



September 27, 2001

Mr. Steve Zappe  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building One  
Santa Fe, NM 87505-6303

Re: Proposed Class 3 Centralized Waste Confirmation Facility Modifications  
to the Waste Isolation Pilot Plant Hazardous Waste Facility Permit  
EPA I.D. Number NM4890139088

Dear Mr. Zappe:

Concerned Citizens for Nuclear Safety (CCNS) makes the following comments to the Class 3 modifications for the Centralized Waste Confirmation Facility (CWCF) at the Waste Isolation Pilot Plant (WIPP) proposed by the Department of Energy (DOE). CCNS strongly opposes the proposed modifications because they greatly endanger human health and the environment. The proposed modifications are administratively incomplete and technically inadequate. Given that NMED has recently denied several Class 1 and 2 modifications, that there is one other pending Class 3 modification, and that the TRU Waste System Optimization Plan that serves as the foundation of the National TRU Waste Management Plan is still unreleased, DOE's requested changes present an unacceptable hodgepodge approach to the permit modification process. DOE's confusing approach wastes time and taxpayer money.

CCNS respectfully requests the New Mexico Environment Department (NMED) deny the proposed modification. There are many reasons for denying the modifications. Below are listed a few.

1. The purpose of the Resource Conservation and Recovery Act (RCRA) is to protect public health and the environment. Specifically, protection of human health and the environment includes the "prevention of any releases that may have adverse effects on human health or the environment." 40 CFR 264.601(a). DOE's proposed Class 3 modifications will not prevent releases, but will open new pathways for releases.

Until recently, DOE has always stated that no waste drums would be opened at WIPP. The people of New Mexico have relied on those statements. That prohibition was an integral part of the WIPP permit to prevent contamination of the entire facility.

**concerned citizens for nuclear safety**

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That prohibition must be maintained in order to protect public health and the environment.

The proposed modifications reverse the basic safety procedures at WIPP. Over the years, DOE and Westinghouse have stated that WIPP would "start clean and stay clean," meaning that no drums would be opened at the facility and that the sites shipping waste would send the waste ready for disposal. During the 1999 WIPP public hearing, Robert F. Kehrman testified that

[w]e never open waste containers that are received from an offsite generators.... 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.

Opening drums to characterize them for disposal at WIPP will dramatically increase the likelihood of workers being contaminated and open pathways for releases that will have adverse effects on human health and the environment. For this reason alone, NMED should deny the permit. In the alternative, DOE should withdraw its proposed permit modifications as it has done in the past.

2. In May 1998 the Environmental Protection Agency (EPA) issued a Certificate of Compliance (40 CFR 191 and 40 CFR 194) for WIPP. In order to dispose of waste at WIPP, the Certificate requires DOE to provide Characterization Infrastructure, Quality Assurance (QA) Programs, and Audit and Surveillance consistent with the Waste Analysis Plan (WAP) and other programmatic documents. Because the proposed modifications change the Characterization Infrastructure, DOE must also seek EPA approval.

3. DOE justifies the proposed modifications through the revised Record of Decision (ROD) for DOE's Waste Management Program: Treatment and Storage of Transuranic Waste. 65 FR 82985, December 29, 2000. The revised ROD states that the "primary purpose of centralized characterization at the WIPP is to expedite the removal of waste from, and minimize expenditures at, sites with smaller inventories of CH-TRU waste where setting up separate characterization programs would not be practical or cost effective." *Id.*

DOE adopted the revised ROD without providing the opportunity for the public to comment on it. NMED should not rely on the revised ROD as DOE's justification of the proposed modifications because the revised ROD was written by DOE to meet DOE's currently perceived needs.

Again, DOE states that "[i]n short, the economic assumptions that shaped an important part of the waste analysis framework in the existing Hazardous Waste Facility Permit have proven to be invalid." CWCF, p. 11. DOE's proposed modifications are based on saving money, not preventing releases from WIPP as required by RCRA. The economic considerations are not a regulatory basis for modification. Even if the economics were a basis for modification, DOE has not justified its request.

CCNS requested the economic studies upon which the proposed modifications are based from DOE. DOE sent one 14-page undated document, "Guidance for Completion of TRU Waste Characterization Cost Sheets." One attachment, "NTWMP Characterization Cost Estimates," is dated August 22, 2001, nearly eight months after the adoption of the revised ROD. This entire document is riddled with errors and incorrect assumptions. The document also raises questions. For example:

a. The columns in the Cost Estimates are added incorrectly.

b. Under the "Characterization Assumptions," DOE states that "[U]ntil unit RH waste characterization costs are defined, they are assumed to be equal to the CH characterization costs." DOE assumes that there will be better Acceptable Knowledge for RH than for CH waste.

However, in sworn testimony at the 1999 WIPP Permit Hearing, Robert H Neill, of the Environmental Evaluation Group (EEG), stated that there is uncertainty in the future projections of quantities of RH-TRU waste; that data is not available for the hazardous component in the waste; and that radiographic analysis of RH-TRU waste may not be viable. During cross-examination, Mr. Neill made other comparisons between the RH-TRU and CH-TRU wastes. He testified that the characterization of RH-TRU waste would be different from CH-TRU waste because the radionuclide inventory is different (primarily fission products that are beta and gamma emitters) and that the RTR facility for RH-TRU would be different from the CH-TRU facility. Gas generation sampling and analysis would also be different. DOE has assumed away the differences between the CH-TRU and RH-TRU and stated that the differences in waste characterization costs will be "offsetting." DOE has not provided enough information to prove the statement.

c. Acceptable Knowledge (AK). DOE is shipping its "new" waste with perhaps "better" AK documentation. However, even for a waste stream generated by LANL to ship to WIPP, there were problems with the documentation. This was evidenced at the 1999 public hearing for the WIPP permit where DOE's written records did not reflect what is actually found in the waste containers.

As DOE moves through its waste, we know that the waste records will be worse. We know some sites have better records than others. DOE has not taken this fact into account in their assumptions. For some sites, DOE assumes that the miscertification rate will be 11% in Fiscal Year 2002 and 2% thereafter. There is no basis for these assumptions and should not be included in the Guidance.

d. It is unclear what Waste Acceptance Plan (WAP) is being referred to in the Guidance. Does the WAP referred to in the Guidance include DOE's use of unapproved Class 1 modifications?

e. Does each shipping site implement the guidance in the same way? We know through the Audit and Surveillance Program, that the shipping sites do not characterize the waste in the same way.

f. No quality control is required for data management, including performing statistical calculations. Please see (a) above. This is of concern especially because DOE cannot even add columns of numbers correctly.

g. DOE has not calculated the exposure risks of double characterization/confirmation for the workers and double transportation costs for prohibited items. The proposed modifications will increase worker exposures and open release pathways and increase transportation accidents by increasing the number of miles the WIPP trucks will travel when loaded with waste.

4. The revised ROD relies on the "Centralized Alternative" analysis done in the DOE's Waste Management Programmatic Environmental Impact Statement. DOE/EIS-0200-F, May 1997, p. 8-23. CCNS would appreciate if NMED would review the Centralized Alternative bounding accident analyses to determine if the human health and the environment will be protected for accident scenarios involving mixed TRU waste at WIPP.

5. The proposed modifications are also based on the National TRU Waste Management Plan, DOE/NTP-96-104 Rev. 2 (Dec. 2000). The foundation of the NTWMP is the TRU Waste System Optimization Plan, which has not been published. The Optimization Plan

will present the methods to improve, or optimize, the system in terms of characterization, transportation, and disposal with sub-tiered categories of administrative change/operational efficiency, regulatory change, technology implementation, and research, development, and deployment.

p. xxiv. It is impossible for the public to fully evaluate the proposed modifications due to the absence of the TRU Waste System Optimization Plan.

6. DOE is proposing to increase the above-ground temporary storage capacity at WIPP by 30.5 cubic meters (or approximately 40 cubic yards.) Expanding the waste storage capacity is inappropriate and unnecessary. Such storage increases the danger of accidents and releases at WIPP. The waste can be stored at other DOE sites. Public and environmental health and safety demands that WIPP not become a DOE surface storage area, or monitored retrievable storage area, or a surface assured isolation facility.

7. DOE is proposing to increase the above-ground storage time from 60 days to one calendar year. Allowing the storage time to increase to one year is inappropriate and unnecessary. Such additional storage time increases the danger of accidents and releases of waste at WIPP. The waste can be stored at other DOE sites. Worker safety, public health, and the environment will be jeopardized by increased above-ground storage time.

8. DOE is proposing additional temporary storage areas within the Waste Handling Building. Allowing the additional temporary storage areas is inappropriate and unnecessary. Such additional temporary storage areas will increase the danger of accidents and releases of waste at WIPP. The waste can be stored at other DOE sites.

Additional temporary storage areas in the Waste Handling Building will jeopardize worker safety, public health, and the environment.

9. Elimination of Audits at the Small Quantity Sites. The proposed modification also states that NMED's audit and surveillance program at storage sites would eventually cease. The audit and surveillance program is an essential and necessary part of the NMED and EPA WIPP program and they must be maintained.

10. In the SEIS-II, DOE approved an alternative to ship the waste from the small quantity sites to the larger quantity sites for confirmation. DOE should do this rather than go back on its word to the people of New Mexico that WIPP would operate clean and stay clean. NMED should hold DOE to its word.

CCNS respectfully requests that NMED deny DOE's proposed Class 3 modifications.

Sincerely,

A handwritten signature in black ink that reads "Joni Arends". The signature is written in a cursive, flowing style.

Joni Arends  
Waste Programs Director

cc: Environmental Protection Agency