

SOUTHWEST RESEARCH AND INFORMATION CENTER

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March 12, 2004

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



RE: Three WIPP Permit Modification requests submitted on January 8, 2004

Dear Steve,

Southwest Research and Information Center (SRIC) requests that NMED deny all of the three requested permit modifications submitted on January 8, 2004, because they are all substantially incomplete, the activities proposed do not protect human health and the environment, and several aspects of the requests are not consistent with the regulations.

Regulations under the New Mexico Hazardous Waste Act (20 NMAC 4.1.900, incorporating 40 CFR 270.42(b) and (c)) provide that NMED may deny Class 2 or 3 modifications. SRIC requests that NMED deny each of the requested modifications.

Pursuant to 20.NMAC 4.1.900 (incorporating 40 CFR 270.42(b)(7)), NMED may deny the class 2 modification requests. SRIC believes that denial is required because the requests for two class 2 modifications are deficient under each of the three criteria -- the requests are not complete, they do not meet the requirements of the Resource Conservation and Recovery Act (RCRA) and the Hazardous Waste Act (HWA), and they fail to protect human health and the environment.

The class 3 modification request, misnamed as "Container Management Improvements," should also be denied, as provided by 40 CFR 270.42(c)(6). That request is grossly incomplete, would substantially increase the risks to human health and the environment, and does not comply with RCRA and the HWA,

Upgrade Waste Conveyance Loading Car

This permit modification request seeks to allow an additional piece of equipment to move pallets in the Waste Handling Building. While SRIC does not have general objections to the permittees adding such a new piece of equipment, we do have a specific objection to the inaccuracy and incompleteness of the request. As SRIC as pointed out in its comments on several previous modification requests, the permittees should not be allowed to submit incomplete, poorly prepared requests, which waste time and resources of NMED and the public..

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On pages 1 and 2 of the request, an Attachment D is mentioned. However, in the version of the request on the WIPP website, there is no Attachment D included. Such an attachment is needed to provide a more detailed description of the vehicles. SRIC believes that another example of incompleteness with the request is the lack of specificity about what vehicle(s) will be used. Thus, for example, SRIC advocates that the permit include figure(s) of the vehicle(s) that will be used. Rather than eliminating Figure M1-11, as the request provides, that figure should be maintained and additional figure(s) of the new facility transfer vehicle(s) should be added.

Even if the original modification request given to NMED has an Attachment D, it is inappropriate for the permittees to not make the entire request available on the WIPP website. The website also does not indicate that the request is incomplete. NMED should require that the permittees make the complete modification request available on their website.

Another example of the permittees' inaccurate permit modification request is in the public notice fact sheet (Attachment 1). That notice states that the request would:

“• Elevate facility pallets a minimum of 9.5 inches above the floor.”

But the request, in fact, reduces the elevation from 9.5 inches to “at least 6 inches.” Attachment F-1, Containment; Attachment F-1 CH Bay Operations; Attachment M1-1c(1). NMED must not allow the permittees to distribute inaccurate public notices. The advertising notice (Attachment 2) states that the modification “will not change the WIPP waste handling process.” SRIC believes that the elevation change is a change in waste handling processes, so the notice statement is inaccurate. In addition, such inaccurate notices are a violation of 40 CFR 270.42(b)(2).

Because the modification request is incomplete and inaccurate, it should be denied. That lack of complete information further means that the request does not demonstrate that human health and the environment will be protected.

Addition of Drum Age Criteria (DAC) for New Containers

On page 2, the permittees state that the request “is a resubmittal of the May 13, 2003 PMR.” In its July 14, 2003, comments on that request, SRIC pointed out that the request is not properly a class 2 request, and instead must be submitted as a class 3 modification. While the resubmittal states that it responds to “applicable stakeholder...comments,” the request has again been submitted a class 2 modification request.

SRIC reiterates its strong objections to the request as a class 2 modification. The DAC for 55-gallon drums and standard waste boxes (SWBs) required the public comment and hearing procedures of a class 3 modification, even though the permittees maintained that it was a class 2 request. The complexity of this request and the need for the detailed considerations of class 3 procedures must also be used for this DAC modification request. Indeed, the fact that the previous class 2 submittal was denied by NMED on September 11, 2003, is yet further evidence of the complexity of the request and the need for it to be considered as a class 3 modification.

Moreover, SRIC again points out that even with all of the experience with the DAC for 55-gallon drums and SWBs, including multiple submissions of the request, there were still errors that were

identified as a result of the public hearing, which resulted in changes to the modification request. See the Secretary's Final Order of December 31, 2002, No. HWB 02-01(M).

In addition, SRIC would strongly object to any procedure that allowed multiple piecemeal class 2 modifications for the same or similar matters that are subject to class 3 procedures. For example, approving TDOPs, 85-gallon and 100-gallon containers and the DACs for them could have been done in one class 3 modification request, rather than separate class 2 requests. The permittees have provided no basis in the regulations for such a piecemeal procedure, and NMED should not allow such a procedure. If NMED allows such a piecemeal procedure for the DAC, the permittees also would undoubtedly use similar piecemeal procedures in future modification requests.

In spite of comments by NMED, SRIC, and others, the resubmittal remains incomplete. For example:

1. The methodology used for this DAC is not identical to the DAC used for 55-gallon drums and standard waste boxes. As one example, there are different assumptions used for the new containers (Attachment C, pages 1-3).

2. The methodology used in the DAC for 55-gallon drums included some actual data from drums to provide some verification of the model. The resubmittal does not include actual experiments for the three new containers. SRIC continues to believe that some actual experiments with real containers must be included to validate the calculated DAC values.

3. Void space assumptions (20% of the container volume outside of the waste packaging; see page A-4) are unsupported by actual data, even though SRIC has raised this issue in its previous comments. Presumably, the permittees are relying for justification of this assumption on their July 14, 2003 response. SRIC notes that the response is not included in the permit modification request on the WIPP website, which is another incompleteness with the request. Moreover, the response was inadequate, stating that the justification was "current site plans" and that void volumes "have minimal impact." July 14 Response, page 8. Neither of those explanations are adequate, especially since the actual permit language does not require that 20% void space and an assertion of minimal impact is not data to demonstrate the factual reliability of the assertion. Thus, the permittees have not shown that the specified void space is conservative. Without such a showing, the assumption is invalid and cannot be used to support an adequate modification request.

4. The permittees have still not provided information that the assumptions and models used are consistent with the requirements of the Nuclear Regulatory Commission (NRC) Certificate of Compliance for the TRUPACT-II. SRIC again points out that the 85-gallon drum has not been approved for transport. Thus, the requirements that NRC places on that container could require revisions in the DAC to ensure that actual container configurations are the same as those used in the DAC. Thus, without the NRC-approved Certificate of Compliance, NMED does not have a complete, accurate modification request for the 85-gallon drum.

5. As previously noted by NMED, SRIC, and other commentators, the 100-gallon drum is intended to be used for the Advanced Mixed Waste Treatment Facility in Idaho. The permittees'

response has not answered all of the issues, and SRIC believes that actual data and a public hearing will be required to fully explore these issues, including much data about the actual “pucks.”

6. While the resubmittal contains some new information and additional calculations, there are also inconsistencies with the previous submittal. For example, the previous submittal showed that the DAC value calculated by VDRUM for Input/Output Filename t8185925/t8185925.out was 2. Page A-4. In the resubmittal, the exact same filename shows a DAC value of 1. Page A-3. These variations are unexplained and troubling, and cannot be considered accurate.

For all of those stated reasons, the request must be denied.

Container Management Improvements

This modification request is grossly misnamed and the notice is grossly erroneous. “Container Management Improvements” connotes using the same containers in the same space more efficiently. The advertisement states that the request “will improve the ability for the WIPP facility to handle waste containers.” Attachment 2.

In fact, the request would result in increasing the maximum capacity in the Waste Handling Building from 2,718 cubic feet (77 cubic meters) to 18,728.3 cubic feet (530.2 cubic meters), an increase of almost 7 times! Table III.A.1.

The parking area maximum capacity would be eliminated and the container equivalent limits would increase from 12 packages to 119 packages, an increase of almost 10 times! Table III.A.2.

While the fact sheet does state that the request would “increase the permit limitations on storage capacity” and “expand the PAU,” it does not quantify the huge scale of the increases. Attachment 3.

Such huge increases are not described in the notice and fact sheet. Once again, SRIC states that NMED must not allow the permittees to distribute inaccurate public notices. In addition, such inaccurate notices are a violation of 40 CFR 270.42(c)(2).

Regarding specific provisions of the request, SRIC first states that many of the proposed expansions have the effect of changing the mission of WIPP established by federal law (the WIPP Land Withdrawal Act, Public Law 102-579, as amended) to being a large-scale storage as well as disposal facility. For example, the WIPP Act states that the purpose of WIPP is to demonstrate the “safe disposal” of defense transuranic waste. Section 2(19). There is no mention of it being a major above-ground storage facility.

These expanded operations are not only not authorized by federal law, they have not been analyzed in the various WIPP environmental impact statements. Nor were many of the expansions even previously considered. For example, placing waste containers on the ground in

the Parking Area where there is not an adequate concrete pad has not been previously analyzed. There should be a full analysis of the impacts, for example of severe storms, lightning, tornados, and earthquakes on such PAU storage. There should be analysis of accidents involving trucks and trains hitting drums stored in the parking area. There should be analysis of accidents with large numbers of containers stored outside, as well as inside the Waste Handling Building. SRIC believes new and additional procedures to deal with such accidents will be required. Such procedures will require additional changes in the permit, including in Attachment F. The request includes “one potential configuration” for increased storage in the Waste Handling Building. Implicitly, the permittees could use many other storage configurations based on the modification request. Such a procedure is unacceptable, as the permit should specifically include the configuration(s) that are allowed. At a minimum, the permittees should have time and motion studies of possible storage configurations and analysis of the risks of each configuration and how those risks will be minimized.

Storage in the parking area requires new equipment, the “Rail Car jockey” (page 4). The request contains no figures or other specifications for that equipment. Such omissions make the request incomplete and unacceptable.

Allowing large Type A containers (or “large container boxes”) also has not been adequately analyzed in environmental impact statements or other WIPP documents to determine its effects on human health and the environment. The request also is grossly incomplete regarding the proposed new “horizontally loaded” packages. The request does not contain complete or adequate information about those procedures, the risks involved in such procedures, the types of accidents that could occur, and the adequacy of emergency response procedures.

All of the expansions included in the request certainly endanger human health and the environment, but the permittees have provided no analysis of those risks.

SRIC objects to the elimination of the specific descriptions of acceptable disposal containers in IV.C.1, F-1, M1, M1-1b. Such specific details should be maintained in the permit so that there is clear information about what containers are allowed.

Moreover, SRIC and others have previously strongly opposed storage capacity expansions as part of the Central Confirmation Facility (CCF) modification request, which was withdrawn. The permittees should be encouraged to withdraw this request, which should otherwise be denied.

SRIC strongly objects to allowing use of the TRUPACT-III, as included in the request, because that container is not certified by the NRC, nor have the characterization and other requirements been established for the large containers that would be shipped in the TRUPACT-III. In addition, the request states that the TRUPACT-III would not have an ICV (A-2). SRIC strongly objects to any shipping container that does not have double containment, as endangered public health and the environment. Long-term storage in the TRUPACT-III, as allowed by the request also would not comply with double containment requirements for such storage.

The request does not adequately explain why the modification is needed, as required by 40 CFR 270(c)(1)(iii). The request tries to justify the request primarily based on plans for increased

throughput based on the (draft) Transuranic Waste Performance Management Plan (PMP) of August 2002. Page 2. However, Roger Nelson, a spokesperson for the permittees, has stated that the PMP is not really a plan, so it does not provide an adequate basis for any of the request.

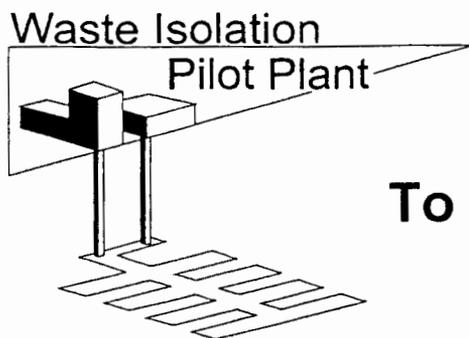
For the many inadequacies noted, the class 3 permit modification should be denied.

Thank you for your careful consideration of all of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Hancock".

Don Hancock



Fact Sheet

DOE Proposes Modification To Hazardous Waste Facility Permit



Upgrade Waste Conveyance Car

Background The U.S. Department of Energy (DOE) has proposed a modification to its Hazardous Waste Facility Permit (HWFP) for the Waste Isolation Pilot Plant (WIPP) to support DOE efforts to clean up the nation's defense transuranic waste by upgrading the waste conveyance car.

Waste arrives at the WIPP facility in a Nuclear Regulatory Commission certified type B shipping container. The shipping container is taken to the Waste Handling Building where the waste containers inside the container are removed. The waste containers are then placed on a large metal pallet called a facility pallet. Next, a forklift transfers the loaded facility pallet and places it onto the waste conveyance loading car. This conveyance loading car currently sits on tracks that guide the facility pallet with its waste payload onto the waste hoist. Once on the hoist, the facility pallet descends underground for transport to the disposal area.

The existing waste conveyance loading car was originally constructed in 1985. Replacement parts are hard to obtain, making maintenance on this equipment difficult. This modification request seeks to replace the aging conveyance loading car with facility transport vehicles, which are widely used in the nuclear power, paper, steel, and aerospace industries.

**What is
Proposed?**

DOE submitted this Class 2 permit modification request to the New Mexico Environment Department (NMED) on January 8, 2004. The proposed modification seeks the following permit changes:

- Replace the existing conveyance loading car with facility transport vehicles;
- Allow the conveyance car to operate with or without the use of tracks (the facility transport vehicle has an internal guidance system that allows for guided movement without tracks);

Attachment 1

- Allow facility pallets to be moved by using either a forklift or a conveyance car;
- Elevate facility pallets a minimum of 9.5 inches above the floor;
- Correct two tables that currently contain incorrect capacities for the conveyance loading cars; and
- Remove two figures that refer to the incorrect conveyance loading car

This permit modification does not seek to change the waste handling process at the WIPP site, but rather the type of equipment used to transfer the waste while on facility pallets. This modification will further enhance WIPP's ability to safely handle and transport waste at the site in preparation for permanent disposal underground.

Comments

Comments for the record must be sent to Mr. Steve Zappe, New Mexico Environment Department, 2905 Rodeo Park Drive, Building 1, Santa Fe, NM 87505. They may also be e-mailed to steve_zappe@nmenv.state.nm.us or faxed to 505-428-2567. Only written comments will be accepted and must be received no later than 5 p.m. (MDT) on March 12, 2004. A copy of the permit modification may be viewed or copied at the NMED offices of Mr. Zappe. To be placed on the WIPP mailing list, contact Mr. Zappe at the address above.

For more Information

For more information about transuranic waste shipments and procedures, call the WIPP Information Center at 1-800-336-WIPP (9477). You also may visit the WIPP home page at <http://www.wipp.ws>. Comments to the Permittees regarding this permit modification may be sent to Mr. Bobby St. John, Washington TRU Solutions LLC, P.O. Box 2078, Carlsbad, NM 88221.

PUBLIC INFORMATION MEETINGS



On Proposed Modifications to the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant

WHO: U.S. Department of Energy (DOE) Carlsbad Field Office and Washington TRU Solutions LLC (WTS)

WHAT: DOE and WTS will conduct public meetings to provide information on the following requested permit modifications. There will be a 60-day public comment period beginning on January 13, 2004.

WHEN: Tuesday, February 17, 2004
5 – 7 p.m. Thursday, February 19, 2004
2 – 4 p.m. & 6 – 8 p.m.

WHERE: Skeen-Whitlock Building
4021 National Parks Highway
Carlsbad, New Mexico
Courtyard by Marriott
3347 Cerrillos Road
Santa Fe, New Mexico

WHY: On January 8, 2004, DOE submitted the following permit modification requests to the New Mexico Environment Department (NMED).

1. **Upgrade Waste Conveyance Loading Car (Class 2)**—This proposed change seeks to upgrade the current waste conveyance loading car by replacing it with facility transport vehicles. The modification request will also revise wording in the Hazardous Waste Facility Permit (HWFP) directly related to the conveyance car upgrade. This will not change the WIPP waste handling process, but rather the equipment used in the process. Furthermore, the upgrade would increase WIPP efficiency and safety in handling and disposing of the nation's transuranic waste.
2. **Addition of Drum Age Criteria (DAC) for New Containers (Class 2)**—In November 2002, NMED authorized WIPP to dispose of transuranic waste in direct-loaded 85 and 100-gallon drums. They also authorized WIPP to dispose of waste in direct-loaded ten-drum overpacks. However, prior to using these new containers, a drum age criteria had to be established for each. This permit modification request establishes the DAC values for each drum to ensure that the waste meets all requirements prior to being transported to WIPP.
3. **Container Management Improvements (Class 3)**—This proposed permit modification request will improve the ability for the WIPP facility to handle waste containers. Currently, only specific containers listed in the permit are allowed to be handled and disposed of at WIPP. This modification request would clarify container specifications and descriptions, including handling and above-ground storage requirements. It would also address limitations associated with potential receipt of shipments via rail.

HOW: To obtain additional information concerning this permit modification request, contact Mr. Bobby St. John, WTS, at 1-800-336-9477. The permit modification is also available on the WIPP web site at <http://www.wipp.ws> and at the WIPP Information Center, Skeen-Whitlock Building, 4021 National Parks Highway, Carlsbad, New Mexico. A copy of the requested permit modification also may be obtained from NMED at the address listed below.

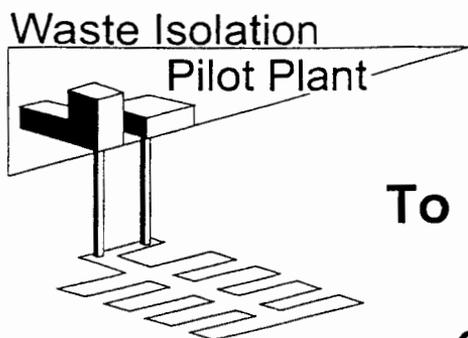
COMMENT: Written comments for the record must be sent to the NMED contact person at the address below and received no later than 5 p.m. on March 12, 2004:

Mr. Steve Zappe
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505
Phone: 505-428-2517
Fax: 505-428-2567
E-mail: steve_zappe@nmenv.state.nm.us

The Permittees' compliance history during the life of the permit being modified is available from Mr. Steve Zappe at NMED.

QUESTION: Any questions or comments for the Permittees regarding this permit modification may be sent to Mr. Bobby St. John, P.O. Box 2078, Carlsbad, NM 88221, no later than March 5, 2004.

Attachment 2



Fact Sheet



DOE Proposes Modification To Hazardous Waste Facility Permit

Container Management Improvements

Background - The U.S. Department of Energy (DOE) has proposed a modification to its Hazardous Waste Facility Permit (HWFP) for the Waste Isolation Pilot Plant (WIPP) to support DOE efforts to clean up the nation's defense transuranic waste by improvements in waste container management.

Transuranic waste is shipped to WIPP in Department of Transportation (DOT) "Type B" packages certified by the Nuclear Regulatory Commission. Once these packages arrive at the WIPP facility, they are off-loaded from the trailer and taken into the Waste Handling Building (WHB). Once inside the WHB, the waste containers are removed from the transportation package and placed in a designated above-ground storage area, awaiting permanent disposal in the underground. Currently, WIPP is limited on the number of waste containers that can be staged above-ground and the type of waste containers it can receive for disposal at the facility.

**What is
Proposed?**

DOE submitted this Class 3 permit modification request to the New Mexico Environment Department (NMED) on January 8, 2004. The proposed modification seeks the following permit changes:

- Increase the permit limitations on storage capacity to the actual design capacity limits;
- Designate an area of the WHB for the unloading of horizontally loaded contact handled packages;
- Allow the use of waste containers meeting the DOT "Type A" or equivalent requirements;
- Allow for expanded use of NRC approved DOT "Type B" packages for storage in the parking area unit (PAU) behind the WHB;
- Expand the PAU to include the rail spurs currently located in back (south) of the WHB; and

Attachment 3

- Provide information to support the option of receiving waste shipments via rail.

This permit change does not alter the ability of the WIPP facility to safely and effectively manage and permanently dispose of TRU waste. It simply improves its ability to accept and manage a variety of waste containers.

Comments

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For more Information

For more information about transuranic waste shipments and procedures, call the WIPP Information Center at 1-800-336-WIPP (9477), or visit the WIPP home page at <http://www.wipp.ws>. Comments to the Permittees regarding this permit modification may be sent to Mr. Bobby St. John, Washington TRU Solutions LLC, P.O. Box 2078, Carlsbad, NM 88221.