



# Attorney General of New Mexico



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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 PCB prohibition

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 deletion of the prohibition on polychlorinated biphenyls (PCBs) above a stated concentration. Permittees propose that the modification be considered under Class 2 procedures, citing 20.4.1.900 NMAC, incorporating 40 CFR 270.42, Appendix I, Item B.1.d.

Our comments are as follows: The proposed modification would change the existing prohibition, which bars waste with PCB concentrations in excess of 50 parts per million, to bar waste "not authorized under an EPA PCB waste disposal authorization." (e.g., B-2, B-3, B-14). An attachment to the modification is the May 15, 2003 letter from

030762



EPA Region VI, authorizing the receipt of certain PCB-contaminated waste. EPA's permission is subject to enumerated "Conditions of Approval."

We submit that any amendment of the existing Hazardous Waste Act permit should refer to specific and known conditions (e.g., the May 15, 2003, EPA letter) and should not incorporate conditions that may be contained in a future EPA authorization. For example, EPA's authorization letter contains limitations on the types of PCB Items (40 CFR sec. 761.3) allowed to be disposed. Further, there are restrictions on the disposal units allowed to receive PCBs, the change in capacity of disposal units, authorized storage areas, change in capacity of storage areas, addition of new storage areas, and the storage and packaging of PCB-contaminated waste. In addition, there are conditions upon the disposal of PCB waste, closure of disposal units, personnel safety, operations, transportation, monitoring, recordkeeping, and other matters. EPA's authorization also has a five-year limit.

In the future EPA may amend these requirements upon Permittees' request. Action taken by EPA on such an application should not automatically modify the Hazardous Waste Act permit issued by the State Environment Department. Indeed, under the regulations applicable to permit modifications, such action by EPA could not effectively modify the State permit. Thus, the modification at present should be limited to permission to receive PCB-contaminated waste allowed by the May 15, 2003 EPA authority.

We have consulted with counsel for Permittees in advance of making these comments, and Permittees have stated that (1) in any case, EPA must be expected to insist upon compliance with the HWA Permit, and (2) some of the conditions of EPA's

approval as to PCB-contaminated waste do not relate to management of hazardous waste, so that it would be appropriate to simply incorporate by reference any future EPA authorization. However, it is not certain what conditions EPA may in the future apply to waste disposal. Moreover, if Permittees believe that some of the conditions of EPA's current authorization do not apply to hazardous waste management, Permittees may simply list those they deem properly so applicable and ask that such conditions be incorporated into the HWA permit as to PCB-contaminated waste. NMED should not, instead, grant to Permittees and EPA a free hand in issuing future PCB authorizations which would then become incorporated into the State's permit.

Very truly yours,

A handwritten signature in blue ink, reading "Lindsay A. Lovejoy, Jr." with a period at the end. The signature is written in a cursive style.

LINDSAY A. LOVEJOY, JR.  
Assistant Attorney General

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