. Moreover, the expertise and historic knowledge at each generating site would not necessarily be available at WIPP, where it is most needed. Issues of quality control, efficiency and completeness argue for denial of this proposed modification.

4. The applicant has attempted to tailor its proposed modifications to fit a Class 2 process by inaccurately stating in its Table 1 that the change in capacity for aboveground storage does not exceed 25% of existing storage. [Not coincidentally, 25% is the limit under 20.4.1.900 NMAC (incorporating 40 CFR 270.42 Appendix I, ¶ F.1a) for a Class 2 modification in a facility's container storage capacity. Above that, a Class 3 modification is required.] Other parts of the applicant's Attachment A demonstrate that DOE in all likelihood seeks to increase the WIPP Waste Handling Building container storage capacity from anywhere between 30 to 40%.

For all of the above reasons, NMED should deny the applicant's proposed Class 2 modifications. Nuclear Watch believes that allowing indefinite aboveground storage of waste or any opening of barrels at WIPP betrays the fundamental premise under which NMED originally granted the State WIPP permit. In closing, we note that for years DOE has claimed that the basic operating principle for WIPP is to "start clean and stay clean" by never opening a barrel. The applicant's proposed modifications completely reverse that operating premise. Therefore, NMED should deny DOE's requested modifications under a Class 2 process.

Respectfully submitted,

  
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Nuclear Watch of New Mexico