

Steve Zappe

From: Joni Arends [jarends@nuclearactive.org]
Sent: Monday, March 22, 2004 10:37 PM
To: steve_zappe@nmenv.state.nm.us
Subject: CCNS comments to three WIPP PMRs

March 22, 2004

Steve Zappe
 New Mexico Environment Department
 2905 Rodeo Park Drive, Building 1
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Re: Three WIPP Permit Modification requests submitted on January 8, 2004

Dear Mr. Zappe:

Concerned Citizens for Nuclear Safety (CCNS) requests that the New Mexico Environment Department (NMED) deny all of the three requested permit modifications submitted on January 8, 2004 by the Department of Energy (DOE). The proposed permit modifications 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. CCNS 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 3Container Management Improvements,2 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 CCNS 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 CCNS has 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.

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. CCNS believes that another example of incompleteness with the request is the lack of specificity about what vehicle(s) will be used. Thus, for example, CCNS 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

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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:

3! Elevate facility pallets a minimum of 9.5 inches above the floor.²

But the request, in fact, reduces the elevation from 9.5 inches to 3 at least 6 inches.² 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 modification³ will not change the WIPP waste handling process.² CCNS 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 request³ is a resubmittal of the May 13, 2003 PMR.² In its July 14, 2003, comments on that request, Southwest Research and Information Center (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 3 applicable stakeholder...comments,² the request has again been submitted a class 2 modification request.

CCNS 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, CCNS 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, CCNS 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, CCNS, 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. CCNS 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 3current site plans² and that void volumes 3have minimal impact.² 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. CCNS supports SRIC's position on this very important matter.

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. CCNS 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, CCNS, and other commentors, 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 CCNS believes that actual data and a public hearing will be required to fully explore these issues, including much data about the actual 3pucks.²

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. 3Container Management Improvements² connotes using the same containers in the same space more efficiently. The advertisement states that the request 3will improve the ability for the WIPP facility to handle waste containers.² 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 seven 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 3increase the permit limitations on storage capacity² and 3expand the PAU,² 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, CCNS states that NMED must not allow the permittees to distribute inaccurate public notices. Such inadequate notice wastes NMED's time and the commentors' time, not including the wasteful use of taxpayers' funds. In addition, such inaccurate notices are a violation of 40 CFR 270.42(c)(2).

Regarding specific provisions of the request, CCNS 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 3safe disposal² 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. CCNS 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 3one potential configuration² 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 3Rail Car jockey² (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 3large container boxes²) 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 3horizontally loaded² 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.

CCNS 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, CCNS 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.

CCNS 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). CCNS 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,

Joni Arends
Executive Director

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