

ENTRUSTED

Presentation to the WIPP Review Committee of the EPA's National Advisory Council for Environmental Policy and Technology (NACEPT), September 6, 1995

GOOD AFTERNOON. MY NAME IS STEVE ZAPPE, AND TODAY I AM SPEAKING ON BEHALF OF MR. MARK WEIDLER, SECRETARY OF THE NEW MEXICO ENVIRONMENT DEPARTMENT. AS YOU MAY KNOW, THE STATE OF NEW MEXICO IS RESPONSIBLE FOR REGULATING THE TREATMENT, STORAGE AND DISPOSAL OF ALL HAZARDOUS WASTE, WHICH INCLUDES THE HAZARDOUS COMPONENT OF ANY TRANSURANIC MIXED WASTE DESTINED FOR DISPOSAL AT WIPP. TODAY, I WILL MAKE LIMITED COMMENTS ON THE THREE TOPICS OPEN FOR DISCUSSION, AND WILL INSTEAD PROVIDE THE PANEL WITH A STATUS REPORT ON THE WIPP HAZARDOUS WASTE DISPOSAL PERMIT.

THE NEW MEXICO ENVIRONMENT DEPARTMENT HAS REVIEWED THE PROPOSED 40 CFR 194 REGULATIONS, AND HAS READ AND HEARD PRESENTATIONS ON THE TOPICS OF CREDIT FOR PASSIVE INSTITUTIONAL CONTROLS, CRITERIA FOR PEER REVIEW, AND THE APPLICATION OF RELEASE LIMITS. IN GENERAL, NMED SUPPORTS REGULATIONS WHICH PROTECT THE HEALTH OF OUR PEOPLE AND PRESERVE THE QUALITY OF OUR ENVIRONMENT, YET WE OPPOSE REGULATIONS WHICH ADD UNNECESSARY BURDENS WITHOUT PROVIDING ADDITIONAL REAL PROTECTION.

ON THE TOPIC OF GIVING DOE CREDIT FOR CONSTRUCTING PASSIVE INSTITUTIONAL CONTROLS (**PICs**), ONE THING IS CERTAIN... 40 CFR 191 REQUIRES THEIR CONSTRUCTION. BEYOND THAT, THE DISCUSSION NOW IS WHETHER DOE CAN TAKE CREDIT IN PERFORMANCE ASSESSMENT CALCULATIONS FOR PICS ACTUALLY DETERRING INADVERTENT HUMAN INTRUSION INTO THE



REPOSITORY. THIS ISSUE, AS ARE MANY OTHERS ASSOCIATED WITH WIPP, IS A SUBJECT UNIQUE IN HUMAN HISTORY, WITH NO DIRECT PRECEDENT. THE DIFFICULTY IN REACHING CONSENSUS ON AN ACCEPTABLE PERCENTAGE REDUCTION IN FUTURE DRILLING RATE SEEMS DIFFICULT AT BEST. UNLIKE ACTUARIAL CALCULATIONS IN THE INSURANCE INDUSTRY WHERE THE DOLLAR VALUE OF A PARTICULAR RISK IS SUPPORTED BY YEARS OF CLAIM EXPERIENCE, NO ONE HAS YET BEEN ABLE TO PREDICT WITH ANY RELIABILITY FUTURE EVENTS IN THE ABSENCE OF ANY HARD DATA. THUS, IT WOULD SEEM EVEN MORE DIFFICULT TO ASSIGN SOME FACTOR WHICH WOULD FURTHER REDUCE THE LIKELIHOOD OF THIS UNPREDICTABLE FUTURE EVENT. THE OTHER SIDE OF THIS ISSUE, HOWEVER, IS HOW TO ENSURE THAT AN ADEQUATE LEVEL OF EFFORT IS EXPENDED BY DOE IN COMPLYING WITH NOT ONLY THE LETTER BUT THE SPIRIT OF THE LAW. SHOULD EPA PROVIDE CREDIT FOR PICS AS AN INCENTIVE TO DOE TO EXPEND MORE EFFORT IN DESIGNING THEM? I LEAVE IT TO THE COMMITTEE TO WEIGH THE PROS AND CONS BEFORE MAKING THEIR RECOMMENDATION TO EPA.

ON THE TOPIC OF PEER REVIEW, EPA IS CONSIDERING REVISING THE COMPLIANCE CRITERIA TO FOCUS LESS ON SPECIFIC ACTIVITIES AND MORE ON A GENERAL RATIONALE FOR REQUIRING PEER REVIEW. NMED SUGGESTS THAT WHATEVER CRITERIA IS DEVELOPED SHOULD BE CLEAR TO ALL PARTIES AND NOT OPEN TO SIGNIFICANT DISAGREEMENT OVER WHETHER A PARTICULAR ACTIVITY MUST UNDERGO PEER REVIEW. EPA MUST STRIVE FOR MORE CLARITY IN HOW THE RATIONALE WILL BE APPLIED IF THEY WISH TO HAVE USEFUL PEER REVIEW.

AND LASTLY, ON THE TOPIC OF RELEASE LIMITS, NMED BELIEVES THE CRITERIA SHOULD ADOPT THE FIXED TIME FOR ASSESSING TOTAL CURIE CONTENT WHICH WOULD BE MOST PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT. SOME MAY APPROACH THIS ISSUE FROM A DIFFERENT PERSPECTIVE, SUCH AS "WHAT FIXED TIME WOULD PROVIDE THE GREATEST LIKELIHOOD OF WIPP SHOWING NON-COMPLIANCE IN THE PERFORMANCE ASSESSMENT CALCULATIONS?" OUR POSITION IS TO SEPARATE THE TWO ISSUES - SELECT A TIME WHICH MINIMIZES EXPOSURE TO THE PUBLIC, AND THEN LET PERFORMANCE ASSESSMENT DETERMINE IF THE REPOSITORY IS LIKELY TO COMPLY.

I AM NOW GOING TO PROVIDE YOU AND THE MEMBERS OF THE STAKEHOLDER COMMUNITY WITH A STATUS REPORT ON THE WIPP HAZARDOUS WASTE DISPOSAL PERMIT. ON MAY 26, 1995, NMED RECEIVED REVISION 5 OF DOE'S RESOURCE CONSERVATION & RECOVERY ACT (RCRA) PART B PERMIT APPLICATION. THIS WAS IN RESPONSE TO THE SECRETARY'S ORDER OF SEPTEMBER 2, 1994, ON THE WIPP DRAFT PERMIT REQUIRING DOE TO SUBMIT A COMPLETE REVISED APPLICATION THAT MORE ACCURATELY REFLECTED FUTURE WIPP ACTIVITIES (I.E., DISPOSAL INSTEAD OF TEST PHASE ACTIVITIES). ON JUNE 20, 1995, SECRETARY WEIDLER CLOSED THIS PREVIOUS ORDER AFTER FINDING THAT DOE HAD SATISFIED ALL ITS REQUIREMENTS.

WITHIN 60 DAYS OF RECEIPT OF THE REVISED PERMIT APPLICATION, NMED ISSUED A DETERMINATION ON JULY 25, 1995, THAT THE APPLICATION WAS ADMINISTRATIVELY COMPLETE. THIS DETERMINATION ASSURES THAT ALL

ELEMENTS REQUIRED OF A HAZARDOUS WASTE FACILITY APPLICATION ARE PRESENT, BUT DOES NOT PRECLUDE NMED FROM REQUESTING CLARIFICATION OR ADDITIONAL TECHNICAL INFORMATION DURING THE SUBSEQUENT TECHNICAL REVIEW OF THE APPLICATION. ANY REQUEST FOR ADDITIONAL INFORMATION AFTER THE DETERMINATION OF ADMINISTRATIVE COMPLETENESS DOES NOT RENDER THE APPLICATION INCOMPLETE.

ON JUNE 26, 1995, NMED ANNOUNCED IT HAD AWARDED A CONTRACT FOR TECHNICAL REVIEW ASSISTANCE OF THE WIPP RCRA PART B PERMIT APPLICATION TO A.T. KEARNEY. THE CONTRACT WAS SUBSEQUENTLY APPROVED BY THE STATE CONTRACTS OFFICE IN LATE AUGUST. NMED HAS DEVELOPED A SCHEDULE FOR TECHNICAL REVIEW OF THE APPLICATION WHICH CALLS FOR A SEMI-SIMULTANEOUS REVIEW OF MULTIPLE CHAPTERS, ITERATIVE FEEDBACK FROM DOE IN RESPONSE TO REQUESTS FOR FURTHER INFORMATION, AND COMPLETION OF THE REVIEW BEFORE THE END OF THIS YEAR. WE ANTICIPATE BEGINNING THE DEVELOPMENT OF THE DRAFT PERMIT IN LATE JANUARY, AND RELEASING THE DRAFT PERMIT FOR PUBLIC COMMENT IN EARLY JULY, 1996.

NMED WILL COORDINATE ITS REVIEW OF THE RCRA PART B APPLICATION WITH EPA OFFICE OF SOLID WASTE'S REVIEW OF THE DRAFT NO-MIGRATION VARIANCE PETITION. MANY ELEMENTS BETWEEN THE TWO DOCUMENTS ARE SIMILAR, AND A.T. KEARNEY IS ALSO UNDER CONTRACT WITH EPA TO ASSIST IN REVIEWING THE NO-MIGRATION VARIANCE PETITION. EPA'S REGION 6 STAFF HAVE ALREADY IDENTIFIED POTENTIAL AREAS OF DISCREPANCY

BETWEEN THE TWO DOCUMENTS WHICH DOE MUST RESOLVE BEFORE THE RCRA PART B APPLICATION IS DEEMED TECHNICALLY ADEQUATE AND COMPLETE.

IN SUMMARY, NMED ENCOURAGES THIS ADVISORY COMMITTEE TO RECOMMEND THAT EPA DEVELOP CLEAR, UNAMBIGUOUS CRITERIA BY WHICH DOE MUST DEMONSTRATE COMPLIANCE WITH 40 CFR 191. NOTHING IS GAINED IF THE RESULTING CRITERIA LEAD TO CONTENTION AMONG THE VARIOUS PARTIES INTERESTED IN A SAFE SOLUTION TO DOE'S TRANSURANIC WASTE PROBLEM. FOR OUR DEPARTMENT'S PART IN THIS SOLUTION, WE PLEDGE TO DEVELOP A PERMIT THAT IS CLEAR, CONCISE, AND PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT. THANK YOU VERY MUCH FOR THIS OPPORTUNITY TO SPEAK TO YOU TODAY.