



ENVIRONMENTAL EVALUATION GROUP

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

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July 21, 2003

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

Re: May 21, 2003 Permit Modification Request for the Waste Isolation Pilot Plant
Hazardous Waste Facility Permit, Number NM4890139088-TSDF.

Dear Mr. Zappe:

The U.S. Department of Energy, Carlsbad Field Office and Washington TRU Solutions, LLC (the Permittees) submitted the proposed Class 2 Permit Modification Request (PMR) to the New Mexico Environment Department (NMED) on May 21, 2003. This request seeks removal of the restriction currently in the HWFP which prevents WIPP from disposing of PCB waste in excess of 50 ppm.

The enclosed comments on this PMR reflect the independent review by the Environmental Evaluation Group (EEG) staff. The EEG considered the PMR submitted by the Permittees and responses by representatives of the Permittees at several public meetings where EEG staff and members of the public asked questions about the PMR.

If you have any questions about the enclosed EEG comments, please do not hesitate to contact me. Thank you.

Sincerely,

Matthew K. Silva
Director

MKS:LA:js:pf

cc: Ines Triay, DOE/CBFO
Steven Warren, WTS

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May 21, 2003 Modification Request for the Waste Isolation Pilot Plant Hazardous Waste Facility Permit, Number NM 48890139088 - TSDF

Polychlorinated biphenyls (PCBs) are currently limited to concentrations of less than 50 ppm in the WIPP Hazardous Waste Facility Permit (HWFP) in part because at the time the HWFP was promulgated there was no authorization under the Toxic Substance Controls Act (TSCA) to store dispose of PCB wastes of greater concentration at the WIPP. The WIPP permittees obtained TSCA storage and disposal authorization on May 15, 2003, in the form of the EPA Region 6 "Conditions for Approval for Disposal of PCB/TR and PCB/TRU Mixed Waste at the U.S. Department of Energy (DOE) Waste Isolation Pilot Plant (WIPP) Carlsbad, New Mexico".

Prior to EPA approval, EEG sent comments to the EPA on January 23, 2003. In a May 15, 2003 letter from the EPA to the EEG, the EPA discussed their responses to EEG's comments. EEG is satisfied with these responses. This permit modification request (PMR) was submitted to remove the prohibition against PCB-contaminated wastes from the HWFP. EEG comments on this PMR are as follows:

Comment 1.

PCB wastes are still hazardous wastes even with a TSCA authorization for disposal, and this modification request simply eliminates all references to PCBs from the HWFP. There is no evidence in the PMR that the permittees have evaluated state of New Mexico regulations for considerations that may still apply. The EEG notes that PCBs are mentioned in the NM water quality regulations at least once (at 20.6.2 NMAC) and there may be other such references. These may indicate a need to continue to address PCBs in the HWFP. Prior to approving this PMR, the NMED may want to consider whether the state of New Mexico still has a responsibility to establish PCB controls independent of the TSCA authorization for wastes that are imported into the state.

Comment 2.

As part of the rationale for why the modification is needed, the PMR states that PCB analysis requirements are currently in the HWFP (p. 4) :

The associated analytical requirements for PCBs were included in the HWFP to demonstrate compliance with the prohibition on waste containing PCBs equal to or greater than 50 ppm. This assertion is supported by the statement in the HWFP Application, Section C-1b indicating that waste streams known to contain PCBs "are required to be screened to assure PCB levels are below 50 ppm." In addition, footnotes to analytical tables in the HWFP indicate that PCB analysis only applies to those wastes known to contain PCBs. TSCA regulations indicate requirements for analysis for PCBs which the generator sites shall use for determining PCB concentrations.

It seems clear from these statements that the permittees wish to replace the current HWFP PCB analysis requirements with "TSCA regulations" for analysis (presumably those in 40 CFR 761). However, the PMR does not indicate any method for reporting these analysis results to the WIPP, where these PCB-contaminated wastes will be stored and disposed. This information would obviously be useful during amelioration of any mishaps that might occur to these containers, or to a group of containers.

The EEG suggests that a database on the PCB waste containers be kept at the WIPP facility which indicates the locations of these containers and the PCB concentrations within them be required to be maintained at the WIPP. Since the principal database for waste containers is the WIPP Waste Information System (WWIS) this might be the appropriate database to keep such information—the EEG notes that Section III.D.4 of the EPA Region 6 "Conditions for Approval for Disposal of PCB/TR and PCB/TRU Mixed Waste at the U.S. Department of Energy (DOE) Waste Isolation Pilot Plant (WIPP) Carlsbad, New Mexico" already requires the WWIS to be altered to show information on PCB wastes. NMED may wish to obtain a plan from the permittees for including generator site PCB container location, and PCB concentrations in those containers, in the WWIS, prior to approving of this PMR.

Comment 3.

Proposed modification a.2 alters Module II.C.3.f. as follows (p. B-2; note that similar language, in a similar position, is used in modification b.1 on p. B-3):

~~PCB waste concentrations - wastes with polychlorinated biphenyls (PCBs) concentrations equal to or greater than 50 parts per million not authorized under an EPA PCB waste disposal authorization~~ are not acceptable at WIPP. "

This is in the TSDF WAC, which specifies those wastes that are not to be accepted at the WIPP facility. The EEG believes that, rather than simply referencing "an EPA PCB disposal authorization", the language should be more specific. If the EPA-ORIA, which regulates radionuclide disposal at the WIPP, should write a letter that includes a sentence such as "We have no objection to the disposal of PCB wastes at the WIPP" would that constitute an "EPA PCB waste disposal authorization"?

The current EPA Region 6 "Conditions for Approval for Disposal of PCB/TR and PCB/TRU Mixed Waste at the U.S. Department of Energy (DOE) Waste Isolation Pilot Plant (WIPP) Carlsbad, New Mexico" Section II.A.1 states that "PCB contaminated transuranic" wastes are those allowed to be stored and disposed under the authorization. 40 CFR 761.3 defines "PCB-Contaminated" as follows:

PCB-Contaminated means a non-liquid material containing PCBs at concentrations >50 ppm but <500 ppm...or where liquid material is unavailable for analysis, a non-porous surface having a surface

concentration $>10 \mu\text{g}/100 \text{ cm}^2$ but $<100 \mu\text{g}/100 \text{ cm}^2$, measured by a standard wipe test as defined in § 761.123.

Thus it appears that the original prohibition could most simply be amended by stating:

PCB waste - wastes with polychlorinated biphenyls (PCBs) at concentrations equal to or greater than 500 parts per million, or non-porous surfaces measured using the standard wipe test defined in 40 CFR 761.123 at equal to or greater than $100 \mu\text{g}/100 \text{ cm}^2$, are not acceptable at the WIPP.

Alternately, the prohibition could reference the exact "EPA PCB waste disposal authorization" that applies to the WIPP.

This same comment would also apply to proposed change b.1, which alters HWFP Section B-1c in a similar manner (p. B-3 of the PMR). Similar language also likely appears in the Section B-6 (QA) checklists.