



State of New Mexico
ENVIRONMENT DEPARTMENT
 Harold Runnels Building
 1190 St. Francis Drive, P.O. Box 26110
 Santa Fe, New Mexico 87502
 (505) 827-2850

ENTERED

BRUCE KING
 GOVERNOR

JUDITH M. ESPINOSA
 SECRETARY

RON CURRY
 DEPUTY SECRETARY

July 18, 1994

George E. Dials, Manager
 Carlsbad Area Office
 Department of Energy
 P.O. Box 3090
 Carlsbad, New Mexico 88221

Dear Mr. Dials:

Thank you for allowing the New Mexico Environment Department (NMED) the opportunity to provide comments on the Compliance Status Report (CSR) for the Waste Isolation Pilot Plant (WIPP). Staff have developed a number of comments/concerns which are attached.

It is clear after reading the Executive Summary that the CSR addresses the WIPP project status in demonstrating compliance with only the long-term disposal regulations, and does not specifically address the requirements for operating a hazardous waste treatment, storage or disposal facility (40 CFR Parts 264 and 265). As the implementing agency for these regulations under the New Mexico Hazardous Waste Management Regulations (HWMR-7), the attached comments focus primarily on compliance issues related to the RCRA Part B Permit for the disposal phase.

Again, thank you for the opportunity to comment. Continued communication of this nature will help to ensure that conflicting requirements are not imposed under the different regulatory authorities. Please call me if you have any questions on the enclosed comments.

Sincerely,

Judith M. Espinosa
 Secretary

Enclosures

cc: Kathleen Sisneros, WWMD
 Benito Garcia, HRMB
 John Parker, HRMB
 Barbara Hoditschek, HRMB
 EPA Region 6

940703



**NEW MEXICO ENVIRONMENT DEPARTMENT COMMENTS
ON THE**

**COMPLIANCE STATUS REPORT
FOR THE
WASTE ISOLATION PILOT PLANT
MARCH 1994**

1. **Page 1-8, Section 1.3 Regulatory Framework:** This Section should contain a reference that the permitting and Post Closure standards are found in HWMR-7 Sections 264 and 270.
2. **Page 1-8 1.3.1 - Hazardous Waste Disposal Standards:** Some discussion of how 40 CFR 268.6 and other operational RCRA regulations may be synergistic or may differ is warranted (e.g. ground water monitoring requirements and unit boundary). Throughout the whole report various discussions on waste characterization and monitoring leave this reviewer confused on how DOE proposed to satisfy overlapping issues addressed by both programs.
3. **Page 4-22, Section 4.2.1 Performance-Based Waste Envelopes:** states that waste parameters shown to have little or no impact on repository performance will be candidates for reduced characterization. Later in the Waste Characterization Section 4.3 (Page 4-40) the CSR states definitively that physical waste forms not affecting compliance will be excluded from future waste characterization programs. Section 4.3 (Page 40) should reflect Section 4.2.1 (Page 4-22) on the need to consult the State and EPA before changes are made.
4. **Page 4-39 Section 4.3.1 Program Summary:** This section states that there are two objectives to the waste characterization program: 40 CFR 191 and 194; and 40 CFR 268.6. This section needs to discuss the overlap between 40 CFR 268.6 and 40 CFR 264, and emphasize that the State RCRA program must also be satisfied.
5. **Page 4-43 Process Knowledge Information:** DOE will have to quantify and qualify specific criteria to support the use of any process knowledge. HWMR-7, section 264.13(a) will be enforced.
6. **Page 5-1, Monitoring:** monitoring is required by HWMR-7, Section 264.
7. **Page 5-6 (P2) Confirmatory Monitoring:** NMED/WIPP staff are unaware and have confirmed that no program exists for hydrogen, methane, or hazardous gas monitoring as described in this section. This should be confirmed that such a statement is not made in the RCRA Part B application.

8. **Page 8-27, Section 8.1.5.2:** It is unclear what is meant by the statement, "the regulatory performance measures...are health-based soil concentration levels allowable for specified hazardous constituents as proposed in 40 CFR 264 Subpart S." On the contrary 268.6 provides a methodology and requirements for petitions to allow land disposal of prohibited wastes. The statement in question is highly oversimplified.
9. **Page 9-1, 9.1 Containment of Releases:** Section 9.1.2 40 CFR 268.6 This section discusses VOC monitoring system. It should be consistent with that required under the RCRA Part B permit.
10. **Page 9-6. 9.2.2 40 CFR 268.6:** The discussion on this page is DOE Interpretation of the applicability of the Test Phase no-migration petition to the disposal phase petition. While wording may have indicated in the no-migration determination that "RCRA relies on Institutional controls" to restrict access to hazardous waste disposal sites, the agency did not specifically review or address possible releases from human-intrusion. NMED/WIPP staff have suggested that because the disposal phase decision and 40 CFR 191 decision will be handled simultaneously, the two conceptual models for releases should be consistent (e.g. include human intrusion).
11. **Page 9-14, 9.6.1 (S2) 40 CFR 268.6 - (RCRA):** EPA is quoted as saying that the air pathway is only credible release prior to closure. While this may be the case, the EPA decision was clearly limited to the Test Phase, which involved only a limited amount of waste and had stringent requirements on allowed waste form, double containment etc.
12. **Page 9-15, 9.9 Waste Acceptance/Waste Compliance (RCRA):** "The final waste acceptance criteria will include criteria from the PA models as well as possible conditions which may be imposed as part of the compliance application process". This should emphasize what those relevant applications are (e.g. RCRA Part B).
13. **Page 9-16 Waste Acceptance/Waste Compliance (RCRA):** "The ultimate goal of waste characterization is to reduce the level and frequency of sampling and analysis required during the disposal phase. "This should emphasize that this strategy will have to comply with not only 40 CFR 268.6 but also RCRA Part B.
14. **Page 11-8, Section 11.9:** The third bullet should be 40 CFR 264 not 40 CFR 265.
15. **Page A-2, Appendix A, Bullet 5:** The hazardous wastes as defined in 40 CFR 264.10 are subject to regulations under the New Mexico Hazardous Waste Act not to RCRA.
16. **Appendix A (3) and (4:** Unit boundaries described should not

be confused by miscellaneous unit boundary, as defined in this regulatory interpretation section.

17. **Page A-19, Appendix A, Bullet 35:** NMED will decide through the permit issuance process and subsequent closure plan review on any vadose zone or groundwater monitoring requirements to be conducted during the post-closure care period.
18. **Page G-9 Glossary:** Hazardous Waste Management Units, Waste Management Units, RCRA Units, Miscellaneous Units and disposal units all need to be defined and/or differentiated in the report and the glossary.