



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 class 2 modification concerning LANL sealed source waste streams headspace gas sampling and analysis requirements, filed November 14, 2003

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), submitted on November 14, 2003. The proposed class 2 modification concerns LANL sealed source waste streams headspace gas sampling and analysis requirements.

The Environment Department (NMED) denied a previous proposal on the same subject on September 11, 2003. NMED then stated, inter alia, that the modification would add unnecessary complexity to the permit and pointed out specifically that "reliance on the inclusion of regulatory requirements from several other Agencies into the permit, through our experience, can complicate the compliance process." (NMED letter, Sept. 11, 2003, at Att. 2 p. 4).

In this situation, our comments on the renewed proposal are as follow

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1. The current proposal uses the same approach disapproved by NMED previously, viz: incorporating by reference the definitions of sealed sources contained in 10 CFR sec. 30.4, 10 CFR sec. 70.4, 49 CFR sec. 173.403, and 10 CFR sec. 34.27 (See amended p. B-4). The regulations referred to are complex and themselves refer to other regulations. The statement previously made by NMED that simply to incorporate by reference regulations of other agencies could make it difficult to determine compliance applies to this approach. It would be far better to state in the permit exactly what requirements apply. Such approach would simplify determinations of compliance and would avoid issues such as the question of the applicable regulation in case one of the cited rules is amended in the future.
2. There appears to be an error in the last bullet in proposed sec. B-3a(1)(iii); the word “change” or the equivalent is omitted after “significant.”
3. The proposal requests that acceptable knowledge be used to establish the integrity of each sealed source. This Office previously stated: “The proposal calls for contamination survey results that validate the integrity of each sealed source. (B-22). The requirement should be stated quantitatively, so that it is clear how “integrity” is determined. It is appropriate to state specifically that visual examination (VE) is accompanied by a swipe test to determine radioactivity present on the item and that a stated level of radioactivity is deemed to indicate leakage. Further, the permit should state how sealed sources that do not meet the integrity test are managed. At a meeting with DOE representatives we were shown a miniature overpack device that serves

this purpose. The permit should direct use of such device.” We continue to believe that container integrity must be established by testing in the characterization process rather than based on documents. The Permittees’ list of available acceptable knowledge documentation does not include integrity test data (Appx. C). Further, integrity testing results should be current, not historical.

4. It should also be noted that the waste stream to which this modification relates was not identified as part of the waste inventory at the time the permit was issued. NMED currently has pending an agency-initiated modification to limit waste eligible for disposal to such identified inventory. To approve the present modification with respect to sealed source waste streams would conflict with the current NMED proposal. We suggest that the sealed source proposal be denied for reasons stated above and that the Permittees may submit a renewed proposal with respect to sealed sources after NMED acts upon the agency-initiated modification and in light of the nature of NMED’s action.

We request that these comments be considered by NMED in reviewing and acting upon the modification as to characterization of sealed sources at LANL.

Very truly yours,



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Assistant Attorney General

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