



COMMENTS OF
NUCLEAR WATCH OF NEW MEXICO
on
DOE APPLICATION FOR A CLASS 2 MODIFICATION OF
DRUM AGE CRITERIA
for the
WASTE ISOLATION PILOT PLANT HAZARDOUS WASTE PERMIT

submitted by

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Thank you for the opportunity to comment on the Department of Energy (DOE) application for a Class 2 modification of Drum Age Criteria for its WIPP permit.

A. **Nuclear Watch of New Mexico strongly opposes the modification and requests that the New Mexico Environment Department (NMED) deny DOE's application because DOE fails to articulate a cause for the permit modification that would meet regulatory requirements under 40 CFR 270.42(b).**

1. **No alteration has occurred to justify this permit modification and DOE has no new or contradictory information on drum age criteria today that was not available during the original permit hearings.** DOE must give some reasoning for abandoning its previous assertion during the permit hearings that a 142 day waiting period, based on the 1995 INEEL study, was required for debris waste (while a longer period of 225 days was required for homogeneous solids and soil and gravel wastes). Absent a new study with new scientific data, DOE's conclusory statements in the application are

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unsupported. NMED should require that DOE support its request by submitting new data and new studies that are science based and show that the 1995 study was incorrect. The new study should show why the new waiting periods, between 8 and 46 days, are so far from the initial study.

2. DOE has not shown that cause exists to grant the permit modification based on the need to meet compliance schedules. DOE states that this modification is necessary to meet INEEL's court ordered deadline of December 31, 2002. Public Service Co. of Colorado v. Batt. No. CV 91-0035-5-EJL (D. Id.); United States v. Batt., No. CV-91-00-5-EJL (D. Id.) Yet DOE's argument is unjustified. The agreement calls for no fewer than 3,100 cubic meters (15,000 drum equivalents or 360 full truckloads of 42 drums each) of transuranic waste to be shipped out of Idaho. The amount of waste required by the agreement to be shipped out of Idaho equals only one year of the amount of waste DOE has told Congress it would ship from Idaho. Since DOE has two years to ship one year's inventory, DOE cannot claim that it must change the permit conditions in order to meet the deadline mandated by the agreement.

3. DOE has failed to demonstrate good cause for this permit modification. DOE may find that its management and planning is inefficient. However, federal regulations do not provide for using a permit modification to resolve DOE's own inefficiency. NMED must not accept the assumption implicit in DOE's permit modification application, that NMED is responsible for solving what is essentially a failure of management at INEEL. A refusal by NMED to entertain this modification will send a clear message to DOE to clean up its own shop. The effect would be to lighten NMED's permit load and return the responsibility to DOE where it belongs.

B. DOE's application requires the more extensive procedures of a Class 3

permit modification. Even if NMED were to entertain this permit modification, Nuclear Watch of New Mexico strongly recommends that DOE's application be considered under a Class 3 modification. 40 CFR 270.42(b)(6)(I) and 40 CFR (b)(7).

1. The permit modification application is incomplete. DOE's permit modification states that debris waste may be shipped in as little as 4 days. Yet the application fails to state how DOE will determine that a drum containing debris waste contains no liners or bags or even how many liners or bags it has. This would be a minimum requirement for NMED to understand how DOE intends to utilize Tables, B1-7 and B1-10 of the application. Moreover, the omission has significant implications. The 142 day waiting period was set as a requirement based on DOE's own analysis of how long it would take VOC's to penetrate from inner packaging to the outer container where it would collect at the headspace. Without some assurance that DOE has a plan to identify accurately barrels with inner packaging, quality assurance that the plan works, and visual examination checks to test the plan, this modification is incomplete.

2. DOE's modification application fails to give sufficient information to explain or justify the complex nature of this proposed modification. Analysis of DOE's application requires the more extensive procedures of a Class 3 modification so that the deficiencies of DOE's application may be investigated and its implications elucidated. For example, the complexity of debris waste at Idaho, much less the complexity of this category as it exists at sites throughout the DOE complex is not

documented in the application. Rather, the modification is a simplification based on conceptual analysis. If NMED is to approve this proposal, NMED must insist on detailed data from each that covers the broad range of debris waste characteristics. NMED should require that DOE show that the data supporting the change is accurate and that the data has been analyzed with respect to the three scenarios included in the modification request.

3. The modification request completely fails to show that it is protective of human health and the environment. What is at stake here is the accurate sampling of headspace gas. If NMED approves this change without scientific justification, the risk to human health and safety is apparent. Collection of volatile organic compounds during transportation, during storage above ground at WIPP, during underground emplacement, or while the drum sits waiting for final sealing of the panel, could be the fuel for spark or impact produced explosions that spread RCRA wastes as well as the radioactive components that are also present in the drums. Beyond the danger to workers, even one such explosion could permanently contaminate the underground facility. Moreover, DOE's modification rests on clay feet. Acceptable knowledge has been proven over and over to be inaccurate. This is why the original permit requires real time radiography, visual examination and sampling and analysis as a check to acceptable knowledge documentation. DOE would not have been granted a permit to ship waste based on characterization from acceptable knowledge paperwork alone. Yet, now DOE expects us to believe that it can simplify this important safety check by relying on acceptable knowledge documentation. After two years of DOE waste shipments,

the public has seen DOE fail in its waste characterization analysis, its transportation loading and shipping, its ability to give good directions to the facility, and its failure to operate a safe satellite monitoring system. How can DOE expect the public to endorse its proposal to short cut its safety procedures for headspace gas when DOE cannot even prove that it has quality control over its original safety procedures? If NMED approves this modification it will be condoning the slipshod way that DOE has heretofore managed this WIPP permit.

4. Federal regulations state that a Class 2 modification application should be considered under Class 3 procedures when there is significant public concern about the change. Nuclear Watch of New Mexico represents over 1,000 supporters who are concerned about the outcome of this review. Our comments alone indicate significant public interest that would direct NMED to consider this application under a Class 3 modification review.

CONCLUSION

DOE has failed to justify or articulate why NMED should grant this drum age criteria modification and for this reason NMED should deny the permit modification. If NMED has any doubt about denying the permit modification application based on the incomplete and inaccurate application, however, NMED should require at least that DOE submit the permit modification application to the more stringent requirements of a Class 3 modification request. Under a Class 3 permit modification, the public and NMED would be able to cross examine DOE's witnesses and rebut or challenge DOE's evidence in a formal hearing. Only in this way could NMED and the public be assured that this permit modification is truly

justified and not just an excuse to cover up DOE's inability to manage its assembly line shipments to WIPP.