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(including cover)

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FROM: Steve Zappe, Hazardous & Radioactive Materials Bureau
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DATE: November 21, 1994

SUBJECT: Presentation for TRU Waste Update Meeting

Mark:

Attached is a draft copy of the presentation I would like to give on behalf of NMED at the upcoming TRU Waste Update meeting. I am providing this for your information only, as it is a draft copy.

I am awaiting approval for this trip from Department Deputy Secretary Ron Curry, so my plans are still tentative. However, I will be unable to attend the entire day's meeting, as my flight arrives in San Antonio at 10:55 AM. Please schedule me to speak sometime after lunch and before 4:00 PM if possible. Call if you have any questions.

Thanks!

Steve

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Update on WIPP RCRA-Related Activities in the New Mexico Environment Department

Presented by Steve Zappe of the New Mexico Environment Department's Hazardous and Radioactive Materials Bureau at the National TRU Waste Update Meeting, San Antonio, Texas, December 1, 1994

Introduction

In February 1991, the New Mexico Environment Department (NMED) received a Resource Conservation and Recovery Act (RCRA) application from the Department of Energy (DOE) and Westinghouse Electric Corporation (WEC) requesting a permit covering Test Phase activities at the Waste Isolation Pilot Plant (WIPP) located in Carlsbad, New Mexico. This application sought to designate a hazardous waste container storage area within the Waste Handling Building and to operate two miscellaneous hazardous waste management units within part of the subsurface repository, located in the salt beds of the Salado formation 2150 feet below the surface.

DOE subsequently revised the application two more times before, in February 1993, NMED determined the application was complete and proceeded to write the draft permit for the WIPP Test Phase. NMED completed the draft permit and gave public notice on August 30, 1993, requesting public review and comment within a sixty-day period. At the request of DOE, NMED extended the public comment period twice and finally closed it on January 14, 1994.

Elimination of Test Phase, Secretary's order

In the meantime, DOE announced October 23, 1993 that they would not conduct tests involving radioactive wastes at WIPP. They further clarified on November 30, 1993 that they no longer intended to conduct mixed waste testing during a Test Phase at WIPP. This resulted in a draft permit no longer applicable to DOE's new plan to conduct laboratory tests and proceed with the Disposal Phase at WIPP. NMED Secretary Judith M. Espinosa considered all comments received during the public comment period. These comments ranged from withdrawing the entire application and ceasing all activities at WIPP, to allowing DOE to update their current application to reflect Disposal Phase activities.

On September 2, 1994, Secretary Espinosa issued an order on the draft permit which stated the following:

1. Because DOE no longer intends to conduct testing at WIPP, the draft permit is withdrawn and remanded to NMED's Hazardous and Radioactive Materials Bureau. *The Bureau received the draft permit the week of September 6, 1994.*
2. By May 31, 1995, DOE shall submit a complete revised application that more accurately reflects future WIPP activities. *DOE is in the process of submitting a revised application, as described below.*

3. Within twenty-one calendar days of the order, DOE shall submit a schedule of milestones of its anticipated progress of submissions on the revised application. *NMED received a schedule of milestones in a September 15 letter from DOE.*
4. Within one month of the order, DOE shall hold a stakeholders meeting to explain its schedule and permit revisions. *DOE held a stakeholder briefing September 26, 1994, as described below.*
5. If no complete revised permit application is received by the Hazardous and Radioactive Materials Bureau by May 31, 1995, a public notice of intent to deny will automatically be issued. *NMED interprets a "complete revision" to be an updated document, not necessarily administratively complete in the regulatory sense.*

Revised permit application for Disposal Phase

On September 26, 1994, Jim Mewhinney of DOE's Carlsbad Area Office Compliance Branch held a stakeholder briefing to discuss their strategy for submitting revisions to the RCRA application. By October 12, DOE submitted seven chapters which had required only minor revision. Chapters to be submitted at later dates include *Facility and Process Description* and *Closure/Post-Closure Plans & Financial Requirements* (due by January 6, 1995), and *Part A Permit Application, Waste Analysis Plan, No-Migration Determination, and Certification* (due by March 2, 1995). These later submittals either require more substantial revision (such as the Waste Analysis Plan), or are subject to approval from EPA (such as the No-Migration Determination). DOE says the final submittal of all chapters, due May 31, 1995, will reflect comments received from stakeholders.

Significant changes expected in the revised permit application are as follows:

1. All references to the Test Phase will be deleted, along with all activities associated with the Test Phase, and will be replaced with Disposal Phase Activities.
2. Panels will be permitted under RCRA 264 Subpart X as miscellaneous units. Up to three panels may be active at once:
 - The panel being excavated
 - The panel being filled
 - The panel being closed
3. Disposal Phase waste characterization procedures will be significantly different from those in the Test Phase. Test Phase waste characterization required visual examination of every container destined for WIPP. DOE

now intends to infer waste characteristics by a combination of sampling & analysis and process knowledge applied to statistically selected containers from discrete waste streams. Waste characterization, and particularly the issue of process knowledge, is the subject of ongoing discussions among DOE, EPA, and NMED.

Waste analysis concerns

NMED is concerned that DOE is developing the Waste Acceptance Criteria (**WAC**) and/or a Waste Analysis Plan (**WAP**) for WIPP-destined waste without addressing the acceptability criteria of the NMED in the RCRA disposal permit application. NMED believes DOE should, at the formative stages of the WAC/WAP process, address the requirements of both the EPA No-Migration Determination (**NMD**) and the State RCRA permit simultaneously.

The State believes if the two regulatory requirements are not married at an early stage, the end result may be two separate sets of waste acceptance criteria (one for the NMD, one for RCRA). NMED believes that DOE and its contractors can avoid unnecessary costs to the program if they begin to develop the WAC now with EPA, NMED, and stakeholders.

A key issue to NMED is the DOE/WID proposal to use knowledge of process (**KOP**) in the WAC/WAP for some waste streams in lieu of chemical and physical analysis. NMED has previously notified DOE that KOP must be statistically validated to represent the entire waste stream destined for WIPP disposal. This statistical validation must be acceptable to NMED for inclusion in the disposal permit.

DOE, through the National TRU Program Office at CAO, must coordinate the **acceptable** waste characterization from the regulator standpoint. NMED believes that if a coordinated, acceptable WAC/WAP can be developed which satisfies both NMED and EPA requirements, these documents can be used to support both the NMD and the RCRA permit.

Closing

NMED's Hazardous and Radioactive Materials Bureau (**HRMB**) will informally review the draft permit application during the phased submittal period and provide limited feedback to DOE on its administrative adequacy. After submittal of the final application in May 1995, HRMB will decide if the application is administratively complete under RCRA permitting regulations. Once the application is considered administratively complete, HRMB will proceed with reviewing the application for technical adequacy.

If you have any questions on the topics presented in this paper, please contact Benito Garcia, Barbara Hoditschek, or Steve Zappe of the HRMB at (505) 827-4308.