



Attorney General of New Mexico

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

Dear Mr. Zappe:

The following comments are submitted by the New Mexico Attorney General's Office in response to the notice issued by the permittee U.S. Department of Energy ("DOE") proposing a 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 April 27, 2001. The proposal would change the drum age criteria ("DAC") used in determining whether a waste container has sufficiently approached equilibrium so that headspace gas may be sampled.

DOE previously sought to amend the DAC (proposal dated December 7, 2000). NMED denied the modification (letter dated March 26, 2001). NMED then noted that the proposal failed to address how sites would determine packaging configuration, from which to identify the applicable DAC. NMED stated that DOE might resubmit the proposal as a Class 3 proposal, adding that "[I]f the Permittees continue to submit technically complex changes as Class 2 modifications, they run the risk of having



technically deficient requests denied on the same basis as this DAC modification request.” The present proposal still has certain problems and should be denied.

First, the proposal states that “generator/storage sites were asked to identify present and future packaging configurations.” (A-6). However, this asserted survey is not presented, and NMED cannot determine whether all credible packaging configurations are covered by the scenarios listed by DOE in Table 4 (A-10).

In addition, if DAC are to be modified, several areas of the permit need modification. NMED has noted that a proposal must

“include permit changes that address how sites shall obtain the necessary information required to determine DACs, including but not limited to modifications to visual examination, radiography, and acceptable knowledge permit requirements. Thorough and comprehensive modification of all applicable permit areas must be included in the permit modification request to ensure consistent and correct application of the modification.”

Thus, at least the following elements of the permit need to be changed:

1. Waste Analysis Plan (Permit Att. B): NMED has noted (March 26, 2001, at 3) that “reliance on AK [acceptable knowledge] to determine detailed and specific information required for DAC determination will not suffice for the majority of containers present at generator/storage sites.” DOE now states that AK, radiography, and visual examination “may be used” for this purpose (A-16; see also A-19 as to Att. B1) but gives no specifics.
2. Quality Assurance (Permit Att. B3): DOE now proposes to require in section B3-11a that the Site Project Manager determine that packaging configuration data are collected for a waste stream, but packaging configuration will vary with each container, not each waste stream. Further, if radiography is to be used to determine packaging configuration, the capability should be required

in section B3-4. Likewise, if AK is to be used, the capability should be required in section B3-9. These requirements are omitted.

3. Characterization using AK (Permit Att. B4): As noted previously, Section B4-2b should require waste process information to include data as to packaging configuration. The current proposal omits this.
4. Audit and Surveillance Program (Permit Att. B6): As noted previously, Table B6-4 should require recording, as to each container, of the data required to establish the appropriate DAC. The current proposal also omits this.

Since the proposal is currently incomplete, it should be denied. We would again suggest that NMED direct DOE to submit any future proposals for changes in waste management as Class 3 modifications. “[M]ajor changes that substantially alter the facility or its operations” require Class 3 procedures. (EPA, 53 Fed. Reg. 37912, 37913)(Sept. 28, 1988).

Very truly yours,



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