



**SOUTHWEST RESEARCH AND INFORMATION CENTER**

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Mr. Steve Zappe  
 NMED  
 2044A Galisteo Street  
 Santa Fe, NM 87505



Dear Steve:

Southwest Research and Information Center (SRIC) provides the following comments on the request for a class 2 modification to the hazardous waste permit for the Waste Isolation Pilot Plant (WIPP), which the Department of Energy (DOE) submitted on January 24, 2001. SRIC believes that the requested modification is a major modification of the permit, and therefore, that a public hearing is required. Thus, SRIC urges NMED to deny the requested modification.

Under the New Mexico Hazardous Waste Act (HWA), Section 74-4-4.2(H) and (I) NMSA, 1978, there are two types of permit modifications: major and minor. The requested modification would result in changes to 39 permit sections (Table 1 to the Notice of Class 2 Permit Modification). The modification involves significant and complex changes to the Waste Analysis Plan, including the intended elimination of visual examination (VE), one of the major conditions imposed during the permitting process. The changes would also involve substantial changes in equipment used in waste characterization and in worker training. Such changes are in no way minor. They are significant in number, scope, complexity, and effect on the permit and must be considered as a major modification. Any such modification should be subject to the public hearing requirements for a major modification.

The requested modification is also not correctly classified as a class 2 modification under 20 NMAC 4.1.900 (incorporating 40 CFR 270), nor does it meet the requirements for approval under 40 CFR 270.42(b)(6). The EPA regulations in 40 CFR 270.42(b)(6) provide that NMED may approve the request, deny the request, or determine that the modification must follow class 3 modification requirements. Among the reasons that NMED may deny the modification request are that it is incomplete, or that it does not comply with 40 CFR 264, or that the conditions of the modification fail to protect public health and the environment. 40 CFR 270.42(b)(7). SRIC believes that all three reasons for denial exist regarding the requested modification.

First, the modification request is significantly incomplete. The regulations require that the modification explain why it is needed. 40 CFR 270.42(b)(jii). The request does not provide such an explanation. SRIC infers from the modification request that the "need" is to "eliminate

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the potential for accidental radiation exposure or releases and preclude the generation of additional TRU mixed waste." (p. A-1). This assertion is not supported with any data or other information in the request. For example, the request provides no data regarding radiation exposure or releases during any waste characterization activity at any site since the permit was issued on October 27, 1999. There is no data regarding exposure or releases from visual examination. There is no analysis about projected exposure or releases from visual examination in the future, nor comparative projected data regarding exposures or releases from DR/CT. There is no data regarding how many additional drums of TRU mixed waste have been generated from the visual examination conducted since the permit became effective (there is an assertion that additional drums are generated from VE on page A-13, but no documentation or reference to actual data is provided). Any such evidence should describe the contents of such containers, why additional drums were generated, how DR/CT would not generate additional drums. Without that and other data, the request is incomplete and technically deficient.

The request is also incomplete because it does not demonstrate that DR/CT is as effective as visual examination. VE was included in the permit as a required procedure based on substantial public comment, evidence, and testimony. The Hearing Examiner in the permit proceeding found that the final permit requirements respecting miscertification (including the requirement of visual examination) "are required to protect public health and the environment." Finding of Fact 212. The Hearing Officer specifically concluded, as a matter of law, that provisions related to visual examination are "necessary to protect human health and the environment by ensuring that waste which is managed, stored or disposed at WIPP is properly characterized and does not contain any prohibited or incompatible items, as required [by regulations]." Conclusion of Law 19. That Finding of Fact and that Conclusion of Law were specifically adopted by the Secretary in his Final Order approving the WIPP permit. Final Order, page 3. NMED cannot allow those conditions of the permit to be changed without an equivalent demonstration that the modification would result in at least the same level of protection of public health and the environment.

The need for verification of acceptable knowledge (AK) was clearly demonstrated during the permit hearing, when the only drum of waste that the permittees introduced into evidence was shown to have grossly inadequate AK. The AK did not properly classify the drum by waste type, nor properly identify its contents. Hearing Transcript, p. 444 and pp. 471-172. Many parties to the permit proceeding supported requiring VE, including SRIC, CCNS, NMED, and CARD.

In contrast to the substantial interest in VE during the permitting process and substantial evidence to support requiring the practice, DOE provides virtually no evidence of the validity of DR/CT. Use of eight drums to test DR/CT (p. A-10) is not a statistically significant sample of the hundreds of thousands of TRU waste containers to make any determination on the adequacy of the technology. In addition, only one operator using the technology does not demonstrate that dozens of operators at many sites would have the same result. A much more extensive testing regime that includes waste types from all DOE sites that plan to use DR/CT and various operators using it must be included before DR/CT can be approved. In addition, DR/CT or any

other technology should be shown to be at least as accurate as visual examination before the alternative method replaces VE. Once again, the modification request is incomplete and technically deficient.

As previously noted, the requested modification affects at least 39 separate portions of the permit, and as such is technically complex. SRIC does not believe that the modification request has fully captured the complexity. For example, the request asserts that DR/CT is a "viable alternative" to VE for quality control on radiography (p. A-8). If approved, the modification would result in eliminating VE from various portions of the permit. However, Attachment B-4a(1) and B1-3b(3) would still allow VE, in apparent contradiction to other portions of the permit.

As another example, the request includes a change to Attachment B1-3b(5). As provided in the request, the modification would eliminate the existing permit requirements for on-the-job training of visual examination inspectors and requirements for the visual examination expert at each site. SRIC strongly disagrees with such a change, since on-the-job training is necessary for VE, just as it is for RTR and would be for DR/CT operators.

A further indication of the technical complexity of the modification request is that it could result in delay, rather than an acceleration, of waste shipments to WIPP. If approved as requested, VE would be eliminated in many portions of the permit as of the date the modification is approved. SRIC believes that such a modification means that sites must be audited for compliance with the new permit requirements before waste can be shipped to WIPP. Thus, such approval could result in substantial delays of shipments because immediate compliance would not be possible since, among many other requirements, equipment would have to be procured, operators trained and tested, the site would need to be audited by CBFO and the final audit report approved by NMED. For all sites, such a process would take at least months, if not years, so that shipments to WIPP would be delayed from at least some sites while that implementation process is accomplished. In such a situation, SRIC would expect that DOE would want a changed schedule for implementation at some sites to allow shipments to continue based on the previous RTR/VE practices. Therefore, the requested modification would necessarily result in other modifications being requested, although such revisions are not mentioned or included in this pending request.

Further, the modification request appears to be based on the alleged radiation risk to workers. Nonetheless, the modification would also continue to allow visual examination in place of radiography, for example in Table B6-1 (7). DOE needs to explain why, if VE poses a risk of exposure to workers, that it still would allow it to be used instead of radiography.

Because of all of the missing information and technical complexity, the requested modification does not comply with 40 CFR 264. Given the inadequate data, it cannot be shown that DR/CT provides adequate verification of radiography as required by the permit. Without such a showing, it cannot be demonstrated that the modification would result in protecting public

health and the environment, as is specifically required by the permit, statute, and regulations.

Moreover, DOE and Westinghouse are interested in even more substantial changes to the permit as part of its centralized characterization project (CCP) at WIPP. That intent has been officially expressed in its class 2 modification request submitted in July 2000 and withdrawn on September 29, 2000, in the amended DOE Record of Decision, issued on December 29, 2000 (65 Fed. Reg. 82985-82988), and in the National Transuranic Waste Management Plan, Revision 2, issued in January 2001. The DR/CT modification appears to be directly related to the CCP.

Under those circumstances, NMED and the public should consider the entire package of modifications that DOE wants, not a piecemeal approach, which does not provide complete information to justify such a request, as required by regulations, and does not afford the public the required public hearing process, including public comment, testimony and cross examination of witnesses and related procedures. The current piecemeal approach also badly strains the public's resources, including those of SRIC, and presumably puts additional burden on NMED.

The piecemeal approach has also resulted in this technically deficient request. As NMED previously told the permittees, such requests run the risk of being denied, as occurred with the Drum Age Criteria modification request. NMED Final Determination Letter on March 26, 2001.

Once again, SRIC urges NMED to deny the requested class 2 modification. If DOE wants to proceed with the modification, it should combine it with other changes that it desires as part of its centralized characterization project, submit those changes with technically adequate bases as a class 3 modification for public comment and for public hearing.

Thank you for your careful consideration of these comments.

Sincerely,



Don Hancock