

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT



IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES DEPARTMENT OF ENERGY
FOR A HAZARDOUS WASTE PERMIT FOR
THE WASTE ISOLATION PILOT PLANT (WIPP)

LEGAL NOTICE NO. 98-02

COMMENTS ON THE PROPOSED DRAFT HAZARDOUS WASTE PERMIT

ISSUED MAY 15, 1998

SUBMITTED BY CONCERNED CITIZENS FOR NUCLEAR SAFETY (CCNS)

August 14, 1998

Pursuant to the New Mexico Environment Department (NMED) Notice of Intent to Permit a Hazardous Waste Storage and Disposal Facility Waste Isolation Pilot Plant EPA No. NM4890139088 of May 15, 1998, Concerned Citizens for Nuclear Safety (CCNS) submits the following requests and comments.

CCNS is a nonprofit, membership organization, incorporated in the State of New Mexico. CCNS provides accurate and timely information on nuclear safety issues to communities that are affected by the radioactive and non-radioactive hazardous materials from nuclear weapons activities, including the development, production, transportation, storage and disposal of nuclear materials. CCNS promotes the protection of natural resources, citizen participation, and environmental and social justice now and for future generations in matters involving nuclear safety. For more than ten years, CCNS has provided information to the general public and has represented the interests of its supporters, board of directors, staff, and members in matters concerning the Waste Isolation Pilot Plant (WIPP).



CCNS has always maintained that WIPP cannot open until the State of New Mexico issues a final hazardous waste permit, pursuant to the New Mexico Hazardous Waste Act (HWA) and the Resource Conservation and Recovery Act (RCRA). CCNS will be a party, pursuant to 20 NMAC 1.4.107(A)(16), in any public hearing related to a HWA permit for WIPP.

REQUESTS

1. Extend the public comment period on the proposed draft permit (hereinafter "Draft Permit") that ends on August 14, 1998. The Department of Energy's (DOE's) announcement on May 13, 1998, that DOE intended to send radioactive waste to WIPP without an HWA permit posed the possibility of a significant violation of the proposed Draft Permit which assumed all WIPP waste to be mixed. Part A of the WIPP HWA application; *see also*, Draft Permit I.D.I. On July 27, 1998, subsequent to DOE's May 13, 1998 announcement, DOE submitted to NMED a Sampling and Analysis Plan (SAP) that is not a part of the proposed draft HWA permit Sections I.D.10, II.C, and Section IV.B as published for public comment on May 15, 1998. NMED's decision to consider DOE's SAP in evaluating DOE's proposed shipments from TA-55-43 indicates that the Waste Analysis Plan (WAP) as published in the Draft Permit is not sufficient for waste characterization of WIPP waste. Because of NMED's reliance, the SAP must be seen as a significant modification of DOE's permit application. Thus, NMED should make the SAP available to the public for comment, and extend the comment period to accommodate public review and comment on the DOE's new waste characterization plan.
 - CCNS requests that NMED allow CCNS and other interested organizations or individuals to review and comment on the SAP's adequacy before NMED makes a determination of whether or not TA-55-43 waste is characterized well

enough to determine that no HWA regulated wastes are present.

- CCNS requests that NMED allow CCNS and other interested organizations or individuals to participate in any meetings between DOE and NMED that involve the SAP in order to comment on the implications of the SAP on the draft permit.
 - CCNS believes that NMED must generally revise the WAP to include more specific requirements that may be determined after public review of the SAP.
2. CCNS requests formal public hearings on the draft HWA permit for WIPP. This unique facility to be permitted in New Mexico has attracted widespread public controversy over design, operation and location and it is therefore appropriate to review the Draft Permit in a public hearing pursuant to 20 NMAC 1.4. However, until NMED receives and reviews comment on the SAP permit modification, WIPP HWA permit hearings are premature and untimely.
 3. CCNS requests that an extension of the Draft Permit comment period include an extension of the Legal Notice 98-02 requirement that commentors “state the nature of the issues proposed to be raise in the hearing.” CCNS has not yet seen the SAP and cannot now know how this modification will raise new issues concerning the Draft Permit. Therefore, should NMED not grant our requested extension, we reserve the right to comment on subjects during the public hearing that are not explicitly noted in this preliminary comment.

SAMPLING AND ANALYSIS PLAN

CCNS cannot comment on the SAP since it has not been made available to the public. However, prior to the SAP, DOE did provide acceptable knowledge documentation on the waste

characterization of TA-55-43 wastes to prove that those wastes were devoid of HWA regulated wastes. The documentation was incomplete and inaccurate. According to a review by the Institute for Engineering and Environmental Research (IEER), the documentation could not have supported a determination that TA-55-43 wastes do not contain HWA regulated hazardous wastes. Given this recent failure of acceptable knowledge documentation, then, CCNS believes that any sampling and analysis plan must provide for physical analysis of all of the waste barrels that are intended for WIPP prior to the shipment of *those* barrels to WIPP.

COMMENTS ON THE PROPOSED DRAFT PERMIT

CCNS provides the following general comments on the proposed Draft Permit as published on May 15, 1998. CCNS reiterates here that no comments on this version of the Draft Permit can be complete without a review of the SAP and its implications for the Draft Permit as a whole.

1. The Draft Permit allows waste to be buried in "Panel 1." Panel 1, which contains seven rooms, was excavated in 1986 and 1988 and is not stable. This is because the enormous underground pressure of salt beds at WIPP causes any excavated rooms to collapse or cave in on themselves. DOE's plan has always been to excavate the rooms immediately before disposal operations, load the waste, and let the room collapse around the waste. The rooms in Panel 1 were excavated at least ten years ago, and are no longer safe for workers. Therefore, the WIPP permit should prohibit the use of Panel 1. Moreover, NMED must include some regulation about how long newly excavated panels may be considered safe for disposal operations. These regulations would require NMED to designate how much warning would be needed to determine and to respond to an unstable condition.

2. The Draft Permit should require full physical analysis of the waste to be buried at WIPP. DOE's current plan depends on "acceptable knowledge." However, DOE's documentation is incomplete and inaccurate as shown in DOE's attempt to prove that TA-55-43 wastes are devoid of HWA regulated materials (see above). Because WIPP's ability to isolate waste from the environment depends on strict limits for the kind of waste to be shipped, DOE must be accurate and certain about the content of the waste barrels it plans to ship. DOE cannot be sure of the barrel contents without physical analysis. Moreover, DOE's most recent Final Report on the Los Alamos Transuranic Waste Characterization/Certification Program (TWCP) Audit shows that significant problems remain in the waste characterization quality assurance procedures for Los Alamos National Laboratory (LANL). This report is a warning to NMED not to assume that LANL's waste characterization documentation is accurate. Therefore, the permit should require physical analysis of all waste barrels until DOE has proven through visual examination and chemical analysis that its acceptable knowledge documents for each waste stream are accurate and complete.
3. The Draft Permit excludes burial of any remote-handled waste (RH-TRU) for the first five years covered by the permit. RH-TRU waste has radioactive emissions levels that are too high to be handled by hand. Since DOE has not yet done studies to show how RH-TRU waste will behave at WIPP, this exclusion is appropriate. The exclusion should also apply to construction and modifications of the RH Bay (Figure M1-1). This provision logically follows the acknowledgement that DOE has not yet provided detailed information and analysis of RH-TRU waste. Such documentation is essential before any RH Bay can be designed. Therefore, NMED should retain the RH-TRU exclusion in the

final permit and also exclude any construction or modifications to the RH Bay from this Draft Permit.

4. The Draft Permit requires that NMED approve each generator site waste stream before this waste may be shipped to WIPP. DOE must request a permit modification from NMED before any out-of-state waste may be shipped. In this way NMED protects the State of New Mexico by requiring NMED approval of waste characterization procedures in other states. The modification provision gives NMED the right to control how wastes in other states are sampled before they can be shipped to WIPP. Therefore, NMED should retain the permit modification provision in the final permit.
5. DOE's failure to analyze the full significance of the effect of fluid injection practices (hereinafter "Hartman Scenario") of oil companies in the vicinity of WIPP poses added problems for NMED's permit. For example, experts note in the following quote, some potential exists for rock fracturing and significant increase in the amount of fluid in the interbeds from a Hartman-like Scenario.

Where high artificial fluid pressures are applied to rocks underground, as in water repressuring, hydraulic fracturing, acidizing, and cementing, it has been observed that, as the pressures approach the geostatic pressure for the given depth, the formations often "break down"; there is a sudden increase in the amount of fluid that enters the formation, apparently as a result of a sudden increase in space. Such a condition may result in the formation of new fractures, from the opening up of incipient fractures, or from parting along bedding planes. . .

A.I. Levorsen Geology of Petroleum, W.H. Freeman Co., 411.

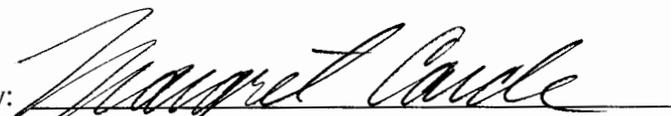
NMED should re-evaluate the Draft Permit to consider any adverse impacts on WIPP operations from Hartman-like Scenario occurrences, including but not restricted to

worker training and emergency response requirements, facility design, such as operation of continuous air monitors or hoists, panel safety and longevity, and evacuation procedures.

6. NMED must require adequate financial assurance from DOE and the Westinghouse Waste Isolation Division (WID) that the State of New Mexico will not be responsible for any foreseen or unforeseen problems during WIPP's operational life, closure, and active institutional control periods. Financial assurances must include *any* emplacement of waste at WIPP, should DOE succeed in beginning disposal operations without a state HWA permit.
7. NMED must retain an oversight role during the entire 100 year duration of DOE's post closure active institutional control period. DOE must provide assurances of appropriate funding to the State for this oversight role. Funding should be contingent on the end of the actual active institutional control period in case DOE fails to complete disposal operations within the 25 year permit projection.
8. CCNS believes that any attempt to short-cut the public's involvement in this WIPP process contradicts the spirit and intent of the 20 NMAC 1.4.

Dated: August 14, 1998.

CONCERNED CITIZENS FOR NUCLEAR SAFETY

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