

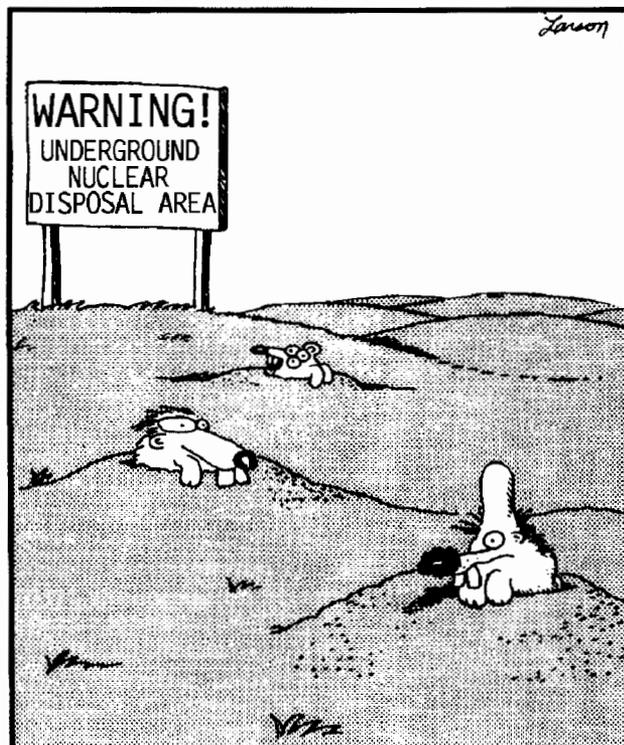


State of New Mexico  
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**FAX COVER SHEET**

Date: January 24, 1996  
 To: Beth Hale  
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 Telephone: 505/842-7767  
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From: *SOE* Steve Zappe

Number of Pages (including this cover sheet): 3 of mine + 6 of yours = 9

**COMMENTS**

Beth -

Here are my suggestions:

1. After mentioning the Resource Conservation and Recovery Act in the first paragraph, follow it with its acronym (**RCRA**), then use the acronym throughout the rest of the article. Do the same with New Mexico Environment Department (**NMED**).
2. Page 1, second paragraph, third line: it's a minor point, but saying the waste contains "traces of hazardous chemicals" sounds like understatement to me and many other stakeholders. I'd simply drop the words "traces of" to avoid trivializing the concentrations - some are quite high.
3. Page 1, last paragraph: I would replace the first sentence, since it is misleading and doesn't tell enough for the reader to judge. Try something like this -  
 Generally, timely submission of a Part A and notification of hazardous waste activities qualifies owners and operators of existing hazardous waste management facilities (who are

**SCANNED**



required to have a permit) for interim status. Facilities with interim status are treated as having been issued a permit until EPA or an authorized State makes a final determination on the permit application. However, there is a legal dispute over the deadline for submitting the Part A to NMED and qualifying for interim status for those facilities managing mixed waste. The New Mexico Attorney General has ...

4. Page 2, last paragraph, second line: The early permit applications (Rev 0 to Rev 3) did more than "include sections" pertaining to the test phase - that was their sole purpose. Thus, this sentence would be more accurate if instead it stated, "The original permit application described activities pertaining to test..."
5. Page 2, last paragraph, last line: Other than saying DOE cancelled the test phase, you leave the reader wondering why the application was revised. Complete the last sentence, "..., which reflected the program changes to pursue an permit for the disposal of TRU mixed waste at the WIPP."
6. Page 3, first paragraph: The impression I got from this section is that nothing serious was wrong with the application, which is *not* the case (as our subsequent correspondence with DOE shows). We were only looking to see if the required topics were included in the application, not to see if what was included was technically adequate. Keep the first sentence, and add the following:  
... During an administrative review, NMED determines if all required information has been submitted in the application. This review does not address the technical adequacy of the application, but only checks to see if the required topics have been included. The WIPP application contained all required administrative information, and was determined by NMED to be administratively complete in July 1995.
7. Page 3, second paragraph: Again, keep the first sentence, and add the following:  
... The purpose of this review is to determine if the application satisfies the technical requirements of RCRA. Throughout November 1995, NMED requested additional information from CAO to provide important details necessary for a thorough technical evaluation of the Part B.
8. Page 3, last paragraph, first sentence: I don't know when you will publish this article, but there is no "if" involved with NMED issuing a notice of deficiency - we will do it. You may want to change the language to read:  
NMED (intends to issue/issued) a notice of deficiency in February 1996. Once NMED reviews the CAO response, it has several options:
9. Page 4, third paragraph, first and second bullets: Clarify that CAO can only request a public hearing if NMED intends to deny the permit. Hearings are generally requested by persons opposed to the proposed action. Thus, citizens

opposing the permit, the applicant opposing the intent to deny, or the Secretary (for any reason) can request a public hearing.

10. Page 4, last paragraph, first sentence: Clarify as follows:  
... response to comments, which identifies those provisions of the draft permit that have been changed and why, and briefly describes and responds to all significant comments raised during the public comment period.
11. Page 5, second line: I appreciate CAO's optimism, but NMED disagrees that the facility permit for WIPP will be issued as early as August 1996. We intend to issue the draft permit sometime prior to early September 1996, but CAO may publish what it wishes. We are under no obligation to make our schedule conform with CAO's.
12. Page 5, prior to second full paragraph: You might want to add a paragraph describing the duration of the RCRA permit, like this:  
A standard RCRA permit is issued for a fixed term not to exceed ten years. During this time, either the applicant or NMED may, under certain circumstances, initiate a procedure to modify the permit, updating it to reflect current activities. Permits for land disposal facilities, such as the WIPP, must be reviewed by NMED five years after issuance to ensure continued compliance with current regulations. Since WIPP expects to receive waste for approximately 25 years, several permit renewals will be necessary.
13. Page 5, end of second full paragraph: After the last bullet, you may add following information:  
If the RCRA permit is terminated for any reason, it will only affect the disposal of TRU mixed waste at the WIPP. The facility will have to perform a partial closure according to the conditions in the approved RCRA closure plan. However, WIPP will still be able to manage and dispose of non-mixed TRU waste (that is, radioactive waste with no hazardous component) in the repository under continued compliance with EPA regulations in 40 CFR §§191 and 194.

I hope this review helps. I understand you are under no obligation to incorporate any of these suggestions, but I believe it will make more sense to those readers unfamiliar with RCRA.

*Steve*

RCRA Story (1,122 words not including title and text box)

Before the Secretary of Energy can decide in October 1997 whether to use the Waste Isolation Pilot Plant (WIPP) as a permanent disposal facility for transuranic waste, the Carlsbad Area Office (CAO) must obtain a Resource Conservation and Recovery Act <sup>(RCRA)</sup> permit from the New Mexico Environment Department (NMED)

~~The Resource Conservation and Recovery Act~~ <sup>RCRA</sup>, which Congress passed in 1976, establishes procedures for the management of hazardous waste. In addition to containing radioactive contamination, much of the waste to be disposed of at the WIPP contains ~~traces of~~ hazardous chemicals. Therefore, the WIPP must have a permit in order to be in compliance with the act. ~~The New Mexico Environment Department~~ <sup>NMED</sup>, which was delegated permitting authority by the Environmental Protection Agency, is responsible for granting or denying a permit for the WIPP.

~~The Resource Conservation and Recovery Act~~ <sup>A RCRA</sup> permit application consists of two parts: Part A and Part B. Part A is a set form that identifies the types and quantities of waste intended to be disposed at the site. Key components of Part A include scale drawings and photographs of the WIPP; a description of the process for disposing of the waste; types of hazardous chemicals found in transuranic mixed waste; an estimate of quantities of hazardous waste; and a general description of waste handling processes.

*Replace with text in fax*

Part A qualifies a facility for interim status, meaning it is treated as having been issued a permit until a final determination on the permit application. The New Mexico Attorney General has

challenged the WIPP's ~~status~~ status. The U.S. Department of Justice is representing the Department of Energy in an effort to resolve the issue.

Part B of the permit application is an extensive narrative on how the facility will operate to meet the requirements of the <sup>RCRA</sup> Resource Conservation and Recovery Act. Part B includes waste characterization information on the hazardous wastes to be handled at the WIPP, a description of procedures for handling hazardous wastes, security procedures and equipment, seismic and flood plain information, and closure and post-closure plans, including ground water monitoring. Some technical data, such as design drawings and specifications and engineering studies, must be certified by a registered professional engineer.

Parts A and B of the permit application were initially submitted to the <sup>NMED</sup> New Mexico Environment Department in 1991. The original permit application <sup>described activities</sup> included sections pertaining to tests with radioactive waste in the WIPP underground. DOE requested and was granted in September 1994 the opportunity to revise Part B because of its decision in 1993 to perform experiments with radioactive waste in national laboratories, rather than in the WIPP underground. From October 1994 to March 1995, the RCRA application draft chapters were made available to <sup>NMED</sup> the New Mexico Environmental Department, other state and federal offices, and the WIPP reading rooms to solicit comments prior to the development and submittal of the revised Part B permit application. In May 1995, the DOE submitted its revised Part B, which reflected the program changes. <sup>to pursue a permit for disposal of TRU mixed waste at the WIPP.</sup>

(2)

→ The New Mexico Environment Department's approval process <sup>begin</sup> begins with an administrative review. During the administrative review, the New Mexico Environment Department could have required the DOE to revise the application if there were serious deficiencies. No serious deficiencies were noted and the permit application was certified administratively complete in July 1995.

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→ Part B of the permit application is undergoing technical review. In November 1995, the ~~New Mexico Environment Department~~ <sup>NMED</sup> requested additional information. The information requested was to provide necessary and important details required for a thorough technical evaluation of Part B.

*Replace with text in fax*

→ ~~The New Mexico Environment Department~~ <sup>NMED</sup> also may obtain additional information by formally issuing a "notice of deficiency." Notices of deficiency may be issued either independent of or subsequent to a previous request for information. The CAO must respond to all notices of deficiency within 30 days unless ~~the New Mexico Environment Department~~ <sup>NMED</sup> approves an extension. Deficiencies may be as simple as requiring a copy of procedures or providing detail on information previously submitted; or as complex as rewriting one or more chapters of Part B of the permit application.

*Replace with text in fax*

If the New Mexico Environment Department issues a notice of deficiency, it has several options after reviewing the CAO response:

- • certify the Part B permit application technically adequate and write the draft Resource <sup>RCRA</sup> Conservation and Recovery Act permit;

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- certify the Part ~~D~~ permit application technically adequate and write the draft permit, but impose conditions that must be met for the permit to be in effect;
- issue an additional notice of deficiency; or
- declare the application technically inadequate by issuing an intent to deny.

A draft permit must contain all conditions, schedules, monitoring requirements, and technical standards for waste treatment, storage, and/or disposal. The Notice Of Intent to deny must specify the secretary's reasons for the intended denial.

→ <sup>NMED</sup> Once the New Mexico Environment Department prepares a draft permit or a notice of intent to deny, the secretary must allow 45 days for public review and comment. If a draft permit is issued and the secretary receives a timely written notice of opposition, the New Mexico Environment Department and the CAO will respond to the request in an attempt to resolve the issues causing opposition.

Once the secretary has issued a draft permit or an intent to deny, a public hearing can be initiated in one of three ways:

- • at the request of anyone from the general public *opposing the draft permit;*
- • at the request of the CAO ~~or~~ *opposing an intent to deny; or*
- at the direction of the secretary of the New Mexico Environment Department.

→ <sup>NMED</sup> After public review and comment, the secretary issues a response to comments, which addresses significant areas of concern and includes reasons for changing any original decisions. The final

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permit decision become effective 30 days after the CAO has received notice of the decision.



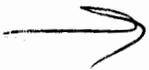
The Carlsbad Area Office anticipates issuance of the facility's permit as early as August 1996. HA!

While the permitting process is based on the facility's ability to protect human health and the environment at the time of issuance, equally important is maintaining that level of protection for the life of the permit. The WIPP site will be inspected periodically until decommissioning to ensure the facility complies with the terms of the <sup>RCRA</sup> ~~Resource Conservation and Recovery Act~~ permit.

*Insert A #12 from Ax*

The secretary of the New Mexico Environment Department may terminate a permit for any of the following reasons:

- noncompliance with any permit condition;
- failure in the application or during the permit issuance process to disclose fully all relevant facts, or misrepresentation of any relevant facts at any time; or
- upon the determination that termination is necessary to protect human health and the environment.



*Insert information from #13*

Note: The radioactive portions of the waste are governed by a different set of regulations: 40 Code of Federal Regulations part 191. DOE will submit a compliance certification application to the EPA in June 1996 to demonstrate how the WIPP disposal system will

contain the radioactive wastes within the repository. A future edition of TRU Progress will describe that process.

*"...wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment."*

— The Resource Conservation and Recovery Act

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