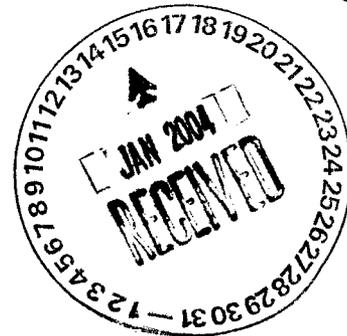


January 15/19, 2004

2701 Eunice Street
Carlsbad, NM 88220

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



RECEIVED

Reference: November 14, 2003 WIPP HWFP Modification for LANL Sealed Source Headspace Gas Elimination

Dear Mr. Zappe:

These are comments on the WIPP Hazardous Waste Facility Permit (HWFP) modification submitted by the Department of Energy (DOE) concerning elimination of the headspace gas sampling and analysis requirements for Los Alamos National Laboratories (LANL).

In this modification request the DOE presents a good case for the reduction of headspace gas sampling requirements, in that reliable data showing that the LANL sealed sources planned for shipment to the WIPP do not contain hazardous wastes is very likely to be available. However, the request may need to undergo additional modification to be acceptable at the WIPP. Several instances why I believe this to be necessary are described in the remainder of this missive.

The definition of sealed sources, and what a sealed source waste stream will consist of, does not appear to be sufficiently clear. The request references two sections of the federal code as containing definitions to be used (10 CFR 30 and 10 CFR 70), but these definitions are for the purposes of licensing the sources, not disposing of them. Consequently, the definitions do not provide sufficient detail to distinguish sealed sources that are to be shipped to the WIPP without headspace gas sampling from other wastes that do require the sampling.

A sufficient correction might be to amend the text to be added to the HWFP to indicate that sealed sources are those that have been licensed under the provisions of these two sections of the federal code. The sealed source definition in 10 CFR 835, Radioactive Waste Management, also could be used, because it includes a clause that indicates that the material has to have been used for the radiation emitted from it in order to be considered a sealed source. This would appear to sufficiently distinguish the proposed LANL sealed source wastes from other WIPP wastes.

The reason the definition of sealed sources should be made clear in the HWFP is because of the DOE's past history of changing definitions left under their control. An example is the definition of what transuranic waste consists of, which depended in part on a DOE Order. The DOE changed the wording in the Order so that additional wastes not originally acceptable at the WIPP could be shipped. For this same reason, it may be better to include whatever definition of sealed source that is used directly in the HWFP, rather than using a reference to the federal code.

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A second issue is that this request includes a process to provide headspace gas sampling data for packaging, rather than for the waste. The LANL should not use packaging materials that are hazardous wastes. Any sampling should be of the waste, not of the packaging. The NMED's rejection letter for the May 2003 modification request on this same topic suggested statistical sampling of waste containers should be a part of future modification requests, even though the identical packaging sampling process was in that earlier request also. The NMED may want to make any future suggestions more specific, as the DOE may have misinterpreted the intent of the suggestion.

At the Carlsbad public meeting on the May 2003 initial modification request for sealed sources, I asked if the sources to be shipped to WIPP would be sealed sources, specifically referring to the TDOP bundling practice for waste shipped from the SRS. The principal CBFO representative at the meeting stated that he had been working on sealed sources for several years, and he assured me that these sources would be transuranic waste. In this current modification request, the data for the one drum of sealed sources for which acceptable knowledge was provided (in one of the appendices). The drum contains two sources; the data for the first of these shows that it is an approximately 9.5 nCi Pu-239 source that weighs 16 grams. This is more than two orders of magnitude below the definition of transuranic waste (100 nCi/g). While the drum itself is transuranic waste according to the DOE's latest interpretation of the 100 nCi/g limit, the source is obviously not. There also does not appear to be any method or criteria in the draft HWFP text provided in this request which would prevent other sealed sources in the LANL sealed source program, including those which do not contain transuranic components, from being bundled into pipe-overpack containers with high-Curie transuranic sealed sources. The NMED should consider whether these non-TRU sealed sources can be received at the WIPP under the HWFP.

The DOE was instructed by Congress many years ago to establish a disposal facility for greater-than-Class C low-level wastes, within which classification the LANL sealed sources apparently falls. The WIPP may be an acceptable repository for part or all of these wastes—but the initial allowances shouldn't be allowed through a back-door process such as this.

Sincerely,

Ben Alvin Walker