



Attorney General of New Mexico



PATRICIA A. MADRID
Attorney General

STUART M. BLUESTONE
Deputy Attorney General

14 July 2003

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



Re: WIPP Hazardous Waste Act permit; proposed modification concerning construction and use of hazardous waste disposal units

Dear Mr. Zappe:

This letter submits comments by the Water, Environment, and Utilities Division of the New Mexico Attorney General's Office concerning a proposed modification to the Hazardous Waste Act permit for the Waste Isolation Pilot Plant (WIPP). The proposed modification concerns the construction and use of hazardous waste disposal units (HWDUs). The proposed modification is clearly significant, affects numerous parts of the permit, and has appropriately been designated for review pursuant to Class 3 procedures.

Our comments on the current proposal are as follows:

1. The proposal contains attachments (Att. C through E), which set forth planned shipping, mining and emplacement schedules for WIPP. The proposal states that these schedules are not to be made a part of the permit. (A-9, A-14, A-15). Such materials must be part of the administrative record of the permit



proceeding, so that they may be referred to in the future in event of changes in such schedules.

2. A proposal to construct underground disposal units requires a showing that the units can be constructed with structural integrity within the time period requested. Moreover, it requires a showing that the disposal units can stand ready for use, even if the shipping schedule is to some extent delayed. Such showings are related to the determinations required to be made under section 264.601. These showings are not contained in the materials presented.
3. The rate at which HWDUs are filled depends in part on the extent to which remote handled (RH) waste is emplaced in those units. No approval has yet been given for the disposal of RH waste at WIPP. There must be a showing of the possible impact upon the construction and use of HWDUs of a delay in authorization to dispose of RH waste. For example, if the pending RH modification proposal is delayed or denied, what will be the impact upon Permittees' schedule for construction and use of various HWDUs?
4. Permittees should also demonstrate how possible changes in the types of waste containers (e.g., TRUPACT-III) authorized for shipment or disposal may affect the schedule for use of HWDUs. Further, if requests to allow various waste containers are delayed or denied, what would be the effect?
5. Permittees should also state whether any response to problems concerning the nonrandom emplacement of waste might affect the schedule for shipping and emplacing waste and the usage of HWDUs.

6. Permittees should state the extent to which attainment of the shipping rates shown on Attachments C through E depends upon approval of a permit modification authorizing a central characterization facility to operate at WIPP.
7. Permittees should state the extent to which the attainment of the shipping rates shown on Attachments C through E depends upon authorization to ship waste to WIPP by rail.
8. Permittees should state the extent to which the attainment of the shipping rates shown on Attachments C through E depends upon authorization to use proposed characterization methods for oversized containers and/or large boxes (noted at A-11).
9. Permittees should identify the principal additional factors affecting the shipping schedules contained in Attachments C through E and should explain the impact of changes in such factors. For example, should audit approval for shipments from the Idaho National Engineering and Environmental Laboratory Advanced Mixed Waste Treatment Facility be delayed, what would be the impact on the shipping schedule?
10. NMED is well aware, from the experience with Panel 1, that to construct HWDUs in advance of use and to allow such units to remain open and unused for an extended period creates the risk of deterioration of the disposal rooms and ultimately may render them partially or wholly unusable. (See A-8 at note 21). The proposed modification should contain safeguards to avoid such result. Therefore, NMED should require that Permittees advise NMED of any significant changes in shipping rates of CH or RH waste that may affect the

rate of use of HWDUs. Further, Permittees should be required to delay construction of HWDUs if shipments are projected to be materially delayed in comparison to the rate shown in Attachments C through E.

11. The table showing anticipated closure dates (Table I-1, at A-20) and associated text should state that Permittees shall advise NMED in the event that projected closure times differ materially from those shown in Table I-1 and that Permittees shall delay excavation of any HWDUs that would otherwise remain excavated but unused for a significant time, such as one year.

We look forward to participating in further proceedings concerning this proposed modification.

Very truly yours,

A handwritten signature in blue ink, reading "Lindsay A. Lovejoy, Jr." in a cursive script.

LINDSAY A. LOVEJOY, JR.
Assistant Attorney General

LALJr:laljr