



## Department of Energy

Carlsbad Area Office  
P. O. Box 3090  
Carlsbad, New Mexico 88221

December 28, 2000

Mr. Gregory Lewis  
State of New Mexico  
Environment Department  
Water and Waste Management Division  
1190 St. Francis Drive  
Santa Fe, New Mexico 87502

RE: Clarification of Temporary Authorization Request

Dear Mr. Lewis:

The Department of Energy (DOE), Carlsbad Field Office (CBFO) is sending this additional information in response to the letter faxed by Mr. Zappe<sup>1</sup> regarding the rescission of a Temporary Authorization (TA) approval dated December 22, 2000, for the Drum Age Criteria (DAC) permit modification request, which was approved by New Mexico Environment Department (NMED) on December 13, 2000.

The NMED rescission is inconsistent with 40 CFR § 270.42 (e)(3)(ii)(c). This section states that one reason to approve a temporary authorization request is "to prevent disruption of ongoing waste management activities." It does not restrict the applicability to only those management activities at the permitted facility. Furthermore, although the preamble to §270.42 revised regulations refers to waste management activities at the permitted facility, it does not, nor could it, restrict the applicability of §270.42 (e)(3)(ii)(c) to solely those disruptions at the permitted facility. (53 FR 37919, September 1988)

As explained below, the December 7, 2000 Temporary Authorization request demonstrated why the temporary authorization was necessary "to prevent disruption of ongoing waste management activities," at both INEEL and WIPP.

The December 12, 2000 letter from Don Hancock to you also had an incorrect interpretation of §270.42 (e)(3)(ii)(c). The whole issue is whether a temporary authorization is necessary to prevent disruption of ongoing waste management activities. The focus is on disruption now, which was demonstrated in the December 7<sup>th</sup> request that explained that INEEL already has had to cancel 8 shipments, which impacts both INEEL and WIPP. That is the disruption required by the regulations, not INEEL's ability to meet its milestone under its agreement with the State of Idaho.

The purpose of this letter is to allow the NMED to consider additional supportive documentation which the CBFO believes will show conclusively that all of the requirements for the issuance of a TA as specified in 20.4.1.900 NMAC (incorporating 40 CFR Part 270) have been met.

CBFO:ORC:HLP:VW:00-1095:UFC:5486



<sup>1</sup> The certified copy of this letter has never been received by CBFC



First, the recission letter questioned the disruptions at the INEEL versus disruptions at the WIPP. In the TA request dated December 7, 2000, CBFO provided the following in order to satisfy the requirements of 20.4.1.900 NMAC (incorporating 40 CFR 270.42(e)(3)):

*"At the INEEL, the inventory of TRU and TRU mixed waste covered by its currently approved waste characterization program is retrievably stored debris waste. INEEL is also undergoing an audit for their homogenous solid wastes. These wastes are stored in permitted storage facilities where waste is retrieved on a last-in, first-out basis. All of those containers are unvented. INEEL's venting process does not accommodate sampling at the time of venting. Therefore, after venting the containers, INEEL is forced by language in the HWFP to wait an additional DAC prior to headspace gas sampling. The calculations in the permit modification, based on the Lockheed 1995 methodology, demonstrate that a much shorter DAC is sufficient to re-establish the required equilibrium prior to sampling (the actual length of time is dependent upon the vent hole size and waste type).*

*"INEEL has already canceled 8 of 19 scheduled shipments due to the inability to complete waste characterization activities.*

*"The current DAC requires INEEL to wait an additional 100 plus days after reaching 90% steady state concentration within each layer of confinement prior to conducting headspace gas sampling and analysis. This condition creates bottlenecks in storage and waste handling areas at INEEL which further disrupts the final characterization and shipment of waste.*

*"Authorizing INEEL to implement the Scenario 2 DAC for all Summary Category Groups as specified in the HWFP modification request will make a large inventory of vented drums available for final headspace gas sampling and analysis and will allow INEEL to resume shipments on a continual basis. As demonstrated in the modification request and attached report, Scenario 2 assures that sampling only occurs after the drum headspace and contents have reached 90% of steady state concentration within each layer of confinement."*

The NMED, in its December 13, 2000 letter reached the proper conclusion: *"As a consequence, WIPP has experienced a disruption in its ongoing waste management activities by reduced receipt of waste from INEEL."*

After venting the containers, INEEL is forced by language in Section B1-1a of the HWFP, to wait an additional DAC prior to headspace gas sampling. This has caused a disruption in the shipping and disposal schedule for TRU and TRU mixed waste. INEEL does not have sufficient shippable waste to configure entire TRUPACT II containers. INEEL has already canceled 8 of 19 shipments due to the inability to complete waste characterization activities. Canceled shipments may not be recoverable in the future due to the limited availability of TRUPACT II transporters, trailers, drivers and support personnel. The WIPP facility is currently staffed at a level necessary to ensure proper management of TRU and TRU mixed waste based upon planned and scheduled waste shipments. The cancellation of INEEL shipments not only disrupts these current operations, it also affects future operations in that pre-planning and routing of personnel and equipment is impossible to predict.

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In addition to the reasons set forth in our initial TA request an additional compelling reason to grant the TA is the fact that the HWFP contains inconsistent language which has the effect of impeding timely implementation of permitted activities.

In a conversation I had with Mr. Steve Zappe of the NMED on Friday, December 22, 2000, Mr. Zappe proposed that CBFO could proceed at risk and allow the generator/storage sites to sample container headspace gas using the revised DAC as proposed in the December 7, 2000 permit modification submittal as long as those generator/storage sites did not ship that waste to WIPP. If NMED was to approve this modification the waste sampled under the revised DAC could, at that time, be shipped to WIPP. Therefore, it is our plan to implement this recommendation as follows: CBFO will approve revisions to generator/storage sites QAPjP's which implement the revised DAC. However we will impose conditions on those generator/storage sites such that any waste characterized employing a DAC other than what is currently in the HWFP cannot be shipped to WIPP. If NMED was to approve this modification the waste sampled under a revised DAC could, at that time, be shipped to WIPP.

Based on this letter, we are requesting NMED to reconsider the rescission of the TA and reinstate the TA and/or provide written concurrence that the direction provided by Mr. Zappe on December 22, 2000 is acceptable.

If you have any questions regarding this information please feel free to contact me at your convenience.

Sincerely,



Dr. Ines Triay  
Manager

cc:

P. Maggiore, NMED

P. Ritzma, NMED

J. Bearzi, NMED

S. Zappe, NMED