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27 September 2001

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 permittees U.S. Department of Energy and Westinghouse TRU Solutions LLC ("collectively, DOE") concerning a proposed Class 3 modification to the Hazardous Waste Act permit issued by the New Mexico Environment Department ("NMED") for the Waste Isolation Pilot Plant ("WIPP"), dated June 6, 2001 (the "CCF proposal"). The proposed modification would authorize a Centralized Confirmation Facility for contact-handled transuranic ("CH-TRU") waste within the Waste Handling Building ("WHB") at the WIPP surface facility.

The initial comments set forth herein are submitted pursuant to 20 NMAC 4.1, 40 CFR § 270.42(c)(2)(i), and it is understood that further procedures, wherein parties will have an opportunity to comment and present evidence, will follow in accordance with 20 NMAC 1.4.

We have five general comments on the proposal. First, it is not explained how characterization for transportation would be carried out to ensure compliance with

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shipping regulations. Numerous characterization requirements must be met for transportation, independently of characterization for disposal, including the following:

1. Container type, filter venting, weight limit (TRUPACT-II SARP).
2. Surface contamination (NRC regulations, 10 CFR § 835, Appx. D).
3. Container identification (TRUPACT-II SARP).
4. Identification of radionuclides constituting 95% or more of the activity (DOT regulations, 49 CFR § 172.203, 173.433).
5. Fissile material quantity; Pu239 fissile gram equivalent plus 2 times measurement error must be less than 200 grams per drum, 325 grams for a TRUPACT (2,800 grams if containing pipe components) (TRUPACT-II SARP).
6. External dose rate <200 mrem/hr at surface and <10 mrem/hr at 2 meters (TRUPACT-II SARP).
7. Aggregate volume of free liquid <1% of payload volume (TRUPACT-II SARP).
8. No sealed containers >4L volume (TRUPACT-II SARP).
9. No radioactive pyrophorics >1% by weight; no nonradioactive pyrophorics (TRUPACT-II SARP).
10. Chemical constituents shall conform to the list in an appendix to the TRUPACT-II SARP; trace chemicals limited to 5% by weight.
11. Explosives, corrosives, pressurized containers prohibited (TRUPACT-II SARP).

12. Decay heat within each payload container plus measurement error must be less than or equal to limit in TRUPACT-II SARP; total in a TRUPACT-II no greater than 40w.

13. Flammable VOCs may not exceed 500 ppm in headspace (TRUPACT-II SARP).

14. Venting and aspiration required for unvented drums (TRUPACT-II SARP).
See Waste Acceptance Criteria for the Waste Isolation Pilot Plant (DOE-WIPP-069, Rev. 7) at Table 3.1 and Ch. 3 (Nov. 4, 1999).

The proposal does not explain how these determinations will be made. If some of the listed determinations may be met by “acceptable knowledge” (“AK”) records, it is doubtful that all may be so met. The matter is of concern to NMED, because, if DOE attempts to characterize waste by AK alone, waste containers may arrive which require unconventional handling, such as decontamination, venting, or removal of prohibited items—all of which involve potentially risky on-site procedures.

Second, to conduct waste characterization (or “confirmation”) at WIPP fundamentally alters the nature of the risks presented by facility operations. When DOE requested a HWA permit, DOE assured NMED that, as a basic safety rule, waste containers would not be intentionally opened. Bob Kehrman of Westinghouse testified in the WIPP permit proceedings:

“Q. Do you ever open the waste containers at WIPP?

A. We never open waste containers that are received from an off-site generator.

Q. Why don't you open them?

A. 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.

Q. Is the waste received in the waste containers in the Waste Handling Building?

A. Yes. . . . Once the waste is received, it will be removed from the TRUPACT containers and placed on a facility pallet. . . . The pallets are moved into a storage area in the northeast corner of the Waste Handling Building, and they will be stored there, probably up to five days, until we accumulate enough waste to begin a – to begin downloading it into the underground.” (Permit Hearing, Tr. 83-84).

DOE now seeks to reverse this policy. However, the cursory descriptions contained in the proposal do not enable NMED to evaluate the risks or to determine what safeguards are called for. The proposal describes the “confirmation” activities in the most skeletal fashion. For example, it states that

“[s]ingle containers may also be managed for confirmation activities in the WHB CH-TRU unit. These containers would also be moved with forklifts and single container attachments to permitted storage areas adjacent to locations where confirmation will be conducted or to the glovebox in the WHB CH-TRU Unit to remove prohibited items, if needed.” (Att. E-2a, at A-85).

Such a brief description does not account for the manifold concerns of safety and accuracy that impinge upon waste characterization.

In similar situations, extensive safeguards are imposed. For example, both Pamela Rogers and Inés Triay of Los Alamos National Laboratory (“LANL”) (the latter now Director of the Carlsbad Field Office) testified in September 1998 about the characterization at LANL of waste stream TA-55-43, Lot No. 1. Triay stated that during the visual examination (“VE”) a continuous air monitor was triggered twice, indicating that plutonium 238 had been released to the atmosphere. (Triay dep. 62). After the second such incident Triay concluded that additional protections were needed. She directed that any handling of plutonium 238 would be conducted inside a glovebox and, further, inside a glovebag in the glovebox. (id. 68). Nothing in the proposal specifies

similar precautions or enables NMED to determine what safeguards are necessary to meet such risks.¹

In seeking a permit, WIPP's operators made a commitment to "start clean, stay clean." The rationale for keeping waste containers sealed is to prevent the possibility of release of hazardous and radioactive constituents. If that is no longer to be the case, the proponent should present new and additional assurances of safety and the containment of

¹ Public information shows that management of hazardous, mixed, and radioactive waste at DOE facilities presents substantial risks and calls for complex safeguards. See, e.g., DOE news release, March 5, 1997 (Idaho National Engineering and Environmental Laboratory (INEEL) workers contaminated while cutting a pipe in a waste handling facility); Defense Nuclear Facilities Safety Board (DNFSB) Report on Pilot Transuranic Waste Retrieval/Characterization at Hanford Site, July 27, 1994 (Waste retrieval and characterization undertaken without adequate safeguards against potential hydrogen explosion); Savannah River Site news release, Feb. 15, 1999 (Faulty plutonium storage canister causes plutonium intakes by seven workers); DOE Enforcement news release, Jan. 31, 2000 (Rocky Flats Environmental Technology Site (RFETS) contractor purchased 69 faulty waste containers without evaluating quality controls; containers were destined to WIPP); DOE news release, Aug. 20, 1999 (INEEL contractor purchased 556 containers for waste destined to WIPP; all found defective); DOE Environment Safety & Health weekly summary, Dec. 14, 1995, at 5 (At RFETS the lid flew off a pressurized drum of waste when opened for inspection); DOE Environment Safety & Health weekly summary, March 9, 1995, at 11 (At Oak Ridge National Laboratories a vented drum became pressurized through failure of the vent); DOE news release, Sept. 8, 1999 (LANL glovebox became overpressurized, ruptured, and extensive radioactive contamination ensued); DNFSB Staff Issue Report, Jan. 6, 2000 (During waste repackaging at Fernald Environmental Management Project (FEMP), a fire started in a container of thorium metal and spread to an adjacent container); DOE news release, Aug. 4, 1997 (FEMP operator failed to inspect waste containers for leakage); DNFSB memo, Uranium/Thorium Interim Storage Safety Review trip report, Sept. 20-21, 1994 (Hydrogen explosions at Fernald violently ruptured waste drums); DOE news release, Aug. 19, 1997 (Sandia National Laboratories ("Sandia") contractor fined after workers sorting waste were exposed to radiation from a highly radioactive particle because of a failure of safety controls); Lawrence Livermore National Laboratory (LLNL) news release, March 11, 1998 (Workers at LLNL exposed to radioactive contamination when waste was shredded which exceeded the limits for such treatment); DOE Environment Safety & Health weekly summary, Jan. 12, 1995 (Workers contaminated at Pacific Northwest Laboratory when the lid of a 55-gallon waste drum blew off); DOE Environment Safety & Health weekly summary, Oct. 17, 1996, at 3 ("There have been

contamination. However, the CCF proposal contains no showing of the structure of safeguards that DOE will use to reduce the risk of accidents.

Third, there is insufficient description of how waste that, upon inspection, is found unacceptable at WIPP will be managed. It is not realistic to assume that the planned characterization for shipment will identify all prohibited or unacceptable items. Thus, a critical element of the proposal is the plan for management of unacceptable waste. Such items may have a variety of forms, and solutions for numerous situations are needed.

Fourth, a fundamental assumption—indeed, a motivation—of the proposal is that it will be possible to reduce significantly the number of audits. (A-3). At present audits typically address characterization and confirmation capabilities with respect to one or a few specific waste streams at a particular facility. Whether audits can be credibly conducted with regard to all waste at an entire DOE site or, more abstractly, with regard to any hypothetical facility, is problematic. Before approving permit conditions that allow such an all-purpose audit, NMED should be convinced that such a process is valid.

Fifth, a further comment goes to the need for clarity, given the nature of the proposal. The thrust of the proposal is to divide the activity of waste characterization into “characterization” and “confirmation” (e.g., Mod. I.D.7, I.D.9 at A-8), to replace the current plan under which generator/storage sites do the waste characterization with the concept that the Central Characterization Project (“CCP”) may do “characterization” or “confirmation” but the sites also retain both capabilities, and to authorize the CCP to do “confirmation” at the WIPP site as well as at generator/storage sites. Parallel but not

numerous events at DOE facilities involving pressurized containers,” citing recent

identical regimes of regulation, oversight, and audit are created for the two systems. In this situation, clarity is essential, e.g., in specifying which of several similar—but separately regulated—functions is being referred to.²

Our comments on specific sections are as follows. The CCF proposal has four principal sections, and we set forth our comments accordingly:

1. Item 1 would authorize waste confirmation at the WIPP facility. We have the following comments:
 - a. Module I.D.8: The definition of “generator/storage site” is confusing, in that states that the site also performs waste characterization. This new definition may have unintended effects on existing permit provisions (e.g., Att. B-1a, B-3). Moreover, a site may characterize its own newly-generated waste but the Central Characterization Project (“CCP”) may characterize retrievably stored waste at that same site, making it unclear what definition is appropriate. If a term for the concept is needed, it would be better to call it the “generator/storage/characterization site.”
 - b. Module I.D.9: “Waste characterization” as defined in the proposed modification may include AK, headspace gas analysis (“HSG”), and

instances at Hanford Site, Paducah Gaseous Diffusion Plant).

² “Characterization” at the generator/storage site addresses the classification of waste by physical form and hazardous constituents and the identification of any items prohibited from shipping. (Att. B-2, A-14, A-15). “Confirmation” may take place either at the generator/storage site or at the WIPP facility and addresses verification of the original waste characterization by means such as real time radiography (“RTR”) and visual examination (“VE”), the identification of prohibited items, and the sampling of headspace gas (“HSG”). Whether a function is deemed characterization or confirmation determines the responsibility for its performance and the conditions of oversight and auditing.

radiography (see Att. B-3 mod.) Therefore, for clarity, “waste characterization” might be limited to the procedures carried out to complete certain portions of the Waste Stream Profile Form, rather than referring to certain regulations, which are more vague.

- c. Module I.D.10: The definition of “waste confirmation” should address waste that has already been characterized, the characterization of which is being confirmed through specific methods, including radiography, VE, and HSG, to complete certain portions of the Waste Stream Profile Form.
- d. Module II.C.1.d: The proposal correctly requires DOE to require that both characterization and confirmation activities, wherever conducted, comply with applicable data quality objectives (“DQOs”). In amending the permit, NMED must ensure that oversight and auditing functions effectuate these requirements and that it is feasible to carry out such audits.
- e. Module II.C.1.h: The proposal states that waste confirmation at WIPP shall be governed by Att. B7. However, the permit should make clear what portions of other attachments also apply (e.g., Att. B).
- f. Module III.E: The discussion of management of waste containers states that it is permissible to open a waste container for waste confirmation or to remove a prohibited item. The text here should refer to other permit provisions setting forth the conditions applicable to such opening, e.g., limitation to room 108 or 112 and use of a glovebox.
- g. Att. B: There is a vagueness and ambiguity with regard to the application of Att. B to activities of the CCP. The introduction, as proposed to be modified,

states that “Waste characterization and confirmation activities conducted by the CCP and auditing of these activities shall be performed in accordance with Permit Attachment B7” (A-12). The implication may be that such activities are not governed by Att. B as a whole or any of the other attachments. This may not be accurate. Applicable sections of other attachments must be referred to unambiguously here or in Att. B7.

- h. Att. B-3d: The title of this section refers to “characterization,” but the discussion involves principally confirmation methods.
- i. Att. B-3d(2): The modification states that retrievably stored waste containers will be characterized using AK “as specified in Att. B4.” There is a question whether this language bears upon characterization done by the CCP, since such activity is governed by Att. B7. (see also Att. B-4a(7), Att. B-4b(1), Att. B-4b(1)(iii) mods.).
- j. Att. B-4b(1)(iii): This provision states that an audit shall be conducted at each “site performing activities under this WAP” and refers specifically to Permittees and “generator-storage sites.” Does this provision, as modified, refer to the CCP either in its activities at WIPP or in its off-site activities? It would seem not, based on the introduction to Att. B, as modified (A-12).
- k. Att. B3-9: The proposal states that “generator/storage sites” shall comply with stated data quality requirements for AK. It is not clear how this language applies when generator/storage site waste characterization is being done by the CCP.

- l. Att. B3-10a(1): The permit requires independent technical review of Batch Data Reports before any waste associated with the “characterization data” is managed, stored or disposed at WIPP. This requirement is appropriate when a Batch Data Report is generated in waste characterization. However, it seems more likely that Batch Data Reports are generated in “confirmation.” In any case, the independent-review requirement must be imposed upon “confirmation” as well as “characterization” activities.
- m. Att. B3-13: The proposal would require the “confirmation site” to implement corrective action in event of a nonconformance. Is this language intended to cover the CCP in its “confirmation” role? It should be made clear.
- n. Att. B4-1: The proposal refers to Att. B7 for characterization or confirmation carried out by the CCP. The proposal does not state clearly what sections of the permit do *not* apply to characterization or confirmation by the CCP. This is a serious ambiguity.
- o. Att. B4-3f: The proposal states that an audit shall be conducted of each “generator/storage site” before certification to ship the WIPP. It is not clear whether this requirement applies to instances when the CCP is carrying out characterization of waste at that site. In our view, when the CCP is characterizing waste at a given site, an audit should be conducted of the AK capabilities of that site.
- p. Att. B4-4: There is a similar ambiguity here, where the proposal requires “confirmation” to take place at the “confirmation site.” Does this include confirmation at WIPP by the CCP?

- q. Att. B6-1: The text should state clearly, if it is the intent, that the Att. B6 requirements do not apply to characterization or confirmation by the CCP, whether at WIPP or at a generator/storage site.
- r. Table B6-5: If Att. B6 and its tables do not apply to confirmation at the WIPP site, why are requirements inserted at items 250, 253, and 254 which relate to radiography confirmation at WIPP?
- s. Table B6-6: If Att. B6 and its tables do not apply to confirmation at the WIPP site, why are requirements inserted at items 297 and 300 which relate to VE confirmation at WIPP?
- t. Att. B7: This Attachment applies in toto to waste characterization at generator/storage sites when done by the CCP. It also applies to confirmation done at WIPP by the CCP. There is the danger of unclarity since other parts of the permit will apply to similar activities by generator/storage sites. The statement appears: “Additionally, this attachment refers to other sections in the WAP [Att. B]. In these cases, ‘generator/storage site’ requirements apply to the CCP.” (A-49). This statement creates ambiguities as to the exact requirements applicable to the CCP. It would be far preferable to list or restate the requirements that apply to the CCP.
- u. Att. B7-1b: The proposal states that the audit shall cover the “AK process” used to characterize the waste. Under the permit, as proposed to be modified (Att. B-3, at A-15; Att. B4-1, at A-34), characterization may be based on AK and supplemented by other data, e.g., when AK is not sufficient. The audit process should embrace the entire process used to “characterize” waste.

v. Att. B7-1b: The proposal states that an audit may be conducted at the first generator/storage site where CCP AK procedures are implemented and need not be repeated at other sites so long as CCP procedures do not change. We fundamentally object to this provision. The experience in auditing clearly shows that each site's documentation and each waste stream is different. In addition, characterization (a) requires the assembly of a significant quantity of information that is not already contained in site records and (b) requires the assistance of site personnel in developing, locating, and interpreting information. Thus, it cannot be assumed that waste characterization based on AK can be conducted repeatedly of different waste streams at different sites by the routine application of a set of established procedures, by personnel who are strangers to the site's operations. "The type and quantity of supporting documentation will vary by waste stream, depending on the process generating the waste and site-specific requirements imposed by the Permittees." (A-52). Characterization of the first waste stream received at WIPP, waste stream TA-55-43, Lot No. 1, set the pattern. That waste stream was defined on the basis of LANL records and the knowledge of site personnel as to the generation of the waste. LANL prepared an Acceptable Knowledge Summary Report ("AK Report"), which is required to be prepared in the case of each future waste stream. (A-53). The AK Report is expressly based on site records of processes that generated the waste; site personnel's knowledge of the origins of the waste, including the time period of its generation, the waste documentation and labeling practices of the site as they

changed over time, the processes that gave rise to the raw materials, the processes applied at the site, and the particular waste forms present in the containers. Inés Triay explained in her deposition that the development of an AK record calls for considerable research into site practices, “one waste stream at a time”:

“Therefore, even though we have preliminary acceptable knowledge for all waste, what we mean by acceptable knowledge, within the constraints of WIPP requirements, is an extremely thorough process that has to be performed for one waste stream at a time at the time that that waste stream is considered for disposal at WIPP.” (Triay dep. 56).

Pamela Rogers testified that development of the waste stream description called for feedback several times from generator-site personnel to personnel developing the AK Report. (Rogers dep. 16-18, 46-75). Further, the current permit anticipates that waste characterization personnel will frequently obtain information from site personnel about the nature of the processes giving rise to wastes. (See Att. B4 at B4-9 through B4-12).

Most of the site audits to date have led to certification only of a single site and one type of waste; thus, NMED’s approval of final audit reports has been confined to a single waste type. See NMED audit letters dated March 9, 2000 (Rocky Flats), June 23, 2000 (Hanford), July 17, 2000 (INEEL), Feb. 7, 2001 (Rocky Flats), March 16, 2001 (Los Alamos), and May 18, 2001 (INEEL). Sometimes the approval covers only a subset of a waste category or a single waste stream. See, for example, NMED audit letters dated April 10, 2001 (Savannah River Site) and June 5, 2001 (Rocky Flats). Future audits of the CCP’s characterization procedures will probably be similarly limited. The

sufficiency of the data-gathering methods is so clearly dependent upon the specific waste type or waste stream being characterized that no audit could certify that such methods are adequate for any and all waste types or waste streams. Thus, it is unrealistic, and invites abuse, to make effectiveness of an audit depend on CCP procedures not “changing.” (A-50). In sum, we do not agree with the idea that a single audit at one site concerning one waste stream can effectively establish that the methods of the CCP are valid and appropriate in other situations.

- w. Att. B7-2: The proposed draft states that the “AK characterization requirements established in this section and Section B-3b provide [sufficient] characterization information . . .” The proposal states elsewhere that AK may need to be supplemented with information from other sources before information sufficient to ship the waste is available. See A-15, A-34, A-51. It cannot be assumed that all necessary information to ship waste will be contained in AK records.
- x. Att. B7-2: The draft asserts that site data will be sufficient to delineate a waste stream, identify the physical form of the waste, exclude prohibited items, and assign hazardous waste numbers. These are major assumptions, and they should not be made without substantial basis. Experience has shown that even after radiography examination some waste drums contain prohibited sealed containers. (Triay dep. 41-44).
- y. Att. B7-2a(ii): It is not clear why Permittees should require of each site procedures for confirming AK through HSG, VE, and/or radiography and

procedures to ensure that radiography and VE include a list of prohibited items that the operator shall verify are not present—if HSG, VE, and radiography are to be conducted at WIPP rather than at the site. (A-53).

- z. Att. B7-2b(ii): The proposal requires the permittees to require the CCP, in turn, to use administrative controls to ensure the correct documentation and management of prohibited items. (A-56). This requirement seems to apply to both retrievably stored and newly-generated waste. What authority does the CCP have to call for particular waste management steps at a generator/storage site distant from WIPP? Similarly, the CCP is expected to have and enforce written procedures to document waste “confirmation” of newly-generated waste before or during waste packaging. (A-57). Again, what authority does the CCP have in DOE facilities outside WIPP?
- aa. Att. B7-2b(v): The section states that DQOs for sampling and analysis appear in Att. B3. (A-60). Is it the intent to incorporate all of Att. B3 into the requirements for CCP activities? If not, what parts are so incorporated?
- bb. Att. B7-2b(vi): The section on audits of acceptable knowledge states that there will be only one audit of the CCP’s capabilities in this regard, to be repeated annually. As stated above, we believe that the variations are so great in the types of waste stream, the quality of site records, and the information needs, that it is unrealistic to assume that an audit of the CCP’s characterization of one waste stream would support the assumption that the characterization of all other waste streams at all other sites will be acceptable. Further, it is likely that the approved audit report for the initial CCP-

characterized waste stream will deliberately be limited to a single waste stream and site. In such situation one could not assume that auditors have found the CCP procedures acceptable for all other sites and waste streams—indeed, quite the opposite would be the case. Next, the proposal states that Att. B6 “gives a description of the overall audit program and a required checklist is provided as Table B7-1.” Does this mean that all of B6 is included in the requirements for CCP audits, supplemented by Table B7-1? Next, it is not clear what “subject waste summary category” will not be managed, stored, or disposed if an audit generates qualified results. (A-62). If an audit of a single waste stream at a single site is to be given systemwide significance in supporting the CCP’s authority, presumably a shortcoming in such an audit ought to have systemwide significance as well and lead to a suspension of all CCP activities. In addition, a word is dropped from the first sentence here.

cc. Att. B7-2c: This section relates to confirmation processes. The term “confirmation site” presumably refers to the site where confirmation by CCP takes place, i.e., WIPP. This should be made clear. Further, the proposal states that “repeated nonconformances” by the CCP in implementing and documenting WAP requirements will lead to termination of management, etc., of a specific site’s waste, waste stream, or summary category group. However, such actions by the CCP should result in termination of the CCP’s authority to manage any waste from any site.

- dd. Att. B7-4(a): The description of confirmation methods calls for the CCP to determine that the drum closure date is shown in the Waste Stream Profile Form or the WIPP Waste Information System as the basis for applying the drum age criterion. However, the drum age criterion is also dependent on the packaging configuration, and that should also be listed.
- ee. Att. E-2e: The description of personnel protection features is inadequate. The initiation of VE and HSG at WIPP works a fundamental change in its mission and in the risks presented by operations at WIPP. The permit must address risks presented by exposure to waste or hazardous constituents during HSG or VE operations. For instance, the glovebox system, where waste containers are opened for VE, must be described in full and its waste containment systems and procedures described. It should be made clear how the glovebox would be employed to examine waste within a 55 gallon drum, a SWB, a TDOP, or any other authorized container. Procedures applicable to different types of waste, such as plutonium 238 waste, should be described.
- ff. Att. M1-1d: The container management practices discussion should contain a detailed description of the facilities used to manage containers in the new storage and management areas, e.g., the pallets and the glovebox facilities used in confirmation of waste characterization.
2. The proposal also requests additional storage capacity and storage locations. The stated purpose is to facilitate the waste confirmation process and to allow containers to meet applicable drum age criteria. (A-90). No showing is made that the requested storage will suffice to meet these purposes. There is

reference to “time and motion considerations” (A-90), but the studies are not provided. These should be submitted for review.

- a. In this CCF proposal DOE makes a commitment to operate within the “permitted waste storage capacity” of 107.4 m³ and calculates the increase sought by the CCF modification based on the assumption that the pending Ten Drum Overpack (“TDOP”) modification, dated April 27, 2001, is granted:

“The design storage capacity of the individual storage areas is 6,321.4 ft³ (178.98 m³). Regardless of this value the permitted waste storage capacity of 3,795 ft³ (107.4 m³) shall not be exceeded. By the same principle, the drum equivalent calculations are based on the design storage capacity of 6.321.4 ft³, rather than the permitted storage capacity of 3,795 ft³. 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 m³ (A-93) and that, upon approval of the TDOP proposal, “the permitted capacity stated in this [CCF] request will change.” However, the TDOP proposal seems to request that the total permitted capacity be changed from 121.98 m³ to 136.88 m³. Moreover, DOE’s statement that “this modification”—presumably the CCF proposal—requests an increase of 25% is inexplicable, since the CCF proposal seeks an increase of 107.5 m³, an increase of 88% from the limit in the original permit of 121.98 m³. Further, the origin of the figure 516 drums is unexplained. Clearly, there are some errors in this section

of the CCF proposal that need to be corrected before the proposal can be considered.

- b. There should be a full description of the “containment pallet” device so that its contribution to safety and to liquid containment can be determined.
3. The proposal also seeks an increase in storage time to a maximum of one year. (Item 3). The proposal states that the request is based on the need to meet the drum age criterion (“DAC”) of 142 days and to meet other time requirements. (A-101). However, there is a pending proposal to modify the DAC. The storage time limit should not be changed until it is known what DAC shall apply at WIPP. Further, the estimates of time needed for various operations (“Perform confirmation analysis (30 days)”) should be supported by calculations giving rise to the asserted intervals.
4. The proposal contains supplemental language about dealing with prohibited items. The items discussed are:
 - a. Nonhazardous liquids; hazardous liquids. DOE maintains that nonhazardous and hazardous liquids may be absorbed by combining the liquid and an absorbent and that a treatment permit is not required. DOE cites a 1997 decision in connection with the Los Alamos National Laboratory (LANL) hazardous waste permit and EPA Guidance EPA530-R-99-064. The LANL permit decision has been furnished by DOE personnel and does not seem relevant. The EPA Guidance states that adding absorbent to waste “can constitute hazardous waste treatment” but, if absorbent is added when the waste

is first put into a container, the action is excluded from Part 264/265. EPA explains: “Adding absorbent after the waste has accumulated does not qualify for this exemption. If a waste is transferred to a new container, more absorbent may be added if the absorbent is being added when the waste is first placed in the new container.” (at 6). The proposed permit language states that liquids will be mixed with an absorbent and the “resultant solid will then be placed back into its original container.” (A-110). The described practice does not correspond to the exemption stated by EPA and would not be authorized without a treatment permit. More importantly, the processes whereby a quantity of liquid is removed from one waste container, solidified, and returned to its original waste container should be described in detail so that one can identify possible hazards and risks of release of radioactivity.

- b. Pressurized containers. DOE states that pressurized containers may be punctured “if determined to be safe” (A-104) and disposed of. DOE cites a 1993 letter from Jeffery Denit of EPA Office of Solid Waste. The Denit letter deals with emptying aerosol cans as part of a recycling process. The recycling exemption, 40 CFR § 261.6(a)(3)(iv), is not applicable to the disposal process at WIPP. Similarly, the process of puncturing various types and sizes of pressurized containers should be described so that one may identify the radioactive and chemical risks. It is stated in the proposal (A-107,

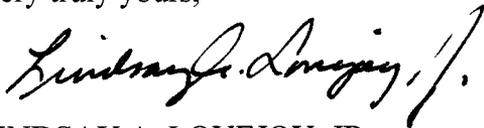
A-110) that containers will be opened only in the glovebox. However, few additional details are given. It is noted that a pressurized gas cylinder, if it constitutes TRU waste, could only be put into a new waste container until NMED determines the appropriate action. No suggestion is made as to the appropriate course. (A-111).

- c. Wastes not authorized for WIPP. Neither does the proposal describe the methods that would be used to determine whether a suspected PCB article contains PCBs in excess of 50 ppm. (A-111). Neither is it clear how the generator of a container, to which a hazardous waste number not identified in Part A should be applied, would “justify” not applying such waste designation. (A-111).

* * *

We look forward to the opportunity to offer further comments and evidence during public hearings in connection with this proposal.

Very truly yours,



LINDSAY A. LOVEJOY, JR.
Assistant Attorney General

LALJr:laljr