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November 1, 2004

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



RE: WIPP Class 3 Permit Modification - Underground HWDU
Public Notice No. 04-14

Dear Steve,

Southwest Research and Information Center (SRIC) provides the following comments on the draft Class 3 permit modification noticed by NMED on September 17, 2004.

SRIC appreciates that NMED officials and representatives of the permittees agreed to SRIC's request to meet with SRIC and other citizen representatives on October 28 to discuss our concerns about the proposed modification. SRIC believes that the meeting was productive in providing information and possible agreement on the proposed new provision IV.E.2.b.

Therefore, SRIC supports three changes in the proposed permit modification that NMED issued on September 17, 2004:

1. SRIC believes that the proposed modification should be revised to include the following provision (and renumbering proposed IV.E.2 to be IV.E.2.a):

IV.E.2.b. Notification of Start of Underground HWDU Mining

The permittees will provide written notification to the Secretary and to the WIPP Facility Mailing List stating the projected date of the start of mining of each Underground HWDU. Such notice will be provided at least 30 days prior to the projected date that underground mining will begin, along with supporting rationale (e.g., projected waste receipt date).

2. Permittees have indicated that they will provide an updated version of the *Mining and Waste Emplacement Timeline* included as Attachment E in the modification request. Those revised dates should be incorporated into Table I-1.

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3. SRIC believes that the proposed modification must also be revised to reflect the factual record before NMED in this matter regarding the maximum capacity of Panel 1 and the maximum capacity of the seven panels that would be allowed if the permit modification is approved.

On page A-8 of the permittees' permit modification request, they state: "A total of 10,496 m³ of TRU waste was emplaced into Panel 1." That panel has now been closed, so no more waste should be emplaced in that panel. (SRIC recognizes that final closure has not occurred, pending approval of a new panel closure modification. But Panel 1 should not be reopened to allow more waste emplacement.) Thus, Table IV.A.1 should be revised to indicate that the maximum capacity of Panel 1 is 371,000 ft³/10,500 m³ (a reasonable rounding of the permittees' calculation). The totals on Table IV.A.1 should then reflect that the maximum capacity is 4,187,000 ft³/118,500 m³.

That same maximum capacity should be incorporated into three other provisions in the permit. First, page M2-2, line 14, should be revised to state: "up to 4,187,000 cubic feet (ft³) (118,500 cubic meters (m³)) of CH TRU mixed waste." Second, page M2-6, line 13, should be revised to state: "will not exceed 4,187,000 ft³ (118,500 m³)." Third, Page O-6, lines 3-4, should be revised to state: "up to 118,500 m³ of TRU waste could be emplaced in Panels 1 to 7."

Based on the record before NMED in this matter, it is not correct for Table IV.A.1 to state that the maximum capacity of Panel 1 is 18,000 m³, since there is no evidence to support such a maximum capacity. Since the 18,000 m³ maximum capacity for other panels was based on the record of the permit hearing in 1999, and the permittees have provided no evidence to support an increase in that maximum capacity. Thus, the changed proposed by SRIC are the only ones with support in the record.

Further, leaving the numbers provided in the draft permit modification Table IV.A.1, and on pages M2-2, M2-6, and O-6 could allow permittees to emplace more waste in panel 1 or more than 18,000 m³ of waste in some or all of panels 2, 3, 4, 5, 6, and 7. The record in this matter would not support such maximum capacity numbers.

Thank you very much for your careful consideration of, and your response to, these comments, as well as those submitted by SRIC on July 14, 2003, and all other comments submitted.

Sincerely,



Don Hancock