



# 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 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 "TDOP proposal"). The proposed modification would change the storage capacity limitations to allow storage of several ten drum overpack ("TDOP") containers with increased capacity.

A confusing situation is created by statements made in DOE's pending Class 3 proposal to authorize Centralized Waste Confirmation (the "CCF proposal"), dated June 5, 2001, which also seeks additional indoor storage capacity. Therein DOE undertakes to operate within the "permitted waste storage capacity" of  $107.4 \text{ m}^3$ . DOE also calculates the increase sought by the CCF modification:

*"The design storage capacity of the individual storage areas is  $6,321.4 \text{ ft}^3$  ( $178.98 \text{ m}^3$ ). Regardless of this value the permitted waste storage capacity of  $3,795 \text{ ft}^3$  ( $107.4 \text{ m}^3$ ) shall not be exceeded. By the same principle, the drum equivalent calculations are based on the design storage capacity of  $6.321.4 \text{ ft}^3$ , rather than the*



*permitted storage capacity of 3,795 ft<sup>3</sup>. The total number of containers in the CH Bay can never exceed the permitted capacity of 516 drum equivalents. The DOE currently has a Class 2 modification request submitted to NMED. Upon approval of this modification the permitted capacity stated in this request will change. This modification requests an increase of 25% over the permitted facility capacity at the time modification is approved.” (at A-93)(italics added).*

Thus, the CCF proposal states that the “Total Permitted Capacity” is 107.4 m<sup>3</sup> (A-93) and that, upon approval of the TDOP proposal, “the permitted capacity stated in this [CCF] request will change.” However, this TDOP proposal seems to request that permitted capacity be changed from 121.98 m<sup>3</sup> to 136.88 m<sup>3</sup>. Thus, it is unclear what limits DOE will adhere to (a) if the TDOP proposal is denied, (b) if the TDOP proposal is granted, or (c) if both the TDOP proposal and the CCF proposal are granted. Moreover, DOE’s statement that the CCF proposal requests an increase of 25% is inexplicable, since that proposal seeks an increase of 88% (107.5 m<sup>3</sup>) from the limit in the original permit of 121.98 m<sup>3</sup>.

An increase in container storage capacity in excess of 25% requires Class 3 procedures. See 20.4.1.900 NMAC, incorporating 40 CFR § 270.42, Table, F.1.a. If this TDOP proposal seeks an increase from a “Total Permitted Capacity” of 107.4 m<sup>3</sup> to 136.88 m<sup>3</sup>, the increase is 27%, requiring Class 3 procedures.

The TDOP proposal seeks an increase of at least 19% in indoor storage capacity.

The following table compares the capacity in the permit and the TDOP proposal.

Storage Area	Permit issued, as maximum capacity, m <sup>3</sup>	Permit issued, as container equivalent capacity limit, m <sup>3</sup> (SWBs)	TDOP proposal, container limit	TDOP proposal, capacity limit, m <sup>3</sup>
TRUDOCK Storage Area	15 m <sup>3</sup>	4 TRUPACT-IIs, 15.04 m <sup>3</sup>	4 TDOPs	18 m <sup>3</sup>
NE Storage	52.6 m <sup>3</sup>	7 pallets, 52.64	14 TDOPs	63 m <sup>3</sup>

Area		m <sup>3</sup>		
SE (Shielded) Storage Area	7.5 m <sup>3</sup>	1 pallet, 7.52 m <sup>3</sup>	2 TDOPs	9 m <sup>3</sup>
Derived Waste Storage Area	1.88 m <sup>3</sup>	1 SWB, 1.88 m <sup>3</sup>	1 SWB, 1.88 m <sup>3</sup>	1.88 m <sup>3</sup>
Parking Area Unit	45 m <sup>3</sup>	45 m <sup>3</sup>	45 m <sup>3</sup>	45 m <sup>3</sup>
TOTAL:	121.98 m <sup>3</sup>	122.08 m <sup>3</sup>		136.88 m <sup>3</sup>

The TDOP proposal might seem to seek an increase from 121.98 m<sup>3</sup> to 136.88 m<sup>3</sup>, i.e., 14.9 m<sup>3</sup> or 12.2%. But the Parking Area Unit, where waste is held upon arrival in sealed TRUPACT-IIs, should be disregarded, since its purpose is entirely different from indoors storage in disposal containers. The TDOP proposal would increase indoor storage from 76.98 m<sup>3</sup> to 91.88 m<sup>3</sup>—a 19.3% increase.

Moreover, the predicate for this TDOP request is DOE's July 20, 2000, Class 1 modification, wherein DOE proposed to change the capacity limit for each TDOP container from the ten drums, or 2.1 m<sup>3</sup>, to 4.5 m<sup>3</sup> (A-2)—an increase of 114%. Previously, the limit for indoor storage *in TDOPs* was 43.88 m<sup>3</sup> (20 TDOPs at 2.1 m<sup>3</sup> each, plus one SWB). This TDOP proposal asks to raise that limit to 91.88 m<sup>3</sup>—an increase of 109%. It should be noted that the regulatory limit of a 25% increase in capacity is calculated from the capacity limit in the original permit. EPA, 53 Fed. Reg. 37912, 37927-28 (Sept. 28, 1988).

Here, the proposed modification by any fair test increases capacity by approximately 20%, and, based on the CCF proposal, by 27%. Moreover, the capacity in TDOPs would increase more than 100%. This Office submits that, due to the pendency of two proposals to modify Table III.A.1, the commitments in the CCF proposal, and the fact that, by some tests, the 25% limit is exceeded, the TDOP proposal should be consolidated with the CCF proposal and considered under Class 3 procedures.

Accordingly, this Office respectfully suggests that NMED deny the TDOP proposal and direct that all proposals for capacity increases be heard simultaneously as a Class 3 modification.

Very truly yours,

  
LINDSAY A. LOVEJOY, JR.  
Assistant Attorney General

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