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**Comments by Nuclear Watch of New Mexico**

**On the Proposed Class 3 Modifications to the Waste Isolation Pilot Plant Hazardous Waste Permit**

**Nuclear Watch of New Mexico** strongly opposes the proposed modifications to the Waste Isolation Pilot Plant (WIPP) Hazardous Waste Permit and strongly recommends that the New Mexico Environment Department (NMED) deny the Class 3 modifications submitted by the U.S. Department of Energy (DOE) on June 6, 2001.

The following reasons support our recommendation to deny the application:

***Waste Confirmation at the WIPP Facility (Item 1)***  
***Prohibited Items (Item 4)***

The DOE has always maintained that it would never open a drum of waste at the WIPP in order to prevent contaminating the site (in their own words they said, "WIPP would start clean and stay clean.") However, with this modification, Carlsbad Field Office (CBFO) has completely abandoned this central tenet. On-site waste confirmation will entirely change the WIPP's mission from a disposal-only facility to a disposal, storage, and a characterization site (although DOE refuses to acknowledge this fundamental change in mission.)

DOE's justification for introducing waste confirmation to the WIPP mission is one of simple economics and lacks safety considerations for the site and the people that will be affected by these changes to the permit. The DOE states in its application that the original concept in the permit was for small-quantity sites (SQS) to "trans-ship" their waste to large-quantity sites (LQS) for characterization and confirmation. Alternatively, SQSs that could not ship their waste to LQSs would have had certified DOE contractors come to them to characterize and confirm their waste. DOE now states that this is no longer an economic or efficient option since the method stated above did not come to its expected fruition. The DOE does not give any quantitative data to suggest that the economics of this method is such that this is actually the case. In addition, the DOE is ignoring the safety and legal issues when they state in their conclusion: "In short, the economic assumptions that shaped an important part of the waste



analysis framework in the existing HWFP [*Hazardous Waste Facility Permit*] have proven to be invalid.” Who has this been proven by, and where is the data that supports this? By focusing on the economic issues, they have ignored the safety issues.

In the beginning of the application the DOE claimed that the modification request was simply to address the financial concerns of the SQSs. DOE later explains that if the WIPP is given the ability to do on-site waste confirmation they would give the option to LQSs to only do characterization (and not confirmation) before waste is shipped to the WIPP. This changes their fundamental stance in mid-application. No longer is it only a simple economic issue for the SQSs, it is now an option for LQSs to do only half the job before they send their waste to the WIPP.

There are inherent flaws in DOE's argument for on-site waste confirmation, the most significant being the concept of Acceptable Knowledge (*AK*). First of all, DOE has a notorious record with respect to waste inventories characterization and record keeping, to which they have admitted in legal documents. It would be naïve of the NMED to assume that DOE's performance would somehow be considerably better with respect to just the WIPP destined waste. Nevertheless, DOE states that through the use of AK (which is currently in effect at all sites doing characterization) any WIPP waste stream with the proper AK will be characterized under that AK and then shipped to the WIPP for confirmation. By not confirming AK-characterized waste before shipment to the WIPP, they will be uncertain as to what waste really is on the roads. Only after these shipments arrive at the site will the people who are affected by transportation of this waste, let alone the WIPP itself, find out what is actually in the drums of waste through the WIPP confirmation process.

In addition to this problem with transportation to the WIPP, the DOE gives almost no explanation of what they are to do in the event that prohibited waste arrives at WIPP. DOE states that it will notify NMED of the receipt of prohibited waste within ten days, and that it will work with the generating site of that prohibited waste (or other storage sites) in order to have the prohibited waste removed from the WIPP site. This, however, is unacceptable. Even the consideration that prohibited items will be sent to the WIPP makes it clear that characterization and confirmation should be done at the generator/storage site and that therefore the application should be denied. Add this to the fact that prohibited waste must be sent back to the generating site or a storage site, and hence having the same waste on the roads multiple times and increasing the cost of dealing with this waste, demonstrates a double standard within DOE's economic argument that it is claiming to be the driving factor of this application. Or, in the worst case, once significant amounts of prohibited wastes arrive at the WIPP, there could be irresistible political pressure on the State to allow those to be buried as well. This proverbial "camel's nose-under the tent" should not be allowed by NMED to even begin.

A final note on the centralized confirmation aspect to the DOE's application is their claim that by allowing confirmation at the WIPP, NMED's audit and surveillance program at storage and generating sites would decrease and eventually cease. These audits and surveillances are of the utmost importance and must continue, without them DOE would be regulating themselves.

By “confirming” waste from SQSs and LQSs the WIPP is no longer just a disposal site but will become a characterization site as well. Through on-site confirmation DOE will be forced to open drums of waste, something that it has always said it would not do. This is a fundamental

change in mission, and is sufficient basis alone for denying their permit modification application.

***Additional Storage Capacity and Additional Container Storage Locations (Item 2)  
Increase Storage Time (Item 3)***

The DOE application requests an additional amount of above ground waste storage space. They state that with the introduction of waste confirmation they are concerned that without the additional space their efficiency for handling waste will be impacted. However, it makes no mention of the safety issues involved with the additional waste stored above ground.

It goes without saying that by adding additional space to store waste above ground they seek to increase the amount of waste that will be above ground as well. This will increase the likelihood of potential accidents that may occur.

In addition to this concern about the potential increase in accidents, the DOE offers no evidence to suggest that additional storage space is required. Once again the DOE has made statements that should not to be taken on faith alone. There is no data given to show why they are concerned about efficiency, nor is there any data offered to show why there is no greater accident potential.

Furthermore, aside from having more waste above ground, the DOE is applying to increase the time that waste may be held above ground from 60 days to one full year. This again is a request without the appropriate explanation. They state that in order to meet the following time constraints:

- the drum age criterion (*DAC*) of 142 days;
- to perform confirmation of analysis of 30 days;
- to complete data verification of 30-90 days;
- to certify that the waste meets all Permit required criteria before disposal of 30 days;
- and unforeseen equipment downtime of 30 days;

an increase of 305 days is necessary. Regardless of the fact that the *DAC* could be met by holding waste at the generating or storage site for the necessary time period, the concept of having waste above ground for a year introduces the accident concerns yet again! It is only a matter of common sense that increasing the amount of waste above ground and increasing the time allotted to it above ground will inevitably increase the potential for accidents and the release of waste at the WIPP! By allowing an increase in the amounts of and time for above ground waste the WIPP will become a surface storage site for the DOE and not be simply a disposal site as per its stated and permitted mission.

In conclusion, **Nuclear Watch of New Mexico** recommends that the New Mexico Environment Department deny the Proposed Class 3 Modification to the WIPP Permit because:

1. The proposed modification goes entirely against the WIPP mission. Through this modification the WIPP will no longer be a disposal only site, they will become a disposal, confirmation, and storage site.
2. The option to open a drum of waste at WIPP is inconsistent with the recorded intent of the DOE: "Start clean, stay clean." Allowing the WIPP to open drums of waste at

- their site will go against what they have been saying all along.
3. The new potential of accidents from opening waste drums, to increasing the amount of waste allowable above ground, to extending the amount of time that waste is allowed to be stored above ground is increased dramatically. The DOE's application gives no data or information as to why this should not be foreseen as a result to their modification.
  4. The DOE states time and time again throughout their application that the driving force for this application is economics, but they give no data to support this claim. While they state that one of their objectives is to maintain safety of their workers and the environment around the WIPP site, there is no data to support that there will be no increase in danger to the environment or the workers at the WIPP.
  5. The DOE states that this modification will eventually allow the audit and surveillance programs of the NMED to cease. This is an unacceptable option as these audits and surveillances are necessary and must be maintained.

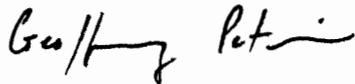
Additionally, with the change of the world on September 11th, 2001, we must be increasingly concerned that WIPP will be a target of terrorism, and transportation being a key issue when it comes to security and safety. With the proposed modifications we will see an increase of transportation and in turn an increase in vulnerability. By keeping the shipments at their current rate, the public will have a lesser concern on their hands with respect to the safety of the shipments. In fact, it would behoove DOE to consider increasing security of the current shipments as opposed to increasing the shipments of waste coming to the WIPP and away from the WIPP.

One final note: The President of the United States will soon be making a recommendation as to the Yucca Mountain site. If by some chance Yucca Mountain is rejected, as it should be, and this proposed modification is accepted we would be looking at a site that holds a precedent of its ability to periodically change its mission. This must be considered while making a decision as to the current application or we could well have high-level waste disposal at the WIPP.

It is for the reasons stated in this document that **Nuclear Watch of New Mexico** strongly recommends that the New Mexico Environment Department deny this proposed modification to the WIPP Permit.

Please deny the modification!

Sincerely,



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