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October 3, 2002



By email to steve_zappe@nmenv.state.nm.us

Mr. Steve Zappe
New Mexico Environment Department
2905 E. Rodeo Park Drive, Building 1
Santa Fe, NM 87505-6303

Re: CCNS Comments on the Seven Proposed Modifications to the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant

Dear Mr. Zappe:

Concerned Citizens for Nuclear Safety (CCNS) makes the following comments about the seven permit modifications requests (PMR) to the Hazardous Waste Facility Permit (HWFP) for the Waste Isolation Pilot Plant (WIPP) submitted by the Applicant, Department of Energy (DOE), Carlsbad Field Office (CBFO) and Westinghouse TRU Solutions LLC, on June 28, 2002:

If approved, the proposed modifications will undermine existing safety standards for shipping waste through New Mexico and disposing of it at WIPP. CCNS strongly urges the New Mexico Environment Department (NMED) to deny all seven PMR. The PMR are incomplete, inaccurate and several lack a scientific basis. Thus, the PMR cannot be approved as submitted.

Under the New Mexico Hazardous Waste Act (HWA), Section 74-4-4.2(H) and (I) NMSA, 1978, there are 2 types of permit modifications: major and minor. The PMR are complex and they propose changes to the basic operations at WIPP. Some of the PMR affect the entire permit. These are substantial and major changes to the permit. Such changes are significant in number, scope, complexity, and effect on the permit and must be considered as major modifications. Any such complex modifications should be subject to the public hearing requirements for major modifications. Therefore, NMED should deny the PMR, rather than expending limited state resources attempting to

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correct the many problems with, in some cases, second submittals that have already been denied by NMED.

Six of the PMR are not correctly classified as a class 2 modification under 20 NMAC 4.1.900 (incorporating 40 CFR 270), nor do they meet the requirements for approval under 40 CFR 270.42(b)(6). The Environmental Protection Agency (EPA) regulations at 40 CFR 270.42(b)(6) provide that NMED may approve or deny the request or determine that the modification must follow class 3 modification requirements. Among the reasons that NMED may deny the PMR are that they are incomplete, or that they do not comply with 40 CFR 264, or that the conditions of the modifications fail to protect public health and the environment. 40 CFR 270.42(b)(7). CCNS believes that all three reasons for denial exist regarding the PMR.

CCNS requests that a consolidated Class 3 hearing be scheduled for these modifications after Applicant resubmits their PMR. NMED and the public should be allowed to consider the entire package of modifications that Applicant wants in a wholistic way. Piecemeal analysis does not protect public health and the environment. Applicant is proceeding in a manner that does not provide complete information to justify such requests, as required by regulations, and does not afford the public the required public hearing process, including public comment, testimony and cross examination of witnesses and related procedures. The current piecemeal approach also badly strains the public's resources, including those of CCNS, and presumably puts additional burden on NMED.

1. Improving Data Management to Streamline the Disposal of Transuranic Waste. CCNS thanks NMED for acknowledging the complex nature of the data management modification and changing it from a Class 2 to a Class 3 process, thereby allowing the opportunity for a public hearing. Nevertheless, NMED should deny this modification, rather than try to correct the many problems found in the hundreds of pages of proposed changes.

CCNS strongly urges NMED to demand that the Applicant develop and test the proposed data management system before the system is presented as a Class 3 modification. Update of the Waste Analysis Plan and Associated Documents with Emphasis on Data Management Requirements, p. 3. In addition, CCNS requests that NMED require the Applicant to make the input/output files and executable codes available to the public, in a CD PC and MAC format, for our preparation for the public hearing.

CCNS has concerns about the proposed use of bar codes on the drums because information that is available on the current tags will not be available on the bar codes without the use of a reader. We are concerned that during an emergency situation that it may be more useful to have the written tag as opposed to a bar code. Applicant has

not provided any evidence that the bar codes will be useful. CCNS suggests that there be a trial period using both systems to determine the pluses and minuses of the two systems.

2. Characterizing Repackaged Homogenous Solids as Retrievably Stored Waste.

Applicant is basing its PMR on a NMED answer to a comment made by Mr. Lawless. Applicant must provide more scientific bases for the PMR. NMED should deny the PMR. CCNS reminds NMED that the Hearing Officer at the winter 1999 permit hearing stated "that visual inspection and analysis of each and every waste container would likely improve waste characterization accuracy." Hearing Officer Report, p. 87. CCNS fully supports the Hearing Officer.

3. Use of Radiography for Newly Generated Waste. This PMR is inconsistent with existing procedures. It is also inconsistent with the outstanding drum age criteria proposed modification. Therefore, NMED should deny this PMR. It is a complex modification and therefore should be a Class 3.

4. Addition of HalfPACT Shipping Container. Applicant has not stated how this PMR will address accidents similar to the two recent ones that involved shipments from the Idaho National Engineering and Environmental Laboratory (INEEL). Just because the Nuclear Regulatory Commission (NRC) has approved the HalfPACT does not mean that the information provided by the Applicant was correct; witness the evidence presented during the drum age criteria Class 3 public hearing. Nor does it mean that NMED should automatically approve the PMR. In fact the PMR should be denied because the Applicant has submitted incomplete information to support the PMR.

5. Addition of a New Hazardous Waste Number. NMED should deny this PMR because the request is (1) from INEEL, the site sending over 650 drums that were "certified" with uncertified equipment; and (2) it appears that the Applicant is relying on the same compatibility studies as it did in its first submittal of this PMR. Applicant does not explain how it can ensure that no corrosive liquids are included in the wastes with the U134 code, especially since the August 2002 audit at INEEL found that, in fact, prohibited liquids had been sent to WIPP.

Applicant has provided conflicting and perhaps sloppy information about the processes that use U134. The Applicant stated in its first submittal that the addition of the code for hydrofluoric acid (HF) (U134) from INEEL was because of a zirconium dissolution process. p. A-20. Now, Applicant states that, "Laboratory personnel neutralized and complexed the HF with excess aluminum nitrate to form a non-corrosive aluminum fluoride complex in a nitric acid matrix and discharged the mixture into the liquid waste storage tanks." Item 1. Addition of New Mexico Hazardous Waste Number, p. A-13. Which is it? Zirconium? Or Aluminum nitrate? Is Applicant talking about the

same drums as during the first submittal? Do the compatibility studies address aluminum flouride?

6. Recordkeeping and Auditing for Classified Information. Applicant is obfuscating the issue involved with this PMR by focusing on the information rather than on the fact that the Applicant is prohibited from bringing classified waste to WIPP. WIPP is not a National Nuclear Security Administration (NNSA) facility and therefore cannot handle classified information. Therefore, if the Applicant wants to dispose of classified waste at WIPP, it could (1) declassify the waste; (2) modify, crush or compact the classified shapes and parts without increasing exposure to workers; or (3) send the classified waste to a NNSA site. By proposing to bring classified waste to WIPP, DOE is cutting the public out of the process. NMED should deny this PMR.

7. Addition of New Waste Containers. NMED should deny this PMR. This is a Class 3 modification requiring a public hearing because of the complexity involved in the PMR. Real-time radiography (RTR) is less reliable on the larger containers than on the 55-gallon drums and Applicant has not demonstrated how it will use RTR on the 85- and 100-gallon drums. The 85-gallon drums are currently used to overpack the 55-gallon drums. What container will be used to repackage leaking or damaged 85-gallon drums? Leaking or damaged 100-gallon drums?

Will installing a vent into the side of a 100-gallon drum challenge its integrity? p. A-20, M1-15.

For all of the above reasons, CCNS respectfully requests that NMED deny all seven modifications at this time.

Sincerely,

Joni Arends
Waste Programs Director