



Allen, Pam, NMENV

From: Kliphuis, Trais, NMENV
Sent: Thursday, April 19, 2012 10:35 AM
To: Allen, Pam, NMENV
Subject: FW: Memo for you
Attachments: Memo C4-3g revision 1.doc

From: Conniewalk@aol.com [mailto:Conniewalk@aol.com]
Sent: Friday, [REDACTED] 11:39 AM
To: Kliphuis, Trais, NMENV
Cc: conniewalk@aol.com
Subject: Memo for you

Hi Trais

As we discussed, attached is a brief memo that goes through your proposed language changes and explains pluses/minuses associated with using the term "finding", etc. Hope you find this useful!

thanks
Connie



Memo:

To: Trais Kliphuis

From: Connie Walker

RE: C4-3g modified language

Date: March 21, 2012

The following was suggested for consideration:

"Hi Rick and Susan,

I noticed that the original draft permit language used "findings of noncompliance" as the marker for non certification (which eventually became stop shipments). The November 13, 1998 draft changed this to "corrective actions (i.e., CARs)". If I am understanding this correctly, the CAR process originates from an EPA requirement and not a RCRA HW permit requirement... (?) I suspect that when this change was made the Permittees did not foresee that some CARs might not be "findings of noncompliance" (of the NMED HWB RCRA permit) and the implications of this change were not fully understood. I am wondering if reversion back to the original phrase would help. This does seem to help clarify what the intent was. Please let me know what you think.

C4-3G History

Attachment C9, Rev 6.5 (April 10, 1996)

DOE Site Audits of Acceptable Knowledge

After the audit is complete, the DOE/CAO will provide the site with preliminary results at a close-out meeting. The DOE/CAO will prepare a final audit report that includes all observations and findings identified during the audit. Sites must respond to all audit findings and identify corrective actions. Audit results will be available at DOE/CAO for review by regulatory agencies, and copies will be provided upon request. If acceptable knowledge procedures do not exist, the minimum required information is not available, or findings of noncompliance are identified associated with hazardous waste determinations, the DOE/CAO will not grant the site waste characterization and certification authority for the subject waste. Waste stream characterization and certification authority may be revoked or suspended if findings during subsequent annual audits indicate a lack of compliance with approved acceptable knowledge procedures. Waste characterization and certification authority will not be reinstated until the site demonstrates all corrective actions have been implemented and the program is reassessed by the DOE/CAO.

Draft Permit – November 13, 1998

B4-3f Audits of Acceptable Knowledge

After the audit is complete, the Permittees will provide the site with preliminary results at a close-out meeting. The Permittees will prepare a final audit report that includes all observations and findings identified during the audit. Sites shall respond to all audit findings and identify corrective actions. Audit results will be included in the final audit report (Permit Attachment B6) ~~available from the Permittees for review by NMED and other regulatory agencies, and copies will be provided upon request.~~ If acceptable knowledge procedures do not exist, the required information is not available, or ~~findings of noncompliance~~ corrective actions (i.e., CARs) are identified

associated with acceptable knowledge compilation, acceptable knowledge confirmation, and/or hazardous waste characterization determinations, the Permittees will not grant the site waste characterization and certification authority for manage, store, or dispose TRU mixed waste for the subject waste summary category. ~~Waste stream summary category characterization and certification authority will be revoked or suspended if findings during subsequent annual audits indicate a lack of compliance with approved acceptable knowledge procedures. Waste characterization and certification authority~~ Management, storage, or disposal of the subject waste summary category at WIPP will not be reinstated until the site demonstrates Permittees find that all corrective actions have been implemented and the program is reassessed by the Permittees site complies with all applicable requirements of the WAP.

The proposed modified language presented in the email would apply as follows:

...If acceptable knowledge procedures do not exist, the required information is not available, or findings of noncompliance are identified associated with acceptable knowledge compilation.....

To understand the implication of using the term "findings of noncompliance", the use of the term "finding" was evaluated. CBFO does not formally use the term "finding" in its audit program; they identify "concerns" that are categorized based upon significance. A search of the internet with regard to the term "finding" showed the following, noting that these definitions are not specific to any DOE program and instead are applied in the commercial industries, sometimes unrelated to nuclear quality assurance:

- Finding - A direct departure from a procedural, regulatory, or contractual requirement.

- *Audit findings* result from a process that evaluates audit evidence and compares it against audit criteria. *Audit findings* can show that audit criteria are being met (conformity) or that they are not being met (nonconformity). They can also identify improvement opportunities. *Audit findings* are used to assess the effectiveness of the quality management system and to identify opportunities for improvement.

EPA, however, issues "findings" during its WIPP technical and QA inspections. EPA's definition of finding (as part of the technical inspections):

- *Finding*: A determination that a specific item or activity does not conform to 40 CFR 194.24(c)(4). A finding requires a response from CBFO prior to site approval.

Note that C6 does not use the term "finding". Instead, this portion of the permit uses the term "deficiencies", for example:

Audits shall include site personnel interviews, document and record reviews, observations of operations, and any other activities deemed necessary by the

auditors to meet the objectives of the audit. Observations or deficiencies identified during the audit will be investigated or evaluated, as necessary, to determine if they are isolated conditions or represent a general breakdown of the waste characterization quality assurance program. During audit interviews or audit meetings, site or DOE approved laboratory personnel may be advised of deficiencies identified within their areas of responsibility to establish a clear understanding of the identified condition.

Based on the above, a "finding of noncompliance" appears to be a non-specific term that isn't used as a defined element in the CBFO documents examined (it is mentioned, but not defined). However, the EPA does use the term in it's evaluations, wherein it has a very specific meaning rooted in 40 CFR 194.24. Therefore, replacement of CARs with a finding of noncompliance would introduce a term without a specific meaning, and might be confused with EPA findings. Noting that C4-3g uses the term "finding" throughout, it might be prudent to discuss this term with the Permittees to determine whether they meant "finding" to be equivalent to deficiency.

Later, it was suggested that the CAR discussion in C4-3g be clarified: "corrective actions (i.e. CARS) that would result in noncompliance of this permit". The intent of this language is to clarify that only CARs issued as a result of permit non-compliance would trigger subsequent C4-3g SCG shipment suspensions. This language could be revised to state "corrective actions (i.e. CARS) issued as a result of permit noncompliance" would capture the intent of the sentence. This appears to be a clarification of intent.

If the Permittees believe that the intent of the term is more accurately represented by "deficiencies" (which is consistent with C6), then C4-3g could be revised as follows:

After the audit is complete, DOE will provide the site with preliminary results at a close-out meeting. DOE will prepare a final audit report that includes all observations and deficiencies ~~findings~~ identified during the audit. Sites shall respond to all audit deficiencies ~~findings~~ and identify corrective actions, as applicable (NOTE: This sentence is not followed- all findings or deficiencies are not responded to by the sites after the audits, some are corrected during the audit, others become recommendations without any required response, etc). Audit results will be included in the final audit report (Permit Attachment C6). If acceptable knowledge procedures do not exist, the required information is not available, or corrective actions (i.e., CARs) are identified associated with acceptable knowledge compilation, and/or hazardous waste characterization issued as a result of permit noncompliance, the Permittees will not manage, store, or dispose TRU mixed waste for the subject waste summary category. Management, storage, or disposal of the subject waste summary category at WIPP will not resume until DOE find that all corrective actions have been implemented and the site complies with all applicable requirements of the WAP.

It is possible that the "deficiency" vs. "finding" changes could be considered a Class 1 change as it brings the section in line with actual CBFO/audit language and really doesn't

change how "we do business". The "issued as a result of permit noncompliance" could also be considered clarification. However, the above changes don't modify the original reason NMED was revisiting this section: CBFO issued a CAR at SRS related to AK compilation, which is specifically identified, in the current permit, as a type of CAR that would prompt cessation of SCG shipment. It appears that removal of the term "acceptable knowledge compilation" in favor of a more general "hazardous waste characterization" would resolve the issue, but this requires explanation and probably wouldn't be a Class 1 change. While there doesn't appear to be a Class 1 change that could be made to rectify the issue, CBFO could reissue the CAR with different language/terminology that would clarify that the problem deals with recordkeeping/transcription and not compilation.

FYI: C4-3g could be re-written as follows to better reflect what we “see” during audit observations and report reviews:

After the audit is complete, DOE will provide the site with preliminary results at a close-out meeting. DOE will prepare a final audit report that presents audit results and identifies deficiencies, observations, recommendations, items corrected during the audit, and corrective action reports (CARs) see Permit Attachment C6. If a CAR is issued as a result of permit noncompliance relating to waste characterization as specified in Permit Attachments C-C7, the Permittees will not manage, store, or dispose TRU mixed waste for the subject waste summary category. Management, storage, or disposal of the subject waste summary category at WIPP will not resume until DOE find that all corrective actions have been implemented and the site complies with all applicable requirements of the WAP.

The above reflects what we observed during audits and audit report reviews, and it is presented for information purposes only. Note that if a site does not have AK procedures or the required information, this is a permit violation so removal of that language in favor of language dealing with permit non-compliance essentially eliminates a redundancy.