

**Subject:** [Fwd: History of D033 in WIPP permit]  
**From:** Steve Zappe <Steve\_Zappe@nmenv.state.nm.us>  
**Date:** Tue, 09 Dec 2003 14:56:38 -0700  
**To:** Jody Plum <Jody.Plum@wipp.ws>, Bob Kehrman  
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Jody, Bob -

Attached is a slightly sanitized version of an internal memo I sent out two weeks ago when trying to reconstruct the basis for our September 11 approval of Class 2 modifications. I think this demonstrates that I was mistaken in approving the addition of D033 if we had public comments for which we had no satisfactory response.

I have attached for your consideration the comments and our responses as they were drafted prior to our approval on September 11. I chose to ignore them then, again under the mistaken impression that we had already approved D033 back in 2001. If you are unable to develop suitable responses from the existing administrative record as of July 15, 2003 that NMED can accept, we'll have to discuss where we proceed from here. I imagine a scenario where NMED would issue a clarification letter stating that D033 was not included in the approval of September 11. I note that we have not received a WSPF for any waste that includes D033, thus there is no waste currently emplaced with that code.

Can you corroborate the information below? You both seemed to believe (when I spoke with you last week at the Santa Fe public meeting) that the final determination on the 2001 modification had specifically included D033.

Please look at this matter ASAP. As you could see from the public meeting, NMED is under the gun to issue the required response to comments. Again, unless you can provide satisfactory responses to the outstanding concerns that are based upon the existing record, we have no legal basis for having approved D033.  
Thanks!

Steve

----- Original Message -----

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CBFO submitted a Class 2 PMR dated March 6, 2001 with a transmittal letter dated March 7, 2001. We received it March 8, 2001. Item 4 of that PMR (page A-10) proposed addition of new hazardous waste numbers based upon requests from INEEL, LANL, and SRS. Included on the list was D033, identified with a single container at LANL.

CBFO submitted comments on the PMR dated May 14, 2001. They stated on page 6:

"The Permittees have further assessed the need to add hexachlorobutadiene (D033) to the permit. Upon discussion with the generator/storage sites it has been determined that this waste will not qualify for disposal at the WIPP facility. The Permittees therefore have changed the language in the permit modification request to remove hexachlorobutadiene."

NMED issued their final determination letter on July 6, 2001. Regarding Item 4, the attachment stated:

"For Item 4, NMED has incorporated all modifications to the Permit language as requested, including the comments received on May 14, 2001, except for the following changes:" [not listed here]

Thus, it appears we intentionally exclude D033 from the approval.

Fast forward to May 2003. CBFO submitted a Class 2 PMR dated May 12, 2003 with a transmittal letter dated May 13, 2003. We received it May 14, 2003. Item 5 of that PMR (page A-10) proposed addition of new hazardous waste numbers based upon requests from various generators. Included on the list was D033, identified with a variety of wastes from RFETS.

... I've been looking for and can't seem to find either an e-mail or a fax from Dave Streng of WTS [received either during or after the close of the public comment period]. In that memo, he states that from his understanding of the record that we had already approved D033, and that its inclusion in the May 12 PMR was an oversight by CBFO. I think he rationalized that it was a case of the left hand (the guys who prepared the PMR) didn't know what the right hand (the guys who reviewed our approvals) had done.

Anyway, that's why our September 11, 2003 final determination approved D033 - I mistakenly assumed Dave was right without checking the facts, and approved it as submitted. It was only after reconstructing the chronology of the two modifications that I realized I was wrong.