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## Attorney General of New Mexico

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Mr. Steve Zappe  
New Mexico Environment Department  
Hazardous Waste Bureau  
2905 E. Rodeo Park Drive, Bldg. E  
Santa Fe, NM 87505-6303

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"), dated March 6, 2001.

The proposed modification has several aspects, and we address only the item (item 4) seeking to add certain hazardous waste codes to Module II, Table II.C.4 of the permit.

Initially, it seems clear that a method should be available to add waste codes to those listed in the permit. Thus, the Attorney General's Office does not object to the principle of adding waste codes to the listed codes. However, the process followed in

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this initial effort to add codes will probably set a precedent for such efforts in the future and should be adopted with care.

We note that it is proposed to add codes to the list of the permissible hazardous constituents, but it is not proposed to amend the procedures for characterizing waste to account for the addition of new waste codes. This approach does not include all of the sections of the permit that are affected by the proposed change. It is necessary to change Attachment B, Table B-1, with respect to the changes made in Module II, Table II.C.4. Further, it will then be necessary to address the site's characterization capability with respect to the newly added waste code in the audit of each site.

Taking the individual proposed changes in the order of the proposed modification, we offer these comments:

In general, the justification for listing the new waste codes states that the waste has been found nontoxic, less toxic, nonignitable, or compatible—without furnishing the data supporting such statements. It would not be appropriate for NMED to approve a permit change based upon unsupported statements.

1. Vanadium pentoxide (P120): This waste is sought to be authorized for summary categories S3000, S4000, and S5000. DOE refers to studies showing that vanadium pentoxide would cause no adverse impact on human health or the environment. These studies should be made available to NMED so that NMED can determine whether vanadium pentoxide will cause adverse impacts when contained in all waste types in which it is requested to be contained, e.g., categories S3000, S4000, and S5000.

2. Hexachlorobutadiene (D033): This waste also is sought to be authorized for all summary category groups. DOE refers to studies of similar semi-volatile organic compounds (SVOCs) but does not cite references. DOE should direct NMED to studies showing that this waste will have no adverse impact on repository safety when contained in any authorized waste form.
3. Acetone (U002): This waste is now listed under the solvent listing, F003. It is monitored as a VOC in summary category groups S3000 and S4000. It is asserted that no liquid acetone will be present in waste containers and the ignitable characteristic will no longer exist. Data should be presented to support such statements, especially in light of the permissibility of up to 1% free liquids.
4. Benzene (U019): This waste is now listed under the solvent category, F005. It is asserted that no liquid benzene will be present in waste containers and the ignitable characteristic will no longer exist. Data should be presented to support such statements, especially in light of the permissibility of up to 1% free liquids.
5. Chlorobenzene (U037): This waste is now included in the solvent category, F002. DOE asserts that no liquid chlorobenzene will be present in waste sent to WIPP, and toxicity will be greatly reduced. Data should be presented to support such statements, especially in light of the permissibility of up to 1% free liquids.
6. Vinyl chloride (U043): This waste is now included in the toxics category, D043. DOE states that since containers are vented, no gaseous vinyl chloride

will be present in waste containers, and therefore toxicity characteristics will be greatly reduced. However, no data are referred to in support of such statements. Such data should be made available to NMED.

7. Chloroform (U044): This waste is now included in the toxics category, D022. DOE states that no liquid chloroform will be present in WIPP waste containers and toxicity will be greatly reduced. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available to NMED.
8. Cresol (U052): This waste is now included in the toxics category, D026, and included in the solvents category, F004. DOE states that no liquid cresols will be present in WIPP waste containers and toxicity will be greatly reduced. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available to NMED.
9. 1,2- Dichlorobenzene (U070): This waste is now included in the listing of solvent wastes, F002. DOE states that no liquid 1,2 dichlorobenzene will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.
10. 1,4 Dichlorobenzene (U072): This waste is now included in the listing of toxic wastes, D027. DOE states that no liquid 1,4 dichlorobenzene will be

present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

11. 1,1 Dichloroethylene (U078): This waste is now included in the listing of toxic wastes, D029. DOE states that no liquid 1,1 dichloroethylene will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

12. 1,2 Dichloroethylene (U079): DOE states that no liquid 1,2 dichloroethylene will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

13. 2,4 Dinitrotoluene (U105): This waste is now included in the listing of toxic wastes, D030. DOE states that no liquid 2,4 dinitrotoluene will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially

since waste may contain 1% free liquids, such data should be made available for review.

14. Formaldehyde (U122): DOE states that no liquid formaldehyde will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

15. Hydrazine (U133): DOE states that no liquid hydrazine will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, that no reactivity characteristics will be present, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

16. Mercury (U151): This waste is now included in the listing of toxic wastes, D009. DOE states that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Such data should be made available for review by NMED.

17. Methanol (U154): This waste is now included in the listing of solvent wastes, F003. DOE states that no liquid methanol will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are

referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

18. Methyl ethyl ketone (U159): This waste is now included in the listing of toxic wastes, D035, and solvent wastes, F003. DOE states that no liquid methyl ethyl ketone will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, that the solidified methyl ethyl ketone will exhibit greatly reduced toxicity, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

19. Pyridine (U196): This waste is now included in the listing of toxic wastes, D038, and solvent wastes, F005. DOE states that no liquid pyridine will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

20. 1,1,2,2-Tetrachloroethane (U209): DOE states that no liquid 1,1,2,2-tetrachloroethane will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, that no reactivity characteristics will be present, and that no impact will result from the management of this waste. However, no data are referred to in support of

such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

21. Tetrachloroethylene (U210): This waste is now included in the listing of toxic wastes, D039, and solvent wastes, F001 and F002. DOE states that no liquid tetrachloroethylene will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.
22. Toluene (U220): This waste is now included in the listing of solvent wastes, F005. DOE states that no liquid toluene will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.
23. 1,1,1-Trichloroethane (U226): This waste is now included in the listing of solvent wastes, F001 and F002. DOE states that no liquid 1,1,1-trichloroethane will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.

24. Trichloroethylene (U228): This waste is now included in the listing of toxic wastes, D040, and solvent wastes, F001 and F002. DOE states that no liquid trichloroethylene will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.
25. Xylene (U239): This waste is now included in the listing of solvent wastes, F003. DOE states that no liquid xylene will be present in waste containers, that the toxicity characteristics will therefore be greatly reduced, and that no impact will result from the management of this waste. However, no data are referred to in support of such statements. Especially since waste may contain 1% free liquids, such data should be made available for review.
26. Hydrofluoric acid (U134): It is stated that hydrofluoric acid is complexed with aluminum nitrate and forms aluminum fluoride and nitric acid, and that once complexed the hydrofluoric acid does not reform, and that the solutions are neutralized in the INEEL wastewater treatment plant and the resulting sludge is dewatered. However, the listing is not limited to sludge from the INEEL wastewater treatment plant. Claims that the waste will be present in forms that lack either the corrosive or the toxicity characteristic should be supported with data made available for review by NMED.

Thus, the proposed new listings should be supported by data concerning the claimed impacts of introduction of the waste types in question. Once such data are made

available, NMED may evaluate the proposed changes for purposes of classifying the nature of the 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).

Very truly yours,

C. MICHAEL BRYCE  
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Director



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