



U.S. DEPARTMENT OF ENERGY  
OFFICE OF REGULATORY COMPLIANCE  
CARLSBAD FIELD OFFICE  
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| FROM:      | H. L. 'Jody' Plum, RCRA Permit Manager |
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MESSAGE: JAMES - ATTACHED IS OUR CLOSURE PLAN POSITION PAPER (DRAFT).  
THIS IS OUR INTENDED APPROACH AND REASONING. AS STATED IN OUR JULY MEETING,  
WE WANTED TO INFORM YOU OF OUR POSITION/BASIS. SHOULD YOU HAVE ANY  
COMMENTS, THEY WOULD BE APPRECIATED.

THANKS,

Jody Plum

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505.4

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**DRAFT Closure Plan Position Paper**  
**Waste Isolation Pilot Plant**  
**Permit Number: NM4890139088-TSDF**  
**August 26, 2002**

The purpose of this position paper is to present the U.S. Department of Energy, Carlsbad Field Office's (CBFO's) regulatory interpretations and positions regarding modification of the Waste Isolation Pilot Plant (WIPP) Hazardous Waste Facility Permit (HWFP) to address changes to the Partial Closure Plan, i.e., Panel Closures.

**Background**

CBFO has carefully evaluated the panel closure system (required for partial facility closure) prescribed by the Environmental Protection Agency (EPA) Certification and the HWFP for the WIPP. These currently require the construction of the "Option D" panel closure design utilizing Salado Mass Concrete. This evaluation determined that a change in closure design is warranted. This evaluation was conducted consistent with WIPP HWFP Attachment I-1e(1) which states:

Although the permit application proposed several panel closure design options, depending on the gas generated by wastes and the age of the mined openings, the NMED and EPA determined that only the most robust design option (D) would be approved. **This decision does not prevent the Permittees from continuing to collect data on the behavior of the wastes and mined openings, or proposing a modification to the Closure Plan in the future, using the available data to support a request for reconsideration of one or more of the original design options. If a design different from Option D as defined in Permit Attachment I1 is proposed, the appropriate permit modification will be sought. (Emphasis added)**

As part of this effort the design criteria have been reevaluated and appropriate design modifications are being finalized for submittal to the NMED and EPA later this calendar year. The *modified* design will:

- First and foremost, satisfy both the regulatory and permit required Closure Performance Standards, ensuring protection of human health and the environment
- Be less impactive to facility operations
- Be simpler in design and construction, providing an increase in the confidence of successful installation and a reduction in the likelihood of an accident during installation providing a decreased level of risk to those installing the closure
- Have no significant impact on the long-term performance of the repository
- Be less expensive to install, saving the project and taxpayers millions of dollars
- Provide for reuse of mined salt, consistent with a basic premise of the federal Resource, Conservation and Recovery Act

CBFO believes each of the last 5 bullets can be technically supported and will provide ample "cause" for the modification while the 1st bullet provides for the regulatory compliant demonstration of protectiveness necessary for NMED's and EPA's approval of the modified design.

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### **Permit Modification Request**

CBFO has identified a difference between the language of: WIPP HWFP Attachment I-1d(4) Amendment of the Closure Plan; and 20.4.1.500 NMAC [incorporating 40 CFR §264.112(c)]. 20.4.1.500 NMAC specifically states:

"The owner or operator must submit a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in Parts 124 and 270. The written notification or request must include a copy of the amended closure plan for review or approval by the Secretary.

- (1) The owner or operator may submit a written notification or request to the Secretary for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility."

It is CBFO's position that the regulations allow for submittal of a Class 2 or 3 permit *modification any time prior to the notification of partial closure of the facility, i.e., notification of closure of Panel 1.*

### **CBFO Positions On Which NMED Concurrence and/or Input is being sought**

1. Last receipt of waste for Panel 1 is estimated as being in the January 2003 timeframe. The WIPP Panel Closure Schedule, WIPP HWFP Figure I-2, provides for notification of closure 30 days prior to completing panel disposal operations. Therefore notification would be required in the December 2002 timeframe.

Given the fact that the regulations provide for the submittal of a request for a permit modification to amend the closure plan at any time prior to the notification of partial closure, i.e., prior to December 2002, and that the WIPP HWFP provides for submittal of proposals to modify Permit Attachment II, i.e., design modifications, CBFO contends that the closure activities described in the WIPP HWFP, i.e., Option D, would not be required to be implemented pending a final agency decision on the request.

2. The modified panel design requires both NMED approval of a permit modification request and EPA approval, which it is anticipated would require a formal rule-making process. Therefore, CBFO believes the "start date" for implementing the Panel 1 Closure Schedule will be the day both agency approvals are obtained. Closure Schedule start dates for the other panels would be tied to last receipt of waste in those panels. Implementation requirements may however require modification of any schedule, based on the time required to complete contract agreements, material procurement, etc.
3. It should be noted that EPA's ability to act on the request might be impacted by the "blackout period" associated with EPA's Recertification of WIPP. Because this could be an extended period, CBFO proposes installing an explosion isolation wall after final waste emplacement in Panel 1, and prior to final agency determinations. This explosion wall will be at least as robust as the explosion wall of Option D, and is intended to ensure isolation of waste and safety during the decision process.