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SOUTHWEST RESEARCH AND INFORMATION CENTER

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April 28, 2017

Butch Tongate, Secretary
New Mexico Environment Department (NMED)
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505

VIA EMAIL AND FAX – 505/827-2836

RE: WIPP Class 1 Permit Modification –
Clarify Maximum Storage Capacity of the CH Bay Storage Area in Permit Part 3,
Table 3.1.1, and Attachment A1

Dear Secretary Tongate,

Southwest Research and Information Center (SRIC) strongly objects to the Class 1 Permit Modification submitted by the permittees on April 27, 2017, according to the Information Repository posting on the WIPP website, and incorporated into the revised version of the Searchable WIPP Permit.

The modification is not a proper Class 1 modification under the Hazardous Waste regulations, and it is substantively a very significant change and increase in the number of loaded pallets and number of contact-handled (CH) waste containers allowed in the Waste Handling Building (WHB).

Pursuant to 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(a)(1)(iii)) and NMED's historic practices, SRIC requests that you review and reject the class 1 modification.

Brief History of CH WHB maximum capacity and container equivalent provisions.

The provisions in Table 3.1.1 and Attachment A1-1c(a) that the Class 1 modification would change were adopted on October 16, 2006, as part of a Class 3 permit modification. The modification resulted from a more than year-long process that included extensive public comment, weeks of negotiations, a public hearing from May 31 to June 9, 2006, a Hearing Officer report, and the Secretary's Final Order. The provisions were unchanged when the WIPP Permit was renewed – after substantial public comment, extensive negotiations, public hearing, a Hearing Officer report, and the Secretary's Final Order – on November 30, 2010.

Since the original WIPP Permit was issued in 1999, there have always been both Maximum Capacity and Container Equivalent limitations in Part 3 (previously Module 3), Table 3.1.1 (previously Table III.A.1). Each provision establishes separate maximum limits for the amount of

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CH waste by volume (in cubic feet and cubic meters) and for the number of loaded facility pallets that are allowed in the CH Bay.

There are several good health and safety and inspection reasons for both requirements. Limiting the volume of waste in the WHB is necessary to protect public safety and the environment. Similarly, limiting the number of loaded pallets restricts the number of waste containers and recognizes that there is limited space in the WHB and there should be not only required aisle space, but also as much open area as possible. Allowing more loaded facility pallets also increases the number of waste containers that can be stored in the WHB.

The permittees objected to the container equivalent requirement in the original draft permit in their May 15, 1998 comments (E-85). Nonetheless, NMED adopted the requirement. NMED's Response to Comments noted that the facility pallet requirement was also in other sections of the Permit (as it still is). NMED also stated:

“The intent of the permit condition is to ensure that the permit inspector will have no difficulty verifying that the maximum allowable storage volume has not been exceeded.” Response to Comment AA-6h, Module III, Page 14 of 24.

The permittees' Class 1 modification neither mentions that history, including the basis for the provisions, nor provides any adequate basis to change the requirements.

The modification seeks to change the “13 facility pallets” that has been included in the Permit since October 16, 2006 to “more than 13 loaded facility pallets in order to achieve the maximum volume capacity.” Page A-5. Thus, the modification would increase by an unspecified number how many loaded facility pallets are allowed. As a result, the WHB would become more crowded, which, among other things, could result in more accidents, as well as more exposures to workers, since more floor space of the WHB would contain loaded containers and more containers would be moved around the facility.

Further, the provisions are not designed for the permittees to “achieve the maximum volume capacity.” Rather, they are designed to protect public health and the environment. The normal practice should not be to “achieve” the maximum volume of CH waste stored in the WHB. WIPP is an underground disposal facility, and should not become a more crowded above ground CH storage site.

NMED must Review and Reject the Modification

It is totally inappropriate to modify such long-standing and significant health and safety provisions of the Permit as a Class 1 modification. The regulations provide:

“Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.” 40 CFR 270.42(d)(2)(i).

The modification is not “minor.” All of the existing CH containers have been allowed for many years, so there is no “routine change.” On the contrary, the modification does substantially alter the long-standing permit conditions, so it cannot be a class 1 modification. Thus, NMED must reject the Class 1 modification and require the permittees to comply with the long-standing provisions.

The class 1 request also is not a “clarification,” as stated in the title. It is clearly a substantial change and increase in the number of allowed facility pallets.

Of course, the permittees may submit a class 2 or class 3 modification request to justify such a significant change in the permit, including establishing that it is needed. But such a request would be – and must be because of the substantial change requested – subject to public comment. In the meantime, the permittees should not be allowed to implement the class 1 modification.

SRIC also points out that we have frequently requested that the permittees discuss proposed permit modifications prior to their submission. If the permittees had provided a draft of the proposed class 1 request, SRIC’s objections would have been noted in advance, and the modification might not have been submitted. By the permittees submitting the class 1 modification, the burden is, inappropriately, on SRIC and other members of the public to regularly observe that the permittees are submitting improperly classified permit modifications .

Therefore, in addition to rejecting the Class 1 modification, SRIC would request that NMED ask the permittees to, at a minimum, provide a publicly available list of planned proposed modifications. Preferably NMED should also ask the permittees to also hold pre-submittal type meetings to review and discuss proposed modifications before they are submitted to NMED.

Thank you very much for your careful consideration of, and your response to, these and all other comments. Please advise me of your actions in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is fluid and cursive, with the first name "Don" being more prominent than the last name "Hancock".

Don Hancock

cc: John Kieling
Ricardo Maestas