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November 2, 2001



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

Re: Proposed Class 2 WIPP Permit Modifications for Compositing Headspace Gas Samples, Visual Examination of Waste Containers, and Headspace Gas Sampling through Existing Filter Vent Holes

Dear Mr. Zappe:

Concerned Citizens for Nuclear Safety (CCNS) provides these comments regarding the proposed Class 2 permit modifications to the Waste Isolation Pilot Plant (WIPP) operating permit requested by the Department of Energy (DOE) on August 28, 2001 and revised on September 28, 2001 to change headspace gas sampling and analysis by compositing large numbers of samples, to change visual examination of waste containers requirements, and to change the procedure for taking samples of headspace gas through the existing filter vent holes.

CCNS strongly opposes the DOE's proposed Class 2 modification requests and respectfully requests that the New Mexico Environment Department (NMED) deny the requests because they are substantially incomplete, the proposed changes do not protect public health and the environment, and the requests are not consistent with the regulations.

CCNS concurs with the comments submitted by Southwest Research and Information Center (SRIC) that the continuing practice of the permittees to submit incomplete and inaccurate modification requests wastes the time, money and resources of DOE, NMED and the public. The public suffers a "triple whammy" because (1) it pays for the permittees to prepare and submit inadequate modifications (and sometimes pays for the same request multiple times); (2) it pays for NMED to review requests and make its decisions; and (3) it pays with its own time and resources to review, attend the public

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information meetings, and comment on the inadequate requests. NMED must take decisive action to stop this process.

SRIC has previously suggested several possible measures to which CCNS concurs. These measures include informing the permittees that Class 3 modifications will be reviewed on a consolidated basis once a year and increasing fees will be charged when multiple modification requests are pending simultaneously. NMED should impose strict penalties on violations of the permit, including practices included in the proposed modifications that were inappropriately put into effect by the permittees months ago.

The New Mexico Hazardous Waste Act regulations (29 NMAC 4.1.900, incorporating 40 CFR 270.42(b)(7)) provide that NMED may deny any Class 2 modification for any of the following reasons:

- a. The modification request is incomplete;
- b. The modification does not comply with other regulations covering the operating standards for hazardous waste storage and disposal facilities; or
- c. The conditions of the modification fail to protect human health and the environment.

DOE's requested modifications fail to meet any of the standards; therefore, NMED should deny the requested modifications.

Item 1. Using Composite Headspace Gas Data and Compositing up to 20 Samples.

The modification request for compositing up to 20 samples should be denied because it is incomplete, does not comply with operating standard regulations, and fails to protect public health and the environment.

The permittees state that the modification request "will improve both efficiency and safety at the generator/storage sites." (p. 1) The modification request is inadequate because any modification should improve safety at WIPP, the disposal site. Supposed improvements at the generator/storage sites is not an adequate basis for a modification to the permit, especially because the permittees have failed to demonstrate any health or environmental benefit for New Mexicans. In addition, the request is incomplete because it does not document the alleged improvements at other sites.

CCNS objects to the manner in which permittees address the Tentatively Identified Compounds (TIC) identification and reporting "noise" problem. (p. A-6). CCNS has reviewed the Clarification Number CAO-00-065, Rev. 2 "Determination of Tentatively Identified Compounds," and will rely on NMED for their scientific expertise to examine the issue of determining the sensitivities of the equipment and the instrument settings. CCNS requests that NMED review the permittees' reasoning to answer Issue 1: "Is it necessary to use the maximum instrument sensitivity when analyzing for target analytes or when screening for tentatively identified compounds." CAO-00-65, Rev. 2 CCNS has worked on "noise" issues in the air monitoring systems at Los Alamos National Laboratory. Our experience tells us that the "noise" issue should be carefully examined in order to ensure that human health and the environment is protected.

What is the status of the WIPP Waste Information System (WWIS)? (p. A-6) Has NMED had trouble accessing the system over the past two months?

What are the unintended consequences to public health and the environment if the permittees are allowed to reduce the TIC library? (p. A-7)

It is unclear which generator/storage sites use the automated software. The permittees should be required to clarify this point. (p. A-8)

Section d.1, Table B6-1, 51a should be rewritten as either two sentences or two questions, or one sentence and one question. (p. A-14)

Because the permittees have not demonstrated that the changed methods of composite sampling are protective of human health and the environment, the modification request does not meet the requirements of 40 CFR 264.13 related to waste analysis and 40 CFR 264.31 related to ensured that unplanned releases do not occur.

Similarly, the request does not protect public health and the environment as required by the permit and regulations since it does not demonstrate that all TICs will be identified and reported and that the required headspace gas sampling will be carried out in accordance with the operating permit.

Item 2. Establishing Safety Conditions for Visual Examination (VE) of Waste Containers.

The modification request to change the visual examination (VE) procedures for waste containers must be denied because it is incomplete, does not comply with regulations, and does not protect human health and the environment. The request does not provide any basis for the proposed change.

The permit requires containers subject to VE to be "randomly sampled." (p. B2-2) The request would change the procedure so that the selection process would no longer be random, but rather could exclude certain drums selected for VE. Such a change would fundamentally change an important Waste Analysis Plan requirement for verification of radiography.

The request does not protect public health and the environment as required by the permit and regulations since it does not demonstrate that visual examination will be carried out in accordance with the permit.

If NMED decides to approve this modification, the following language should be changed to clarify what the permit requires:

Page A-22, Proposed Revised Permit Text: a.1. Section B-3d(2), last sentence should be modified: "A site [insert: shall] [delete: may] establish container safety conditions...."

Page A-22, Proposed Revised Permit Text: a.1. Section B-3d(2), first bullet, DOE should define "high" radioactivity.

Page A-22, Proposed Revised Permit Text: a.1. Section B-3d(2), fourth bullet should be modified to read: "Container safety conditions that are established [insert: shall] [delete: may] not reduce the number of containers that are visually examined based on the statistical requirements of Permit Attachment B2."

Page A-23, Proposed Revised Permit Text: b.1. Table B6-1, last bullet should be modified to read: "Container safety conditions that are established [insert: shall] [delete: may] not reduce the number of containers that are visually examined based on the statistical requirements of Permit Attachment B2."

Item 3. Taking Samples of Headspace Gas through Existing Filter Vent Holes.

The modification request to change the procedures for taking samples of headspace gas through existing filter vent holes must be denied because it is incomplete, does not comply with regulations, and does not protect human health and the environment.

The request does not provide any basis for the proposed change. Based on the demonstration at the October 11, 2001 Santa Fe public information meeting, it is unclear whether taking headspace gas samples through an existing filter vent hole will ensure an airtight seal as required by Permit Section B1-1a(3)(ii). Having the filter missing for 33 seconds will not provide an airtight seal and will skew the sampling results.

Another issue that was raised at the public information meeting was the proposal to insert a setscrew into the drum lid. Issues were raised about the use of a gasket or sealant while inserting the setscrew to ensure a tight seal.

It is unclear why the permittees have proposed this modification to NMED. The permittees admitted at the public information meeting that they would be required to obtain approval from the Nuclear Regulatory Commission and the federal Department of Transportation. The question was asked if NMED had the metallurgical and engineering expertise to determine the impacts of inserting a setscrew into the drum lid. CCNS requests a response from NMED.

The result of inadequate headspace gas sampling, in addition to violating the permit, would be to allow drums of waste that are inadequately characterized to go to WIPP. Such drums could introduce large amounts of VOCs than allowed by the permit. As such, the modification would not comply with the regulations and would not protect human health and the environment, and NMED should deny the modification request.

CCNS respectfully requests that NMED deny the three permit modification requests made by the permittees. Should you have any questions or comments, please contact me. Thank you for your careful consideration of our comments.

Sincerely,



Joni Arends
Waste Programs Director