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April 17, 1997

Mr. Chris Wentz, Coordinator  
New Mexico Radioactive Waste Consultation Task Force  
New Mexico Energy, Minerals, & Natural Resources Department  
2040 S. Pacheco  
Santa Fe, NM 87505

Dear Mr. Wentz:

RE: NMED comments on 1996 WIPP Biennial Environmental Compliance Report

The Hazardous & Radioactive Materials Bureau (HRMB) coordinated the New Mexico Environment Department's (NMED) review of the 1996 WIPP Biennial Environmental Compliance Report (BECR). This letter summarizes NMED's findings upon completion of the review.

To the best of NMED's knowledge, WIPP was not in violation of the environmental laws and regulations contained in Chapters 25 through 31 of the BECR between the dates of April 1, 1994, and March 31, 1996. However, this should not be construed to imply that WIPP actually complied with all applicable laws and regulations during this time, because the information needed to reach an affirmative conclusion can not be supported without extensive inspections and oversight by NMED.

Attached are general and specific comments on chapters of the BECR which NMED reviewed. NMED offers these comments to improve the information provided in subsequent editions of the BECR. If you have any questions concerning NMED's review of the BECR, please contact Mr. Steve Zappe of my staff at 827-1561.

Sincerely,

Ed Kelley, Ph.D.  
Director, Waste and Waste Management Division

Attachment

cc: Peter Maggiore, NMED  
Susan McMichael, NMED OGC  
Benito J. Garcia, HRMB  
Stu Dinwiddie, HRMB  
Steve Zappe, HRMB  
WIPP File - Red '97

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*Comments from NMED on the WIPP Biennial Environmental Compliance Report (DOE/WIPP 96-2171), October 1996*

1. General Comment - Statements such as "WIPP procedures that address these requirements are in place" or "... are conducted in accordance with WIPP procedures" are inadequate. Provide direct references to applicable WIPP procedures relative to the compliance period of the BECR. Otherwise, the reviewer either must assume a procedure exists which is applicable, or must spend time locating and reviewing the procedure to confirm it is applicable.
2. General Comment - Section 25.2.3, page 25-20 states, "The DOE and WID conduct assessments or audits to review WIPP compliance with requirements ... that pertain to hazardous materials transportation activities" and then provides the dates of pertinent assessments and audits. However, most of the other sections in the BECR do not indicate whether DOE or WID have conducted audits or assessments to ensure procedures have been adequately implemented. The BECR would be greatly improved if any other such audits or assessments were documented and available for review by regulators.
3. Table 25-1 (Correspondence Between the Federal Regulations Implementing RCRA and the State Regulations Implementing the New Mexico Hazardous Waste Act) - in subsequent submittals, be advised that Section 1103 of 20 NMAC 4.1 replaces references to 40 CFR §124 with 20 NMAC 4.1 §901, not §902.
4. Table 25-3, Section 25.2.2.11 (90-day or less accumulation time) - The table states the compliance status is "Achieved", when it should be "Up to Date". The 90-day storage requirements are an on-going issue, not something that can be considered achieved by implementation of a procedure.
5. Table 25-3, following Section 25.2.2.14 (Compliance with Subpart W of 40 CFR Part 265, 40 CFR §262.34(a)(1)(iii)) - Although the BECR asserts compliance with §262.34(a)(1)(i) through (iii), no mention is made of compliance with accumulation requirements for waste in containment buildings (40 CFR §262.34(a)(1)(iv)). Even if containment buildings are not used, this section should be referenced for consistency with previous sections.
6. Table 25-5, Section 25.2.4 (Compliance with Regulatory Requirements for Interim-Status TSDFs, 40 CFR Part 265, 20 NMAC 4.1, §§600 and 601) - The assertion "The WIPP is an interim-status facility" is contested by the State, and as such the State will not certify the WIPP as being in compliance with regulations relating to interim status TSDFs.
7. Table 25-6, Section 25.2.5 (Compliance with the Hazardous/Mixed Waste Permit Program, 40 CFR Part 270, 20 NMAC 4.1, §§900 and 901) - The statement on page 25-57, "Prior to the receipt of TRU mixed waste, WIPP must retain interim status..." is contested by the State, and as such the State will not certify the WIPP as being in

compliance with regulations relating to interim status TSDFs. Specifically, compliance with these regulations is not certified:

Section 25.2.5.2, §270.10 General Application Requirements  
Section 25.2.5.11, §270.71 Operation During Interim Status  
Section 25.2.5.12, §270.72 Changes During Interim Status

8. Section 26.2.3 (Prohibited Acts, 20 NMAC 9.1, §109) - An additional bullet must be added to the list of wastes excluded from the WIPP landfill:

- All municipal solid waste (MSW), except C & D

Also, the word "timers" should be replaced with "timbers".

9. Section 30.2.5 (Discharge Plan Required, 20 NMAC 6.2, §3-104) - As stated in Section 30.1, this section should note that the discharge plan also authorizes the discharge of 32,000 gpd of domestic wastewater in addition to the 2,000 gpd of brine water.
10. Section 30.2.9 (Director Approval, Disapproval, Modification, or Termination of Proposed Discharge Plans, 20 NMAC 6.2, §3-109) - the BECR states, "Since the approval of discharge may not exceed seven years from the date of issuance of the Discharge Plan approval, it will be necessary to find an alternative means of disposal for the nonhazardous brine solution currently being discharged.

Even though the approval period for a discharge permit is for a limited period of time, the permit can be renewed. Pursuant to 20 NMAC 6.2, §3106.F, the applicant may apply for renewal of the discharge permit which, upon approval, may extend the approval period for up to five additional years.