

October 3, 2002

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Regarding: Waste Isolation Pilot Plant Permit Modification Requests

- Item 1: Addition of New Mexico Hazardous Waste Number**
- Item 2: Characterizing Re-Packaged Homogenous Solids as Retrievably Stored Waste with Regard to Solids Sampling**
- Item 3: Classified Information Record Keeping and Audit Requirements**
- Item 4: Addition of HalfPACTs**
- Item 5: Use of Radiography for Newly Generated Waste**

Dear Mr. Zappe,

Nuclear Watch of New Mexico (NWNM) requests that the New Mexico Environment Department (NMED) deny the above mentioned permit modification requests.

As you know, regulations under the New Mexico Hazardous Waste Act (20 NMAC 4.1.900 incorporating 40 CFR §270.42(b)(7)) provides that NMED may deny any Class 2 permit modification request for the following reasons:

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

NWNM is strongly opposed to these modifications as they are a threat to human health and the environment, and they are technically incomplete.

The following reasons will support our request to deny.

Item 1: Addition of New Mexico Hazardous Waste Number

As the permit modification request (PMR) states, the permittees submitted the same modification request to NMED on June 6th, 2002. This original PMR was denied by NMED because of insufficient information, but once again the permittees have not rectified this issue of completeness in this PMR.



There is no mention of the studies done on the hydrofluoric acid (HF) contaminated waste. While this may not be required in the actual permit, the permittees should certainly have included the studies they have performed on this waste in the PMR. Without this data and information, the public is given no reason why we should assume that the permittees facts are correct. This and this alone should be sufficient for NMED to deny this item, however there is more.

Corrosives are a banned substance at the Waste Isolation Pilot Plant (WIPP). While the permittees claim that they have found a way to remove the corrosive nature of HF, the potential danger to human health and the environment is far too great to get only 100m³ of waste to WIPP. NWNM also notes that the main reason why the permittees wish to send this waste to WIPP is because of the Idaho National Engineering and Environmental Laboratory (INEEL). INEEL is notorious for their inability to abide by the permit. They have used inappropriate verification and confirmation tools (i.e., the WAGS system), and they have illegally shipped waste to WIPP because of this, among other violations. INEEL is not the site that we should be making concessions for. They are a danger to the WIPP site already, without giving them the opportunity to send corrosives to WIPP.

NMED must deny this PMR. The PMR is technically incomplete; it is a potential danger to human health and the environment, and because of the permittees wish to allow a previously banned substance into WIPP this should be a Class 3 PMR, not a Class 2. If NMED does approve this PMR, it must prohibit INEEL from using only acceptable knowledge (AK) when characterizing and sending this waste. NMED must have INEEL do visual examination (VE) and testing of this waste prior to shipping to ensure that the waste is non-corrosive. If this PMR is approved, it should be for only the 100m³ of waste that the permittees claim INEEL currently has to dispose of. If any other site in the DOE complex wishes to send HF contaminated waste, NMED should require the permittees to submit a PMR for that particular site.

Item 2: Characterizing Re-Packaged Homogenous Solids as Retrievably Stored Waste with Regard to Solids Sampling

“The proposed modification will allow generator/storage sites throughout the DOE complex more *flexibility* in selecting the *most efficient* approach to performing some waste analysis tasks.” (page A-21, emphasis added) While “flexibility” and “efficiency” may be on the forefront of the permittees concerns, this is not what makes a permit modification appropriate for approval. In fact, with this statement, the permittees assist NMED in reasons to deny this PMR.

Once again this PMR is incomplete. While the permittees claim that their intent is two fold, one to assist in adding more flexibility to generating/storage sites within the Department of Energy (DOE) complex, and two, to correct errors/confusion within the WIPP Permit, their explanation is woefully lacking. While the permittees believe that their PMR will reduce confusion, their explanation is actually more obfuscating than not.

In addition to this, the PMR does not clearly explain why this change is needed. Again, while flexibility and efficiency (i.e., cost savings) may be the priority of the permittees, it is not what makes for an approvable permit modification request. Because of this lack of explanation there is clearly a need for more data, explanation and justification before this PMR can be considered complete. NMED must deny this PMR.

This lack of information also contributes to NWNM's concerns over human health and the environment. To allow newly-generated/re-packaged waste to be characterized in the same light as retrievable stored waste goes against the logic of the original WIPP Permit and may affect human health and the environment in an adverse way. To give the permittees the opportunity to reduce their characterization standards for re-packaged waste is unacceptable and dangerous. Again, the lack of reasoning within the PMR speaks volumes of the fact that not even the permittees have looked into this sufficiently and hence all the possible contingencies have not been accounted for. Even if there is a remote chance that this PMR could adversely affect health and the environment, NMED should deny this PMR.

Item 3: Classified Information Record Keeping and Audit Requirements

This PMR should be denied outright because it is incomplete and it is detrimental to human health and the environment. If NMED does not deny this PMR, then NMED should reclassify this PMR as a Class 3, for it certainly does not fall under the purview of a Class 2 PMR.

In several stakeholder meetings, the permittees were unable to define how much waste would be classified and fall under the requirements of this PMR. Without a substantial investigation on how much classified waste is in the DOE complex, there is the opportunity for the permittees to be disingenuous on what waste can be deemed "classified." Even with NMED personnel having clearance to view the information that will be classified, NWNM is well aware that NMED is under staffed and the opportunity for something to slip by is a serious possibility.

This PMR also limits the opportunity for stakeholders to maintain a watchful eye on WIPP. This is unacceptable because, as NMED is well aware of, stakeholders have played a valuable role in making certain that WIPP stays true to its own mission.

Additionally, there is no mention of what would clearly be necessary changes to the Permit in the case of a spill. While this contingency may be unlikely, what is to occur if an accident takes place and there is a spill of the waste being transported? When the cleanup crew is sent to the spill site, will they all have to have Q clearance before they are allowed onto the contaminated site? Again, while this is an unlikely scenario, it clearly begs for need to deny this PMR, as the permittees make no mention of changes in their accident protocol.

The need for this PMR is not made clear. There is no discussion as to the pros and cons of the alternatives and hence no rationale as to why this is the only way to deal with their current need to bury classified waste at WIPP.

This lack of information creates an incomplete document and therefore requires that this PMR must be denied.

Furthermore, without additional explanation NWNM can see a variety of reasons why this PMR adversely affects human health and the environment. Using our hypothetical scenario of an accident, if there is no change as to how WIPP would deal with this situation then we can see how lost time could endanger everything around that spill. There is also cause for concern if this classified approach to waste disposal is abused and waste is inappropriately dumped at WIPP.

National security has never been so blatantly used as a reason for a PMR by the permittees. This PMR must be denied as it currently stands, as the scope of it changes far too many items in the WIPP Permit. Even if NMED were to reclassify this PMR as a Class 3, NMED will need to deny it as it is incomplete and a danger to health and the environment.

Item 4: Addition of HalfPACTs

Once again, this PMR is incomplete, and NMED should deny it. The permittees give no reason to show under what circumstances the HalfPACT will be used. This should be in the PMR as we should know when a TRUPACT-II will be used and when a HalfPACT will be used. In addition to this, the permittees should show documentation of when they have had trouble shipping with the TRUPACT-II. It is inappropriate for the permittees to create a PMR simply to have a wish fulfilled, rather than a need.

The permittees also do not address any plan to deal with the contingency of leaky drums within the HalfPACT. We have recently seen this lack of consideration with respect to the TRUPACT-II, as an INEEL shipment had to be returned to INEEL after contamination was found. The permittees must produce a plan to deal with this potential problem before the HalfPACT is to be used. Again, NWNM believes that this is an incomplete PMR and is a threat to health and the environment and hence NMED must deny this.

Item 5: Use of Radiography for Newly Generated Waste

This PMR item is very similar to item 2 in the fact that it is incomplete and the permittees basis for this PMR is for “flexibility” and “efficiency” rather than quality. Even if efficiency was a reason to allow for a PMR to be approved, which it is not, there are simply no reasons offered by the permittees as to why this is the case. “Generator/storage sites have identified circumstances when post-packaging confirmation of AK using radiography instead of verifying AK at the time of packaging is more efficient.” (A-95)

This is the extent of their reasoning. This is not enough to allow this PMR to be approved. NMED must deny this PMR.

NWNM has always believed that DOE's AK of its waste in the DOE complex is poor. To reduce its procedures for verification of AK, without supporting reasons as to why this is not the case, the permittees open up the opportunity to adversely affect human health and the environment. The permittees also have not fully justified why this PMR needs to be implemented. There is simply no serious explanation as to why this should be approved.

In conclusion, **Nuclear Watch of New Mexico** recommends that Addition of New Mexico Hazardous Waste Number, Characterizing Re-Packaged Homogenous Solids as Retrievably Stored Waste with Regard to Solids Sampling, Classified Information Record Keeping and Audit Requirements, Addition of HalfPACTs and Use of Radiography for Newly Generated Waste should be denied. These PMRs are incomplete, they are a danger to human health and the environment and some constitute a substantial change in the mission of the Waste Isolation Pilot Plant.

Since WIPP has opened, NWNM has consistently stated that the permittees continue to submit incomplete permit modification request and the permittees continue to say that they will correct this problem. However, this series of PMRs again shows that there is no intent by the permittees to change their procedures and they continue to waste the time and money of the New Mexico Environment Department, our organization, other organizations who watch over WIPP, and the taxpayers. In our eyes, this is simply unacceptable. In addition to this, the permittees continue to put the almighty dollar ahead of human health and the environment as opposed to what is best for the safe cleanup of the DOE complex. Again, this is unacceptable. While the permittees may believe that since WIPP is open, it may change its mission on a whim, or waste the time and money of the taxpaying public, but they cannot. NMED must deny these PMRs and show the permittees that their attempts to endanger the public and the environment will not be allowed.

Thank you for your careful consideration of our comments.

Sincerely,

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Regarding: Waste Isolation Pilot Plant Permit Modification Request – Add Waste Containers

Dear Mr. Zappe,

Nuclear Watch of New Mexico (NWNM) requests that the New Mexico Environment Department (NMED) deny the above mentioned permit modification request.

As you know, regulations under the New Mexico Hazardous Waste Act (20 NMAC 4.1.900 incorporating 40 CFR §270.42(b)(7)) provides that NMED may deny any Class 2 permit modification request for the following reasons:

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

NWNM is strongly opposed to this modification as it is a threat to human health and the environment, and it is technically incomplete.

The following reasons will support our request to deny.

The permittees give remarkably little information on why this permit modification request (PMR) is necessary. The permittees are attempting to instigate a massive number of changes to the Waste Isolation Pilot Plant's (WIPP) Permit, but leave many questions unanswered.

With the changes in the use of the 85-gallon overpack, the ten-drum overpack, and the introduction of the 100-gallon drum the permittees leave little room for error. The permittees make no mention as to what their response will be if an overpack is required for these drums. By using these drums as a direct load, there is no contingency in place if a problem is found. Where is the permittees' plan if an overpack is needed for a ten-drum direct load, or for the other drums?

In addition to this, there is no mention of why these additions are necessary. In fact, the permittees even suggest that there are problems with their own PMR by stating that the 85-gallon drum is not authorized as a shipping container in the TRUPACT-II Authorized Methods for Payload Control (TRAMPAC). How can the permittees assume that the TRAMPAC will be revised according to their own requirements? While reasons why these additions need to be made is not necessary in the Permit itself, these reasons certainly should be in the PMR as to allow the public the opportunity to understand the permittees' logic and give the public the ability to assess the PMR appropriately. The permittees do not seem to understand that when they submit incomplete PMRs they are cheating themselves out of the opportunity to have their PMR approved!

Furthermore, it is common sense to assume that many of the characterization, confirmation and verification techniques will become more difficult with the addition of these waste containers. One such problem that seems clear is the use of radiography on the 100-gallon drums. Again the permittees do not deal with this issue in any way.

The permittees do not deal with how these drums will be used if the HalfPACT PMR they have submitted is approved. Are the permittees planning on submitting another PMR if the HalfPACT PMR is approved? Please note: As stated in other comments, NWNM is strongly opposed to the HalfPACT PMR.

By not addressing the concerns of radiography and how overpacking would be dealt with, the permittees have not addressed the possible adverse affect that this PMR would have on human health and the environment. In fact, there is simply no mention of the environment and health in the PMR except to state that there is no impact. This is unacceptable. Because of this lack of documentation, NMED must deny this PMR.

Finally, there are a number of reasons why this PMR should be denied outright, but if NMED decides not to do so, they should reclassify this PMR as a Class 3. First, this PMR deals with far too many aspects of the WIPP Permit to not fall under the purview of a Class 3 PMR. Second, there are a number of issues at stake with respect to the Waste Handling Building (WHB). The permittees claim that this PMR should be considered a Class 2 PMR as it falls under 40 CFR 240.42 Appendix 1 F.2.a "Modification of a container unit without increasing the capacity of the unit." However, it appears that this is contradicting 40 CFR 240.42 Appendix 1 F.1.a "Resulting in greater than 25% increase in the facility's container storage capacity..." The permittees have not explained how the addition of these containers will be accounted for in the WHB and clearly there will be the possibility of exceeding the WHB's capacity. If this is the case, and there is currently no way to tell as the permittees do not address this, then this PMR would have to be a Class 3 as any change to the WIPP Permit that falls under 40 CFR 240.42 Appendix 1 F.1.a is required to be a Class 3.

In conclusion, **Nuclear Watch of New Mexico** recommends that the New Mexico Environment Department deny the WIPP permit modification request to Add Waste Containers. This PMR is technically incomplete, is a threat to human health and the environment, and is incorrectly classified.

Once again, the permittees are attempting to change the WIPP Permit without providing substantial reasoning as to why. Time and time again the permittees have stated that they will work to create useable permit modification requests. This is yet another example of their continued submittal of incomplete, improperly classified and unusable PMRs! NMED has more than enough reason to deny this PMR and should also remind the permittees of their past promises not to submit something that barely passes for a permit modification request.

Thank you for your careful consideration of our comments.

Sincerely,

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Regarding: Update of the Waste Analysis Plan and Associated Documents with Emphasis on Data Management Requirements

Dear Mr. Zappe,

Nuclear Watch of New Mexico (NWNM) was pleased when we found out that the New Mexico Environment Department (NMED) had decided to change the classification of this permit modification request (PMR) from the clearly incorrect Class 2 to a Class 3. However, NWNM believes, as it did while this PMR was still a Class 2, that the Data Management PMR should be denied.

As you know, the New Mexico Hazardous Waste Act (20 NMAC 4.1.900, incorporating 40 CFR 270.42(c)(6)), provides that NMED may deny a Class 3 modification.

NWNM is strongly opposed to this modification as it is a threat to human health and the environment, and it is technically incomplete.

The following reasons will support our request to deny.

There are an extraordinary number of issues at stake in this PMR, however the permittees have taken the approach that less is more. None of the items within this PMR are dealt with sufficiently to convince us that this is a safe modification. We will go through these items individually.

1. Add the option for electronic data review, validation, and verification

Efficiency, once again, is the permittees key reason for why they are looking to make this change. As NWNM has stated a number of times, while the permittees may consider efficiency to be enough for a PMR, we know that it is not. Furthermore, even if efficiency were a defining factor, the permittees do not address how this PMR creates greater efficiency.

NWNM is very concerned over the increased responsibilities of the Independent Technical Reviewer. By removing the Technical Supervisor, Quality Assurance (QA) Officer, Site Project QA Officer and Site Project Manager (SPM) in their duties to review, verify and validate, the permittees are putting all their eggs in one basket. As the permit currently stands there are a series of "double-checks" that potentially prevent errors. To rely almost solely on their electronic method the permittees are playing a dangerous game.

Also, there is no mention on how the permittees plan to prevent electronic attacks on their new electronic method. "Hacking" continues to become a greater threat throughout the DOE complex and a recent DOE IG report stated that while DOE has made some strides toward better "cyber-security" they are still extremely poor. If a person were able to break into the WIPP system they could possibly bring shipments to a complete halt as well as endanger human health and the environment. In fact, in a conversation with a coder that was involved with the design of this system, he mentioned that there had been one person who had been able to hack into the system while they were testing its security. This is unacceptable, and the fact that the PMR does not address this issue in any way suggests that the permittees have not considered this in the least.

This item does not deal with health and the environment in any way. With the lack of double-checks and the possibility of hacking it could create a very dangerous impact on human health and the environment. None of this is addressed in this PMR.

2. Revise reviewer responsibilities

This item further emphasizes our concerns of overburdening the Independent Technical Reviewer. By increasing the responsibilities of the Independent Technical Reviewer through the additions from the electronic data review and now the responsibilities of the Site Project QA Officer, the Independent Technical Reviewer's responsibilities are far too great. In fact, NWNM is concerned that with these new responsibilities the "independence" of the Independent Technical Reviewer will be at stake. This is clearly unacceptable.

By overburdening the Independent Technical Reviewer there is an increased opportunity of endangering human health and the environment, and hence is inappropriate in a PMR.

3. Eliminate the Waste Stream Characterization Package

This is yet another example of the fact that efficiency, while the permittees believe is a legitimate rationale for a PMR, is not good enough as an explanation. There is simply no good reason why the permittees need to eliminate the waste stream characterization package. Without this explanation this is incomplete and should not be approved.

4. Eliminate quarterly repeat of data review, validation, and verification

The argument against this item is very similar to item 3. There is little to no justification as to why the permittees require this change. "Wants" do not justify a change in the WIPP Permit, and the permittees have given no reason as to why they need this change. It is incomplete because of this reason and therefore should be denied.

5. Clarify data management inconsistencies

This item opens the opportunity for errors, much like item 1 does. By removing the currently required double/triple/quadruple-checks of data management there is room for error. In fact, NWNM has to question why the permittees wish to change this as the text in their own permit modification request shows that they are finding inconsistencies in their data management through this method! Why would the permittees remove

something that would allow them to manage quality in a greater capacity? Considering that text does not sufficiently explain the permittees justification it is incomplete. In addition to this, this change would allow more room for error and hence be a danger to human health and the environment. This must not be approved.

6. Reorganize data management portions of Attachment B and Attachment B3

The permittees claim that the need for this change is because the WIPP Permit is confusing to them. While we have seen that the permittees find their permit difficult to abide by, and hence possibly confusing to them, their claim that portions of the permit are redundant is not enough of a reason to change the permit in such a massive way. This item is incomplete, as they have no real explanation as to why these changes need to be made. Again, it is want versus need. The way the permit currently stands, it forces WIPP to check their data. The permittees may not want to check their data, but they need to. These changes in this item must not be approved.

7. Add the option for use of barcodes in lieu of sample tags or labels

It goes beyond comprehension why the permittees would rather have stripes as opposed to actual text to show what drums contain. How is it that a worker would know immediately what a drum contains if all they have is a barcode? While the idea of barcodes is potentially a good change, it is not a good change to use barcodes in lieu of labels or sample tags. If sample tags or labels were to remain, then the addition of the barcodes would be acceptable. However, all workers should also be required to double-check the barcode with the sample tag or the label. This item is also incomplete as there is no information as to what process would be used to prevent errors in the barcodes, nor how the workers would identify what the barcodes mean. This item also endangers human health and the environment, for if a worker is unable to identify what is contained in a drum then there is a danger to their health and to the environment. This item must be denied.

8. Add the option for use of electronic rather than hard copies of records

The permittees have given poor reasons as to why this is required. To hold an archive of information on hard copy is more than appropriate. The permittees claim that through the exclusive use of electronic records they will not be required to manage as much paper, we feel that this is not a reason to remove hard copy. Falling back on the argument mentioned under item 1, NWNM is concerned about the security of DOE's computers and the possibility of having their electronic records removed intentionally or accidentally is something that can be avoided by continuing to maintain hard copy. This is again an incomplete and potentially harmful item.

9. Associated changes, such as referencing information rather than repeating it

This item concerns us greatly. The permittees are notorious for their inability to proofread and edit their own documents. In fact the permittees prove our very point in one of the PMRs that they have submitted. In the first PMR, the permittees' Item 5 is entitled: "Use of Radiography *fro* Newly Generated Waste." We believe that the permittees actually meant to write "for" as opposed to the slang term used for a circa 1970's hairstyle called the Afro. While this typo is amusing, there are other cases in

which the permittees have made typos and suggested changes to the permit that are potentially dangerous and simply wrong. The permittees' suggested changes should not be approved as their past has shown that they are incapable of performing the task that they are required to. Additionally, this item is not sufficiently justified in the PMR to explain why it is required. No reasonable explanation means that it is incomplete.

In conclusion, **Nuclear Watch of New Mexico** requests that the New Mexico Environment Department deny this permit modification request outright. As these items are not individual modification unto themselves NMED is not required to deny each individually. However, if NMED decides to approve this PMR then we request that public hearings take place.

This PMR is quite possibly the worst of the bunch that the permittees have submitted for this review period. The danger to health and the environment and the lack of supporting data/justification throughout this document is simply atrocious. In many ways we felt as though we had become a broken record by stating time and time again that one item after another was incomplete. The permittees have stated in the past that they will work to make the permit modification process better, but they have actually done the exact opposite. Never before have the permittees submitted such an extensive and poorly written number of permit modifications and NWNM can only speculate as to why. These modification requests constitute a serious attempt by the permittees to change the mission of WIPP and put the dollar ahead of human health and the environment. Furthermore, with WIPP becoming a contender in the review for the next pit production facility, we can only assume that they are attempting to preemptively ready the site for this extraordinarily dangerous addition. WIPP is endangering New Mexico enough as it is without doing potentially more harm with these modifications. Please deny this modification.

Thank you for your careful consideration of these comments.

Sincerely,

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