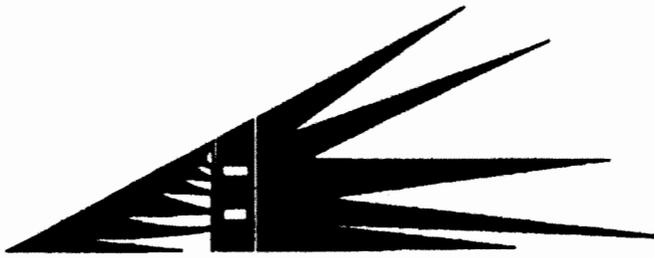




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SOUTHWEST RESEARCH AND INFORMATION CENTER

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February 1, 2018

Ricardo Maestas
New Mexico Environment Department (NMED)
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

via email

RE: Class 2 Modification Requests – Training Program Revision and
Construction and Operation of a New Filter Building

Dear Ricardo:

Southwest Research and Information Center (SRIC) provides the following comments on the Class 2 permit modification request package that was submitted by the permittees on November 29, 2017, according to their public notice.

SRIC appreciates that the permittees provided a draft of the proposed request and that representatives of the permittees as well as NMED met with SRIC and other citizen group representatives on November 9, 2017. SRIC continues to believe that such pre-submittal meetings are useful and supports continuing that “standard” practice in the future.

Item 1 – Training Program Revision

SRIC does not object to the proposed changes. But SRIC does object to some of the justification language that implies that the greater level of detail regarding the training program that has always been in the Permit was not consistent with the regulations.

For example, page 1 of the request:

“Revise the training program for WIPP facility personnel required by Permit Part 2.8, *Personnel Training*, to be consistent with the applicable requirements of the Resource Conservation and Recovery Act (**RCRA**) regulations and other hazardous waste facility permits throughout the state of New Mexico.”

The justification should be, “*Personnel Training*, as allowed by the applicable requirements...”

The existing Permit language also is “consistent with” those requirements.

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Page 2 of the request (similar language is at the end of the first paragraph and on page 13):
“In order to more closely align the training program with the requirements of 20.4.1.500 NMAC (incorporating 40 CFR §264.16),”

The justification should be, “As allowed by the requirements of...”

SRIC believes, and NMED has stated in Permit hearings and Permit renewal hearings, that the existing requirements are very much aligned and consistent with the regulatory requirements. To allow the details to be in the WIPP Facility files is allowed by the regulations, so SRIC does not oppose the change. But the justification language is inappropriate and unnecessary, and it does not fully reflect the fact that the existing language is allowed by the regulations and that the permittees supported including the detailed language in the original and renewed Permit.

If it approves the request, NMED should make clear that it is in no way agreeing to the changes because the training requirements that have been in the Permit since 1999 were inappropriate or not in compliance with regulatory requirements.

Item 2 – Construction and Operation of a New Filter Building (NFB)

SRIC does not object to the NFB, nor to improved underground ventilation. The existing lack of adequate ventilation is a definite worker health and safety problem, which should have been better addressed before underground waste operations were re-started in January 2017.

Pursuant to 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(b)(6)(i)(B)) and its historic practices, NMED may deny class 2 modification requests. The modification request is so inadequate that NMED may need to reject it, without prejudice to resubmission of a new request. At a minimum, any approval must be with changes and some parts of the request must be denied.

The modeling done is inadequate, an issue that was raised by SRIC at the pre-submittal meeting but not adequately addressed. SRIC objects to the fact that the permittees are not using the most current meteorological data. The justification on page 10 is:

“The underlying assumption is that any five-year period is equivalent to any other five-year period. Therefore, it is not necessary to use the most recent five-year data set (e.g., 2012 – 2016).”

In cases that assumptions that can supported or disproven or modified with data, such data analysis should be required. The permittees admit that they have the five-year data set (2012-2016), but they have not demonstrated that it is “equivalent” to the data set from 2009-2013, which is used in Appendix C. Climate change and weather patterns are rapidly changing in some parts of the United States, as demonstrated by major fire, mudslide, hurricane, superstorm and other current events. The permittees should be required to either use the most recent data set in their modeling or to demonstrate (not simply assert) that the most current data is actually “equivalent” with the data set used in the modeling. Without using either the current data or demonstrating the equivalence, the request is inadequate, because protection of worker and public health is not assured. Thus, adequate technical basis is not provided, and the request should be rejected.

SRIC strongly objects to the removal of provisions of Permit Attachment O, WIPP Mine Ventilation Rate Monitoring Plan. As stated in our November 12, 2015 comments on the Class 2

modification request, SRIC does not believe that the existing monitoring is sufficient. Further, there is no reason to remove the ventilation rate monitoring plan, which provides a level of safety for workers and the public by ensuring that adequate ventilation is maintained. Monitoring of ventilation flow also is required for safe operation of the facility, as is Central Monitoring Room Operator's Log, so it is appropriate to maintain those requirements. The permittees apparently are trying to take the opportunity of this request for a NFB to remove unrelated provisions of the Permit, for which adequate justification has not been required. If the removal of the provisions was required or necessary, they should have been included in the Class 2 modification request package of September 8, 2015. The removal was not necessary or required then, and it should not be necessary or required now, so those proposed changes should be denied.

Similarly, the proposed deletions and changes in Permit Attachment A2-2a(3) are inappropriate and should not be approved. For example, "sufficient airflow" and "sufficient ventilation airflow" are insufficiently detailed as compared with actual air flow standards that have always been in the Permit. SRIC would not object to adding details about the 540,000 actual cubic feet per minute (acfm) that the permittees state will be installed with the NFB.

Further, the proposed deletion in Attachment E, Table E-1 is not appropriate, and it should not be approved. Ventilation exhaust inspections must be done for the safe operation of the facility, and such inspections should continue to be required by the Permit.

SRIC also objects to using the NFB as the basis for a significant change to the closure plan related to decontamination and decommissioning (D&D) of some of the structures and equipment, including those totally unrelated to the proposed D&D activities regarding the NFB. As the request admits on page 8, such early D&D was not supposed to occur until final facility closure. If NMED approves the modification request, the department should also require a future request specific to all changes in the closure plan that are needed as a result of the 2014 fire and radiation release, including those mentioned in this request, or require that more comprehensive request be included as part of the forthcoming permit renewal. Piecemeal changes in the closure plan are not appropriate so many years before the closure plan is implemented. The impacts of the 2014 events on the closure plan should be looked at comprehensively so that the permittees, NMED, and public resources are focused on determining what changes are required in the Permit.

The proposed new language in G-1e(2)(c)(2) must be denied. The language is not specific enough, the need has not been established, and it does not fully include that changes that the permittees actually apparently want. What the permittees apparently want is a blank check to emplace whatever contaminated material, structures, and equipment in whatever volumes and in any uncontainerized fashion. None of that is authorized by the WIPP Land Withdrawal Act (LWA) or the WIPP Permit. Both the LWA and the Permit place limits on the volume of waste that can be emplaced in WIPP. The Permit requires waste to be characterized and includes prohibits certain materials and chemicals in Permit Section 2.3.3. The proposed language contains no provisions for characterization, no means to determine whether the waste meets those TSDF-WAC requirements, no determination that it meets the container requirements of the Permit. NMED must deny this part of the request and instead inform the permittees that they must submit a new modification request regarding all of the proposed changes in the closure plan.

Thank you very much for your careful consideration of these comments and all others received.

Sincerely,

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

Don Hancock

cc: John Kieling