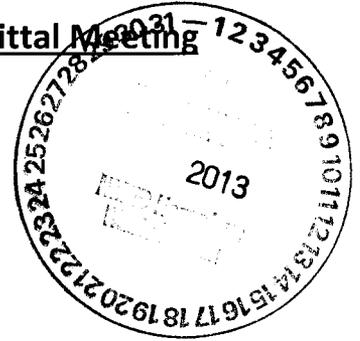


 ENTERED

**NMED Summary of Hanford Tank Draft Class 2 PMR Pre-submittal Meeting**

March 20, 2013 10 am -12 noon

Embassy Suites, Albuquerque, NM



**Attendants:**

Permittees: George Basabilvazo, Rusty Stone, George Helstrom (council), Rick Chavez, Bob Kehrman, Dennis Cook (council), Eric D'Amico

Public: Don Hancock, Scott Kovak, Dave McCoy, Janet Greenwald, Joni Arens (call in), two other women with CARD, Katie Richardson (Heinrich's office), Bianca Ortiz Wertheim (Udall's office), Joe Epstein (Carlsbad Mayors Taskforce), Kyle Marksteiner (Carlsbad Mayors Taskforce), Lokesh Chatuvedi, Elaine Baumgartel (KUNM).

Security: Tom

NMED: Trais Kliphuis, Ricardo Maestas

George Basabilvazo started the meeting. He asked the attendees to keep the focus of the meeting and their comments on the draft PMR. A presentation was given by Bob Kehrman then he opened up the floor to questions.

**Questions/Comments:**

Don:

- Understands these preliminary meetings are informal and an extra thing Permittees have agreed to. Believes it's helpful to understand and NMED has in past also expressed usefulness. EPA guidance also encourages these kinds of meetings.
- Extremely disappointed with substance of what is in draft.
- Appreciated that Bob went into further detail than the presentation did on background for Hanford tank waste. He started correcting some of major deficiencies in it but I need to go through some of them because if you are going to submit this as a Class 2 which I encourage you not to do, you need to go back and start where Bob ended. The tank waste exclusion added as a Class 2 PMR July 2, 2004 you don't talk about that. "So Let's talk about it"
- Page 1 of your July 6, 2004 PMR language states "This PMR would establish a procedure for approval of the disposal of transuranic (TRU) mixed waste from tanks that has ever been managed as high-level waste by adding language to Section II.C.3, Section B-1c, and Table B6-1 of the WIPP HWFP. The proposed conditions would prohibit WIPP from accepting TRU mixed waste from tanks that has ever been managed as high-level waste unless it is approved for WIPP disposal through a Class 3 permit modification. "Class 3 PMR to deal with the tanks the tanks that were mentioned at the time and the reason



we are going through this. It further said "Pursuant to the proposed procedural changes, the Permittees would be prohibited from accepting TRU mixed waste from tanks that has ever been managed as high-level waste unless the waste is approved for WIPP disposal through a subsequent Class 3 permit modification. Any such Class 3 PMR would include specific information on the waste and its origin, and the PMR would be subject to the public participation requirements of 20.4.1.900(B) NMAC." So the purpose of the request in 2004 was to ensure that the public would be involved in subsequent discussions, that the Permittees would provide the Environment Department with "specific information on the waste and its origin". That was the purpose of that PMR.

- The same day, July 2, 2004 Permittees put out a fact sheet. It says "The PMR will prohibit WIPP from accepting TRU mixed waste from tanks that has ever been managed as HLW unless such waste is first approved by NMED through a subsequent Class 3 PMR. Any waste approved for disposal at WIPP as a result of such a Class 3 PM will still be required to meet all waste acceptance criteria i.e. no liquids, ignitables, corrosive, etc."
- July 22, 2004, TRU Teamwork's publication, page 2: "Willie Most, WRES principal scientist (on phone) clarifies intent of request. "This modification would prohibit TRU mixed waste from tanks that have ever been managed as HLW unless it is approved for disposal through a Class 3 PM. Any subsequent PM seeking approval for disposal of such waste at WIPP would provide specific information on the waste and its origin and would involve stakeholder participation through the Class 3 process.
- September 7, 2004: The Permittees submitted 9 pages of specific comments to the Environment Department on its PMR. I could spend a lot of time quoting what this says about Class 3 modifications and public participation. I won't do that but if you are going to submit a PMR you have to go back and explain why you are not complying with what the purpose of that mod was. You are not complying with the promise you made to people of New Mexico in that Class 2 request from 2004. What has changed? You haven't done that in the draft. The draft is extremely inadequate and it's got to address all those kinds of things before you go forward.
- So fundamentally what I was expecting to see on your slide about benefits of the PMR, the major benefit is it eliminates the public hearing requirements that are currently in the permit.
- Acknowledge the major benefit – eliminates hearing process and would have to deal with people like us. Might be a benefit for the Permittees but it is not a benefit for the public.
- You say in the draft that page two "Because this determination is not RCRA related, the Permittees believe the provisions are inappropriate and should be removed." Well, for nine years you said it is permit related. You submitted the July 2004 PMR as RCRA related.
- So you need to explain why suddenly a provision that's been in the permit for almost nine years, that you proposed to put in the permit, that you supported remaining in the permit during renewal in 2009/10, why a major provision in the permit is suddenly not RCRA related. You don't explain that in the draft as you have to do. You make a

statement that I believe this is totally erroneous. I believe it is RCRA related. I am glad to have somebody respond now. How did something that was RCRA related for eight and a half years suddenly become not RCRA related?

**Bob:** Right after this Mod went into the permit we had a request from Hanford to do a Class 3. We compiled the information to satisfy this. The mod only talked about the radioactive components of the waste and the radioactive management of the waste. Only causally mentioned the fact that it was mixed. None of the decision making dealt with the hazardous components of the waste. That raised the question "How does the agency deal with those decisions?" That's not their expertise. That's not their authority under the hazardous waste act. We've been trying to come up with ways to deal with that. One way is to take the agency out of the position of having to determine whether the DOE is properly implementing their rad waste classification process.

**Don:** So it is RCRA related. You didn't explain right now and answer why it's been RCRA related....

**Bob:** It's because the decision regarding the Class 3 does not involve RCRA factors. It only involves the fact that we put this in the permit so the agency would have to process a Class 3 but the contents of that Class 3 is unrelated to the hazardous waste nature of this waste. It has to do with how the waste has been classified as radioactive waste.

**Don:** Well, I have to disagree with that. I would argue that you yourselves are disagreeing with that. You describe the fact that you have gone through a chemical compatibility (2012). Many of the Hanford tanks are not included in the analysis. So my question is "Are you saying you don't have to include all of the chemical compatibility of all of the Hanford tanks?"

**Bob:** The purpose of the discussion on the chemical compatibility is that there are a number of waste streams that were not in the TWBIR that have been shipped to WIPP. They all have to be determined compatible. The way we do that for RCRA is we limit the hazardous waste numbers that can be in the waste. When we added additional hazardous waste numbers we address compatibility of those new numbers.

**Don:** So what you are saying is the 2012 Chemical Compatibility study inaccurate?

**Bob:** No... I believe the 2012 report contains chemicals including all the hazardous waste chemicals that are in all of those tanks that contain TRU waste [later clarified that not formally determined to be TRU].

**Don:** This information is not included in the draft and should be.

**Bob:** DOE has not done a formal classification of tanks. Suspects 20 tanks may be TRU and are assumed to be TRU for NEPA analysis.

**Don:** Also missing description of why they are doing this now. Because of March 6, 2013 DOE announced Hanford tank waste will go to WIPP. Draft must have more information on this.

**Bob:** We will provide more detail. We intended to do this later and DOE asked to move this up.

**Don:** In determination you talk about authority. Is the sole determiner of HLW vs. TRU up of DOE?

**Bob:** Laws and regulations state that DOE Secretary makes determinations of defense generated nuclear waste according to Atomic Energy Act...

**Don:** So you need to also discuss the fact the Federal District court in Idaho when DOE sent that to the court Judge Windmill District Court Judge in Idaho said "you are wrong" there is a legal decision in federal court that says what you just said is inaccurate. That needs to be discussed. The judge said clearly that the law (AEA and NWPA) does not give DOE the sole authority. He pointed to the NRC authority. Also need to discuss EPA authority (through LWA).

EPA since 1998 also says they are a determiner about whether Hanford tanks are HLW or whether it can come to WIPP. Have the Permittees discussed this issue with EPA?

**Don:** Didn't discuss all regulation regarding whether it is a Class 2. You didn't discuss "significant public interest" requirement. You need to address that in the 2004 PMR there were more than 1200 people who showed interested and commented. I don't know if you think that's significant or not. I think it clearly is. If you think it isn't, you need to address it.

**Bob:** Three aspects to regulatory framework here. 1 – if it's in the table then that's how. 2 – if it's not in table EPA says submit as Class 3 or request a determination . 3- what happens to a class 2 if elevated by Secretary if substantial public interest or complexity - decision of Secretary.

**Don:** Believes it is in the table as a Class 3. Appendix 1 270.42, F(3)(a) says "storage of different waste in containers that require additional or different management practices... is a Class 3.

**Bob:** This is not what we are proposing.

**Don:** Hanford EIS: RH waste in 55 gallon drums... this is not in the Permit.

**Bob:** Yes. Right now RH is in 55 gallon drums that are loaded in RH casks.

**Don:** The draft seeks to eliminate public involvement. What is the planned schedule?

**Bob:** It depends on the nature of the comments. We are having a similar meeting in Carlsbad on Monday. The goal is to submit this Class 2 PMR to NMED by late March/early April. It is scheduled to proceed aggressively.

**Don:** Public and NMED will be looking at this at same time as comment period of the Class 3 Monster Mod.

**Bob:** Yes, they will overlap.

**Don:** We've had numerous discussions that this is not helpful. Let's discuss why. For 8.5 years we had this. What's the rush to do it now? Haven't issued the record of decision to say they will have these tanks coming. It will take years to implement that. Again, I don't understand this expeditious rush.

**George:** This was scheduled for later. It is our prerogative to submit this now if we want to and to get those regulatory items in process.

**Don:** Gov. Martinez has said on numerous occasions said LANL waste is a high priority to get to WIPP. Concerned that this [new Hanford] priority will disrupt LANL shipments. You need to discuss what happens to this, impact on LANL, INL, SRS and other Hanford waste. 10,000 cubic meters of actual TRU waste at Hanford. Need to discuss the impact of all this.

**George:** LANL is priority for shipping and moving waste. This is looking at regulatory process. We are not saying that by putting this mod in now we are changing the priority. These are different.

**Don:** Then you need to describe how jumping the queue is necessary.

**Scott:** Is all waste handled as mixed waste?

**Bob:** Permit requires that all waste be characterized the same.... Wastes must be compatible.... Only characterization would be needed to determine WIPP acceptance... NMED may not have experience to do Rad work...

**McCoy:** Compatibility of waste... what is NMEDs role?

**Bob:** Characterization of waste is in the WIPP Permit, NMED enforces that Permit, review of WSPF, NMED observes audits, approves audit reports.... Waste characterization is what keeps out the bad stuff.

**McCoy:** If changing authority of a state, why not go through EPA?... Hanford Tanks have been leaking since the late 70s....

**Janet:** Draft PMR "shortness" (5 pages) does not preclude "complexity" ... This is very complex... 15 years ago bad fish in the Columbia... Nothing new... Only new press...if there is a problem with Hanford,,, send it to NM... If there is a problem with SRS, Oak Ridge,,, send it to NM... Environmental Racism...There should be more plants to take care of this problem..

**Katie Richardson:** Thank you for the meeting. We will be following events closely.

**Kyle:** Thanks for having the meeting.

**Joe Epstein:** Thought opening remarks were good. This is a good process.

**Bianca:** Thanks. Senator Udall has expressed this type of open forum is useful and we'll be following this closely.

**Lokesh:** Used to work for EEG, independent oversight for WIPP, former contractor to DOE.

- Helped with Recertification in 2004...
- 2004-2008 helped review Yucca mountain,,, 2010 Obama defunded Yucca,,, all look to WIPP now for HLW repository...
- LWA is law of the land,,, prohibits HLW from going to WIPP.
- Draft PMR page 4: NRC definition,,, DOE,,, we define waste based on source...
- Once these definitions are accepted, Hanford is HLW until DOE can show otherwise
- Federal Register Vol. 74 #2 Dec. 18, 2009: "... Hanford waste will not go to WIPP..."
- WIPP and Hanford HLW,,, this appears to be a "softner" ,, WIPP has not submitted Hanford tank waste to EPA for Performance Assessment (PA)... (Permittees have said that this is not the case and that Hanford waste is included in the PA)
- This PMR has no technical basis...NMED should reject it....

**Joni:** Why changes to tank waste from SRS and INEEL?... NMED should deny this PMR...

**Don:** Acceptable Knowledge portion of the Permit... Waste must not be HLW... NMED already has authority to stop any waste.. What is the effect of Hanford tank waste on rest of repository schedule?... Hanford will bring in 4 million more curies..

**McCoy:** ... blaming NMED authority ... LANL/Sandia... Class 2 -Class 3 authority...Will you look at every drum?

**Bob:** Audits are based on waste stream basis, AK, RTR, VE will assure that waste is acceptable... 20 Hanford tanks may be CH or RH,,,, then treat and ship...

**Lokesh:** Washington EIS: Some waste will be low level and may be buried at Hanford... some waste will be HLW and will be treated and stored onsite awaiting final HLW repository,,, No TRU waste at present...

Permittees thanked everyone for attending and commenting on the draft PMR.