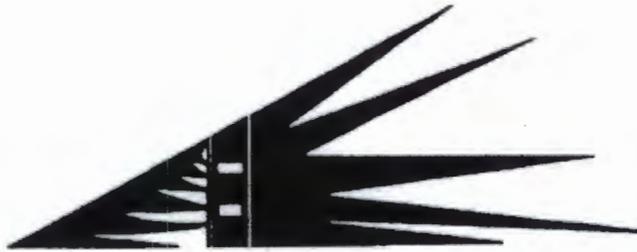


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SOUTHWEST RESEARCH AND INFORMATION CENTER

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May 12, 2014

Ryan Flynn, Secretary
New Mexico Environment Department
1190 St. Francis Dr. Suite N4050
Santa Fe, NM 87505

RE: May 6, 2014 Request for Additional Extension of Storage Time at WIPP

Dear Secretary Flynn,

Southwest Research and Information Center (SRIC) provides the following initial comments on the Permittees' Request for an Additional Extension of Storage Time in the Waste Isolation Pilot Plant (WIPP) Waste Handling Building (WHB) for 19 shipments of contact-handled (CH) transuranic (TRU) waste.

SRIC believes that the extension request should not be approved because adequate information and justification have not been provided, available options have not been adequately examined, protection of public health and the environment is not assured, and proper procedures were not followed under the WIPP permit and the New Mexico Hazardous Waste Act (HWA).

If any extension is approved, it should be for no more than two months and only for waste with deadlines before July 9, during which time the permittees should be required to begin preparations for returning wastes to the Idaho National Laboratory (INL) and Savannah River Site (SRS).

Because the cause of the February 14 radiation release is not known, there is uncertainty as to the safety of the waste in the WHB. When WIPP can resume operations is unknown. Whether the WHB will be needed to handle some wastes currently underground is unknown. Therefore, SRIC believes that the preferable action now is to begin immediately reducing the risk of an accident or release in the WHB by denying the extension and instead requiring that waste that came from INL and SRS with near-term deadlines be returned to those sites. If there are no reasonable alternatives for the LANL waste that is in the WHB, actions should be taken to ensure that none of those containers pose a risk of explosion or leaking.

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1. The request does not provide sufficient, accurate information to justify the extension.

On February 27, 2014, you issued an Administrative Order (AO), which provided:

“The 60-day storage time limit for CH TRU mixed waste in the WHB, Permit Part 3, Section 3.1.1.7, shall be extended an additional 45 days to 105 days.”

¶12(c).

As a result of the AO, the 57 assemblies now in the WHB have the following deadlines:

<u>Deadlines</u>	<u># of assemblies</u>	<u>Waste volume</u>
May 17 SRS	4 assemblies	177.6 cubic feet
May 17 LANL	3 assemblies	198.9 cubic feet
May 18 INL	2 assemblies	320 cubic feet
May 19 INL	3 assemblies	198.9 cubic feet
May 19 SRS	1 assembly	261 cubic feet
May 20 LANL	2 assemblies	132.6 cubic feet
May 20 SRS	6 assemblies	273.8 cubic feet
May 20 INL	5 assemblies	706.3 cubic feet
May 21 LANL	5 assemblies	331.5 cubic feet
May 27 LANL	1 assembly	66.3 cubic feet
May 27 INL	6 assemblies	772.6 cubic feet
Total May 17-27	38 assemblies	3,439.5 cubic feet
July 9 SRS	8 assemblies	788.4 cubic feet
July 10 SRS	1 assembly	261 cubic feet
July 10 INL	10 assemblies	648.5 cubic feet
Total July 9-10	19 assemblies	1,697.9 cubic feet

Thus, one-third of the assemblies and almost one-third of the volume of waste stored in the WHB is allowed for two more months under the existing AO. But the extension request does not mention that fact.

The 57 assemblies were included in 19 shipments to WIPP – 4 from LANL, 8 from INL, and 7 from SRS. Because 11 assemblies from five shipments are already underground, the assemblies in the WHB apparently could be re-packaged for shipments away from WIPP in fewer shipments – LANL assemblies in two shipments, INL assemblies in four shipments, and SRS assemblies in seven shipments. The extension request does not mention those facts.

2. The request does not adequately examine the available options.

The extension request provides only three options:

1. Leave the waste in the WHB for at least another year.
2. Make four or possibly 12 shipments to Waste Control Specialists (WCS), depending upon the WCS Waste Acceptance Criteria and an NRC approval of an exemption request, thereby leaving at least seven shipments at WIPP.
3. Returning the waste to the generating sites, which is not being considered for LANL and which is “not immediately available” for INL and SRS.

Clearly, there are other options. A few of the several examples:

- An extension could be for a shorter period of time than one year.
- An extension could be for only some of the waste.
- An extension could be only for the assemblies with deadlines prior to July 9.
- An extension could require that some of the waste be shipped to WCS and some to another site(s).

Under the permittees' option 3, the reason cited for not shipping wastes back to the generator sites is that "negotiations will be required with state regulatory agencies and state governments." The request cites no regulatory or other requirement for such negotiations. In fact, NMED has authority to require waste to be returned to generator sites without negotiations with other states. There are numerous examples in the permit where waste containers can be returned to the generator site without any negotiations or approval from another state. Further, past practice to which the permittees have complied resulted in waste being returned to generator sites without negotiations with the affected state. On August 3, 2007, NMED Secretary Ron Curry ordered that SWB BN10166592 be retrieved from the underground and shipped back to INL. The retrieval and shipment back to Idaho was accomplished without negotiations with state regulators. Thus, NMED has the authority to order the permittees to ship the waste in the WHB back to INL and SRS.

Under option 2, the WCS restrictions and the specific reasons that limit the amount of waste are not provided. Therefore, there is not enough information provided to support the assertions made in the request.

3. The request does not demonstrate that the extension will protect public health and the environment.

Although it is more than 12 weeks since the radiation release was detected, the permittees continue to acknowledge that do not know the cause, what decontamination will be needed, what physical changes to the facility will be required, what changes to procedures are necessary, when normal operations could resume, what changes to the permit are needed, among other essential matters. Given those many unknowns, protection of public health and the environment is not assured by continuing to allow waste to be stored in the WHB for longer periods than those provided in the WIPP permit during the past 15 years.

The request in no way demonstrates that each of the 144 containers in the WHB is not subject to whatever caused the radiation release. All of the CH waste in room 7 Panel 7 where the radiation release presumably occurred are from the same three sites. All of the CH waste in room 7 Panel 7 are from the same or similar waste streams as those in the WHB. All of the CH waste in room 7 Panel 7 was shipped to WIPP within a month prior to the radiation release. All of the CH waste in the WHB was shipped to WIPP within three weeks of when any of the waste in room 7 Panel 7 was emplaced. Some of the CH waste in room 7 Panel 7 is from the same shipments as those in the WHB. Given the many similarities in the waste in the WHB and in room 7 Panel 7, there is some possibility that what happened to one or more containers in the underground could occur in the WHB. In light of the uncertainties and the possibilities of a

release or accident in the WHB, protection of public health and the environment may be better assured by removing some or all of the waste, consistent with the permit's requirements.

4. The request does not comply with procedures under the HWA.

The request does not cite any regulatory authority for the request. The February 26 request did not cite any regulatory authority. In fact, the permittees are requesting a permit modification, so they must follow procedures in 40 CFR 270.42, including public notification requirements. They have not followed such procedures.

Nor have the permittees followed the long-standing practice of providing a draft of the permit modification request to interested parties and holding a meeting before submitting the request to NMED. If such a pre-submittal procedure had been followed, some agreement might have been possible for a path forward. SRIC continues to urge a meeting or discussion to clarify the facts and options.

In summary, the current situation at WIPP has created many unknowns. Allowing waste to be stored in the WHB for more than a year is not justified by the request and other alternatives exist. SRIC urges that at least the waste from INL and SRS be returned to those sites as soon as possible. Alternatives for the LANL waste should be explored and actions should be taken to increase the safety of that waste wherever it is stored.

Thank you very much for your careful consideration of, and your response to, these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is written in a cursive style with a large initial "D".

Don Hancock