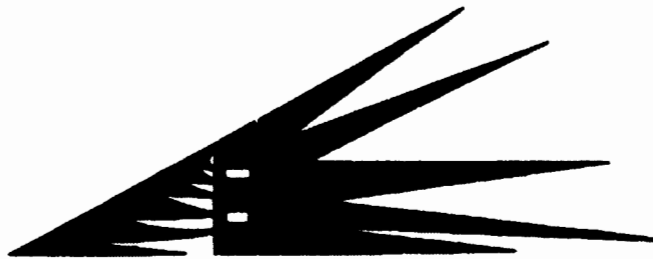


 ENTERED



7/10/2019

SOUTHWEST RESEARCH AND INFORMATION CENTER

P.O. Box 4524 Albuquerque, NM 87196 505-262-1862 FAX: 505-262-1864 www.sric.org

April 5, 2019

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

VIA EMAIL

RE: WIPP Class 1 Permit Modification Notification – dated March 21, 2019
Report Final LWA TRU Waste Volumes for filled Panels 1 through 6 in Permit
Part 4, Table 4.1.1

Dear Secretary Kenney,

Southwest Research and Information Center (SRIC) strongly objects to the Class 1 Permit Modification Notification submitted by the permittees dated March 21, 2019, according to the Information Repository posting on the WIPP website, and incorporated into the revised version of the Searchable WIPP Permit on that date.

As you are hopefully aware, SRIC and others have filed an appeal in the New Mexico Court of Appeals (No. A-1-CA-37894) of the permit modification issued on December 21, 2018, which relates to this matter. We hope that you will give serious attention to how to address that litigation in the near future.

Notwithstanding that appeal, the Class 1 modification cannot be accepted by NMED because it is inaccurate, incomplete, and contains unverifiable waste amounts. Further, SRIC believes, notwithstanding the NMED approval letter of December 21, 2018, that the modification is not properly a class 1 modification under the Hazardous Waste regulations.

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. Alternatively, as has also previously occurred, the permittees can withdraw the submission.

This supposedly "simple" submission creates technical and factual issues and public controversy, setting aside the legal matters under appeal. Such matters could have been addressed if the permittees had agreed to a pre-submittal meeting, as has been done with many other modification requests. Thus, SRIC believes that a meeting among NMED, the permittees, and other stakeholders should be held soon to discuss this modification and other requests that the permittees are considering, as well as to discuss the upcoming permit renewal process.



The modification is inaccurate and incomplete

None of the amounts shown in Table 4.1.1 column “Final LWA TRU Waste Volume⁴” can be verified as accurate. The notice does not explain how the amounts are derived. It is inappropriate to have information in the Permit that is inaccurate and which cannot be verified as to the amount of waste in the containers.

In contrast, the volumes shown in column “Final TRU Mixed Waste Volume³” can be verified, as SRIC has done in attachment 1, which shows the number of each disposal containers in each panel and the amount of waste contained.

The Notice, footnote 4 states: “A link to the LWA TRU Waste Volume is posted on www.wipp.energy.gov.” But no such link is shown on the WIPP website, nor does a search on the WIPP homepage result in any such link, so the Notice is inaccurate.

Additionally, the modification is entitled “Report Final LWA TRU Waste Volumes for filled Panels 1 through 6 in Permit Part 4, Table 4.1.1” (page following cover letter), yet the submission includes not only numbers for that column, but also for the “Final TRU Mixed Waste Volume³.” The title and description of the notification should have so stated and are not accurate.

Table 4.1.1 Column “Maximum TRU Mixed Waste Capacity²” totals 5,244,900 ft³ (148,500 m³) of CH waste and 93,050 ft³ (2,635 m³) of RH waste. The notification does not sum either “Final TRU Mixed Waste Volume³” column, nor the “Final LWA TRU Waste Volume⁴” column and does not provide any explanation for not providing those numbers.

Information provided by the permittees must be accurate and complete and the cover letter signatories state: “the information submitted is, to the best of our knowledge and belief, true, accurate, and complete.” However, as described above, the information is not accurate and complete.

NMED must Review and Reject the Modification

In addition to requirements for accuracy and completeness, 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 a “minor change.” The sum of the “Final TRU Mixed Waste Volume³” column for CH mixed waste is 90,238.24 m³ and 625.78 m³ for RH mixed waste. The sum of the “Final LWA TRU Waste Volume⁴” column is 64,488.83 m³ for CH waste and 350.60 m³ for RH waste. The “LWA TRU Waste Volume⁴” is a 28.5 percent reduction in the total amount of CH waste and a 44 percent reduction in the total amount of RH waste. In no way can those changes be considered “minor,” and the submittal should not be considered as a Class 1 modification.

An alternative to NMED rejecting the modification is for the permittees to withdraw the notice, similar to their withdrawal on May 12, 2017 of the class 1 modification submitted on April 27, 2017, related to Part 3, Table 3.1.1, and Attachment A1.

The importance of pre-submittal and other meetings with the permittees and NMED

SRIC reiterates previous requests that the permittees discuss proposed permit modifications prior to their submission, a practice that has been followed for class 2 and 3 modification requests for several years. 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 or it might have been changed to correct some or all of the inaccuracies and incompleteness.

By the permittees submitting the class 1 modification, the burden is, inappropriately, on SRIC and other members of the public to regularly monitor the WIPP website to observe that the permittees are submitting improperly classified permit modifications.

Therefore, in addition to rejecting the Class 1 modification notification, SRIC would again request that NMED convene pre-submittal type meeting(s) to review and discuss plans for proposed modifications before they are submitted to NMED. In addition, the permittees are required by Permit Section 1.7.3 to submit a permit renewal application in 2020. Based on the experience in 2009 and 2010 with the first permit renewal application, when the original application had to be substantially amended and resubmitted, SRIC strongly recommends that a meeting be convened soon to discuss what changes the permittees intend to request in the permit renewal. Such a meeting could clarify what the permittees are planning and identify controversial issues and the timing and resources needed by NMED and the public for the renewal process. Such a meeting could also avoid submission of other modification requests that should instead be considered as part of the permit renewal process.

Thank you very much for your careful consideration of these comments. Please advise me of your actions in this matter.

Thank you very much, also, for the meeting on April 2 with me and representatives of several other organizations to discuss concerns about the three DOE facilities in New Mexico. SRIC looks forward to working with you and your staff, as well as the permittees and others, to promote better collaboration and interaction on WIPP and better protection of public health and the environment.

Sincerely,



Don Hancock

cc: Jennifer Pruett
Stephanie Stringer
John Kieling
Ricardo Maestas

WIPP DISPOSAL VOLUMES (cubic meters)

(as of March 23, 2019)

	Panel 1	Panel 2	Panel 3	Panel 4	Panel 5	Panel 6	Panel 7	Panel 8	Totals
55-gal. Drums	38,139	23,865	8,394	12,858	21,255	12,317	4,535		121,363
Volume	8,009.19	5,011.65	1,762.74	2,700.18	4,463.55	2,586.57	952.35		25,486.23
SWB	1,239	3,176	1,730	1,405	2,200	3,033	357		13,140
Volume	2,329.32	5,970.88	3,252.40	2,641.40	4,136.00	5,702.04	671.16		24,703.20
TDOPS	35	1,451	2,227	1,048	788	459	636		6,644
Volume	157.50	6,529.50	10,021.50	4,716.00	3,546.00	2,065.50	2,862.00		29,898.00
85-gal drums	2	0	0	3	0	0	0		5
Volume	0.64	0.00	0.00	0.96	0.00	0.00	0.00		1.60
100-gal. Drums	0	1,278	5,409	11,050	9,951	6,546	56		34,290
Volume	0.00	485.64	2,055.42	4,199.00	3,781.38	2,487.48	21.28		13,030.20
SLB2s	0	0	0	0	0	220	12		232
Volume	0.00	0.00	0.00	0.00	0.00	1,625.80	88.68		1,714.48
R-Lid 72-Bs	0	0	0	198	246	239	18		701
Volume	0.00	0.00	0.00	176.22	218.94	212.71	16.02		623.89
F-Lid 72 Bs	0	0	0	0	18	0	0		18
Volume	0.00	0.00	0.00	0.00	16.02	0.00	0.00		16.02
Shielded Cont.							9	18	27
Volume							1.89	3.78	5.67
Dunnage	579	909	3,407	215	221	612			5,943
CH volume	10,496.65	17,997.67	17,092.06	14,257.54	15,926.93	14,467.39	4,595.47		94,833.71
RH volume	0.00	0.00	0.00	176.22	234.96	214.60	19.80		645.58

Sources: Container numbers: <http://www.wipp.energy.gov/general/GenerateWippStatusReport.pdf>

176,420 containers with waste

Container volumes: <http://www.nmenv.state.nm.us/wipp/documents/Part3.pdf>

Dunnage from WIPP Information Center as of 2/3/16

RH legal limit									7,079
RH canister capacity				176.22	234.96	214.60	650.00	650	1,925.78
RH cumulative					411.18	625.78			

CH legal limit									168,485
CH capacity	10,496.65	17,997.67	17,092.06	14,257.54	15,926.93	14,467.39	18,750.00	18,750.00	127,738.24
CH Cumulative	10,496.65	28,494.32	45,586.38	59,843.92	75,770.85	90,238.24			