



## Attorney General of New Mexico



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Mr. Steve Zappe  
New Mexico Environment Department  
Hazardous and Radioactive Materials Bureau  
2044A Galisteo Street  
Santa Fe, NM 87505

Dear Mr. Zappe:

The following comments are submitted by the New Mexico Attorney General's Office ("OAG") in response to the notice issued by the permittee U.S. Department of Energy ("DOE") concerning a proposed Class 2 modification to the Hazardous Waste Act permit issued by the New Mexico Environment Department ("NMED") for the Waste Isolation Pilot Plant ("WIPP").

The proposed modification would authorize use of digital radiography and computed tomography (DR/CT) for several purposes related to waste characterization. It seems clear from the materials supporting the proposal that DR/CT is a significant advance over previous methods of radiography used for waste characterization. Thus, the Attorney General's Office has no objection to the use of DR/CT in principle.

However, a basic difficulty with treating this proposal in accordance with Class 2 rules is that the capability of DR/CT techniques to fulfill the proposed requirements has not been established, only asserted. The proposal states flatly that DR/CT methods furnish a complete substitute for visual examination ("VE"):



“The conclusion from Table 2 is that the independent interpretation of the DR/CT scan meets the requirements for performing QC of radiography and therefore is a viable alternative for VE in this capacity.” (Proposal at A-8).

But, before NMED allows the modification, it should determine whether DR/CT would actually perform fully as effectively as VE. The present record does not demonstrate when DR/CT can fully replace VE and when it cannot. Further, a test is currently underway at Argonne National Laboratory to determine the effectiveness of DR/CT in waste characterization. The results of that test should be made available to NMED, before NMED is asked to decide upon this proposal. When provided with such information, NMED may determine that DR/CT is a fully adequate substitute for VE. The present record does not contain enough information to enable NMED to make such decisions.

Further, DOE has stated that it plans to renew its request for a permit modification to allow it to conduct central waste characterization at WIPP. DOE has also stated at quarterly meetings with representatives of state agencies that its forthcoming request to conduct waste characterization at the WIPP site will be predicated upon, and assume the granting of, this modification to allow use of DR/CT. It appears that the current proposal and several others, some not yet presented, form an overall plan to bring about major changes in the format of WIPP’s operations. The OAG would submit that NMED should not be required to consider the elements of such a plan in an artificially segmented procedure. Instead, it would seem prudent to consider DR/CT in the context of its planned place of use and the proposed safety and waste-management precautions that would apply there. When the scope of the planned changes, taken together, is examined,

the OAG believes that Class 3 treatment is to be recommended, given the broad nature of the changes and the public concern that would be raised.

Before ruling on this proposal, NMED should know DOE's overall plan to effectuate all of the proposed and planned changes. To conduct such an inquiry, NMED needs to follow the processes applicable to a Class 3 permit modification. NMED must classify a modification in Class 3 if there is significant public concern or by reason of the "complex nature of the change." 40 CFR §270.42(b)(6)(i)(C). Both tests are met here.

Very truly yours,

C. MICHAEL BRYCE  
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Director



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