



**SOUTHWEST RESEARCH AND INFORMATION CENTER**  
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Mr. Steve Zappe  
NMED Hazardous Waste Bureau  
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Santa Fe, NM 87505-6303

VIA FAX 827-1544 and U.S. MAIL

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 or about March 6, 2001. SRIC believes that item 4 of the requested modification is a major modification of the permit, and therefore, that a public hearing is required. Thus, SRIC urges NMED to deny that requested modification.

Under the New Mexico Hazardous Waste Act (HWA), Sections 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 the addition of 26 hazardous waste codes to the Part A (Attachment O) and to the Waste Analysis Plan (WAP) That constitutes a 70 percent increase in the hazardous waste codes specified in the Part A. These are substantial and major changes to the permit, including allowing currently prohibited hazardous chemicals to be disposed at WIPP. Such changes 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 also is 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)(iii). The request does not provide such an adequate explanation. As basis for the modification, the request states that "three

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generator/storage sites ... have recently requested the addition of hazardous waste numbers" and that the new numbers would "ensure compliant management of TRU mixed waste." (p. A-10). That explanation is inconsistent with the actual modification request which changes Module II.C.4 and Attachment O for all sites, not just the three sites listed (p. A-23-24). Further, the explanation should provide information about why the need for the additional codes has only now been discovered at those three sites.

The recent discovery of these chemicals at the three sites raises serious questions about the acceptable knowledge at those sites. The request should explain how the chemicals were discovered and why they had not previously been identified. The request should describe the particular characterization processes being used at those sites and how those processes revealed that the chemicals are present. The request should describe whether similar practices have been undertaken at all other sites to determine whether these codes are unique to those three sites or whether they exist at other sites. The discovery of these chemicals could also affect other portions of the WIPP permit, but the request provides no information regarding that matter.

The request also does not provide adequate information about the processes that use the specified chemicals. If there are unique processes at each of the sites such that those chemicals are used only at those sites, the request should provide such an explanation. If the chemicals and processes are used at several sites, the request is incomplete because it provides no information about those other sites and the numbers of containers containing such chemicals. For example, the addition of hydrofluoric acid (U134) from INEEL mentions a zirconium dissolution process (p. A-20). The request should answer questions, such as: Is that process unique to INEEL? Was it a process used at Rocky Flats where the INEEL wastes were generated? If so, why has Rocky Flats not requested a modification to include U134? If not, what other processing has been done at INEEL with those wastes and have such new processes been adequately documented to meet other requirements of the permit?

The request is incomplete because it does not include actual data to support the assertion that "the addition of these numbers will not adversely impact the performance of the waste repository nor will it have any deleterious effect on human health or the environment." (p. A-10). The request provides no demonstration that DOE has even identified that amount of such chemicals in the waste coming to WIPP, let alone done studies to show that their release would not be injurious, nor that there are no synergistic effects or chemical incompatibilities.

The request is incomplete because it does not modify Table B-1 of Attachment B to include all of the chemicals in the characterization requirements. With no characterization procedures in place for some of the chemicals, neither the generator/storage site, WIPP, nor NMED will know whether the specified chemicals are in drums, nor have any basis to calculate the amounts of such hazardous chemicals that would be placed into WIPP. Without such information, no adequate technical analysis of the effects of such chemicals on human health and the environment can be performed. Such an analysis is certainly not included in the request.

Moreover, DOE's March 15, 2001 Fact Sheet "Addition of Hazardous Waste Numbers" sent to the WIPP mailing list states: "Addition of the new waste numbers would be specific to waste containers in temporary storage at Los Alamos National Laboratory, the Idaho National Environmental and Engineering Laboratory, and the Savannah River Site." However, the requested modification provides no such limitation. Thus, the request is incomplete because it does not limit the permit changes in the Part A and in Module II.C.4 to those three sites. Alternatively, the request is inaccurate and should be rejected because of such misinformation.

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 the addition of these codes in fact would protect 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. These modification appears to be directly related to the CCP in that it relates to chemicals for which characterization is required.

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