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September 27, 2001

Steve Zappe
 New Mexico Environment Department
 2905 Rodeo Park Drive, Building 1
 Santa Fe, NM 87505



Dear Steve,

Southwest Research and Information Center (SRIC) provides these comments regarding the class 3 permit modification requested on June 7, 2001 to the WIPP permit to expand waste storage, increase storage time limits, manage prohibited items, and provide new waste characterization activities (so called "confirmation") at WIPP. SRIC strongly opposes the modification and requests that NMED deny it because the activities proposed do not protect public health and the environment.

1. The requested permit modification does not protect public health and the environment and should be denied.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(c)(6)), NMED may deny the class 3 modification request. SRIC believes that denial is required because the request is totally contrary to the requirements of the Resource Conservation and Recovery Act (RCRA) and the Hazardous Waste Act (HWA) to protect public health and the environment.

Very importantly, the request is a fundamental and total reversal of the operating safety principles for WIPP incorporated in the permit application and in the permit. DOE has stated for years that the fundamental operating safety principle for WIPP is to "start clean and stay clean," and it could do so by not opening drums of waste at WIPP. On the first day of the permit public hearing, the permittees' witness stated this principle emphatically.

"We never open waste containers that are received from an offsite generator.... By not opening the waste, we can eliminate the possibility of spreading contamination throughout our facility. So not opening the containers, keeping the containers sealed, is a major -- a major strategy in our protection of human health and the environment." Testimony of Robert F. Kehrman, February 22, 1999, pp. 83-84, emphasis added.

Throughout the permit public hearing, it was frequently reiterated by the permittees, other witnesses, and other parties that WIPP was a disposal facility and that its essential purpose was to receive wastes from DOE facilities and to dispose of the containers underground at WIPP.

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Thus, opening drums of waste or characterizing waste or "confirmation" at WIPP is not a purpose of the facility and such activities should not take place. The associated activities in the permit modification request -- expanding the storage area, increasing the storage time limits, and managing prohibited items -- are specifically related to the "confirmation" activities and so must also be denied.

It is axiomatic that a modification request must demonstrate that a facility would continue to meet the general facility standards of 40 CFR 264. In issuing the requirements for permit modifications in 40 CFR 270.42, the Environmental Protection Agency (EPA) specifically stated: "any permit modification, whether a Class 1, 2, or 3 change, will be subject to the appropriate substantive Parts 264, 265, 268, and 269 requirements." 53 Federal Register 37914 (September 28, 1988).

Changing the basic operations of a hazardous waste facility in a manner that undermines the design and operation to the detriment of health and the environment, which the proposed modification would do, is incompatible with regulatory requirements. For example, 40 CFR 264.31 requires that

"Facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

One essential way that the permit minimizes the possibility of releases of hazardous waste constituents is by prohibiting waste characterization or confirmation activities, including opening of waste containers, at WIPP. Reversing that prohibition is directly contrary to the requirement to "minimize the possibility" of releases, and so the request must be denied.

The permittees do not, and cannot, demonstrate in their modification request that the changes minimize the possibility of releases at WIPP. In fact, they do not even suggest that is a basis for the request. Instead, the "primary purpose" of the modification "is to expedite the removal of waste from, and minimize expenditures at, sites with smaller inventories of CH-TRU waste." at 3.¹ The rationale for the modification contained on pages 10 and 11 of the request does not even mention, let alone demonstrate, that the modification minimizes the possibility of releases at WIPP. The rationale does not even pertain to activities at WIPP. Rather it relates to the operations and speculative economics of other DOE facilities. There is no basis in RCRA or the HWA to approve such a modification.

When the permittees' own statement does not even assert that the request minimizes the possibility of releases and protect public health and the environment, there is clearly no basis for NMED to propose a draft permit modification, and the request must be denied.

¹Page numbers are those that result from the WIPP website PDF version using our inkjet printer. They may not perfectly conform to the page numbers of the hard copy as submitted.

Furthermore, 40 CFR 264.601, also applicable to WIPP, states that protection of human health and the environment includes "[p]revention of any releases that may have adverse effects on human health or the environment" to the ground water or subsurface environment, surface water, wetlands or soil, or in the air. The permit seeks to prevent any releases by ensuring that waste characterization activities, including opening of drums, is prohibited at WIPP. Reversing that prohibition is directly contrary to the requirement to prevent any releases.

The permittees do not, and cannot, demonstrate in their modification request that the changes prevent any releases at WIPP. In fact, they do not even suggest that is a basis for the request. Instead, the "primary purpose" of the modification "is to expedite the removal of waste from, and minimize expenditures at, sites with smaller inventories of CH-TRU waste." at 3.

When the permittees' own rationale does not even assert that the request would result in prevention of any releases, there is clearly no basis for NMED to propose a draft permit modification, and it must deny the request.

Moreover, fundamentally changing the basic operating safety principle both endangers public health and the environment and calls into question a primary basis for the entire WIPP permit.

2. The requested permit modification would result in inadequate waste characterization at generator/storage sites that rely on WIPP to do waste "confirmation."

SRIC has repeatedly pointed out the inadequacy of acceptable knowledge (AK) at DOE sites. That AK is inadequate was clearly demonstrated during the WIPP permit hearing when DOE did not produce even one drum of waste for which the AK was accurate. The only drum of waste that permittees introduced into evidence at the permit hearing was shown to have grossly inadequate AK. The AK did not properly classify the drum by waste type, nor properly identify its contents. Hearing Transcript, p. 444 and pp. 471-472.

Because AK is inadequate, full characterization is required at the generator site, including radiography, headspace gas sampling, and visual examination, before waste is shipped to WIPP. This principle is clearly established in the permit.

But the modification would terminate that principle and practice by allowing a site that believes that it has adequate AK to use it as the basis to ship waste to WIPP for "confirmation." The modification request would clearly allow waste to be shipped to WIPP without undergoing radiography, headspace gas sampling, and visual examination. Modules II.C.3; II.C.3.j; II.C.3.k; Attachment B-3. The modification request provides for such a change without providing any evidence that AK is adequate for all debris waste at any site, let alone that it is adequate for all debris waste at any site that would ship its waste to WIPP for "confirmation." Based on the record of the permit hearing, NMED must deny the request, because the permittees have provided no evidence to refute the evidence provided at the permit hearing. Thus, the principles and practices incorporated into the permit must not be changed.

3. Response to comments on the initial submission is inaccurate.

In its modification request, the permittees include responses to comments on the earlier Class 2 modification request, submitted on July 21, 2000, at 16-18. Some of those responses are at best disingenuous and incomplete, and some should be considered inaccurate. Such misrepresentation itself is adequate basis to reject the permit modification, and could be the basis to terminate the permit. 40 CFR 270.43(a)(2).

For example, in addressing the concern that SRIC and other commentors had about "opening drums at WIPP," the permittees assert that not opening drums at WIPP was "because the need did not exist to open such containers." at 17. That is a totally false characterization of the sworn testimony of the permittees' witness at the permit hearing. The testimony on the first day of the permit hearing (Transcript, pp. 83-84) was correctly quoted by SRIC in its initial comments and on page 1 of these comments. As the testimony clearly states, the reason to not open drums at WIPP is "to eliminate the possibility of spreading contamination throughout our facility." That basis to not open drums is consistent with the requirements of 40 CFR 264.601. The newly stated rationale would not meet the RCRA requirements that have been discussed above.

4. The modification request should be denied because it is so incomplete and inadequate as to preclude thorough review.

Although the permittees filed a very similar request for a class 2 modification in 2000, the resubmitted request is similarly incomplete and inadequate. Continuing to submit incomplete, inaccurate modifications is a waste of the public's time and resources and NMED's time and expertise and diverts the agency from other important WIPP activities. NMED should inform the permittees that this request, like numerous others, is so incomplete that the request is denied and that either the permittees should not resubmit the request or that a much more complete request is required before NMED will undertake a full review and request extensive public comment. SRIC here will identify only a few of the many incomplete aspects of the modification.

While the modification is based on supposed economic advantages of confirmation at WIPP, the request provides no adequate economic data. The request asserts that "the economic assumptions that shaped an important part of the waste analysis framework in the existing HWFP have proven to be invalid." at 11. However, the permittees have not provided necessary data to support the claim. On the contrary, five sites (INEEL, RFETS, LANL, Hanford, and Savannah River) have been approved by NMED and have shipped wastes to WIPP. The permittees have provided no data, nor have they even asserted, that any other site has not been approved because of economic considerations. Further, as previously noted, there is no basis in RCRA or the HWA to approve a modification request based on economic benefits.

Adequate economic analysis, at a minimum, would provide full cost analysis of fixed and variable costs of each generator site, including the detailed budgets of each site, costs of

handling any hazardous or mixed wastes, site overhead and contractor costs, regulatory requirements and costs, operation and maintenance costs of each facility used for waste management and storage, and wages and benefits of workers and management. Such data is necessary to determine how costs vary from site to site, and to avoid irrelevant and unsubstantiated claims, such as the supposed comparative costs of managing a cubic meter of CH TRU waste at small quantity sites and LANL. at 11. The analysis should include comparisons of doing confirmation at each small quantity site, at existing "large quantity sites" which have infrastructure, workforce, and experience to conduct such activities, and at WIPP. Such detailed information would be voluminous and complex and would be most appropriate for a separate process, perhaps such as the Optimization Plan that DOE said would be issued in its National TRU Waste Management Plan, DOE/NTP-96-1204, Revision 2, December 2000 at xxiv. Such data and analysis should be provided to the public for review and comment prior to the submission of a permit modification request for waste confirmation at WIPP.

The request states that "DOE is working to implement digital radiography/computed tomography (DR/CT) in a manner that will reduce or eliminate the need for routinely opening drums as a part of the confirmation process." at 17. The permittees should explain why a request for modifying the permit to do confirmation at WIPP should not be delayed until NMED approves DR/CT.

WIPP's principal mission has long been primarily to dispose of TRU waste at Rocky Flats and INEEL. See, for example, the 1981 Record of Decision, which states that all waste at INEEL would be disposed at WIPP before waste is disposed from other sites. 46 Federal Register 9162 (January 28, 1981). The CBFO Manager continues to state that those two sites remain the priority for current operations. The permittees should explain how confirmation activities at WIPP further that mission, because the confirmation activity appears to divert attention and resources to other sites and away from the primary focus on those two sites.

WIPP has operated for less than two years under the HWA permit and during that time it has received only slightly more than one percent of its statutory capacity limit, so there is not sufficient operating experience to conclude that currently permitted operations are being adequately implemented or that a major expansion of WIPP's operations is justified. On the contrary, NMED's Notice of Violation, issued on September 24, 2001, indicates that CBFO and the generator sites are not adequately implementing some of the existing permit requirements. NMED should not approve expansions of activities at WIPP when the permittees are in violation of permit requirements. Indeed, "[n]oncompliance by the permittee with any condition of the permit," is grounds for terminating the permit. 40 CFR 270.43(a)(1), emphasis added.

One goal of the modification request and others to follow is to eliminate the audit and surveillance program. at 14. The permittees also state that they want to eliminate "redundant audits." at 16. SRIC strongly opposes elimination of the audit and surveillance program, unless it is replaced by a class 3 permit modification process to review each site's compliance with the permit. Under the permit, the audit and surveillance program is the principal means for NMED and the public to be assured that permit requirements are being met. Rather than reducing

audits, the effect of the modification should be to increase audits, since they should be required at the generator sites with additional audits at WIPP. The modification request, on the other hand, would reduce the audits by providing that only the first Central Characterization Project (CCP) site be audited for AK process and that subsequent sites not be so audited. A-4; Attachment B6-1. Such a reduction in audits is unjustified and unacceptable. In fact, audits so far conducted have resulted in NMED sometimes not approving site procedures that the site and CBFO have approved. Because each site has different wastes, produced by different facilities and processes, and with its own set of procedures and records, it is obvious that AK practices and procedures will differ from site to site. Thus, it remains necessary for NMED to audit each site for its AK procedures. This audit would be even more important if the additional characterization or confirmation requirements were eliminated, as proposed in the request.

A more logical and cost-effective approach in reducing audits, in addition to better protecting public health and the environment, if that is indeed the permittees' goal, would be to focus waste characterization activities and audits on INEEL and RFETS, while adequate waste characterization procedures are established at other sites. Then, those other sites could be the focus of characterization and shipping regimes so that all their wastes can be characterized and transported in a few months or years, rather than having shipments occur on a piecemeal basis over many years, with associated continuing audits.

The modification request proposes a totally new activity -- waste confirmation at WIPP. A new attachment B7 would be included in the permit. In addition to endangering public health and the environment at WIPP, the new activity complicates and confuses activities at other sites and at WIPP. The request is incomplete because it does not adequately recognize these complexities and does not adequately discuss them and provide specific language necessary to prevent such confusion. The differentiation between "characterization" and "confirmation" is not clearly and consistently described. For example, in Module I.D. several new and confusing definitions are introduced. Apparently, existing "generator/storage" sites can also be "confirmation" sites. Thus, there would be 22 "generator/storage" sites and 23 "confirmation" sites. Or would it be less than 23 "confirmation" sites because some sites would not do confirmation? Or would a site be a "confirmation" site for some of its waste and not a "confirmation" site for other of its wastes? Confusion about regulatory requirements will increase with associated problems and violations of the permit. As a result of the confusion, mistakes of the kind that happened with use of the WAGS system at INEEL months before it was approved by CBFO and EPA would become more frequent.

Another example of how the modification request creates confusion is how it variously changes the Attachment B6 checklists to try to accommodate "confirmation sites" even though such sites might not conduct all of the activities included in the checklists. A further example of the confusion is in Attachment B-3a, which is unchanged in the modification, and Attachment B-3d, which is changed to incorporate "confirmation" and specifically refers to Attachment B-3a.

The proposed confirmation activities at WIPP are not described in sufficient detail. As just one

example, a new element of the modification request, compared with the request in 2000, is that a glovebox could be used for "confirmation" activities at WIPP. However, the specific glovebox attributes and requirements are not provided, nor its location specified. The glovebox size is not even provided so that it is unclear that it would be large enough to handle any container that required examination. The necessary detailed description for glovebox operation, the skills and training requirements for workers, quality assurance/quality control requirements are not provided. Nor is there any discussion of the substantial environmental and health problems associated with the use of gloveboxes at other sites, especially including Rocky Flats.

Another example of the inadequate and incomplete description of "confirmation" activities is that the maximum amount of waste that would undergo confirmation analyses at WIPP is 1,250 cubic meters per year, or 6,000 55-gallon drums. at 3. However, the storage capacity increases are based on "time and motion considerations" (which are not provided or referenced in the request) of "approximately 2,000 drums per year for waste confirmation." at A-82 (Item 2 discussion). Thus, in their request, the permittees have provided no health and safety basis to approve any confirmation activities or any storage capacity increases.

An additional problem with waste characterization and confirmation at WIPP is the lack of adequate containment. The previous modification request variously mentioned "bermed containment areas," "bermed areas," and "containment berms," which were strongly criticized by SRIC and others. The current modification request now includes "containment pallets," but they are not pictured or otherwise adequately described as to how they will fully contain wastes, as required by 40 CFR 264.175.

Another key element of the permit to protect public health and the environment is to keep prohibited materials from coming to WIPP. Module II.C.3 of the permit specifies that the "permittees shall not accept TRU mixed wastes at WIPP for storage, management, or disposal" certain prohibited materials including: liquids; pyrophoric materials; non-mixed hazardous wastes; chemically incompatible wastes; explosives and compressed gases; PCB concentrations greater than 50 parts per million; ignitable, corrosive, and reactive wastes; and remote-handled wastes. The modification request (Item 4) would change Module II.C.3 to weaken that prohibition. All of those prohibited items pose risks to public health and the environment and they should remain prohibited from WIPP. SRIC opposes weakening the prohibition. If the prohibition is to be changed, consideration should be given to include a permanent ban on any further shipments from a site that ships any prohibited item to WIPP.

Furthermore, waste characterization activities beyond acceptable knowledge are necessary to identify prohibited items to ensure that they are not shipped to WIPP. SRIC believes that to protect public health and the environment full waste characterization and confirmation must be done at the storage/generator sites to ensure that prohibited items do not arrive at WIPP. The modification request contemplates that increasing amounts of prohibited materials would come to WIPP – see new allowance for prohibited items in Attachment F-4d and Table F-10. The proposed modification in essence provides incentives for generator sites to send prohibited items

to WIPP, since the modification request would, in some cases, allow those wastes to remain at WIPP without any consequence to the generator site. Exactly how those prohibited items would be handled at WIPP is not adequately described. Thus, the modification request would not only allow prohibited items to arrive at WIPP, but it would allow long-term management, storage, and disposal in some cases of those items, with attendant threats to public health and the environment. Such changes to the permit do not protect public health and the environment, and they must be denied.

The permittees are requesting at least a 33% increase in the WIPP Waste Handling Building (WHB) container storage capacity (Item 2). The modification would change Module III.A.1 and other parts of the permit to increase the WHB Unit from 33,175 square feet to 44,275 square feet. Confusingly, Table III.A.1 states that the "design storage capacity" to be increased to 6,321.4 cubic feet or 178.98 cubic meters, but then states that the "permitted storage capacity" would be 3,795 cubic feet or 107.4 cubic meters. The permittees have provided no basis for the storage increase other than the need to expand WIPP to conduct the "confirmation" activities. Increasing the amount of waste that can be in the WHB increases the risks to workers and the public of releases of radioactive and hazardous materials, endangering public health and the environment, so the request should be denied.

The proposed modification threatens public health and the environment by allowing an increase in the surface storage time at WIPP from 60 days to one year (Item 3). That one-year timeframe was rejected by NMED in issuing the permit, based on public comment, because it is unnecessary to WIPP's purpose as a disposal facility. It is being again requested by the permittees to allow time to do the confirmation activities at WIPP. Since the confirmation activities should not be allowed at WIPP, there is no basis for the increased storage time. The longer wastes are stored on the surface, the greater the likelihood of accidents or releases of hazardous materials that would endanger workers and the public. Thus, the increase in timeframe for surface storage should be denied.

Again, SRIC requests that the Class 3 modification be denied. NMED should so notify the permittees and explain its reasons for the denial. Alternatively, the permittees could withdraw their request for the modification, as they have done with some previous modification requests.

Thank you for your careful consideration of these comments.

Sincerely,



Don Hancock