

**Written Comments Received by NMED on WIPP Draft Permit  
August 14, 1998**

<b>Author</b>	<b>Organization/ Citizen</b>	<b>Corresponding Number</b>
Annette Adams	Citizen	A-1*
Lee Cartwright	Citizen	B-1 through B-2
Virginia Hallock	Citizen	C-1*
Deirdre Lannihan	Citizen	D-1*
Dials/Epstein	DOE/CAO	E-1 through E-150
McFadden/Epstein	DOE/CAO	"
Tom Haney	Citizen	F-1 through F-9
Mark Castagneri	NFT Incorporated	G-1 through G-5
David Neleigh	EPA Region 5	H-1 through H-9
Deborah Reade	Citizen	I-1 through I-3
Michael Overbay	Citizen	J-1 through J-6
John E. Tanner, Jr.	Citizen	K-1 through K-2c
Richard T. Bernardi	Waste Inspection Technology Co.	L-1
Cristopher Moore	Citizen	M-1
Geoffrey H. Fettus	New Mexico Attorney General	N-1 through N-82
Geoffrey H. Fettus	New Mexico Attorney General	"
Kathleen E. Trever	Idaho INEEL Oversight Program	O-1 through O-2b
Charles Rice	INEEL Citizen Advisory Board	P-1 through P-5
Jim Harrison	Carlsbad Dept. of Development	Q-1 through Q-9
Gary Perkowski	City of Carlsbad	R-1 through R-9
Don Hancock	Southwest Research & Info Center	S-1 through S-19
Sue Chavez	Citizen	T-1 through T-2
Joseph A. Legare	Rocky Flats Environmental Tech Site	U-1 through U-49
Elizabeth Dunham	Citizen	V-1*
Lori Fritz	DOE/Idaho Operations Office	W-1 through W-58
Hargis/LeBrun	Los Alamos National Laboratory	X-1 through X-12
Nomi Green	Citizen	Y-1 *
Ray Schmidt	Citizen	Z-1*
Robert H. Neill	Environmental Evaluation Group	AA-1 through AA-7
Abraham/Greenwald	Citizens for Altern to Rad Dumping	BB-1 through BB-22
Margaret Anne Hesch	Citizen	CC-1 through CC-3
Carde/Arends	Concerned Citizens for Nucl Safety	DD-1 through DD-11

\* General opposition to WIPP site



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		<u>AR ID#</u>	<u>Receipt Date</u>	<u>Author</u>	<u>Organization/Citizen</u>	<u># Pages</u> <sup>1</sup>	<u>Hearing?</u>	<u>Extension?</u>
A	1	980545	20-May-98	Annette Adams	Citizen	3		
B	2	980553	27-May-98	Lee Cartwright	Citizen	1	yes	
C	3	980548	28-May-98	Virginia Hallock	Citizen	2		
D	4	980554	01-Jun-98	Deirdre Lennihan	Citizen	1		
E	5	980555	03-Jun-98	Dials/ Epstein	DOE/CAO	250		
		980827	14-Aug-98	McFadden/Epstein	DOE/CAO	2200	yes	
F	6	980705	14-Jul-98	Tom Haney	Citizen	12		
G	7	980803	04-Aug-98	Mark Castagneri	NFT Incorporated	4		
H	8	980804	10-Aug-98	David Neleigh	EPA Region 6	2		
I	9	980807	10-Aug-98	Deborah Reade	Citizen	1		yes
J	10	980806	12-Aug-98	Michael Overbay	Citizen	3		
K	11	980808	12-Aug-98	John E. Tanner, Jr.	Citizen	1		
L	12	980810	12-Aug-98	Richard T. Bernardi	Waste Inspection Technology Co	70		
M	13	980815	12-Aug-98	Cristopher Moore	Citizen	3		
N	14	980819	13-Aug-98	Geoffrey H. Fettus	New Mexico Attorney General	90	yes	yes
		980828	14-Aug-98	Geoffrey H. Fettus	New Mexico Attorney General	16		
O	15	980825	13-Aug-98	Kathleen E. Trever	Idaho INEEL Oversight Program	2		
P	16	980805	14-Aug-98	Charles Rice	INEEL Citizen Advisory Board	4		
Q	17	980811	14-Aug-98	Jim Harrison	Carlsbad Dept of Development	4		
R	18	980812	14-Aug-98	Gary Perkowski	City of Carlsbad	4		
S	19	980814	14-Aug-98	Don Hancock	Southwest Research & Info Center	80	yes	yes
T	20	980816	14-Aug-98	Sue Chavez	Citizen	1		yes
U	21	980817	14-Aug-98	Joseph A. Legare	Rocky Flats Environmental Tech Site	19		
V	22	980826	14-Aug-98	Elizabeth Dunham	Citizen	1		yes
W	23	980818	14-Aug-98	Lori Fritz	DOE/Idaho Operations Office	75		
X	24	980820	14-Aug-98	Hargis/LeBrun	Los Alamos National Laboratory	4		
Y	25	980821	14-Aug-98	Nomi Green	Citizen	1		yes
Z	26	980822	14-Aug-98	Ray Schmidt	Citizen	1		yes
AA	27	980823	14-Aug-98	Robert H. Neill	Environmental Evaluation Group	200		
BB	28	980824	14-Aug-98	Abraham/Greenwald	Citizens for Altern to Rad Dumping	260	yes	
CC	29	980829	14-Aug-98	Margaret Anne Hesch	Citizen	1		yes
DD	30	980830	14-Aug-98	Carde/Arends	Concerned Citizens for Nucl Safety	7	yes	yes
				30 commentors	Total Pages =	3323	6	9
<sup>1</sup> Page numbers greater than 25 are estimates								

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**Commentor Letter/Author/Organization/Receipt Date: MODULE I**

**Commentor Key: B-Cartwright E-DOE/CAO F-Haney G-NFT/Castagneri H-EPA6/Neleigh I-Reade J-Overbay K-Tanner L-WITCO/Bernardi M-Moore  
N-NMAG/Fettus O-INEEL Oversight/Trever P-INEEL CAB/Rice Q-Carlsbad DOD/Harrison R-Carlsbad City/Perkowski S-SRIC/Hancock T-Chavez  
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<b>Module No.</b>	<b>Condition No.</b>	<b>Attach. No.</b>	<b>Cmt. No. (pg &amp; par) See commentor key above</b>	<b>Comment Subject</b>	<b>Comment</b>	<b>Response</b>	<b>Include in Permit? y/n</b>
I	D.13.a	0	F-3, page 4 of letter	Editing Clarification	Suggested reorganizing sentence so that the word "orally" occurs after the word Secretary.	The draft permit has been modified to include this correction.	Y
I	0	0	H-2 page 1, comment 2 of letter	Addition of Boilerplate Language	Boilerplate condition pertaining to severability of the permit, 40 CFR 124.16(a)(1) and (2) was not found. NMED should add this requirement to the permit boilerplate language.	The revised draft permit has been modified to include this correction.	Y
I	A	0	F-1, page 2 of letter	Editing Clarification	Move the acronym WID to after Waste Isolation Division, and define CBS	The acronym has been moved.	Y

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I	C.5, pg. I-2		E-2, pg. 11	Definition of TRU Mixed Waste	The definition in the permit for TRU mixed waste (page I-2) is incorrect and misleading. The applicants believe the confusion can be avoided by using the accepted definition of TRU waste to create a separate definition of TRU mixed waste. Pg. 11	The definition in I.C.5 has been modified as follows: "TRU Waste" means waste containing more than 100 nanocuries of alpha-emitting transuranic isotopes per gram of waste, with half-lives greater than 20 years, except for (A) high-level radioactive waste; (B) waste that the DOE Secretary has determined, with the concurrence of the EPA Administrator, does not need the degree of isolation required by the disposal regulations; or (C) waste that the Nuclear Regulatory Commission has approved for disposal on a case-by-case basis in accordance with part 61 of title 10, Code of Federal Regulations. [Pub. L. 102-579 (1992)]. "TRU Mixed Waste" means TRU waste that is also a hazardous waste as defined by 20 NMAC 4.1.200 (incorporating 40 CFR Section 261.3). The following change is acceptable.	Y

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I	D	0	AA-6a, (p. 19, item 1)	Clarification of Reporting Requirements	The commentor believes that several requirements in the draft permit are unclear and need to be clarified. The first example cited is why the draft permit (Permit Condition I.D.15) requires verbal and written reporting of releases, fires, explosions or any other occurrence that may endanger public drinking water supplies, environment or human health, while Permit Condition I.D.16 requires all other items of non-compliance be reported at the time monitoring reports are submitted. How will the regulator deal with these other non-compliance items and whether they are important. If not important, they should not be included.	This is standard permit language from the EPA model RCRA permit. NMED does not believe that clarification is necessary. Permit Condition I.D.15 addresses emergency occurrences.  Permit Condition I.D.16 addresses routine compliance issues which are, for example, discovered during inspection. Permit Condition I.D.16 is also standard language from the EPA model RCRA permit.	N

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I	D	0	AA-6b, (p. 19, item 1)	Listing of Compliance Criteria	The commentor believes that it would be useful for the permit to list all the items that are considered to be compliance criteria, indicate their reporting requirements, and indicate the consequences of non-compliance.	The permit conditions and attachments are the compliance criteria. There is a wide variability of issues or items which could be covered by Permit Condition I.D.16. Therefore it is not possible to list all items of noncompliance. The consequences of noncompliance may vary in the type of enforcement action taken. Depending on the nature, severity, as well as the strength of available evidence of the violations, the following enforcement options, if any, may be pursued: (1) Administrative actions (warning letter administrative order, administrative penalty, permit action) (2) Civil court action (3) Criminal court action. The principal goals of NMED are to protect human health and the environment by requiring regulatory compliance and deterring noncompliance. In addition, Permit Condition I.D.1 also states that the permittees must comply with all conditions of the permit.	N

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I	D	0	AA-6c, (p. 19, item 1)	Listing of Compliance Criteria	The commentor believes that an explanation is need of the consequences of non-compliance instances discovered during inspections.	See response to AA-6b.	N

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I	D.10.d	B, pg. B-17, -27, -32 B6, pg. B6-1, -2	E-1, pg. 9, 10	Records Retention	Numerous conditions in the draft permit regarding records retention need clarification and specific DOE records requirements need to be accommodated. Specifically, can copies of original records be submitted to the DOE central records facility in Carlsbad to meet operating record and retention requirements? Are electronic records acceptable for the operating record, and are microfilm records acceptable for inclusion in the operating record? Additionally, the permit should be modified to reflect the practice of retaining waste characterization raw data for 10 years from date of generation and then dispositioning the records in accordance with Section 1.7 of the QAPP. Pg. 9	The permit language has been modified as follows: <u>Record Types</u> - Records shall be maintained at the WIPP site for a minimum of three years. Records maintained in the operating record shall be good quality copies of original records. Records that are not current records may be retained in electronic or microfilm formats, as long as legible copies are readily available to the NMED when requested. The permittees must retain waste characterization raw data for 10 years (3 years on site) from the date of generation. After 10 years, the waste characterization raw data records may be disposed of, unless the records are part of a pending enforcement action. Since the QAPP was not included as an Attachment to the draft permit, specific language which addresses disposition of the records have been included in the permit.	Y



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I	D.9.d	0	F-2, page 3 of letter	Sampling	Add the following to the end of the condition paragraph beginning with <u>sampling</u> : "The permittees shall ensure that all personnel collecting and/or handling samples or waste have proof of appropriate training. The Secretary shall comply with EPA guidance to ensure a representative sample is collected and shall ensure that QA/QC are adequate to ensure data is of known and acceptable quality for the intended use. The Secretary shall follow chain-of-custody requirements for all samples, and each sample shall be tracked from "cradle to grave". The Secretary shall ensure proper disposal of all samples and shall document to permittees how, where, and when unaltered and altered samples and residues have been disposed.	The first part of the comment is addressed in the training section of the permit, and the second part is addressed in the permit conditions which address waste analysis issues.	N

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I	D.11, D.12, D.13		E-3, pg. 12, 13	Reporting Noncompliance	The conditions for reporting planned changes (I.D.11), reporting anticipated noncompliance (I.D.12), and certification of construction or modification (I.D.13) should be combined into a single condition. In the regulations, the language set forth in condition I.D.12 is an integral part of I.D.13. The requirements in I.D.12 apply to activities outside the permit. For example, without combining these two conditions, maintaining the underground is a continuous construction and/or modification activity and under I.D.13 such maintenance action must be reported and inspected even though it poses no risk of permit noncompliance.	The permit conditions as established in the permit are standard permit language from the EPA model RCRA permit. In order to address the comment, Permit Condition I.D.11 has been modified to include the following language at the end: "...or activities which may result in noncompliance with permit requirements."	Y

**Summary of May 15, 1998 Draft Permit Public Comments  
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II	C	0	BB-1c, cover letter 2nd pp	General	Characterization of the waste destined for WIPP is of question.	The comment does not address specific information in the revised draft permit which can be addressed through a response.	No

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II	C	0	I-3, page 1 of letter	General	The permit should be denied until they can show to an objective observer that they can truly characterize the WIPP waste and that they will not attempt to "slip in" waste that should not be going to WIPP.	The comment does not address specific information in the revised draft permit which can be addressed through a response.	No

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II	C.1.f	0	F-4, page 5 of letter	Editorial	Change the word "which" to "that".	The suggested language has been incorporated.	Yes

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II	C.1.g	0	F-5, page 5 of letter	Editorial	Remove the word "if" from I and ii because the word "if" is in the previous sentence.	The suggested language has been incorporated.	Yes

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II	C.1.g	0	N-46, (p. 7/ pp.3)	Permit modification to approve audit results	The permit should make clear that the approval of any site's audit results should be made by major modification of the permit, with full public participation.	The permit has been revised to remove the condition requiring permit modification for each generator/storage site because NMED has determined that the WAP process, conditioned upon approval of the audit requirement, is sufficient to meet the requirements of 20 NMAC 4.1.500 (incorporating 40 CFR §264.13). NMED shall make the audit report available to the public, and the public may provide written comments to NMED.	No

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II	C.1.g.	0	F-6, page 6 of letter	Editorial	Suggested changing language of first sentence, "The Permittees shall not resume shipments"... to some other language, questioning whether the Permittees or generator/storage sites will resume the shipments.	The permit has been modified to incorporate the suggested language.	Yes



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Commentor Key: B-Cartwright E-DOE/CAO F-Haney G-NFT/Castagneri H-EPA6/Neleigh I-Reade J-Overbay K-Tanner L-WITCO/Bernardi M-Moore  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.2	0	F-7, page 5 of letter	Editorial	The commentor suggests changing the word "which" to "that" and, under II.C.2.a, questions whether the first sentence should read, "Liquids-liquid waste is not acceptable at WIPP, except under the following conditions"	The permit has not been reworded as suggested because the limitation is on liquid content of the waste, as well as "liquid wastes" (such as liquid TCE).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.2	0	U-48, (Pg. 17 Row 5)	Applicability of permit to TRU-mixed waste	All subsections should be modified to specifically reflect applicability of these conditions to TRU mixed waste. Use of terms such as all waste and any waste could be interpreted to extend RCRA authority to non-mixed TRU waste.	The applicants have committed to following the same waste characterization process for non-mixed waste in their permit application. In addition, appropriate characterization is required of all wastes so that NMED can ensure that the environmental performance standards for miscellaneous units in 20 NMAC 4.1.500 incorporating 264.600-601 are met. Without this, NMED cannot meet the requirements of law relative to ensuring that human health and the environment are appropriately and adequately protected. Also, non-mixed waste is subject to some terms of the permit (Module IV) to ensure appropriate characterization of the waste. However, the permit has been clarified in Module II.C to indicate that the Permittees are to manage, store, and dispose of TRU-mixed waste. For further information please refer to NMED's Exhibit A (Non-Mixed TRU Waste) and NMED's Findings of Fact and Conclusions of Law (Findings)(Non-Mixed TRU Waste).	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.2.1	0	X-5, Comment 5 page 2	LDR	Delete the apparent requirement in II.C.2.1 for treatment prior to disposal because the WIPP has been exempted from land disposal restrictions in the LWA.	The draft permit will be revised to reflect that WIPP is exempt from LDR requirements.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.4	0	N-10, (p. 2/ pp.8)	Derived waste	The permit condition states that derived waste may be characterized by process knowledge of the waste from which it was derived. There may be instances in which such characterization is insufficient to identify the hazardous constituents, and the permit should specify the methods of characterization to be used at such times.	The commentor does not specify the instances where such characterization would be insufficient relative characterization of derived waste. No permit modification can be made because of non-specificity of comment.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	0	W-57, (Pg. 72, Row 3)	Treated waste	The draft permit does not indicate if retrieved waste forms that are treated will carry original waste codes or will be considered newly generated and carry a new waste code designation.	The treatment of retrieved waste would modify the hazardous waste code assignment of the waste if any of the hazardous waste characteristics were removed, or if the treatment rendered the concentration of toxicity characteristic compounds below the regulatory level. However, listed waste codes are generally retained as per 20 NMAC 4.1.800 (incorporating 40 CFR §268) regardless of the treatment.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	0	W-58, (Pg. 72 Row 4)	Treated waste	The draft permit does not indicate what documentation is or will be required to support a "no longer contained in" determination if applicable.	Non-toxic F003 waste may be considered non-hazardous based on concentration because F003 waste is generally listed because of its ignitability. The draft permit has been revised to reflect this allowance. However, NMED has not established "no longer contained in" criteria for other listed waste.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.f	B5	E-5, pg. 18, 19	Permit modification	Revise Module II.B to remove the condition associated with permit modifications and related language in permit Condition II.C.1.f.	See Responses to Comment for Module II.B.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.g, pg. II-3	0	E-6, pg. 20	WAP compliance at generator/storage sites	WAP compliance, audit requirements, and corrective action measures are overly restrictive in several areas. (1) Major portions of the WAP are not applicable to sites that are not hazardous waste generators and are only Treatment, Storage or Disposal Facilities (TSDF). However, failure of a generator/storage site to comply with any part of the WAP is a potential basis for suspending waste shipments. This is inconsistent with the goals of the HWA and outside the scope of the HWA. A permitted TSDF cannot be held responsible for the acts or omissions of a generator/storage site shipping waste to the TSDF, unless the TSDF violates its permit or the HWA by relying on those acts or omissions.	The WIPP permit is unique in that on-site verification of generator waste characterization will not take place and because the DOE is owner and co-operator of the WIPP and the generator/storage sites. As such, the only assurance that appropriate waste characterization will take place is through the permittees (WIPP) inspection and audit of the sites to ensure compliance. It may be possible that some portions of the WAP are not applicable to the generator/storage sites, and the draft permit has been revised to indicate that only specific (i.e., applicable) portions of the WAP apply to generator/storage sites. The permittees must require sites to comply with applicable portions of the WAP because there is no other method to ensure that waste is appropriately characterized. Please refer to NMED's Exhibit A and Findings (Audit Requirement) for further information.	Yes



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.2.b	B, Section B 1c	W-53, (Pg. 71, Row 3)	Non-nuclear pyrophoric	The draft permit should clarify the definition of non-nuclear pyrophoric materials. Non-nuclear pyrophoric materials such as Zirconium have been utilized in conjunction with nuclear materials.	Non nuclear pyrophoric materials include materials such as elemental sodium and potassium; examples have been added to the draft permit.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.2.i, pg. II-5	0	E-11, pg. 32	LDR	The exclusion of disposal of mixed wastes from disposal at WIPP which do not meet the land disposal restrictions is unnecessary. The WIPP Land Withdrawal Act Amendment exempts waste that has been designated for disposal at the WIPP from the RCRA treatment standards.	The requirement has been deleted in the revised draft permit.	Yes

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II	C.2.k	B, Section B1c	W-54, (Pg. 71, Row 5)	De minimis quantity determination	The draft permit does not clearly define de minimis quantities of prohibited items or unacceptable waste forms. In addition, the draft permit should clarify the classification of unique waste forms such as lab packs. Specifically, would a lab pack be considered a single waste stream accompanied by multiple waste codes or would it be necessary to segregate lab packs into discrete waste streams?	The draft permit provides a clear description of prohibited items. The draft permit cannot define every unique waste form that may be present at generator/storage sites. The definition and subsequent characterization of individual waste streams must follow the applicable characterization requirements provided in the WAP.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.2.1	0	W-52, (Pg. 71, Row 2)	LDR	Eliminate the requirement prohibiting the acceptance of TRU mixed wastes that has not been treated to meet Land Disposal Restriction Standards. The Land Withdrawal Act specifies that TRU mixed waste is exempt from treatment standards and shall not be subject to land disposal prohibitions.	The requirement has been deleted in the revised draft permit.	Yes

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II	C.2.1	0	W-55, (Pg. 72, Row 1)	Notification	The comment requests clarification if the inclusive clause "and," relating to waste not accompanied by a notice of exemption, is intended.	The requirement has been deleted in the revised draft permit.	Yes

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II	C.3	0	W-56, (pg. 72, Row 2)	Hazardous waste on Part A	The list of permitted TRU mixed wastes in Table II.C.3 does not include D001, Potassium and Sodium Nitrate, P098 (KCN), and P106(NaCN)	The permittees did not request inclusion of P098 in their Part A permit application. In addition, the permittees stated that WIPP would not accept ignitable (D001) waste and did not include this in their Part A application. The exclusion of these two hazardous waste codes from the draft permit reflects the information presented in the permit application.	No

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II	C	0	U-16, (Pg. 8 Row 3)	QA	Several locations in the draft permit reference QA requirements that are repeated from DOE documents. In addition, specific responsibilities are assigned to the Site Project QA Officer. Instead sites should have QA Programs that comply with the DOE QAPD and do not define how the project QA officer meets requirements.	The example provided in the comment was in the original application. The draft permit has been clarified in the revised draft permit throughout with regard to the site QA officer (i.e., permit Attachment B3), but the primary commitments in Permit Attachment B have been retained because they reflect commitments made by the applicants in their permit application.	Yes, in part

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II	C	0	B-2, page 1 of letter	General	Waste characterization [must be sufficient] to ensure the process of determining what waste can and can't be stored at WIPP is appropriate.	No modification of the draft permit can be made; comment is very general. The purpose of the WAP is to ensure appropriate waste characterization.	No



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II	C.2.h.	B	N-8, (p. 2/ pp.7)	RH waste	The permit condition that RH-TRU waste is not acceptable at WIPP is necessary since little or no information about RH-TRU characterization or management has been provided.	No response required since the comment supports the permit condition.	No

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II	C.2h, pg. II-2	B, Section B-1c	E-9, pg. 27, 28 <b>(resubmission of August 1998 comment on draft permit)</b>	RH waste	See comment 1.1.3. Specific arguments against prohibiting RH waste include the following: (1) The Land Withdrawal Act, 106 Stat. 4777 (LWA) states that mixed RH TRU waste is to be disposed of at WIPP. (2) The condition is based solely on the radionuclide content which is not subject to regulation under hazardous waste requirements. This condition is not merely an incidental impact on radioactive waste arising from regulation of hazardous waste, which the court found permissible in <u>United States v. New Mexico</u> , 1992 U.S. Dist. LEXIS 20962 (D.N.M. 1992), aff'd, 32 F.3d 494 (10th Cir 1994). As the hazardous materials are the same in RH and CH TRU wastes, this is the direct regulation of nuclear waste which the <u>US v. New Mexico</u> court indicated was improper. Id. at *13.	Please refer to NMED's Exhibit A and Findings (Remote-Handled TRU Mixed Waste).	No

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II	C.2h, pg. II-2	B, Section B1c	E-9, Cont., pg. 27, 28 <b>(resubmission of August 1998 comment on draft permit)</b>	RH waste	(3) NMED's justification (absence of specific waste characterization procedures in the DOE's Methods Manual) for excluding RH mixed waste no longer applies because the Methods Manual has been excluded from the permit. NMED's concerns regarding waste characterization and acceptance for RH TRU waste should be dealt with in the draft permit. (4) It is important to the DOE and the nation that the facility be permitted to store and dispose of RH TRU waste. If RH TRU mixed waste disposal does not begin in the year 2002, the WIPP may lose a major portion of its RH TRU capacity because of the waste emplacement process, thereby preventing the Permittees from using the total capacity for disposal of 500,000 cubic feet of RH TRU mixed waste at the WIPP.	Please refer to NMED's Exhibit A and Findings (Remote-Handled TRU Mixed Waste).	No

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II	C.2h, pg. II-2	B, Section B1c	E-9, Cont., pg. 27, 28 <b>(resubmission of August 1998 comment on draft permit)</b>	RH waste	DOE has identified several facility and waste handling process modifications that will make the handling of RH TRU mixed waste safer and more efficient by eliminating the need for the Hot Cell (see Attachment M1). By excluding the RH TRU mixed waste facilities and waste handling processes from the draft permit, the NMED is requiring the Permittees to seek a major modification to the permit in order to proceed with the design and implementation of the facility modifications needed. Such a delay would jeopardize the DOE's ability to begin disposal of RH TRU mixed waste by 2002.	Please refer to NMED's Exhibit A and Findings (Remote-Handled TRU Mixed Waste).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.2.h	A	AA-5, (p. 14-18, Issue 5)	RH	The commentor is in agreement with NMED's position to deny DOE's request to emplace RH-TRU mixed waste under the draft permit and recommends that NMED identify its reasons for prohibiting RH-TRU waste, including observations by DOE and the Environmental Evaluation Group. The commentor then provides their rationale for prohibiting the emplacement of RH TRU mixed waste under the draft permit.	Please refer to response to Comment E-9.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B	AA-6f, (p. 20, item 3)	Clarifications of required summary waste category group characterization	The commentor indicates that the definitions of Category S 3000, homogeneous solids, and Category S 4000, soils/gravel, provided in permit Attachment B and permit Attachment F (Section F-1, pages F-4 and F-5) appear to exclude any waste containers from WIPP that do not have greater than or equal to 50% volume of one of these categories and that any debris waste container that did not have greater than or equal to 50% volume of particles greater than 2.36 inches would be excluded. The commentor asked if exclusion was the intent of the definition.	NMED agrees that the language in the permit implies exclusion of a waste that is not 50% of a given category (i.e., a 30-30-40 mix of all Summary Category groups). The characterization scheme was proposed to define waste characterization methodologies, and it is appropriate to also define the waste by this methodology. The draft permit has been revised to indicate that waste that doesn't fall into a waste summary category group can still be shipped to WIPP if characterization of the waste is performed using the required protocols for the largest grouping of waste by volume with common characterization requirements.	Yes

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II	C	B	AA-6g, (p. 20, item 3)	Debris waste definition	With regard to the particle size requirement in the definition of the Category S 4000 waste in permit Attachments B and F (Section F-1, pages F-4 and F-5), the commentor states that determining particle size distribution in debris wastes is not currently addressed in the QAPP, or in procedures used at the generator/storage sites, and could be a difficult undertaking. The commentor requests an explanation of why these definitions are necessary and how compliance will be verified.	The definition of debris is directly taken from the definition in 20 NMAC 4.1.800 (incorporating 40 CFR 268.2). However, this definition does require the sites to sample material less than 2.56 inches, even if this material includes human manufactured items (e.g., debris). The NMED imposed the condition because as written in the permit application, "sampleability" was left entirely to the generator/storage sites, and it was therefore possible that homogenous solids/soil particles that could be sampled would be placed in the debris category, which could mistakenly preclude the collection of samples. The NMED did not, however, intend for the generator/storage sites to sample small particles of manufactured material such as glass, metal fragments, or rubber. The draft permit has been revised to allow small particles of manufactured material to be considered debris, but not small particles of S3000 or S4000 waste. Please refer to NMED's Brief in Support of Proposed Findings of Fact and Conclusions of Law.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Pg. B-3	U-40, (Pg. 16 Row 2)	Debris waste definition	The definition of debris waste should match that of WIPP because the definition as presented does not account for other heterogeneous wastes that are not amenable to statistical sampling and analysis but are more appropriately characterized through acceptable knowledge and headspace gas analysis confirmation.	See Response to Comment AA-6g.	Yes, in part



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II	C	B, pg. B-3	E-23, pg. 70	Debris waste definition	The current definition of the S5000 summary category group is too specific with regard to the definition of debris waste meaning solid material exceeding a 2.36 inch measurement. This will require the DOE to perform sampling on certain waste forms that are clearly debris such as rashig rings.	See Response to Comment AA-6g.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B	E-16, pg. 42	Reporting	Use of the terms "raw data", "Data reports", and "data packages" in the draft permit is inconsistent with intended definitions or planned reporting practices. Raw data include analytical documentation reported in batch data reports forming the basis for concentrations, e.g. spectra. Data packages consist of all characterization results for a group of containers with QA and data validation summaries. This is the data package that may be requested by the Permittees. The draft permit refers to data reports as both batch data reports and data packages, the term "data report" should be replaced as appropriate.	The NMED recognizes that the use of these terms is inconsistent throughout the draft permit, but this is primarily because the terms were used inconsistently in the permit application. The NMED has revised the draft permit to use the terms consistently. See Permit Attachment B3 for specific definitions and clarification.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B	E-16, Cont., pg. 42	Data reviews	There is no need for three separate reviews at the data generation level. The technical supervisor and QA review should be combined to streamline the process.	The permit application included the commitment to have a separate technical and QA review. Separate review to assess quality of data (QA review) and achievement of data quality objectives (technical review) is consistent with providing independent and separate analysis of quality assurance and technical information, and is consistent with typical RCRA quality assurance protocol.	No

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II	C	B, B1-B6	P-5b, Comment 5, page 2 of letter	Documenta-tion requirements	Proposed requirements for documentation would result in an estimated 900 pages of hard copy per barrel at the INEEL. This translates to a million pages of documentation/year.	The documentation requirements questioned by the commentor were not specified. However, the draft permit has been revised to require only data summary reports for all sampling, testing, and analytical data be transmitted with the WWIS and as part of the waste stream profile information to the permittees. Data summary reports will include summaries of analytical data, not raw data. This will greatly reduce the amount of documentation required to be submitted for each barrel of waste. In addition, the draft permit has been revised (permit Attachment B3) to reduce the paperwork involved with nonconformance reporting to WIPP.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, pg. B-26, 27	E-37, pg. 102	Waste stream profile	Clarification of the process for verifying Waste Stream Profile Forms and evaluating the consistency of waste container data with approved waste stream descriptions is requested.	The permittees wish to remove the commitment to review waste characterization data transmitted via the WWIS after the initial review and approval of the waste stream profile form (WSPF) has already occurred and prior to waste shipment (i.e., remove this requirement from B-4b(1)(ii)). This clause is still included in the first paragraph of B-4b(1)(i). The language in B-4b(1)(ii) was retained, but was modified to remove designation of specific group responsibilities (the language now only specifies the permittees as the responsible party). The requirement for review of acceptable knowledge documentation was clarified to only require that acceptable knowledge summary documentation be reviewed.	No

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II	C	B	E-16, pg. 42	Waste stream profile form	The process for verifying Waste Stream Profile Forms and evaluating the consistency of the waste container data with waste stream descriptions needs to be clarified. Raw data, data packages, or batch data reports are not routinely used by the Permittees in reviewing the Waste Stream Profiles and are not submitted unless specifically requested. Any wastes with characterization results which are inconsistent with an approved waste stream profile will be redefined as a separate waste stream and a new Profile form will be submitted. Resubmittals may be required if calculation or other errors related to the initial data are identified. Pg. 42	The draft permit has been clarified in the revised draft permit to indicate that summary information (not raw data) must be transferred to the permittees for comparison with the WSPF. However, the suggested language change made by the commentor is unacceptable. The permit application committed to an examination of data used to assemble the WSPF; this clearly includes summary information beyond that transmitted in the WWIS. It is acceptable that once a waste stream is accepted at WIPP, forthcoming reviews by the permittee should be based on the WWIS transmitted data. However, the permittees must perform a more thorough initial review as committed to in the permit application and explained more thoroughly in the draft permit.	Yes, in part

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II	C	B	E-17, pg. 52	Radio-nuclides	The reference to radionuclides and isotopic make-up in the definition of a waste stream should be deleted. The purpose of delineating waste streams is to have populations from which to sample in order to identify all applicable EPA hazardous waste codes in compliance with applicable regulations.	The reference to radionuclides relative to waste stream designation has been removed, although the reference was made in the permit application. In addition, the commentor's suggested language with regard to summary category groups is generally acceptable.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Page B-2	W-24, (Page 32)	Radio-nuclides	The definition of a waste stream should exclude consideration of isotopic makeup when delineating waste streams.	See response to comment E-17.	Yes



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II	C	B	E-19, pg. 54	Revision of organizational titles	Many of the organizational titles given in the draft permit should be changed to read "the Permittees" to avoid unnecessary permit modifications in the future. In other cases where organizational context is important, specific titles should be retained (such as in inspections and training).	The draft permit has been modified in the revised draft permit to change many of the organizational titles, so long as these revisions do not diminish the intended waste characterization process. The draft permit has also been revised to address some of the suggested revisions made by the commentor. However, the commentor also made language changes well beyond the simple clarification of titles; these were assessed on a case-by-case basis.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B	E-21, pg. 67	Distinction between retrievably stored and newly generated	The distinctions made between newly generated and retrievably stored mixed waste should be deleted throughout the draft permit. Because all TRU mixed waste must undergo either 100% radiography confirmed by visual exam, or 100% visual exam, making the distinction between the two serves no useful purpose.	The permit application is based upon distinct differences between the characterization processes for newly generated and retrievably stored waste proposed by the Permittees in their permit application. The Permittees committed to very different characterization requirements in terms of the homogenous solids sample process for retrievably stored and newly generated waste. Therefore, the distinction is necessary due to differences in waste characterization requirements. Also, while the commentor asked that all retrievably stored and newly generated waste distinctions be removed from the permit application, the commentor's own redline/strikeout document did not reflect this modification. Please refer to NMED's Brief in Support of Proposed Findings of Fact and Conclusions of Law (Brief).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Pg. B-2	U-32, (Pg. 12 Row 5)	Distinction between retrievably stored and newly generated	Eliminate the distinction between retrievably stored and newly generated waste.	See response to comment E-21, above.	No

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II	C	B, Pg. B-2	W-51, (Pg. 71, Row 1)	Distinction between retrievably stored and newly generated	The definition of retrievably stored waste to include only waste generated after 1970 implies that there is no mechanism to dispose of wastes that were buried prior to 1970. The draft permit should clarify the disposal mechanisms that will be utilized to dispose of RFETS legacy TRU wastes.	The restriction to post-1970 waste was provided by the Permittees in their permit application and was incorporated by the NMED. Please refer to NMED's Brief.	No

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II	C	B	E-22, pg. 68	Review of radiographic or visual examination tapes	The draft permit requirement that the Permittees routinely review radiography tapes does not add to the protection of human health and the environment and is unnecessary. Radiography tapes are reviewed by trained, independent technical reviewer at each generator/storage site. All radiography information is subject to audits and surveillances.	Site audits include examination of radiographic and visual examination tapes, and continual review of those tapes does occur at the generator/storage site level. However, because the WIPP performs no on-site chemical verification of container contents, it is prudent and conservative that the WIPP include such periodic examinations as part of their waste acceptance process.	No

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II	C.1.a	B	Q-8, bullet 8 Attachment A of letter	Review of radiographic or visual examination tapes	Requirements to review waste radiography tapes at WIPP should be removed from the permit because this adds unnecessary cost to disposal operations without any benefit to human health and the environment.	See response to comment E-22.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.a	B	R-8, bullet 8 Attachment of letter	Review of radiographic or visual examination tapes	Requirements to review waste radiography tapes at WIPP should be removed from the permit because this adds unnecessary cost to disposal operations without any benefit to human health and the environment.	See response to comment E-22.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B	E-22, pg. 68	Review of radiographic or visual examination tapes	It is not practical or cost-effective to train radiography operators at WIPP because each generator/storage site has specific training requirements related to its waste generating processes. The physical characteristics of the waste vary considerably and require radiography operators to have significant site-specific experience and training.	See response to comment E-22. The commentor's argument, however, is inconsistent with the permit application, which argues that comparability between generator/storage sites will be ensured by consistent training requirements.	No



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II	C	B	E-22, pg. 68	Radiography	There is no justification for restricting approved radiography to only real-time radiography (RTR). Other more sensitive imaging techniques are now available and these should be approved without the need to modify the permit.	The permit has been modified to allow the use of radiographic systems other than RTR.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B, B1	L-1, page 2 of letter	Radiography	Radiographic techniques such as digital radiography and computer tomography offer exceptional scanning results and the draft permit should not be limited to RTR.	See response to comment E-22.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B, B1	M-1, page 2 of letter	Radiography	The draft permit should be revised to allow the use of computer tomography because it is the best available technology for nondestructive examination. Revise the permit, page B.11 to begin, "Radiography (including computed tomography) is a nondestructive..." Eliminate paragraph starting at line 40, page B.11, or replace the three sentences with, "The Permittees will use real-time radiography or computed tomography for container analysis. If other methods are developed, permit modifications will be sought for their inclusion. The quality assurance, quality control, and training requirements established for RTR and CT will apply to any newly developed methods." On page B.12, replace "radiography and/or VE" with "radiography, computed tomography, and/or VE." On page B1.19, modify the text, line 30, to read, "It should be possible to vary the voltage, typically between 150 and 420 for 450 kilovolts (kV) in some type of equipment, and 1 and 2 MV in other types of equipment, to provide the optimum degree of (continued below)	Inclusion of radiographic systems other than RTR appears reasonable, but the draft permit will not be modified to require inclusion of systems (i.e., won't require examination by both RTR and tomography before VE is done). However, some of the suggested language provided by the commentor has been included in the revised draft permit.	Yes, in part

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II	C.1	B, B1	M-1, page 2 of letter		(continued from above) penetration through the waste." Modify the sentence on line 35 of page B1.19 to read, "The imaging system may utilize a fluorescent screen and low-light television camera, an x-ray sensitive image intensified, or solid-state x-ray detection devices." Modify the sentence at the end of the paragraph, line 5 of page B1.20 to read, " Containers with lead liners, sludge, cement or other containers whose contents prevent full examination of the remaining contents on systems whose maximum voltage is 420 kV or 450kV shall be examined using more penetrating 1 to 2 MV radiations. If it is still not possible to discern their contents, they shall be subject to visual examination.		Yes, in part

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II	C	B, Pg. B-11	W-25, (Page 33)	Radiography	Delete the requirement for radiography to be performed by RTR and allow for the use of alternate methods such as Tomography. Use of alternate methods with improved resolution should be allowed without permit modification.	See response to comment E-22.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B	E-27, Cont., pg. 80	Tentatively identified compounds	Hazardous constituents listed in Appendix VIII include some that are regulated by RCRA and HWA and some that are not. There is no authority under RCRA or HWA for monitoring or measuring TICs that are not hazardous wastes. It is unreasonable to require Appendix VIII compounds to be added to the target analyte list because SW-846 analytical methods do not include all of the compounds on the list. Furthermore, there is no basis for requiring a second confirmatory analysis since TICS are just tentatively identified compounds that are not included in the analyte list. If a confirmatory analysis is required, labs would have to obtain new standard mixtures, develop new calibrations, revise forms and procedures, and update software and method performance. This offers no benefit to the program. The application's approach of providing a threshold of reporting of TICs to those found in 25% or more of the samples from a waste stream is appropriate.	20 NMAC 4.1.200 (incorporating 40 CFR §261.11(3)) clearly states that a waste is considered as listed if it contains an Appendix VIII constituent and meets some additional criteria as evaluated by the Secretary. Therefore, identification of Appendix VIII constituents as TICs is relevant and no change has been made to the permit to address this issue raised by the commentor. However, the draft permit has been modified with regard to TIC identification criteria presented in SW 846. The permit has been modified to indicate that a TIC will be added to the compound analysis list for a waste stream if it is found in 25% of the samples. However, the 25% criteria does not specify the point at which the 25% determination would be made (i.e., at the end of all sampling or at some intermediate point). (continued below)	Yes, in part

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II	C	B	E-27, Cont., pg. 80			(continued from above) The permit has been modified to indicate that all samples must be reanalyzed for the added compound, and to indicate criteria for determining a TIC based on SW-846 criteria. However, the commentor's suggestion that the permit regulates TICs beyond those in hazardous waste is not supported by the draft permit. The draft permit requires addition of hazardous waste codes, not that constituents are detected as TICs (except to add TICs to the list of analytes, which includes constituents, not waste codes). The commentor sought revision of the permit to include appendix IX rather than VIII analysis, claiming that analysis for all appendix VIII constituents cannot be performed. However, the permit application committed to Appendix VIII analysis, and Appendix IX applies to ground-water monitoring. Pleaser refer to NMED's Exhibit A and Findings (Tentatively Identified Compounds).	Yes

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II	C.1	B, BA	N-27, (p. 5/ pp.2)	Tentatively identified compounds	The methods of dealing with tentatively identified compounds should require the listing of any hazardous constituent identified during sampling and analysis. Acceptable knowledge should not be used to exclude a constituent from listing.	See response to E-27	



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II	C	B, pg. B-10, B-12, B-13, B-9	W-19, (Page 23)	Tentatively identified compounds	The permit should be modified to require the addition of a TIC to the target analyte list if it is found in 25% of the samples and that is found in the Appendix IX list. The draft permit requires the addition of a TIC if it is found in the sample and it is on the Appendix VIII or IX lists.	See response to comment E-27.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Section B-3a(1), Pg. B-10 Section B-3d, Pg. B-13	U-14, (Pg. 7, Row 3)	Tentatively identified compounds	Change the draft permit to reflect the TRU QAPP to read "Nontarget compounds shall be reported as tentatively identified compounds (TICs) and are reported with a higher uncertainty than the reported target analyzed concentrations. For samples containing TICs with total ion current peaks greater than 10 percent of the nearest internal standard, appropriate search routines of the latest NIST or equivalent mass spectral library must be performed on the 20 greatest in the area count . For samples analyzed using external standard quantitation, mass spectral library searches must be performed on up to 20 TICs	The draft permit has been modified to include the following provisions for TIC identification and reporting: 1) TICs are identified if they meet the method criteria in SW-846 for TIC identification. This specification will ensure that only significant and easily identifiable peaks are quantitated, 2) TICs will only be reported if they appear on the Appendix VIII list in SW-846, if they are found in 25% or more of the samples in a waste stream for that method, and if their presence in the waste can not be directly attributable to radiolytic degradation or packaging materials. The comment requests to limit the number of TICs is not an SW-846 specification. Please refer to NMED's Exhibit A and Findings (Tentatively Identified Compounds).	Yes, in part

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II	C	B, Section B-3a(1), Pg. B-10 Section B-3d, Pg. B-13	U-14 (Pg. 7, Row 3)	Tentatively identified compounds	(those with the greatest area counts) which have total ion current peak areas greater than 10 percent of the largest target analyte identified, or ten times greater than the standard deviation of the background. Positively identified TICs listed in 40 CFR §264, Appendix IX shall be added to the target analyte list by the site project officer if they are detected in greater than or equal to 25 percent of all samples from a given matrix parameter category"		Yes, in part

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II	C.1	B	N-2, (p. 1/pp. 4)	LANL SAP	The submission by the Department of Energy (DOE) of a proposed new sampling and analysis plan (SAP) on July 27, 1998 bears on the permit process since it seems clear that the methods and approaches used in this new plan would significantly modify the Waste Analysis Plan (WAP). NMED's experience at LANL does not support retaining the WAP in its current form.	The LANL SAP was performed to determine whether a waste stream is non-mixed. Sampling requirements and strategies can vary depending on the data usage and project requirements. In the case of the SAP, analyses were conducted to prove that the waste stream was non-hazardous by destructive analysis of debris waste. Please refer to NMED's Brief.	

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II	C	B, B1-6	T-2, second paragraph of letter	LANL SAP	The commentor expresses concern because DOE has not been able to demonstrate waste [LANL] is non-mixed. Also, the LANL SAP, which has not been released for public comment, differs from DOE's waste characterization proposal in the permit application. DOE's acceptable knowledge is not acceptable; physical analysis is absolutely necessary.	See response to comment N-2.	

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II	C	B, B1-B6	DD-1a, Page 2 para 2	LANL SAP	The public comment period must be extended because the NMED's decision to consider DOE's SAP in evaluating TA-55-43 shipments indicates that the WAP in the draft permit is not sufficient for waste characterization.	NMED has issued a revised draft permit with an associated comment period that ends Jan. 18, 1999.	

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II	C	B, B1-B6	DD-1d, page 3, second bullet	LANL SAP	CCNS believes the NMED must generally revise the WAP to include more specific requirements that may be determined after public review of the SAP.	See response to comment N-2.	

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II	C.1	B	N-18, (p. 4/ pp.1)	LANL SAP	The WAP has been modified by the submission of a proposed SAP for LANL waste stream TA-55-43, lot no. 1, on July 27, 1998. That SAP was submitted after NMED determined twice that characterization by DOE procedures would not be sufficient to identify hazardous wastes. NMED should review the WAP, and revise appropriately, in light of its findings to data, based on inadequacy of DOE's processes and the July 27 SAP.	See response to N-2 and DD-1d.	



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II	C.1	B	N-19, (p. 4/ pp.2)	LANL SAP	It is doubtful that a SAP for a single waste stream can effectively be designed without designing the permit of which it will be a part. Thus, the July 27, 1998 LANL SAP must be viewed as part of the entire permit application.	See response to N-2 and DD-1d.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B	N-20, (p. 4/ pp.3)	LANL SAP	The approach of the July 27, 1998 LANL SAP seems to be first to characterize the waste stream based on acceptable knowledge and radiography, then to build a sampling and analysis plan around the assumptions generated in that attempt at characterization, and then to conduct analysis of that created sample. It must be kept in mind that the initial characterization using radiography has already been shown to be deficient. Comments dated August 6, 1998 by the Institute for Energy and Environmental Research (IEER) have been enclosed.	See response to N-2 and DD-1d.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B	N-21, (p. 4/ pp.4)	Radiolysis	Enclosed are comments previously made by the Institute for Energy and Environmental Research on the waste characterization carried out at LANL. The commentor requests that NMED consider them in connection with the WAP and the July 27, 1998 LANL SAP.	The comments were considered when reviewing the LANL SAP and WAP. The commentors claimed that radiolysis could result in development of a characteristic waste (ignitable, corrosive, reactive, and TC for benzene and vinyl chloride). NMED's analysis disputed the IEER's assessment in terms of development of characteristic waste for the LANL waste stream in question, but the issue still remains whether sites must assess if their wastes are characteristic due to the presence of radiolytic constituents. The permit has been revised to include radiolysis and to include an analysis of the impacts of radiolysis on hazardous waste identifications.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B	N-22 (p. 4/pp. 4)	Visual exam of hetero-geneous waste	To characterize heterogeneous waste by a supposed sampling process is highly dubious. It is probably not possible to extract a representative sample; indeed, DOE's July 27, 1998 cover letter to NMED so states (at p. 1); thus, visual examination and analysis of the entire contents of the drums appears to be the only workable method as to debris waste.	Heterogenous waste forms are first characterized by acceptable knowledge (AK) using all available sources of information. In the case of the WAP, this is further confirmed through radiographic or visual examination of <u>each</u> container, coupled with headspace gas analysis to <u>confirm</u> hazardous waste code assignments. The intent of the LANL SAP, was to confirm the non-hazardous waste designation prior to issuance of a WIPP RCRA permit . It should be noted that in the case of the LANL SAP, visual examination of each container was performed during repackaging. A valid sampling and analysis plan (SAP) was constructed using statistical techniques for the LANL waste stream TA-55-43, Lot No. 01. The SAP used a stratified random sampling approach consistent with the requirements found in SW-846 which assured that a non-biased representative sample of all major matrices in the waste stream were sampled. Measurements for each waste matrix were mathematically combined in proportion to their estimated weight in the waste stream to determine the  (continued below)	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B	N-22 (p. 4/pp. 4)	Visual exam of hetero-geneous waste		(continued from above) amounts of constituents contained in the whole waste stream. The outcome of the sampling results for this waste stream confirmed AK and provided evidence that debris waste streams can be sampled in a manner that yields meaningful and regulatorily compliant results. Furthermore, the effort was accomplished using smaller sample aliquots and statistically-derived numbers of samples which limited exposure to workers. Sampling entire contents of radioactive drums is not feasible nor is it required to obtain the needed information. Further, the WAP process which includes acceptable knowledge, radiography/VE and headspace gas analyses of each container will be performed to confirm initial hazardous waste assignments and will acquire the necessary information without destructive analysis of debris waste.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B	N-23, (p. 4/ pp.5)	Waste stream identification	Concerning the WAP as a whole, NMED should also specify in detail how individual waste streams are identified for purposes of establishing characterization rules.	The WAP specifies how waste streams will be identified (Section B1-a); subsequent modifications to initial waste stream determination are discussed in Attachment B4.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B	N-24, (p. 4/ pp.6)	Radiolysis	The WAP at present does not incorporate the identification of hazardous constituents generated during storage by processes such as radiolysis.	The permit has been modified to include this consideration.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B	N-25, (p. 4/ pp.7)	Pressurized container identification	Section B-1c (page B-7, lines 3-6) of the WAP assumes that pressurized containers will be identified through non-destructive examination. Experience at LANL with waste stream TA-55-43 has shown this not to be the case. The WAP must prescribe a different method to identify pressurized containers.	The draft permit requires the identification of prohibited items through various methods, such as radiography, process knowledge and visual examination. The permit has been revised (Attachment B2, page B2-1) to include prohibited items, such as pressurized containers, in the miscertification analysis. The permit also requires sites to use site-specific miscertification rates, if available, rather than the INEEL 2% rate (Attachment B2, page B2-1). Please refer to NMED's Findings (Miscertification)	Yes



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B	N-26, (p. 4/ pp.8)	Character-ization of debris waste	The restriction of debris characterization methods to acceptable knowledge, real-time radiography, and headspace gas sampling has been shown to generate inadequate results and should be reconsidered in light of the experience of analyzing waste stream TA-55-43 at LANL. (See IEER reports dated June 5, 1998 and July 7, 1998, attached.)	Refer to response to comments N-2 and DD-1d. Debris characterization methods also include visual examination. These methods meet the waste characterization requirements of 20 NMAC 1.4.500 (incorporating 40 CFR §264.13). The draft permit provides procedures for reconciliation of characterization data between methods. Additionally, the Permittees are prohibited from storing or disposing inadequately characterized TRU mixed waste at WIPP.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B	N-28, (p. 5/pp. 3)	Repackaged waste characterization	Section B-3d(1) (page B-13) should include an explanation of exactly how the procedures for characterizing newly-generated wastes are adapted for use with repackaged wastes (page B-16).	The permit has been modified to address repackaged waste (Attachment B, Section B-3d), but does not specify detailed procedures because procedures for characterizing newly generated waste are already included.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.h, pg. II-3	B, Section B-4b	E-7, pg. 24	WWIS	The requirement that Permittees "certify" that the WWIS is "functional" is vague and the requirement for the Permittees to grant access to the entire WWIS system poses security risks. Nothing in the HWA, RCRA, or permit explains the procedures to "certify" or what constitutes a "functional" condition, including how computer outages, hardware and software upgrades, communication line deficiencies or other issues impact functionality. It is unclear whether certification of the WWIS is made once before the first waste is received or is made before each shipment of waste to WIPP. The access requested to the entire WWIS database poses security risks because this would include security information such as passwords, names of users, and proprietary code. Pg. 24	The draft permit has been clarified to state that the secretary shall have access to the WWIS or other data provided to WIPP in lieu of WWIS information. The comment that access to the WWIS poses a security risk is not justified because the Permittees have installed access to the WWIS in the NMED office. The comment that passwords, names of users, and proprietary codes poses a "security risk" is not supported by specific examples of how providing this information to the State would be problematic. Please refer to NMED's Exhibit A and Findings (Access to WWIS Database).	Yes, in part

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II	C.1	B	N-29, (p. 5/ pp.4)	WWIS	Section B-4b(1)(I) (page B-25) should include assurance that the WWIS is operational before waste shipments commence.	See response to comment E-7.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.h	B	S-10, pg. 7 of letter	WWIS	WWIS and Manifest systems: specific testing and reliability of the systems are essential.	See response to comment E-7.	No

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II	C	B, pg. B-24	E-35, pg. 99	WWIS	The NMED does not need access to the Permittees' WWIS as a condition of this permit since it is already available, this condition should be deleted. The sentence in this section that reads "The initial Waste Stream Profile Form check performed by the Permittees will include WWIS data <u>and</u> raw data" should read "The initial Waste Stream Profile....WWIS data <u>and</u> data packages if they were requested".	Refer to comment E-7. The draft permit has been revised to reflect some of the commentor's requests, but the suggested revised text is inconsistent with the comment. The draft permit was not revised to remove the requirement for the audit to be performed prior to WSPF submittal, or the remaining portion of the paragraph, as requested by the commentor. Only minor revision to the draft permit was performed to clarify language because the proposed redline/strikeout revision was inconsistent with the comment posed.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, pg. B-30	E-38, pg. 104	WWIS	The permit condition of providing a written report to NMED of any discrepancies identified during manifest examination and container bar-code WWIS data comparisons within 15 days of discovery is more stringent than the provisions of 20 NMAC 4.1.500 (incorporating 40 CFR §264.72(b)). Under that regulation only discrepancies that are not resolved within 15 days must be reported to the NMED. There is no justification or legal basis offered to support the more stringent requirement, therefore the regulatory language should be used.	The permit has been revised to reflect requirements of 20 NMAC 4.1.500 (incorporating 40 CFR §264.72(b)).	Yes

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II	C.2.a, pg. II-4	B	E-8, pg. 26	Liquid in waste	The draft permit's specification that liquid waste is not acceptable at WIPP... and internal containers shall contain less than 1 inch or 2.5 centimeters of liquid in the bottom of the container is ambiguous. It should be clarified that the 1 percent criterion applies to the payload container (55 gallon drum or standard waste box) and not to an individual internal container.	The limitation does apply to the payload container (55 gallon drum or SWB), not to an individual internal container that may be within the payload container. The draft permit has been revised to resolve this ambiguity. However, the suggested deletion of the paragraph concerning radiography is not consistent with the overall content of the comment, and is addressed in response to comment E-22.	Yes



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II	C.2.a	B	P-3, Comment 3, page 2 of letter	Liquid in waste	Proposed prohibition on receipt of containers with any free liquids will result in significant repackaging efforts. Appears to be a conflict within the draft permit with regard to the acceptability of free liquids in containers.	The permit does not restrict the presence of free liquids, but limits the quantity to residual amounts only. The draft permit has been clarified, however, to indicate that this limitation applies to the payload container, not containers within payload containers.	Yes, in part

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II	C	B, Pg. B-11, B-3c. (Comment indicates pg. B-10)	U-5, (Pg. 2 Row 3)	Liquid in waste	The draft permit should be modified to state that the waste container would be rejected only if the liquids in a waste container exceed the amount allowable per the definition of residual liquids.	The permit application, pg. C-29 lines 33-42 rejects a payload container if liquid is found in non-transparent containers through visual examination. The permit application does indicate that liquids found in transparent containers through visual examination or through radiography will be rejected if the volume is questionable. The draft permit has been reworded as suggested.	Yes

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II	C	B, pg. B-11	E-29, pg. 86	Liquid in waste	The waste acceptance requirements of the draft permit allow acceptance of waste for disposal with residual liquids that contain "less than 1 inch or 2.5 cm of liquid in the bottom of the container." This requirement is applied inconsistently in the draft permit between how the item containing the liquid is treated when discovered during visual examination and how the item is treated if it is discovered during RTR examination.	See response to comment E-29.	Yes

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II	C	B, pg. B-24, 25	E-36, pg. 101	Notification requirements, Phase 1 reviews	<p>The notification requirements for Phase I reviews are burdensome and unnecessary. If the Permittees identify a discrepancy during the Phase I review, it must be resolved prior to waste shipment to the WIPP. Documented resolutions will be available during audits for the NMED to inspect for compliance with the draft permit. The statement that "The Permittees will notify NMED in writing of any waste discrepancies and resulting discrepancy resolution prior to waste shipment" should be deleted.</p> <p>The draft permit allows the NMED to cite potential violations of the permit with a review of every discrepancy no matter how small, and regardless of whether the discrepancy had any effect on a waste shipment. The notification requirements should be deleted.</p>	The draft permit has been revised to require NMED notification of discrepancies identified during waste stream profile form review.	Yes, in part

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N-NMAG/Fettus O-INEEL Oversight/Trever P-INEEL CAB/Rice Q-Carlsbad DOD/Harrison R-Carlsbad City/Perkowski S-SRIC/Hancock T-Chavez  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Section B-3c, Pg. B-11 and B-12	W-43, (Page 60)	Liquid in waste	The draft permit should be modified to state that only if the liquids in a waste container exceed the amount allowable per the definition of residual liquids, would the waste container be rejected. In addition, the draft permit is inconsistent in requirements concerning allowable free liquids in waste containers.	See response to comments U-5 and E-29.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B B6, pg. B6-1	E-18, pg. 53	NQA-1	References to the NQA requirements are inappropriate for a hazardous waste facility permit. 10 CFR §830.120 only applies to contractors at DOE nuclear facilities. NRC NQA-1 applies to nuclear power plants, high-level nuclear waste program, and other miscellaneous nuclear activities. EPA-ORIA imposes NQA-1 on WIPP nuclear activities. NQA-1 is not applicable to hazardous waste activities. Part 2.7 of NQA-2 has requirements for software QA not QA auditing. NQA-3's title states that it applies to scientific investigations for site characterization of nuclear waste repositories. All references to NQA-1 should be removed from the permit except those found on page B6-1.	References to NQA have been removed in the revised draft permit.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Pg. B-10	U-44, (Pg. 16 Row 6)	Total analysis	The draft permit should allow use of TCLP for the hazardous waste determination. The totals analysis for the hazardous waste determination conflicts with the State of Colorado requirements. Significant characterization data generated under TCLP analyses would therefore not be valid for the WIPP.	The draft permit has been revised to allow either totals or TCLP analysis.	Yes

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II	C	B, Pg. B-12	U-28, (Pg. 11 Row 6)	Visual examination miscertification rate using stratified analysis	Delete the requirement for confirmatory visual examination of each waste stream and replace with the strategy provided in the QAPP. The waste stream specific strategy would result in a delay in implementing the site confirmatory visual examination process, result in additional drums examined, and only provide a small increase in the confidence of the radiography. The strategy in the QAPP is to determine the number of waste containers based on the percent of waste containers miscertified in previous years.	The revision of the miscertification rate to be based on a stratified analysis does not allow for specific waste streams that are consistently miscertified to go unexamined and provides assurances that any problematic waste streams will be examined. Waste streams identified by generator/storage sites can be of varying size, and the stratified strategy allows for checking of problematic waste streams, while allowing much less examination of waste streams that are not problematic. Please refer to NMED's Findings (Miscertification).	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Pg. B-14	U-29, (Pg. 12 Row 2)	Change roles of Site Data Validation and QA Officers	Delete the position of Site Data Validation Officer or all the Site QA Officer to assume the duties of the Site Data Validation Officer. This change is requested because the Site QA Officer already performs the same duties as a Site Data Validation Officer. In addition, there are three levels of data validation being performed. Adding an additional level of validation would cause all data validated to this point to be revalidated and recertified.	The permit application committed to these positions on page C-36, line 3. However, the requirement for Site Data Validation Officer has been removed from page B-17 line 25 of the revised draft permit.	Yes

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II	C	B, Pg. B-14, 15, B-3d(1)	U-6, (Pg. 2 Row 4)	Remove newly generated waste procedure specifications	The requirements for sampling newly generated homogenous wastes should not specify the requirements to be contained in the procedures for waste generating processes. The justification provided is that the generator/storage sites must be given the flexibility to design and implement their characterization program.	The permit application pg. C-23 lines 39-43, and pg. C-24 lines 1-23, included the questioned passage which contains procedural requirements for waste generating processes. The Permittees provided a suggested edit to remove some, but not all, of the specifications. The modifications requested by the Permittees have been incorporated.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Figures B-1, B-2, B-3	U-25, (Pg. 11 Row 3)	Editorial	The print in the tables is too small and should be increased to ensure that the draft permit can be read.	The print size will remain unchanged.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1	B, B1, B2, B3, B4, B5	E-15, pg. 38-41	Upper Confidence Limit	See comment 1.1.4. The change in the draft permit from using a 90% Upper Confidence Limit (UCL) to a 95% UCL is unjustified and unnecessary. The 10% error rate is justified because a lower error rate (5%) provides no benefit in terms of protection of human health or the environment. Significantly increased sampling requirements that would result from the change from UCL at 90% to a UCL at 95% would increase sampling requirements and therefore would increase the potential for worker exposure to chemicals and radionuclides with no added benefit of hazardous waste compliance or improvement of safety conditions.	NMED re-examined imposition of the 95% UCL and determined that the 95% UCL will result in a 60% increase number of samples being collected when increasing the confidence limit from only 90 to 95%. That is, for only a 5% increase in confidence, many more samples would have to be collected, imposing more risk at the generator/storage sites. The draft permit has been modified in the revised draft permit to require a 90% UCL.	Yes

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II	C.1	B, B1, B2, B3, B4, B5	E-15, Cont., pg. 38-41	Upper Confidence Limit	Secondly, the provisions regarding mixed waste characterization should be consistent with EPA's requirements for and guidance on sampling procedures found in documents such as its SW-846 Manual. The draft permit cannot alter the regulatory criteria in 20 NMAC 4.1.300 (incorporating 40 CFR §262.11 and §260.11) applicable to hazardous waste determinations and should not modify the sampling and analysis procedures in EPA's SW-846. The Permittees use the data quality objectives process to establish the confidence for making hazardous waste determinations using sample statistics. The process involves an assessment of the decision error rate that is appropriate in characterizing hazardous waste.	See response to Comment E-43.	

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II	C.1	B, B1, B2, B3, B4, B5	E-15, Cont., pg. 38-41	Upper Confidence Limit	Third, all TRU waste will be handled in the same manner during transportation to and disposal in the WIPP as well as in an emergency response regardless of whether it does or does not contain a particular hazardous waste and will not be segregated on this basis. Fourth, the number of homogeneous solids and soil/gravel waste samples that would be required to characterize hazardous waste would increase significantly if confidence levels were increased for 90 to 95 percent. The number of samples would be 60-70 percent more than required using a UCL of 90 percent; the actual increase depends on the number required initially. This would increase worker exposure. Lastly, the use of a UCL of 95% has no basis or precedent under the hazardous waste requirements. The use of a UCL of 90% is consistent with examples and tabulated values for the student's T in SW-846 which uses an 80 percent confidence level for a two-sided interval (equivalent to a 90 percent confidence level for a one-sided interval).	See response to Comment E-43.	

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II	C	B, B1-B6	Q-4, Bullet 4 Attachment A of letter	Upper Confidence Limit	Waste characterization protocols should use EPA guidelines of the 80 percent upper confidence limit. The increased sampling and analysis [resulting from an increased upper confidence limit of 90% proposed by DOE and 80% imposed by EPA] would increase the sampling and analysis requirements and associated costs for characterizing each affected waste stream by an estimated 60% and also increases the potential for worker exposure to radiation.	See response to comment E-15. Also, the 80% value cited by the commentor applies to a two tailed test with a 10% cutoff at either tail; the 90% value is simply one tail of the two tailed test.	No

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II	C	B, B1-B6	R-4, Bullet 4 Attachment of letter	Upper Confidence Limit	Waste characterization protocols should use EPA guidelines of the 80 percent upper confidence limit. The increased sampling and analysis [resulting from an increased upper confidence limit of 90% proposed by DOE and 80% imposed by EPA] would increase the sampling and analysis requirements and associated costs for characterizing each affected waste stream by an estimated 60% and also increases the potential for worker exposure to radiation.	See response to comment E-15. Also, the 80% value cited by the commentor applies to a two tailed test with a 10% cutoff at either tail; the 90% value is simply one tail of the two tailed test.	No



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II	C	B, Section B3a; Attachment B2, Section B2-3; Attachment B3, Section B3-11; Attachment B-4, Section B4-3d	U-13, (Pg. 7 Row 2)	Upper Confidence Limit	All instances of the use of a 95 percent confidence limit should be changed to a 90 percent confidence limit. The technical justification is that RCRA SW-846 specifies the use of a 90 percent confidence limit and that this limit should be used for consistency purposes.	See response to comment E-15.	Yes

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II	C	B, B1-6	K-2b, page 1 pp 2 of letter	General	The requirement for certification of the generator/storage sites by New Mexico, after that has already been done by DOE and EPA, the extra analysis required, and the prohibition of even minor amounts of free liquids, the demands for overpacking of drums all seem designed to raise the cost to the nation's taxpayers.	Refer to response to comments N-46, E-8 and U-5.	Yes

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II	C	B	DD-6, page 5, comment 2	Full physical analysis of waste is required	The draft permit should require full physical analysis of the waste to be buried at WIPP until DOE has proven through visual examination and chemical analysis that its acceptable knowledge documents for each waste stream are accurate and complete.	20 NMAC 4.1.500 (incorporating 40 CFR §264.13) reflects the regulatory intent that sites should collect representative samples, and that analysis of each and every container of waste intended for disposal is not required. Full physical analysis of the waste is inconsistent with EPA guidance and unnecessary to ensure adequate waste characterization. This approach is not endorsed by EPA in it's 1992 guidance document entitled Characterizing Heterogeneous Wastes: Methods and Recommendations (1992), which was specifically written to present methods for characterizing heterogeneous waste contaminated with radionuclides and hazardous chemicals. In this document, complete waste stream analysis is not endorsed and generators are encouraged to develop sampling and analysis plans that determine an appropriate number of samples to be taken by considering the sample matrix and contaminants. The (continued below)	No

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II	C	B	DD-6, page 5, comment 2	Full physical analysis of waste is required	(Continued from above)	(continued from above) preferred sampling design must be "practical and achievable," and should take into consideration serious health and safety considerations unique to sampling radioactive waste. The document emphasizes that in the case of radioactive hazardous waste (mixed waste), the optimal sample design should aspire to collect as much information as necessary to characterize the waste from a limited number of samples, with an emphasis on the use of acceptable knowledge and non-invasive processes. The methods and philosophies presented in the 1992 EPA document are also reflected in the Joint EPA/NRC (continued below)	No

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II	C	B	DD-6, page 5, comment 2	Full physical analysis of waste is required	(Continued from above)	(continued from above) Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste, (1997). This 1997 document emphasizes the use of process knowledge rather than sampling and analysis of mixed waste wherever possible, and offers sample strategies to help maintain exposures as low as reasonably achievable (ALARA), which includes use of small sample size, the use of surrogate samples, and select (i.e., not complete) sampling of drums to collect analytical information. The permit includes many elements of these guidances, with an emphasis on non-intrusive data collection.	No

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II	C.1.e	B, B4	CC-3, page 1 of letter	Full physical analysis of waste is required	Incompleteness and inaccuracy of the DOE's records is insufficient to constitute "acceptable knowledge" of waste content. Physical analysis of all waste barrels is essential.	See response to comment DD-6	No

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II	C.2	B1, B4	S-6, pg. 6 of letter	Full physical analysis of waste is required	Ignitable, corrosive, reactive wastes should be prohibited; no free liquid should be allowed. All TICs must be reported and full sampling and analysis should be required.	Ignitable, corrosive, and reactive wastes are prohibited. Liquid limitations are imposed. However, the TIC requirement has been changed in the draft permit to be consistent with EPA guidance. Please refer to NMED's Exhibit A and Findings (Tentatively Identified Compounds).	No

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N-NMAG/Fettus O-INEEL Oversight/Trever P-INEEL CAB/Rice Q-Carlsbad DOD/Harrison R-Carlsbad City/Perkowski S-SRIC/Hancock T-Chavez  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.b	B, B1-B6	P-1, Comment 1 page 2 of letter	Chemical characterization poses risk to worker health	Requirements for chemical characterization of waste would greatly increase the requirements for handling waste, thereby increasing worker exposure and risk to worker health and safety. Proposed requirements would also add to the costs of management of the TRU waste program at the INEEL.	The comment is too general to respond to via modification of the draft permit, unless the commentor is requesting that the entire chemical characterization requirement of the draft permit be deleted. In this case, the comment cannot be incorporated because such a modification would result in a complete revision of the permit application and subsequent re-initiation of the permit application review process.	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, B4	O-2a page 1, comment 2 of letter	ALARA should be considered	NMED should consider ALARA concerns when establishing permit requirements (i.e., Idaho reduced waste verification from 10% to 5% when ALARA concerns are present). The commentor also suggested eliminating the requirement for limiting waste drums and boxes to a nominal life of 20 years.	ALARA concerns are taken into consideration, as the characterization process emphasizes nonintrusive analysis and acceptable knowledge. The chemical characterization strategy provided in the permit application and draft permit is consistent with RCRA and incorporates appropriate ALARA concerns by allowing totals analysis for volatiles as well as TCLP analysis (depending upon each site's analytical capabilities), allowing collection of a representative number of samples, and allowing the use of headspace gas analysis to further augment the volatile determination. Additionally, the only invasive sampling requirement calls for sampling a minimum of 5 preliminary waste samples to determine the number of core waste samples to collect. The actual number of samples to collect may be greater based upon the subsequent analytical results and evaluation of the constituent means and standard deviations, but if the generator/storage site has adequately (continued below)	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, B4	O-2a page 1, comment 2 of letter	ALARA should be considered		(continued from above) defined its waste streams via acceptable knowledge, it is likely only five samples will be collected. The draft permit was changed in the revised draft permit to remove the 5% requirement.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, pg. B-11, 12	E-30, pg. 87, 90	Visual examination miscertification rate using stratified analysis	Visual exam is used to verify radiography results on a statistically selected population of containers, regardless of the number of waste streams involved. It is erroneous to assume that in order to verify radiography, every waste stream examined through radiography must undergo visual examination. The impact of the draft permit attachment language is that more visual examinations will be required if containers are selected on a waste stream basis than on the basis of the number of containers that are to be characterized annually for the site.	The comment location in the draft permit is identified as Attachment B3. This is incorrect and should be listed as Attachment B. The intent of the requirement is to ensure that a waste stream that is continually problematic is not overlooked, as could occur using the approach presented in the permit application. The waste stream miscertification rates would dictate the number of samples that were subject to confirmatory visual examination, and would reflect the actual waste observation conditions and limitations. Additionally, oversight resources would be concentrated on the waste streams that are likely to present the most difficulty due to material densities or other factors. Waste streams that were easily discernable through radiography would likely be subject to less miscertification, and, hence, lower visual examination requirements.	No

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II	C	B, pg. B-11, 12	E-30, Cont., pg. 87-90	Visual examination miscertification rate using stratified analysis	INEEL miscertification data were examined for homogenous solids and debris waste forms. The results show no statistical difference in miscertification proportions between solids and debris wastes at the 0.05 significance level. The significance is that with no difference in the miscertification rates among waste forms, the use of the historical rate in determining the number of containers for future visual exam is appropriate regardless of what waste types or streams will be examined. Increasing visual examination may result in additional personnel exposures without providing greater confidence in the radiography process.	Please refer to the response to comment E-30.	No

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II	C.2.I, pg. II-5	B, pg. 12, 13, 16, 6, 9, 2, 55 56, B4, pg. 11 B6, pg. 83	E-10, pg. 29	100% headspace gas is not required	The current requirement for 100% headspace gas sampling is unnecessary for the protection of human health and the environment, is not cost-effective, and unnecessarily increases exposure of workers to radiation and hazardous materials. Headspace gas analytical results verify acceptable knowledge. the gas sampling of 100% of the containers was implemented because of the stringent requirements of the WIPP test phase and is no longer necessary or justified. Headspace gas samples should be collected on a statistically representative portion of the waste containers using EPA SW-846, Chapter 9 methods. This is consistent with 20 NMAC 4.1.500 (incorporating 40 CFR §264.13). Some waste streams such as thermally treated waste may not need to be sampled at all since there is no possibility of significant amounts of VOCs.	The 100% headspace gas sampling requirement was committed to by the permittees in their permit application, and revision of this condition would represent a significant change in the proposed waste characterization process included in the permit application. In addition, the presence of VOCs is required to ensure compliance with room limitations presented in Module IV, Table IV.D.1.	No

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II	C	B, pg. B-10 B1, pg. B1-12, 16, 18	E-28, Pg. 82	Core sampling of newly generated homogenous waste should be deleted	The requirement to conduct core sampling of newly generated homogenous waste is inappropriate and should be deleted. To minimize potential exposures and more effectively obtain a representative sample, generator/storage sites will use tools for sampling process lines or waste batches prior to packaging.	The draft permit has been revised to allow the use of alternative sample collection devices for newly generated homogenous solids. However, the requirement to collect solid samples has been retained, as this is necessary for the waste characterization AK confirmation process.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, pg. B-14	E-31, pg. 92	Ten samples for control charting	Ten samples are generally considered a minimum for control charting purposes. Both 5 and 10 are specified in the draft permit in different locations. The draft permit should be consistent and reflect an adequate number of samples upon which to base control limits.	The draft permit has been modified to indicate that ten samples will be collected.	Yes

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II	C	B, pg. B-14	E-31, Cont., pg. 92	Characterization of newly generated soil/gravel	Characterizing newly generated soil/gravel waste using the same approach used for retrievably stored homogenous solids and soil/gravel negates the basic concept that acceptable knowledge will be used for newly generated waste. Therefore, the use of the approach for retrievably stored wastes in lieu of those for continuous processes is not needed for characterization.	The intent of the permit condition was to address the fact that remediation waste soil/gravel are not generated by well controlled processes that are amenable to control charting. It is reasonable to treat the waste as retrievably stored and use the sampling frequency provided in the draft permit.	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, pg. B-15	E-32, pg. 94	Weekly inspection of process records	The frequency of record review depends upon the type of process, the frequency of its operation, and the variability of the relevant process inputs. To specify weekly inspection of process records does not guarantee compliance with the draft permit requirements.	Weekly examinations ensure that no process change impacting process output remains undetected. The Permittees' request to remove the NMED notification of waste shipment cessation has not been incorporated as NMED should be aware of the reason for a shipment cessation that could be an important indicator of potential problems with waste characterization. The draft permit has been revised, however, to remove mandatory the provision of follow-up sample results to the NMED.	Yes, in part

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II	C	B, pg. B-15	E-32, pg. 94	Notification	The NMED should only be notified if a waste that has been improperly characterized or is not included in the draft permit is accepted at the WIPP. If the Permittees determine that there has been an instance of noncompliance because of a change in the waste generating process, they will notify NMED. Additional notifications will not provide additional assurance of compliance with the draft permit.	Please refer to the response to comment E-32, above.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, pg. B-14	E-32, Cont., pg. 94	Concurrence on decisions regarding waste stream definition	The generator/storage sites have control chart and process record documentation procedures in place to indicate changes to the waste stream before shipment to WIPP. They must have administrative controls to segregate different mixed waste streams. These controls are assessed by the Permittees during the audit and surveillance process. If a process changes, the generator is required to submit a new Waste Stream Profile Form for acceptance which is the notification of a new waste stream. This eliminates the need for NMED's and the Permittees' concurrence on decisions regarding new waste stream delineations and sampling requirements for existing waste streams that have undergone any changes.	The draft permit indicated that the Permittees and NMED must concur with the decision not to increase sampling frequency before any additional waste from that waste stream is shipped. It is important that the Permittees concur with any decision not to increase sampling, which could result in noncompliance. The draft permit has been revised to retain concurrence by the Permittees, but not require NMED concurrence.	Yes, in part

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II	C	B, pg. B-16	E-33, pg. 96	Repackaged waste	Based on operational considerations, sites may characterize repackaged waste in accordance with the requirement for retrievably stored wastes rather than newly generated wastes. Based on the available facilities, equipment, trained personnel and the subject waste, radiography/visual examination may be a more effective and efficient characterization method after repackaging. The waste characterization techniques for newly generated and retrievably stored wastes result in the same data of equal quality, either approach will comply with the WAP.	The requirement referenced in the comment is located on pg. C-25, lines 20-21 of the permit application. This language was taken directly from this section of the application and directly incorporated into the revised draft permit. The Permittee's request to change the requirement for characterizing repackaged retrievably stored waste in accordance with retrievably stored waste is a substantive change from the permit application which NMED cannot review and approve at this stage of the permitting process. The commentor did not specify the circumstances under which characterization processes for retrievably stored waste would be more amenable for repackaged waste than newly generated processes, and it would be inappropriate to make such a modification to the draft permit without additional information.	No

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II	C	B, pg. B-19, 20	E-34, pg. 97	Potential violation conditions	NMED specifies that noncompliance with sample control and data generation provisions are potential violations of the draft permit. In the case of sample control, the Permittees would only be in violation of the permit if the QAPjP was determined to be inadequate and incorrectly characterized waste had been accepted from a generator/storage site. Similarly, if audit results indicate that a generator/storage site is not complying with the WAP, a violation of the permit would only occur if incorrectly characterized waste was accepted at WIPP. The potential violation condition should be removed.	The draft permit has been revised to remove the phrases in question.	Yes

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II	C	B, pg. B-19, 20	E-34, Cont., pg. 97	Potential violation conditions	The New Mexico HWA and Hazardous Waste Management Regulations, as well as the RCRA regulations require that any permit conditions must be necessary to protect human health and the environment, must be reasonable, and must be required to make the permit applicable to meeting regulatory requirements. NMSA 1978 Section 74-4-4.2(C); 20 NMAC 4.1.901(A)(8); 40 CFR §270.32(b). Furthermore, federal law requires that such permit conditions be clear and unambiguous, <u>US v. Richard Heuer and Eugene Holderness</u> , 4 F.3d 723 (9th Cir. 1993). Statements such as, "If the NMED finds that the QAPJP and sample handling and control programs do not meet the applicable requirements of this WAP, the Permittees may be in violation of this permit," do not meet any of the above requirements and are not proper permit conditions.	The draft permit has been revised to remove the phrases in question.	Yes

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II	C.1.f	B, Pg. B-23, B5, Pg. B5-2	W-2, (Page 3)	QAPjP	Delete the requirements that the QAPP and QAPjP be provided to the NMED for examination. Using an approval process similar to that required for compliance with 40 CFR §194 is recommended.	The generator/storage approval process for 40 CFR §194 relies upon site audits, and the QAPjP is used as an information source for those audits. NMED has required the preparation of a QAPjP, as committed to in the permit application, which is to include information pertinent to WAP compliance. The draft permit has been revised to remove the permit modification requirement in Module II.B, replacing this with a requirement that the Permittees audit generator/storage sites for WAP compliance. Please refer to NMED's Exhibit A and Findings (Audit Requirement).	Yes, in part

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II	C	B, Pg. B-22; B3, Pg. B-23	W-21, (Page 26)	Weekly report of data verification	The comment requests that the requirement for weekly repeat of data verification for one container should be eliminated.	The comment has been incorporated into the revised draft permit.	Yes



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II	C	B, pg. B-5	E-24, pg. 71	TSDf - WAC	NMED defines Waste Acceptance Criteria (WAC) as those criteria in the draft permit. This is a subset of DOE's WAC as defined in the WIPP WAC, WIPP/DOE 069. The use of the same term for different sets of criteria could result in significant confusion. The Permittees suggest giving a unique title to the Final Permit's WAC.	The draft permit has been revised to accept the commentor's suggested language change because it distinguishes between the draft permit WAC and DOE WAC requirements (which are not duplicative in all instances).	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, pg. B-7	E-25, pg. 77	Allowable headspace gas	See comment 1.1.5 on pg. 4.	The draft permit was modified to clarify language pertaining to allowable headspace gas concentrations in containers.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, pg. B-9	E-26, pg. 79	Sample preparation	There is no precedent for including the sample preparation as an additional restriction in the analytical batch definition and requiring that samples be prepared within 14 days of the Verified Time of sample Receipt (VTSR). The term analytical batch is inappropriately used in this text and should be revised to reflect the definition given in SW-846, Chapter 1 which defines an analytical batch as samples which behave similarly with respect to the sampling or testing procedures being employed and which are processed as a unit. The requirement that the samples be prepared within 14 days of VTSR invalidates the need of holding times greater than 14 days. The date of sample preparation is defined by the analytical holding time, not the date of receipt at the laboratory and should not be included in the definition of an analytical batch. The new definition is unnecessary and does not improve the quality of the data.	The term analytical batch can be used, and for some analyses must be used, to refer to a group of samples that has been prepared together. Metals analysis is an example of a method which clearly defines an analytical batch as those samples that were prepared at the same time, under the same conditions. The date of analysis does not matter, what defines the batch is the conditions and time of preparation. The holding time for metals analysis is 6 months. The requirement for the samples to be prepared within 14 days of sample receipt is too restrictive and does not follow SW-846 method guidelines for holding times for methods other than volatile organics. The draft permit has been revised to remove the requirement for all samples to be prepared within 14 days of sample receipt. Standard holding times for sample analyses will be required according to the analysis requested. Requirements to batch based upon receipt date at the laboratory is more appropriate to the logistics of the site as well as the laboratory.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Pg. B-9	W-20, (Page 25)	Sample preparation	The sample preparation component of the analytical batch definition should be deleted because it is more restrictive than the SW-846 requirements and it does not increase the quality of data or improve protection of human health and the environment.	See response to E-26.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Section B1c	U-43, (Pg. 16 Row 5)	Review of radiographic and visual exam data at Level III	The draft permit requires a review of radiography tapes to confirm the absence of prohibited items or material during Level III review. As written the requirement does not allow for the verification of compliance through alternate methods (visual examination) and is therefore too restrictive.	The referenced language is found in the permit application, page C-13, lines 38-41. The draft permit has been revised to include review of visual examination information as well as radiographic information.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.2.1	B, Section B 1c Other locations	U-41, (Pg. 16 Row 3)	LDR	Eliminate the requirement prohibiting the acceptance of TRU mixed wastes that has not been treated to meet Land Disposal Restriction Standards. The Land Withdrawal Act specifies that TRU mixed waste is exempt from treatment standards and shall not be subject to land disposal prohibitions.	Refer to response to comment E-11.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Section B3-14, Pg. B3-32 Multiple locations	U-15, (Pg. 8 Row 2)	QAPjP and required information	The permit should include a definition or qualifier that information required in a generator/storage site quality assurance project plan (QAPjP) may be included in generator/storage site QAPjP's or in associated quality assurance program documentation referenced in the QAPjP. The justification for this comment is to allow the generator/storage sites to have flexibility in implementing requirements to avoid unnecessary duplication of documentation.	The draft permit has been modified to allow inclusion of required information in standard operating procedures (SOPs) or other documents referenced in the QAPjP. However, all procedures must be subject to the same level of internal change control. The Permittees must also be responsible for evaluating and approving the content of the SOPs or other documents through audit if those documents contain WAP references.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Section B 4a	W-17, (Page 20)	QAPjP and required information	The permit should be modified to allow the sites to define data reporting requirements in the QAPjP and to provide actual data reporting formats in standard procedures or the QAPjP. The justification is to provide sites the latitude to make minor modifications without going through an unnecessary approval process.	The permit has been modified to allow the QAPjP to reference SOPs for required information.	Yes



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II	C1.b	B, Section B3a (2), Attachment B1, Pgs. B1-11 to B1-17	U-36, (Pg. 14 Row 4)	Use of SW-846 analytical and sampling methods	The permit should be modified to state that both analytical and sampling methods specified in SW-846 can be used to characterize TRU mixed wastes. In addition, the permit should state that other appropriate recognized sampling methods can be used, such as ASTM.	The permit has been modified to allow the use of alternate SW-846 analytical methods so long as the detection limit requirements of the methods listed in Tables B3-4 through B3-9 are met for detection limits, calibration, and quality control recoveries. Use of alternate sampling methods, such as using dippers or scoops, may be appropriate for newly generated solid wastes that are not amenable to coring, and the permit has been revised to allow their use.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Section B-3a(2), Pg. B-10, Figure B-3	W-28, (Page 41)	Assignment of TC code and acceptable knowledge	The requirement indicating that additional TC codes will be assigned based upon TC results and acceptable knowledge implies that a TC code could not be removed if data indicated that a constituent was below the regulatory limit. Delete the word additional from the requirement.	The permit has been revised to allow removal of toxicity characteristic codes assigned by acceptable knowledge, if such removal is justified based on confirmatory sampling and analysis results.	Yes

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II	C	B, Section B3d; Attachment B1 Attachment B6 checklists	U-45, (Pg. 17 Row 2)	Minor permit changes	A system should be developed and referenced in the permit to allow flexibility in defining approaches for allowing minor changes to characterization approaches without a permit modification.	See comment U-2.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B, Section B-4a(5), Pg. B-21	W-31, (Page 46)	Project level titles	The draft permit specifies titles for personnel to perform project level data validation without provisions for equivalent positions or titles. The site data validation officer title is used without definition of the site data validation officer function. Modify the draft permit to specify that all signature and review authorities can be an equivalent position.	Specifically defined positions in the permit application did not take generator/storage site organizational structures into account. NMED has determined that allowing identification of equivalent positions that meet the same functional responsibilities as those presented in the draft permit does not impact the quality of the characterization process. The draft permit has been modified, where appropriate, to define equivalent positions.	Yes, in part

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II	C	B, Section B-4a(7), Page B-22	W-35, (Page 50)	Record disposition	The draft permit modification specifying that records must be maintained per the records inventory and disposition schedule should be modified to include equivalent records inventory and disposition systems.	The permit has been modified to include the suggested revision.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B1	X-7, Comment 7 page 3	Innermost bag/container sampling	Delete the requirement for innermost bag sampling.	See Comment for E-41.	Yes

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II	C	B1	X-12, fifth specific comment page 3	Innermost bag/container sampling	Delete the requirement that samples for containers subject to VE be collected in the innermost non-rigid polyliner layer that has a minimum of 1 liter of headspace. This would dramatically increase the cost of characterization and reduce throughput without significantly improving information obtained from visual analysis. The commentor also questions the value of these analyses if the container was sampled prior to repackaging. Finally, the vapor source term may not always be within the innermost layer of confinement.	See Comment for E-41.	Yes

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II	C.1.a	B1	S-3a, pg. 5 of letter	Innermost bag/container sampling	Sampling and analysis should ensure that the innermost confinement layer is sampled, with three samples (solids) collected. Container equilibrium/quality control elements are important. Maintain 95% UCL, to obtain adequate number of samples.	See Comment for E-41 for the draft permit approach to innermost bag sampling. The reference to three samples was intended to serve as the number of subsamples that are collected to create composite samples associated with waste core sample collection. Collection of three headspace gas samples for each waste container does not provide enough additional assurance of data quality to justify the expense. In general, gas samples are more homogeneous than soil samples. The draft permit still specifies that a field duplicate sample will be collected that can be used to assess the homogeneity of the gas matrix. The draft permit references to a 95% confidence limit for statistical considerations were modified in the revised draft permit to be 90%. The 90% confidence limit is consistent with guidance in SW-846. Also, see comment E-15.	No



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II	C	B1, pg. B1-17	E-41, pg. 110	Innermost bag/container sampling	The draft permit makes reference to inner layer headspace gas sampling during visual examination. The permit does not describe how these data will be used to protect human health and the environment. These data will not increase protection of human health or the environment because VOC emissions at the WIPP are a result of diffusion through the drum filter from the container headspace. Concentration limits in Table B-2 of permit Attachment B are based on the rate of diffusion of VOCs from the container headspace. Therefore, sampling the container headspace is fully protective of human health and the environment and any additional sampling of inner layers during visual exam is unnecessary.	The draft permit has been modified in the revised draft permit to indicate that samples will be allowed to be collected in the drum headspace between the drum lid and the rigid polyliner for all waste containers. The draft permit establishes drum age and equilibrium requirements to provide assurance that the drum headspace is at equilibrium between all layers of confinement at the time the headspace gas sample is collected. The drum age criteria are based on experimental results from a report by Connolly et al. (1995) entitled "Position for Determining Gas Phase Volatile Organic Compound Concentrations in Transuranic Waste Containers," document INEL-95/0109 rev. 1. The large bag thickness in the Connolly study was almost three times greater (0.028 cm) than the thickest commercially available trash liners (0.01 cm). Therefore, the equilibrium and drum age requirements appear to be conservative and appropriate, and revision of the draft permit to allow for the sampling of the drum headspace, with adequate drum age and equilibrium time, is appropriate.	Yes

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II	C	B1	X-8, first specific comment page 3	Resolution-pressure gauges	The draft permit (pg. B1-2, lines 30-32) contains an incorrect reference to the resolution requirements on pressure gauges for headspace gas sampling. The resolution of 0.005 mm Hg @ 0.05 mm Hg should be reduced to 0.05 mm Hg @ 0.01 mm Hg. The original permit application had a conversion error from inches to millimeters of mercury for the resolution.	The permit was modified to provide the correct resolution of 0.05 mm Hg@0.01 mm Hg.	Yes

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II	C	B1	X-9, second specific comment page 3	Alternative sample canisters	Page B1-3, lines 6,7. Modify these lines to allow the use of SilcoSteel (TM) passivated sample canisters, which has a fuse silica surface coating that is superior to SUMMA canisters. Every reference to SUMMA should also reference SilcoSteel.	The draft permit was modified in the revised draft permit to reflect the use of canisters equivalent to SUMMA canisters as long as the alternate canisters demonstrate that the surface is as inert and leak-proof as the SUMMA canisters.	Yes

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II	C	B1	X-11, fourth specific comment page 3	Humidifier elimination	Eliminate the requirement for use of a humidifier in the manifold headspace gas sampling system. The addition of a humidifier only complicates gas sampling manifold without providing much benefit. If a humidifier is not required for FTIR, it should not be required for other methods.	The requirement to humidify air used in field reference standards, blanks, and to purge the system between samples will remain. Humidified air is necessary when using stainless steel components because of a tendency for organics to adhere to stainless steel surfaces in the absence of water on the component surface. Water vapor also serves to help clean internal surfaces and approximates the anticipated humidity of the headspace gas for the benefit of QC sample comparison.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.a, C.2.j	B1	G-1, page 1, pp 2 and 3 of letter	Headspace gas equipment and sampling modification	Headspace gas sampling equipment used by this company cannot comply with the methods in the Part B Permit. The commentor explains that DOE has successfully audited the equipment and it passed the performance demonstration program (PDP) program. The commentor would like the permit revised to allow for performance-based sampling and analysis methods. The commentor suggests deleting the method in the permit or stating it was for guidance only and different methods may be used if they pass PDP and DOE audits.	The comment did not present an alternative to the available sampling methods, namely sampling through the drum lid or through the filter. Any other method such as removing the drum lid or filter would result in the loss of excessive volatiles from the headspace. The draft permit has been modified to eliminate the tube diameter requirement for the tubing that leads from the needle tip, to allow for the use of alternate sample canisters, to allow for the use of pressure regulators to monitor gas flow through the purge assembly, and to despecify the type of drum punch. The remaining system requirements define operating conditions to include the system vacuum, purge air content and flow rates, pressure leak and temperature acceptance and measurement criteria, and sample collection requirements. In addition, use of QC samples such as equipment and field blanks, reference standards, and field duplicates are already used as performance indicators. These performance requirements seem reasonable. The comment did not specify other performance requirements.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B1, Pg. B1-5, B1-1a	U-11, (Pg. 5 Row 2)	Headspace gas equipment and sampling modification	The permit specification for two recognized headspace gas collection methods should be modified to allow for the use of any accepted method that results in the acquisition of a representative sample. In addition, the poly liner does not need to be punctured to collect a representative headspace gas sample so long as a representative sample can be collected from inside the rigid poly liner.	Headspace gas sampling requirements were originally in permit application, Appendix C4, page C4-5, lines 26-39, permit application, Appendix C4, page C4-6, lines 1-3, and in the permit application, Appendix C4, page C4-6, lines 1-22. The response to comment G-1 provides further information regarding the use of alternate headspace gas sampling methods. The Permittees originally specified that drums with unvented polyliners were to be subject to nonconformance reporting. Collection of samples inside the polyliner as opposed to in the drum headspace presents several (continued below)	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B1, Pg. B1-5, B1-1a	U-11, (Pg. 5 Row 2)	Headspace gas equipment and sampling modification		(continued from above) potential problems such as chemical cross-contamination from a sample needle contacting volatile source material, or damage to the needle from hitting debris objects.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B1, pg. B1-2	E-40, pg. 107	Headspace gas equipment and sampling modification	The draft permit should only specify sampling equipment criteria that affect performance in meeting program requirements. Generator/storage sites should be allowed to demonstrate through operational tests and QC sample performance that the equipment meets the performance criteria. The Permittees originally included details of a specific sampling system when the Methods Manual was provided as guidance to the generator/storage sites. Since that time, methods have become mandatory and many of the detailed specifications are not appropriate. Sampling system design differences do not affect the quality of the data and should not be specified in the permit.	See Comment G-1. The changes in the revised draft permit made to eliminate non-performance related specifications are consistent with the changes recommended in this comment.	Yes, in part



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B1, Section B1-1a(1),	W-39, (Page 55)	Headspace gas equipment and sampling modification	The draft permit specifications regarding headspace gas sampling equipment and operation are too specific and do not specify data quality. In addition, online sampling requirements are not distinguished from direct canister or manifold sampling. The draft permit should be modified to only specify sampling equipment criteria that affect performance in meeting program requirements. Generator/storage sites should be allowed to specify equipment criteria through QC sample performance.	See Comment G-1. On-line sampling and analysis requirements have been distinguished in the revised draft permit from direct canister and manifold sampling requirements, as needed.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B1	X-10, third specific comment page 3	OVA	Delete the requirement for an organic vapor analyzer (OVA) with an 0.1 ppm detection limit; this detection limit is 100 times lower than the program required quantitation limit (PRQL). Addition of OVA is unnecessary because flushing of manifold with dry nitrogen or zero air and evacuation will clean the system adequately.	The draft permit was modified to indicate that the OVA detection limit must be below the lowest PRQL for any of the headspace gas organic compounds. However, the requirement for use of an OVA is retained to provide documented evidence that manifold flushing was adequately performed.	Yes, in part

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II	C.1.b	B1	N-30, (p. 5/ pp.5)	Drum age equilibration	The equilibration time of 72 hours and age limits in Section B1-1a (page B1-1) should be supported in each case by record entries.	The draft permit was modified to indicate that the drum age and equilibrium time shall be documented for each waste container.	Yes

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II	C.1.b	B1	N-31, (p. 5/ pp.6)	RTR operator training	In light of the difficulties encountered at LANL in characterizing the TA-55-43 waste stream, additional training and quality control requirements should be imposed on RTR operations in Section B1-3b (page B1-20).	Training requirements in the permit are sufficient. Deficiencies in implementing the training requirements will be evaluated in the Permittees' audits and will be reflected in generator/storage site miscertification rates. The requirement to apply the failure to identify prohibited items to miscertification calculations will provide additional assurance that increased visual examination will occur if radiography personnel are unable to identify prohibited items. Please refer to NMED's Findings (Miscertification).	No

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II	C	B1, Pg. B1-1, B1-1a	U-10, (Pg. 4, Row 4)	Headspace gas equilibrium/ drum age	The 72 hour equilibrium requirement associated with headspace gas analysis is too restrictive because it indicates that the equilibrium must occur within a radiation containment area. The requirement should be relaxed to allow for equilibrium at room temperature to be achieved in alternate locations or at alternate equilibrium times so long as the thermal equilibrium of the container within 18-29 degrees Celsius can be demonstrated.	The draft permit was modified to clarify that the equilibrium temperature will be between 18-29 Celsius and that the equilibrium does not need to occur in a radiation containment area.	Yes

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II	C	B1, pg. B1-1	E-39, pg. 106	Headspace gas equilibrium/ drum age	The drum age criteria for headspace gas sampling addresses compliance with conditions for use of TRUPACT-II shipping containers and is not relevant to compliance with applicable hazardous waste regulations and therefore should be deleted.	The draft permit condition requiring a drum age to be met prior to sampling was to allow drum headspace to reach a 90 percent steady-state. Headspace gas sampling of drums at a headspace steady-state would preclude the necessity to collect samples from innermost layers of confinement.	No

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II	C	B1, Section B1-1a	U-46, (Pg. 17 Row 3)	Headspace gas equilibrium/drum age	The draft permit should be clarified to indicate that the 225 day holding requirement applies to cemented organics and inorganics but that solid organics and inorganics require only 125 days.	The report entitled "Position for Determining Gas Phase Volatile Organic Compound Concentrations in Transuranic Waste Containers", Connolly, et. al. (1995), document INEL-95/0109, Rev.1 did not specify a different steady-state drum age time for solid organics and inorganics. Evaluation of the data in the report did not yield any definitive conclusions to support a drum age of 125 days for solid organics and inorganics. In addition, the comment did not provide any additional study data to justify the comment request.	No

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II	C	B1, Table B1-1	U-30, (Pg. 12 Row 3)		Allow the laboratory holding time for an analytical batch to be increased on a corresponding, day-by-day, basis for each day the field holding time or shipping allowance is decreased, up to a maximum of 34 days. This change is requested to allow for greater flexibility in the laboratory without adding any additional days to the overall time required in providing analytical results.	The headspace gas holding time requirements were originally provided in the permit application Table C4-1. The headspace gas holding time elements of the table were removed from the revised draft permit. The times are for program efficiency purposes only and do not have an impact on data quality. Analytical and preparation holding time requirements for other analytical methods are still in effect.	Yes



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II	C	B1, Section B1-5, Pg. B1-26	W-6, (Page 7)	Trip blanks	The requirement for collection of trip blanks for solid samples to detect VOC cross-contamination should be deleted. Trip blank results for solid samples are too difficult to interpret based on differences in VOC absorption and diffusivity characteristics between the blank matrix and the solid matrix.	SW-846 does not specify that VOC trip blanks are not to be collected for solid samples. Establishing direct correlations between trip blank results and impact on soil samples are difficult to determine for the reasons stated in the comment. However, evidence of trip blank contamination in volatile organics samples is relevant in understanding possible data anomalies.	No

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II	C	B1, pg. B1-15	E-42, pg. 111, 112	Non-mixed waste and hazardous waste identification	The draft permit cannot alter the regulatory criteria in 20 NMAC 4.1.300 applicable to hazardous waste determinations and should not modify the sampling and analysis procedures specified in EPA's SW-846 Manual for making these determinations. The draft permit does not apply to non-mixed wastes and therefore it must distinguish between use of sampling procedures to determine whether a waste stream is mixed and use of sampling procedures to further characterize waste streams already known to be mixed. Provisions regarding waste characterization should be interpreted as only guidance for determining whether a waste stream is mixed.	The permit application includes provisions directly consistent with SW-846 (note that some revisions to the revised draft permit were made to reflect this). While the permit characterization requirements apply to mixed waste, headspace gas, radiography, visual examination, and soil/solids sampling are part of the acceptable knowledge confirmatory process and are required to obtain the characterization necessary to assign hazardous waste codes. Even for non-mixed waste, however, the Permittees would be required to make a hazardous waste determination, and the same process would be used. Additionally, the revised draft permit prohibits the disposal of TRU-mixed waste in rooms/panels containing waste which has not been characterized in accordance with the WAP. See NMED's Findings (Non-Mixed TRU Waste).	Yes, in part

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II	C	B1, pg. B1-15	E-42, Cont., pg. 111, 112	Core sampling	Characterization is not defined on the basis of individual waste containers but on the waste stream for which the variability is incorporated into the upper confidence limit (UCL). The variability in the waste streams is accounted for by statistically determining the number of samples to collect from the waste stream and collecting the samples from random locations. Collecting additional samples provides no benefit with regard to determining the UCL. These random locations may be in different vertical locations from container to container. The requirement to collect and analyze three samples per core is excessive.	The purpose of this permit condition was to identify three subsamples within a core and composite the subsamples into a single sample. As a result, a single sample is more representative of the container contents. There was no intent to require vertical characterization of individual waste containers. Page B1-15 of the draft permit has been modified to reflect the compositing of samples in the core. Please refer to NMED's Exhibit A and Findings (Sampling).	Yes

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II	C	B1, pg. B1-15	E-42, pg. 111, 112	Core sampling	Because of the change to the sampling requirement for VOC analyses, the sampling requirement for SVOCs, PCBs, and metals becomes ambiguous. The sampling requirement for SVOCs, PCBs, and metals states that samples may be collected in the same manner from the same location as for the VOC analysis, or they may be collected by splitting or compositing the representative subsection of the core. The former implies that three samples must be chosen; however the wording is unchanged from the permit application where one sample was required.	The response to Comment E-42, above, alleviates the ambiguity surrounding the collection of SVOC, PCB, and metal samples. These samples may be collected as composites in the same manner as VOCs or may be collected by splitting and compositing a representative subsection of the core. Please refer to NMED's Exhibit A and Findings (Sampling).	No

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II	C	B1, pg. B1-15	E-42, Cont., pg. 111, 112	Core sampling	The option of compositing a representative subsection of the core has been made unclear with the statement, "The representative subsection is chosen by randomly selecting a location along the portion of the core from which the samples was taken (i.e., core length)." It is not clear to what sample the sentence refers, nor is it clear whether the subsection is chosen from the length of the core or a portion of the core. This section needs to be clarified.	The response to Comment E-42 above alleviates the ambiguity surrounding the collection of SVOC, PCB, and metal samples. These samples may be collected as composites in the same manner as VOCs or may be collected by splitting and compositing a representative subsection of the core. Please refer to NMED's Exhibit A and Findings (Sampling).	No

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II	C	B1, Section B1-2a, Pg. B1-15. B6, Pg. B6-44.	W-26, (Page 35)	Core sampling	The specification that three samples will be collected from vertical cores should be modified to indicate that a single sampling location will be selected. In addition, all references to multiple samples or vials collected should be made singular. The justification is that the samples should be collected to determine variability within a waste stream and that determining vertical variability within a waste container is not necessary.	The response to Comment E-42 above alleviates the ambiguity surrounding the collection of SVOC, PCB, and metal samples. The draft permit references to vials and samples were modified to reflect the collection of a single sample. Please refer to NMED's Exhibit A and Findings (Sampling).	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B1, pg.. B1-24 and B1-26	W-46, (Page 63)	Chain of custody	The chain of custody requirements in the draft permit should be modified to delete language referring to transfer of custody to the shipper and replaced with language that more clearly identifies the custody transfer process.	The chain of custody requirements in the draft permit were modified to clarify that the method of transfer and transfer firm will be documented and that any airbill or lading numbers will be documented. The draft permit was not intended to require documentation of the individual shipping employees handling the shipping containers.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B1, Sec. B1-1b(4)	G-2, page 2, pp1 and 2 of letter	Field duplicate	The field duplicate requirement does not apply to on-line integrated sampling methods. An on-line system accomplishes the same requirements by sending a duplicate standard sample through the sample piping and instrumentation as a regular headspace gas sample. The duplicate standard must meet the quality assurance objective of <25% RPD. The commentor requests that the same rule for on-line blanks be allowed for on-line duplicates. The commentor recommended adding a note to B1-2 stating, "For on-line integrated sampling/analysis systems, if field blank results meet the acceptance criterion, a separate on-line blank is not required."	The comment reference to allow use of an acceptable on-line field blank in lieu of an on-line laboratory blank is found on page B1-9 of the draft permit. DOE indicated in the permit application, on page C4-9, field duplicates were necessary to assess the sample collection process precision. There were no available data to establish the extent of VOC homogeneity in headspace gas or to assess the precision of the sampling method. Therefore, the field duplicate requirement for headspace gas was retained in the revised draft permit.	No



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II	C	B1, Section B1-1a, Pg. B1-1	W-5, (Page 6)	QAPjP contents	The requirement to describe the radiation containment area and remote-handling equipment in the QAPjP is unnecessary to ensure the collection of a representative sample. This requirement should be deleted.	A description of the remote handling and sampling equipment is necessary to demonstrate that the area is configured to prevent external contamination or sample cross contamination.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B1, Section B1-1b(3), Page B1-9	W-37, (Page 52)	NIST standards	The permit specification that all field reference standards shall have a known valid relationship to a nationally recognized standard such as NIST should be modified to indicate that all commercial standards must be certified by the manufacturer. The justification for this change is that NIST type standards are not available for RCRA regulated compounds.	The NIST requirement was originally in the permit application, page C4-8, lines 45-47, and on page C4-9, line 1. The draft permit was modified to indicate that if NIST standards are unavailable, that certified commercial standards can be used and that the certificates of concentration documenting traceability should be available.	Yes

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II	C	B3	U-4, (Pg. 2 Row 2)	Alternative solid sampling techniques	The permit should allow for the use of other sampling techniques to collect representative samples. Use of a dipper to collect molten waste and a scoop to collect pulverized wastes are better suited to the waste stream being sampled. Choice of sampling equipment should be based upon the container size, physical form, and hazards of the waste. Acceptable waste sampling methods are available through EPA and NIST. In addition, the generator/storage sites should have the opportunity to develop new techniques, if necessary, without the need to modify the permit.	The response to comment E-28 states that alternate sampling methods may be used under some circumstances. Retrievably stored waste will be required to be sampled via coring. The draft permit has been modified to specify that appropriate sampling methods as specified in SW-846 may be used for some newly generated wastes in the event that coring is not an appropriate sampling method. Any alternate sampling methods must maintain sample representativeness through spatial and temporal conditions.	Yes, in part

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II	C	B1, B2	X-6, Comment 6 page 3	Headspace gas sampling	The NMED should require that a representative headspace gas sample be obtained for analysis, but should not dictate the manner in which the sample is to be obtained (i.e., do not require invasive sampling via insertion of a needle through the carbon filter).	There appears to be only 3 methods of obtaining a headspace gas sample: by intruding through the drum lid, intruding through the filter, or removing the filter. There is no methods manual or other reference that indicates an effective method of removing the filter without losing a significant portion of the headspace gas. The comment did not provide an alternative non-intrusive method of sampling. Therefore, although modifications were made to the draft permit to eliminate overly specific system requirements, the basic methods of headspace gas sample collection remain unchanged in the revised draft permit.	No

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II	C	B1, Section B1-2a(1)	U-49 (Pg. 66)	Core sampling of newly generated homogenous waste should be deleted	The permit should allow for the use of other sampling techniques to collect representative samples.	See the response to Comment E-28. Modifications will be made to allow for the use of alternate SW-846 sampling methods for certain types of waste.	Yes

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II	C	B1, Section B1-2a(2), Table B1-4	U-37, (Pg. 15 Row 1)	Sample preservation	The sample preservation table found in SW-846 (Table 3-1) should be referenced as the requirement for sample preservation. This would eliminate the need to propagate permit revisions based on changes to SW-846. In addition, the soil preservation requirements for metals chilling to 4 degrees C, is not consistent with the most recent version of SW-846, which only requires metal soil samples to be chilled for mercury and hexavalent chromium analyses.	The sample preservation Table B1-4 was retained in the revised draft permit. However, a footnote was added that preservation requirements in the most recent promulgation of SW-846 may be used if more appropriate. All metal samples will be analyzed for mercury as well as for the other metals that do not require chilling. Therefore, unless a facility intends to collect separate samples for mercury, and for the other remaining metals, the temperature provision for metals samples is necessary to provide for the preservation of mercury samples. Other than the footnote, Table B1-4 was not modified.	Yes, in part

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II	C	B1, Section B1-2b(2), Pg. B1-17	W-32, (Page 47)	Sampling equipment	The draft permit should be modified to allow for the purchase and use of certified clean disposable sampling equipment in lieu of re-usable equipment that has been cleaned and is associated with an acceptable equipment blank.	The permit application, Appendix C4, pg. C4-13, lines 32-33 does indicate that disposable equipment can be used. However, the text is not as descriptive as that provided in the comment. The draft permit was modified in the revised draft permit to indicate that certified clean disposable equipment may be used in lieu of reusable equipment that must be cleaned.	Yes

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II	C	B1, Section B1-3a, Page B1-20	W-36, (Page 51)	Video recording devices	The draft permit should be modified to allow equivalent audio/video recording media such as CD-ROM or other digital media when documenting radiography and visual examination activities.	The draft permit was modified to allow for the use of alternate recording media that proves to be as unalterable as audio/video tape.	Yes



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II	C	B1, section B1-3b(2)	E-22, pg. 68	Periodic tape review	The independent technical review that takes place at each generator/storage site including review of tapes is unnecessary. The oversight functions discussed in the last paragraph of this section are unclear and redundant. Adequate oversight is already required by independent scans, replicate observations, audits and surveillances at the generator/storage site. "Periodic tape review" is not defined and can be construed to be the replicate observation of the video, therefore this requirement does not add value to the Program.	The periodic oversight requirement of radiography was originally included in the permit application on page C4-21. This additional level of oversight appears to be appropriate due to the lack of quantitative quality control data that is available for radiography results. As originally proposed by the Permittees in the permit application, the level of effort of oversight is vague. The Permittees should evaluate a facility radiography oversight program through audit, through evaluation of the replicate scan and observation results, as well as the site misclassification rates. The draft permit was modified, however, to allow for the use of any radiography technique that meets the minimal resolution requirements to discern a 2-2T hole in a steel block and to identify a test pattern.	No

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II	C	B1, Section B1-4, Pg. B1-25	W-7, (Page 8)	Final waste disposition identification	The requirement to include the description of the final waste disposition on the sample chain of custody should be deleted. The requirement should be deleted because waste containers are tracked and managed per site operating procedures.	The requirement was found in the permit application on page C4-22, lines 43-44. Because sampling waste and excess sample from these waste streams will likely be identified as a separate waste stream, there is due cause to track the disposition of the samples. The requirement has been retained in the revised draft permit.	No

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II	C	B1, Section B1-5, Page B1-26	W-45, (Page 62)	Tamper-proof seals on sample containers	The draft permit specification that all sample containers should be affixed with tamper-proof seals on the outside of all sample containers and sample shipping containers should be modified to be consistent with the 11/15/96 QAPP Table AC-1, pg. 4.	The custody seal requirement was in the permit application in Appendix C4, pg. C4-23, lines 20-21. The draft permit was modified in the revised draft permit to indicate that tamper-indicating devices are allowed if the tamper-indicating device is directly traceable to the sample custodian or individual who originally affixed the device. The purpose of signed custody seals is to preclude the removal of the original seal and the affixing of another seal.	Yes

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II	C	B1	E-43, pg. 114-118	Hazardous waste determination	See the second part of Comment E-15 The permit cannot alter 40 CFR §262.11 and 20 NMAC 4.1.300 applicable to hazardous waste determinations and should not modify sampling and analysis procedures in EPA's SW-846 Manual. The draft permit should distinguish between use of sampling procedures to determine whether a waste stream is a mixed waste and the use of sampling procedures to further characterize waste streams known to be mixed.	See response to comments E-15 and E-42.	Yes, in part

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II	C.1.b,c	B2	S-3c, pg. 5 of letter	Both radiography and VE should be performed on each container.	Both radiography and VE should be performed on each container.	Performing radiography and VE on each container is redundant. The intended purpose of radiography is to minimize worker exposure to radiation by having a method for observing waste containers without opening the container. Visual examination serves as a confirmation of the effectiveness of radiography or is used when radiography is not practicable due to the waste matrix or when containers are already opened due to repackaging. Please refer to NMED's Findings (Miscertification).	No

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II	C	B, Section 3d(1)(a), Pg. B-14, Section 3d(1)(b), Pg. B-16. B2, Section B2-4, Pg. B2-6 B6, Pg. B6-37	W-29, (Page 42)	Control charts	The draft permit requires a minimum of 5 instead of 10 samples when establishing newly generated homogenous waste control limits. The permit should be modified to indicate 10 samples at a minimum because 10 is generally considered a minimum amount. In addition, the permit uses a 5 and 10 sample amount. The permit specification that newly generated soil and gravel wastes should be sampled in the same manner as retrievably stored homogenous wastes should be deleted because it negates the use of acceptable knowledge.	The draft permit was modified to indicate that control charts will be established on 10 historically collected process sample data points. Acceptable knowledge may be used as part of the characterization record. However, newly generated soil and gravel wastes are not generated under controlled processes, which the newly-generated characterization process is intended to apply to.	Yes, in part

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II	C	B2	E-43, Cont., pg. 114-118	Statistical approach to determine number of solid samples	Imposition of 5% sampling for preliminary sampling overrides the statistical approach being used and is not a method recommended in statistical science or SW-846. The equation for determining the number of samples to collect and analyze in the draft permit leads to estimation of the mean concentration within a wider range of tolerances than with the approach in the permit application; the consistent range of +/- 100% of mean used in the application will result in conservatively determining a waste stream hazardous when the mean is close to the regulatory threshold rather than increasing the number of samples. Requiring sampling on an additional 10% of the calculated required number imposes an unjustified burden on sites when the required number must be collected and analyzed regardless of completion requirements.	The approach used in the draft permit to evaluate if a correct number of waste samples are collected will remain, with a modification to allow the sites to declare a waste as hazardous for a constituent prior to collection of the required number of samples and removal of the 5% sample requirement. The sample size formula as provided in SW-846 is intended to determine if a waste is hazardous for a particular waste with a certain degree of certainty, with the expectation that increased sampling would be beneficial to determine a waste as non-hazardous and subsequently preclude disposal in a RCRA regulated facility. In the case of WIPP, commentors pointed out that because all TRU waste is intended for WIPP, there is no economic advantage to performing detailed hazardous waste (continued below)	Yes, in part

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II	C	B2	E-43, Cont., pg. 114-118	Statistical approach to determine number of solid samples		(continued from above) determinations. As such, the commentors saw no advantage to the potentially large number of samples that could be required when sample concentrations are near the regulatory threshold. Recognizing this, the draft permit was modified to allow the site to determine the waste to be hazardous for a constituent at any point after the collection of the preliminary samples. The provision for collecting 110% of the calculated number of waste samples was removed and replaced with a statement that the completeness requirements for the data must be met. The provision indicating that a minimum of 5 samples or 5% of the waste stream will be collected as a preliminary sample was modified to indicate that a 5 sample minimum will be collected for each waste stream.	Yes, in part



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Commentor Key: B-Cartwright E-DOE/CAO F-Haney G-NFT/Castagneri H-EPA6/Neleigh I-Read J-Overbay K-Tanner L-WITCO/Bernardi M-Moore  
N-NMAG/Fettus O-INEEL Oversight/Trever P-INEEL CAB/Rice Q-Carlsbad DOD/Harrison R-Carlsbad City/Perkowski S-SRIC/Hancock T-Chavez  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B2, Page B2-4, B2-2	U-7, (Pg. 3, Row 2)	Statistical approach to determine number of solid samples	Eliminate the requirement for preliminary sample estimates used in the approach for statistically selecting retrievably stored waste containers for totals analysis. In addition, the 5% requirement is excessive for large waste streams with little variability. The QAPP-specified minimum of 5 samples should be employed.	The requirement for the collection of preliminary sample estimates is in the permit application Appendix C6, pg. C6-3 - C6-6. The intent of the permit was to allow for the use of the preliminary samples as part of the characterization data set, so long as the preliminary samples were collected randomly and were collected and analyzed using the same procedures as required for the characterization samples. The draft permit was modified to state that the preliminary data must be representative of waste stream but that the preliminary samples may be used as part of the sample population if collected in a comparable manner as the characterization samples. The remainder of the comment is addressed in the response to comment E-43.	Yes, in part

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II	C	B2, Section B2-2, Pgs. B2-4, B2-5	W-27, (Page 37)	Statistical approach to determine number of solid samples	Revise the permit to indicate that the preliminary number of core samples will be a minimum of 5. The requirement that the minimum number of samples will be 5 or 5% of the waste stream (whichever is larger) should be deleted. The justification is that the 5% criteria would override the statistical approach and is not supported by SW-846 or science. Revise the permit to employ the sample number specifications used in the original permit application as opposed to the SW-846 method employed in the draft permit. The technical justification is that the SW-846 would result in additional sample collection for results near regulatory thresholds to prove a waste non-hazardous; while the application method would conservatively identify wastes as hazardous without the additional sampling.	See the response to Comment E-43.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.c	B2	N-32, (p. 5/ pp.7)	Miscertifica-tion rate	The process for identification of containers for visual examination (Section B2-1) should be reconsidered since errors have been detected in the characterization of waste at LANL. As proposed, the rate of visual examination is increased only when there is a recorded increase in the error rate as to matrix parameter and weight. Significant errors have occurred as to the presence of sealed containers, and similar errors may occur in the future. The statistical methods should take account of such errors.	The draft permit was modified to indicate that generator/storage sites will use site-specific miscertification rates if available instead of initially using the INEEL 2% miscertification rate, and that failure to identify prohibited items is considered a miscertification. The program at each generator/storage site will develop site miscertification rates and the level of confirmatory visual examination at each site will vary based upon the demonstrated miscertification rate from the previous year. In addition, the miscertification rate will also be based upon the ability of the generator/storage site radiography operators to successfully identify prohibited items based on the results of certification activities. Please refer to NMED's Findings (Miscertification).	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.c	B2	N-33, (p. 5/ pp.7)	Miscertification rate	The two percent miscertification rate based on experience at INEEL (as stated in Section B2-1, page B2-1) is no longer applicable, based on experience at LANL with waste stream TA-55-43.	See response to N-32.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B2, Page B2-4, B2-2	U-8, (Pg. 4, Row 2)	Statistical sampling	The commentor suggests eliminating the requirement for collecting 110% of the required samples. The justification is that each site should be allowed to design their own sampling program and that additional sample collection may be prudent but it should not be a requirement.	See the response to Comment E-43.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B2, Section B2-2, Pgs. B2-4, B2-5		Statistical sampling	The permit requirement to collect 110% of the necessary samples to ensure completeness goals should be deleted. The justification is that sites should be allowed to collect additional samples as necessary to meet completeness goals. The requirement that preliminary estimates must be randomly selected samples is not necessary and should be deleted.	See the responses to Comments U-27 and E-43.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B3	E-27, pg. 80	Tentatively Identified Compounds	The application's approach to identifying and reporting Tentatively Identified Compounds (TICs) is reasonable and the permit requirements for TICs should be changed to the way it was presented in the application. The USEPA Contract Laboratory Program (CLP) National Functional Guidelines for Organic Data Review require that for each sample, the lab must conduct a mass spectral search of the NIST library and report the possible identity for the 10 largest volatile fraction peaks (or semi-volatile peaks) which are not system monitoring compounds, internal standards, or target compounds, but which have area or height greater than 10% of the area or height of the nearest internal standard. By limiting the number of TICs to 20 for GC/MS and 5 for Fourier Transform infrared Spectroscopy (FTIRS), the permit remains consistent with SW-846 and the CLP.	See comment response for E-27. It should be noted that CLP methodology and validation criteria were established for CERCLA programs and are not required to be applicable to RCRA sample analyses. Limitations on the number of TIC's reported under CERCLA may not necessarily be provided for purely technical reasons. Several elements of the CLP methods were crafted to afford program consistency to facilitate contract laboratory cost control. The criteria in SW-846 methods for TIC reporting limit reported TICs to only those with significant values and that are clearly identifiable. However, there should not be a limit on the number of TICs that are reported so long as they meet the SW-846 requirements for TIC identification. Pleaser refer to NMED's Exhibit A and Findings (Tentatively Identified Compounds).	Yes, in part

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II	C	B3	E-27, Cont., pg. 80	Tentatively Identified Compounds	TIC data analysis is very time consuming and by not limiting the number, prevalence, and frequency of occurrence for TICs, no boundary is placed on the amount of additional data analyses required for each sample and waste stream.	See comment response for E-27, above.	Yes, in part



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II	C	B3, Pg. B3-4 and B3-5, Section B3-2	U-12, (Pg. 6 Row 2)	Headspace gas sample collection location	Instead of sampling in the innermost layer of confinement within each drum, headspace gas sampling is performed on the drum headspace either directly under the drum lid or directly under the rigid liner if the rigid liner is not vented. The justification is that a DOE study has shown that the concentration of the VOCs in the innermost layer of confinement can be related to the concentration of VOCs measured in the drum headspace.	See response to Comment E-41 and W-40.	Yes, in part

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II	C	B3, Section B3-2, Pg. B3-4; Section B3-12, Pg. B3-26	W-40, (Page 57)	Headspace gas sample collection location	Instead of sampling in the innermost layer of confinement within each drum, headspace gas sampling is performed on the drum headspace either directly under the drum lid or directly under the rigid liner if the rigid liner is not vented. The justification is that a DOE study has shown that the concentration of the VOCs in the innermost layer of confinement can be related to the concentration of VOCs measured in the drum headspace.	Please refer to the response to comment E-41. The DOE Methods Manual, pgs. 110.3-1 and 110.4-1 indicate, in the limitations and interference sections of the two sample head methods, that the poly liners should be vented. In addition, the DOE specification that a failure to vent a poly liner is cause for initiating an NCR is an indication that sampling under the poly liner is not an acceptable practice. Sampling under the poly liner increases the possibility of contaminating the probe with solid waste, damaging the probe, and releasing radioactivity by puncturing internal bags. Sampling in the drum headspace minimizes the possibility of the above mentioned problems.	Yes, in part

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II	C	B3-2	G-3, page 2, pp 3 and 4 of letter	Headspace gas sample collection location	B3 methods are overly prescriptive for the location of sample collection; a sample collected directly under the drum lid will be representative of gases and vapors in the drum. Sample collected in innermost layer of confinement is not necessary. The commentor stated that equilibrium is attained after 142 days after packaging debris waste and 245 days after packaging sludge waste. Equilibrium is defined as having the drum contents reach a 90% steady state concentration within each layer of confinement. The commentor suggested adding a statement that headspace gas sampling must occur after these time periods have elapsed. If headspace gas sampling is performed before these time periods have elapsed, inner bag sampling must occur.	The draft permit has been modified to clarify that headspace gas sampling will occur after the drum age criteria have been met. In order to maintain consistency, providing an option for innermost bag sampling in lieu of meeting the drum age criteria will not be added to the draft permit.	Yes, in part

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II	C	B3	E-44, pg. 120-122	Non-conformance	This issue of nonconformances is confusing, and the reference locations need to be centralized. Section B3-13 appears to contain the general requirements for all nonconformances with section B3-1 containing specific requirements that are in addition to B3-13. There are repeated references throughout the permit to Attachment B3 regarding how to handle nonconformances. This should be changed to indicate B3-13 or Attachment B3. In addition, the phrase "nonconformance" and "failure to meet" are redundant and this redundancy should be removed.	The nonconformance report (NCR) draft permit requirement was modified in the revised draft permit to indicate that the Permittees will receive NCRs for any non-administrative items identified at the Site Project Manager Level review. Identifying a problem at this level is a reasonable indicator that the review process is not functioning properly and that there is an increased likelihood of discrepant data entering the WWIS. The intent of the language contained in the draft permit was not to require NCR reporting at all levels of review and the site should not be required to report in-process discrepancies or routine data quality problems, only those discrepancies found at the project level. By requiring reporting of each NCR, every issue would be brought to the attention of the Permittees, even if the issue was small, correctable, and did not impact QAOs. This reporting unnecessarily burdened the generator/storage sites and Permittees with reporting that did not add significant benefit to safeguard human health and the environment. (continued below)	Yes

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II	C	B3	E-44, pg. 120-122			(continued from above) The modified language should therefore meet this intent. The phrase "failure to meet QAO " was removed from the draft permit.	

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II	C	B3 B4	E-20, pg. 63	Non-conformances	The draft permit conditions for documenting non-conformances are redundant and should be deleted. Nonconformances identified during "In-Process" activities do not normally require nonconformance reporting (NCR). If a process is incomplete or otherwise nonconforming, the process may be completed and the nonconformance corrected without documentation in accordance with the performing organization's work procedures. When the work activity is considered completed and has been presented for acceptance, it is then necessary to document any nonconformances. Nonconformances are processed in accordance with the performing organization's own internal procedures. The procedures are subject to audits and surveillances to assure upper-tier requirements are being met during NCR processing.	See response to E-44. The draft permit was revised to not require external NCR reporting for in-process work prior to the Site Project Manager Level review.	Yes

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II	C	B3	E-44, Cont., pg. 120-122	Non-conformances	The nonconformance program was developed to provide a documentable method for dealing with waste/program elements that do not comply with program requirements. Nonconformances that prevent waste from being incorrectly disposed of at the WIPP should not require direct, immediate intervention from the Permittees. These nonconformances should only be periodically audited. Nonconformances that document waste which has already been accepted at the WIPP should require intervention by the Permittees.	See response to comment E-44. The draft permit was revised to not require external NCR reporting for in-process work prior to the Site Project Manager Level review.	Yes

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II	C	B3 B4	E-20, pg. 63	Non-conformances	Data validation/verification at the generator/storage site level, including the independent technical review and QA review, are considered "In-Process" activities and the requirement to document nonconformances at this level would be redundant. The purpose of these reviews is to identify and correct potential nonconformances. Requiring the Permittees to document nonconformances at the generator/storage site would add additional cost without providing an increase in protection of human health or the environment.	See response to comment E-44. The draft permit was revised to not require external NCR reporting for in-process work prior to the Site Project Manager Level review.	Yes



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II	C	B3 B4	E-20, pg. 63	Non-conformances	The Permittees do not want NCR tracking reports from each generator/storage site. The generator/storage sites are expected to implement their own QA program for each nonconformance and to trend those NCRs for quality improvement. The Permittees will verify the implementation of the site QA programs through audits and surveillances. Documenting NCRs as CARs is redundant.	See response to comment E-44. The draft permit was revised to not require external NCR reporting for in-process work prior to the Site Project Manager Level review.	Yes, in part

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II	C	B3 B4	E-20, pg. 63	Non-conformances	See comment E-54. Discrepancies in acceptable knowledge information at the generator/storage site level are resolved in accordance with the site-specific procedures and is considered an in-process activity. Therefore, NCR processing would not be required, the use of an NCR is redundant and unnecessary for compliance with the WAP.	See response to Comment E-54 which addresses the issue of nonconformances associated with the discovery of discrepancies in acceptable knowledge documentation.	Yes

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Commentor Key: B-Cartwright E-DOE/CAO F-Haney G-NFT/Castagneri H-EPA6/Neleigh I-Reade J-Overbay K-Tanner L-WITCO/Bernardi M-Moore  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B3, Pg. B3-4, B3-1	U-9, (Pg. 4, Row 3)	Non-conformances	Delete the requirements for individual NCRs to be reported to WIPP. Instead, require sites to have methods to identify and resolve NCRs. Implementation can be audited by the Permittees as part of site certification process.	See the response to Comment E-54. The draft permit was revised to not require external NCR reporting for in-process work prior to the Site Project Manager Level review.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B3	E-44, Cont., pg. 120-122	Non-conformances and data useability	The DQO (data quality objectives), not the QAOs (quality assurance objectives) should be used to determine if a waste container was incorrectly accepted at the WIPP. It is not uncommon with more complex waste matrices, to have some matrix spike, surrogate, or internal standard results outside of the acceptance criteria (QAOs). A nonconformance for a specific QAO in the data validation process may or may not result in the data not meeting the DQOs (being reported and used). Therefore it is more reasonable to tie the nonconformance reporting requirement to the DQOs rather than the QAOs.	The original permit application did not contain any provisions for assessing the usability of analytical or testing data and the subsequent determination of data quality objectives. The provisions added to the draft permit that indicated that only data that met QAOs were acceptable for use did not provide the generator/storage sites an ability to justify the use of data qualified due to matrix or other effects. Justification of data acceptance for data associated with matrix related failures to meet QAO's is appropriate. However, there is no current mechanism in place to ensure that assessment of data usability will be applied consistently among characterization results at a site or between (continued below)	Yes, in part

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II	C	B3	E-44, Cont., pg. 120-122			(continued from above) sites. The draft permit was therefore modified to indicate that the Permittees will be responsible for establishing data usability criteria and ensuring that all generator/storage site data assessment criteria are consistent with the criteria established by the Permittees. These criteria will be based upon the criteria established in the quality assurance objectives taking into account issues such as matrix effects, interferences, use of qualified data, impact of failure to meet hold times. The revised draft permit does not establish any criteria for data usability, only that the Permittees must establish and apply criteria that is used to assess the usability of data in DQO calculations and assessments.	Yes, in part

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II	C	B3	E-44, Cont., pg. 120-122	QAOs	There must be a distinction made between matrix related and non-matrix related failures to meet QAOs. Nonconformances are not required for matrix related QC samples that do not meet the acceptance criteria (i.e., QAOs) because qualifying flags will be applied to the appropriate data and a discussion of the qualification will be included in the case narrative for each data package.	See response to the second part of comment E-44 above.	Yes

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II	C	B3, Pg. B3-22	U-26, (Pg. 11 Row 4)	Order of data validation review	The order of data validation review should be reversed to have the Project QA Officer sign and release data and then have the project manager sign and release data. This sequence is not possible.	This provision requiring Project QA Officer and Project Manager signature release was originally included by the Permittees in the permit application, page C8-18, lines13-46 and page C8-19 lines 1-11. However, the modification was made to have the Site Project QA officer review the data and then release the data to the Site Project Manager. The QA officer provides a final quality control check of the data before the project manager reviews the data for final approval at the generator/storage site immediately prior to transmitting the data to the Permittees. Therefore, the language has been changed in the revised draft permit to reflect the logical and necessary order of data review at the project level.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B3, pg. B3-11	E-46, Cont., pg. 125	Data useability	The draft permit does not allow DOE to qualify data based on the data use. This is inconsistent with EPA's SW-846 or USEPA CLP guidelines and is contrary to laboratory practices used in environmental sample analysis and reporting. With the complex matrices often associated with hazardous and mixed wastes, it is not uncommon to have some matrix spike, surrogates, or internal standard results outside of the acceptance criteria. The basis for invalidating or rejecting data in the CLP program is based on how far the QC sample results deviate from the acceptance criteria and the professional judgement of the validator. The field sample results must be flagged if the QC samples do not meet the acceptance criteria, but are reported and used. Valid results used to calculate data completeness should include all reported results, including any results that have been reported with qualifying flags and meet the detection limits, calibration, representativeness, and comparability criteria within this section.	See response to the second part of comment E-44. However, the comment definition of valid data should not automatically include all qualified data. Data with severe quality control deficiencies may not be suitable for use. The Permittees will be responsible for establishing usability criteria that assess the usability of qualified data. Usability criteria establishes whether data represents the actual constituent and concentrations found in the media sampled. The usability criteria defines how quality control parameters of the sampling and analysis event are used to assign qualifiers to the data and whether the data that was obtained from the sampling and analysis event is complete enough to make decisions about that media (waste). Data may be considered valid, estimated, or (continued below)	Yes



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II	C	B3, pg. B3-11	E-46, Cont., pg. 125			(continued from above) rejected and assigned the corresponding validation flags based on how the quality control parameters are used to assess the data. Once the data has been qualified, the representativeness and completeness of the data can be evaluated and it can be determined whether the data provides adequate information about the sampled media to meet project objectives.	

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II	C	B3, Pg. B3-11, B3-14, B3-16, B3-20	W-22, (Page 27)	Data useability	The definition of valid data for completeness purposes should be modified to allow DOE to qualify data and consider the matrix based upon data use.	See response to the second part of comment E-44.	

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II	C	B3-5	G-5, pages 3 and 4 of letter.	Performance based methods	Revise the QAOs to allow for PBM (performance-based methods) in accordance with 1997 EPA Testing and Monitoring Final Rules (FR Vol. 62, No. 114, June 13, 1997). Revise comparability sections of the QAO to read, "Comparability will be achieved through use of documented Performance Based Measurement Systems or standardized methods, and traceable standards, and by requiring all sites to participate in the PDP."	The citation provided in the comment is for the current promulgation of SW-846 and refers to a provision in chapter 2 that allows for flexibility in methods so long as performance standards are met. However, this flexibility is only applicable if the data is to be used for purposes other than hazardous constituents or hazardous waste identification that would require a less rigorous test (i.e., field screening for some types of corrective action). Flexibility is also allowed to account for unusual analytical or sample conditions. The Permittees may request modifications to the permit based upon the need to modify existing methods to meet specific sample matrix or analytical scenarios that are not amenable to the SW-846 methods. A revision to the draft permit reiterating this provision of SW-846 was not made.	No

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II	C.1.d	B3	N-34, (p. 5/ pp.8)	Radiography QA	NMED should reconsider the quality assurance (QA) requirements for review and oversight of real time radiography in light of the LANL experience. The discussion of accuracy of radiography on page B3-9 (Section B3-4) is quite vague and leaves it uncertain how many drums are to be subject to visual examination.	The accuracy requirements in the draft permit for radiography were modified to indicate that accuracy will be verified through confirmatory visual examination and that the number of drums subject to visual examination will be a function of the observed miscertification rate. Therefore as the miscertification rate increases, so does the number of drums required to be visually examined. Precision and accuracy within a drum by VE/RTR are not truly calculable as in chemical testing methods because the purpose of the inspection is only semi-quantitative for detection of liquids and estimated material parameter weights and only qualitative for the presence of other prohibited items. In addition, radiography tapes are reviewed at the data generation level at a minimum rate of one for every tenth container, at the project level at a minimum rate of one videotape for every testing batch to ensure that the data are correct and complete. Furthermore, radiography data is required to be obtained using standardized radiography procedures and operator qualifications. Please refer to NMED's Findings (Miscertification).	Yes

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II	C.1.d	B3	N-35, (p. 5/ pp.8)	LANL waste identification issues	The accuracy of acceptable knowledge is measured only on the basis of percentage of containers requiring reassignment to a new waste matrix code (Section B3-9, page B3-17). Errors in matrix code are not the only error experienced at LANL; other errors include noncompliance with WIPP-WAC and failure to capture degradation products. Such factors should be included in QA measurements.	The draft permit was modified to indicate that miscertification will also be based on the failure to identify prohibited items. However, identification of degradation products is not a clear indicator or reason to miscertify a container unless degradation has rendered the waste as characteristic. Degradation products will either be a generated gas or degraded base materials (e.g., rubber or plastic). Detection of an unconfined gas is not a defined function of radiography and the presence of degraded rubber or plastics does not result in a RCRA hazard that is identifiable through radiography or visual examination. Therefore, failure to identify a waste characteristic through radiography is not a valid reason to miscertify a drum. As a result, there were no changes made to the draft permit based upon this portion of the comment. Please refer to NMED's Findings (Miscertification).	Yes, in part

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II	C.1.d	B3	N-36, (p. 6/ pp.2)	QAPjP submission	NMED should require DOE to submit QAPjPs from each generator/storage site for the record so that NMED has documentation of how each site plans to comply.	The draft permit includes this requirement.	No

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II	C.1.d.	B3	S-3d, pg. 5 of letter	QA (general)	All aspects of QA are important and audits, deficiencies and nonconformance reports must be readily available.	Audit reports that include identified problems are made available to NMED. Non-administrative NCRs identified at the Site Project Manager Level will be sent to the Permittees and made available to the state for review. All comment elements were previously addressed in the permit.	No

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II	C	B3, Pg. B3-18	U-34, (Pg. 14 Row 2)	Signature modifications	The comment proposes to modify the requirement to sign and date all raw data in black ink to only indicate that black ink is preferred.	This requirement was originally in the permit application (C8-15 line 39). The draft permit was modified to indicate that reproducible ink will be used. Unalterable, protected electronic signatures may be used as an alternative.	Yes



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II	C	B3, Section B3-10, Pg. B3-18	W-9, (Page 10)	Signature modifications	The requirement that all raw data must be signed and dated in black ink by the person generating the data should be modified to allow the use of electronic records and digital signatures. Use of electronic signatures is supported by state laws in Idaho and New Mexico and increases the validity of data in the WWIS based on the premise that data will not be manually modified if an electronic update is available.	This requirement is in the permit application C8-15 line 39. The draft permit was modified to indicate that reproducible ink will be used. Unalterable, protected electronic signatures may be used as an alternative.	Yes, in part

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II	C	B3, Pg. B3-20	U-31, (Pg. 12 Row 4)	Analytical flags	Add flags H and Z with the following definitions: H - Holding times exceeded; Z- One or more QC samples do not meet acceptance criteria. These flags are currently being used in the reporting of analytical data per the QAPP.	The H and Z flags were added to the draft permit as allowable reporting flags for characterization data.	Yes

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II	C	B3, Pg. B3-32, Section B3-14	U-17, (Pg. 8 Row 4)	WAP indoctrination	The draft permit requirement that all personnel performing or managing activities affecting the quality of TRU mixed waste to be disposed of at WIPP will be indoctrinated to the scope, purpose, and objectives of the WAP are costly and show little benefit. Instead management should determine the employee training needs based upon their role or activities.	The language regarding the comprehensive training requirement is from the permit application (Appendix C8, C8-27, lines 22-25). The permit was modified to indicate that only the applicable elements of the WAP scope, purpose, and objectives will be included in the training requirements.	Yes, in part

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II	C	B3, Section B3-3, Pg. B3-8	W-8, (Page 9)	Coring of entire waste depth	The requirement that the entire depth of the waste must be cored should be modified to read that the entire depth minus a documented safety factor must be cored. The justification for this modification is that site safety requirements prohibit coring of the full drum to prevent penetrating the bottom of the drum.	The language requiring that the entire waste depth must be cored is from the permit application (pg. C8-7, line 24). The application did not address the possibility of puncturing the drum bottom when establishing the core requirement. Therefore, allowing a documented safety factor in establishing the core depth is appropriate. The draft permit was modified to indicate that the entire waste depth minus a documented safety factor will be cored.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B3, pg. B3-7	E-45, pg. 123, 124	Statistical method-sampling precision	The statistical method proposed in Attachment B3, page B3-7 for evaluating sampling precision (using the F distribution) is not sensitive and is expected to rarely reject the hypothesis that the co-located core variance is less than the waste stream variance. It was presented as an interim method in the permit application, to be replaced as sites obtain sufficient data for control charting, which is the more appropriate and preferred method. The permit should be changed to reflect that the F test is a reasonable approach for interim measures but will be replaced with control charting once sufficient data are available.	The permit application indicated that control charts would be established with 25-30 co-located pairs. Based upon the requirement that a co-located core is collected for one in twenty samples, that would mean that 500-600 samples would be collected for a waste matrix before a control chart could be developed. Additionally, considering that samples are only collected for a statistically derived percentage of the waste containers, it is highly unlikely that enough samples would ever be collected to establish a control chart except for the largest of waste streams. However, the draft permit was modified to allow for the use of Shewart control charts in the event that an adequate number of co-located sample results are available.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B3, pg. B3-11	E-46, pg. 125	Data completeness	The limits on data completeness imposed by the provision of this section of the permit and Tables B3-2 and B3-3 should be removed. Data completeness is defined in the permit as the number of samples analyzed with valid results as a percent of the total number of samples submitted for analysis. Valid results are those that meet all of the Quality Control Criteria specified in Tables B3-2 and B3-3.	The draft permit has been modified in relevant QAO discussions to indicate that data completeness is the number of data points that meet data usability criteria. It would be inappropriate to assume that all data analyzed are acceptable for use regardless of the quality of the analysis. Indicating that valid results can include all flagged data that meet the detection limit, calibration, representativeness, and comparability requirements is not inclusive of all data quality conditions that could result in unusable data. Specifications for establishing data usability criteria are provided in the response to comment E-44.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B3, pg. B3-13	E-47, pg. 127	Most recent SW-846 use	The requirement to use the most recent SW-846 update at the time of sample collection and analysis is overly restrictive and unnecessary. It is impossible for laboratories to implement a new promulgated method instantaneously; it would require procedures to be reviewed, updated, approved, a new demonstration of method performance, training on the new method, and possibly new equipment. Laboratories update during their annual review cycle or when new equipment is purchased. The permit should reflect flexibility on this point.	The draft permit was modified to indicate that new or revised methods in SW-846 may be used if they are consistent with the permit QAO's. However, the generator/storage sites will not be required to immediately use new promulgations of SW-846.	Yes

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II	C.1.b	B1	U-2, (Pg. 1 Row 2)	Methods Manual	include only a reference to the Methods Manual instead of including characterization methods directly in permit. The justification for this comment is that permit modifications would be required if a sampling or analytical method was modified, thereby resulting in unnecessary delays and additional costs.	Including a reference to the Methods Manual as part of the permit would have the result in a permit modification whenever the methods manual is revised. The draft permit was modified to indicate that a limited number of additional sampling methods may be used for the collection of newly generated wastes that are not amenable to coring. Attachment B1 states that newly generated wastes are sampled from a process as it is generated and may be sampled using EPA approved methods, including scoops and ladles that are capable of collecting a representative sample. All retrievably stored waste samples will be collected through coring.	Yes, in part



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II	C.1.b	B3, Pg. B3-13, B3-14, B3-16	W-23, (Page 29)	Methods Manual	The permit should be modified to allow the use of the DOE Methods Manual in addition to SW-846. The justification for this modification is that the Methods Manual included a more complete presentation of quality assurance objectives, analyte lists, and QC acceptance criteria. Additionally, requiring the laboratories to immediately use the most current promulgation of SW-846 is impractical.	See the response to Comment U-2.	

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II	C	B, Pg. B-22, B3, Pg. B3-19	W-44, (Page 61)	Independent review	The draft permit footnote requirement that the independent technical reviewer for data validation should report to a supervisor not responsible for performing the work being reviewed should be deleted. The justification is that sufficient reviews are performed. The additional organizational requirement would require organizational restructuring and the addition of manpower that would not otherwise be needed.	The footnote in the draft permit was modified to remove the requirement that the independent reviewer must be organizationally separate from the individual performing the analysis, but should be someone not responsible for performing the work or generating the data.	Yes, in part

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II	C	B3, pg. B3-19	E-48, pg. 127	Independent review	Footnote 1 on page B3-19 states that independent technical review is performed by a competent individual who is not directly responsible for performing the work. It is outside the NMED's authority to regulate a potential contract laboratory. It is unrealistic to require that an independent technical reviewer report to a supervisor not responsible for the work being performed. Laws routinely employ numerous technically proficient persons that can alternately perform measurements or review the work of other technical staff. In addition, the redundant data review and validation required by the permit ensure that any mistakes will be found in the review cycle.	See response to Comment W-44.	

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II	C	B3, Pg. B3-4, B3-5, B3-20, B3-29, B3-30	W-18, (Page 21)	Time requirements for issuing NCRs	The draft permit should be modified to eliminate the time requirements for issuing NCRs. NCRs are issued periodically and are monitored by the Permittees through the audit process. In addition, NCRs based upon quality control criteria not being met should not be required for matrix based QC steps.	See response to comment E-44. The draft permit was modified to reduce the level of NCR reporting to only non-administrative issues identified at the Site Project Manager Level. The draft permit was modified to require that the Permittees ensure that they are notified within 5 calendar days of the incident and that the NCR must be resolved prior to waste shipment. NCRs typically would not be issued for matrix related problems unless the data was used to confirm characterization and was found to not meet data usability requirements.	No

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II	C	B3, Pgs. B3-19, B3-30, B3-31	W-30, (Page 44)	NCRs	The nonconformance requirements are too prescriptive and should be modified to indicate that nonconformance reports should only be used for significant deficiencies and that a graded approach should be used to control nonconformances.	See response to comment E-44. Graded nonconformances are not acceptable because they would leave too much subjectiveness in the process, because nonconformance grades are not defined, and because there would be a number of logistical difficulties in identifying and tracking graded nonconformances. However, the draft permit has been revised to indicate that NCRs will be initiated for non-administrative nonconformances identified at the Site Project Manager level or by the Permittees.	Yes, in part

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II	C	B3-20	E-49, pg. 130	NCRs	<p>Nonconformances should be reported on a periodic basis rather than after each individual event and should be reported at the generator/storage site level. All nonconformances, corrective actions, and trending information should be reported to and monitored by the Permittees through the auditing process.</p> <p>Nonconformances should not be required for matrix related QC samples. The permit requirement is excessive and does not benefit data quality.</p>	See the response to Comment number E-44.	

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II	C	B3, Section B3-10, Pg. B3-19	W-47, (Page 64)	Review responsibility revision	The permit specification that facilities may combine the positions of independent technical reviewer and QA Officer should be modified to indicate that facilities may combine the technical supervisor and QA officer. The justification is that it is not practicable or desirable to have a combination of the QA officer and technical reviewer positions based upon their functional responsibilities.	This provision was originally provided in the permit application (Appendix C8, page C8-16, lines 26-27). The provision to combine the independent technical reviewer and QA officer has been removed from the draft permit. However, the comment request to combine the technical supervisor and QA Officer positions does not allow for adequate independence of quality assurance functions from technical functions and therefore will not be incorporated into the revised draft permit.	No

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II	C	B3, Section B3-10, Pg. B3-23	W-10, (Page 13)	Summary reporting	Delete the report requirement that sites must prepare a Site Project QA Officer Summary and Data Validation Summary. The purpose of these reports is not defined. Furthermore, no data fields exist in WWIS to provide the Summary Reports.	This requirement was originally provided in the permit application (Appendix C8, pg. C8-19, lines 18-28). The Permittees did not request a change in their comments, and therefore it can be assumed that the Permittees believed this report to be a relevant element of the waste characterization quality control process.	No



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II	C	B3, Section B3-10, Pg. B3-20	W-33, (Page 48)	Calibration records	The draft permit requirement to include calibration records and the gas canister sample tags in the batch data reports should be modified to indicate that calibration records (or references to the calibration records) and a reference to the storage location of the gas canister sample tags is acceptable. The justification is that these records are maintained at the laboratory and are not used as part of the project level data validation. Therefore, reference to the storage location is adequate to document that calibration and custody have been maintained.	This requirement was originally provided in the permit application (Appendix C8, page C8-17, lines 2-5). Calibration records are a necessary part of the data validation process to determine if calibration QAO's were met. Gas canister tags are required to demonstrate that sample integrity was maintained throughout the sample collection and analysis process. The draft permit was modified to allow for the reference of available calibration packages and allow the use of copies of sample tags analytical batch reports.	Yes, in part

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II	C	B3, Section B3-10, Pg. B3-23; Section B3-12, Pg. B3-28	W-42, (Page 59)	Radioassay	Draft permit specifications applicable to radioassay data should be deleted because radiochemical requirements are not addressed under RCRA.	References to inclusion of radioassay data in the data generation and review process was removed from the permit.	Yes

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II	C	B3, Section B3-11, Pg. B3-25	W-41, (Page 58)	Miscertification rate, stratified sampling	Delete the requirement for confirmatory visual examination of each waste stream and replace with the strategy currently used at the site.	The applicants proposed the miscertification process as part of the WAP in the permit application. Please refer to NMED's Findings (Miscertification).	No

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II	C	B3, Section B3-12, Pg. B3-27	W-11, (Page 14)	Data package preparation	Delete the requirement to prepare data packages within 28 days of sample receipt. Also delete requirements for serial number assignment and page numbering location. The justification for the changes are that the requirement is not related to data quality.	The requirements to prepare batch reports within 28 days of sample receipt were removed from the draft permit because they did not impact the quality of the data, only the timeliness of the program. The requirement that data packages are paginated has been removed from the draft permit although pagination of data is a highly recommended practice. However, the requirements that each batch data report will be uniquely identified with a serial number was retained in the permit to ensure that reports are identifiable and traceable.	Yes

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II	C	B3, Section B3-2 Pg. B3-5	W-48, (Page 65)	Corrective action, headspace gas RPDs	The draft permit specifies that corrective action is required if headspace gas analytical RPDs for an analyte exceed 25%. The permit should be amended to indicate that corrective action is required if the RPD requirement is exceeded for any analyte with sample concentrations greater than the PRQL. The justification is that the precision decreases near the MDL. EPA CLP specifies replicate acceptance criteria that accounts for the likely decrease in precision near analytical detection limits.	This language was included in the permit application (Appendix C8, page C8-4, lines 44-45). However, the draft permit was modified to require corrective action only if the duplicate or original result is greater than the PRQL. Percentage differences for results less than the PRQL translate to small actual differentials that are well within the inherent instrument variabilities that are encountered at or near the MDL.	Yes

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II	C	B3, Section B3-3, Pg. B3-8	W-34, (Page 49)	Core recovery	The draft permit requires that in the event of a less than 50% core recovery, the second coring shall be used for sample collection. The permit should be modified to indicate that the core with the best recovery would be used. The justification is that the permit did not account for the possibility that the second core recovery could be worst than the first core.	The language stating that the second core will be used in the event the first core recovery was less than 50% was originally included by the Permittees in the permit application (Appendix C8, C8-8, lines 6-8). However, the draft permit was modified to indicate that the core with the best recovery will be used in the event that the first core recovery was less than 50%.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B3, Section B3-8, Pg. B3-15.	W-49, (Page 66)	Metals accuracy requirements	The metals accuracy sample requirements for interference check and serial dilution samples should be deleted because these samples are used to assess instrument accuracy and not the overall accuracy.	The interference check and serial dilution requirements will remain as QAO requirements because they are QC analyses that are relevant in evaluating data usability for the DQOs. The interference check sample is required to ensure that analytes which typically cause interference with the detection of other analytes of interest in the samples are properly accounted for. The serial dilution sample is required to determine whether significant physical or chemical interferences exist due to sample matrix.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B3, Tables B3-2 through B3-9.	W-50, (Page	QC inconsistencies	The Quality control specifications in Tables B3-2 through B3-9 contain several inconsistencies with Methods Manual and SW-846 requirements.	Several modifications were made in the revised draft permit to Tables B3-2 through B3-9 to reflect method requirements and to eliminate the issuance of in-process nonconformances that are reported to the Permittees.	Yes



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II	C	B3-2	G-4, page 3, pp 1 and 2 of letter	Duplicate sample collection	The commentor suggests replacing "simultaneous duplicate collection" with "sequential duplicate collection," and adding a statement, "For on-line integrated sampling/analysis systems, if field reference standard duplicate results meet the acceptance criterion, a separate field duplicate is not required."	The draft permit has been modified to reflect the sequential collection of duplicate samples. Sequential collection will allow for the assessment of sample collection technique as well as the possibility of matrix heterogeneity. Sequential collection of duplicate samples provides a useful tool in evaluating the consistency of the operator personnel and instrument performance and therefore provides a good assessment of the overall precision and accuracy of sample results.	Yes

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II	C	B-3d (1)(a), Pg. B-12	U-22, (Pg. 10 Row 3)	Sampling newly generated homogenous wastes	The requirements for sampling newly generated homogenous wastes should not specify the requirements to be contained in the procedures for waste generating processes. The justification provided is that the sites must be given the flexibility to design and implement their characterization program to meet the needs of the site.	The requirement for identifying waste generating process procedure requirements was taken directly from the permit application (Chapter C, page C-23, lines 39-43, and page C-24, lines 1-23). These requirements were modified in the permit to specify only those process procedure requirements that were directly relevant to the documentation of acceptable knowledge information that would be beneficial in characterizing the waste stream.	No

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II	C.5	B, Section B 1-3d	U-42, (Pg. 16 Row 4)	Definition of TRU-mixed waste	Definition of TRU mixed waste should include the RCRA hazardous component as an integral part of the definition of TRU mixed waste.	The definition was originally provided in the permit application (C-1 lines 27-30.) The hazardous definition has been retained in the revised draft permit.	No

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II	C.1.a	B4	O-3 pages 1 and 2, comment 3 of letter	Draft permit is more stringent than RCRA	New Mexico's hazardous waste program is limited by state law to be no more stringent than federal RCRA regulations. For example, New Mexico is requiring financial assurance for WIPP, but under 40 CFR §264.140(c) federal facilities are exempt from financial requirements. Also, a disposal facility may manage waste identified in the Part A of the facility's permit. Under RCRA, listed wastes are not regulated simply by the presence of hazardous constituents, they must be tied through process knowledge to the hazardous waste numbers. Permit condition II.C.1.a appears to be more stringent than RCRA by proposing to regulate hazardous constituents that are not necessarily tied to hazardous waste numbers.	The draft permit tied the occurrence of hazardous constituents to hazardous waste codes as part of its acceptable knowledge process. While the acceptable knowledge process (including the confirmation process) may identify hazardous constituents, these will be assessed relative to the hazardous waste code that may be assigned by the presence of these constituents. It is unclear what the commentor meant in stating that II.C.1.a is more stringent than RCRA, but this Module has been modified to clarify that the Permittees will ensure generator/storage site compliance to applicable portions of the WAP. VOCs are also monitored to ensure compliance with 40 CFR §264.601 performance standards for releases in the air pathway. It should be noted that the EPA, in 1992 and 1997 guidance pertaining to characterization of radioactive debris and mixed waste, determined that non-intrusive procedures are the preferred method of characterization, with the emphasis on acceptable knowledge. Because headspace gas and solid waste sampling (continued below)	Y, part

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II	C.1.a	B4	O-3a pages 1 and 2, comment 3 of letter			(continued from above) are included in the AK analysis, both are considered an essential part of the acceptable knowledge process. Hence, revision of the initial acceptable knowledge characterization based upon new acceptable knowledge information does not constitute "dual" regulation of the waste. It is also pointed out that EPA clearly indicates that while acceptable knowledge should be used as much as possible, sampling and analysis, such as the confirmatory analysis in the permit, may be used to acquire additional information. Also, the definition of acceptable knowledge includes sampling and analysis information. The draft permit has been modified to clarify the role of sampling and analysis in the waste characterization process.	Yes

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II	C.1.a.4	B4	X-4, Comment 4 page 2	Delete confirmation requirement	Delete the requirement that AK documentation be confirmed through sampling and analysis because this defeats the EPA preference for use of AK [alone] to characterize heterogeneous and radioactive waste.	See response to comment O-3a.	No

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II	C.1.e	B4	N-37, (p. 6/ pp.3)	Reclassification of waste with insufficient acceptable knowledge	The WAP must state specifically what it means in directing that debris waste streams are to be reclassified and managed as newly generated waste if acceptable knowledge is insufficient. The characterization of newly generated waste is based on acceptable knowledge; how is legacy waste, for which acceptable knowledge is insufficient, to be characterized?	The change of classification from retrievably stored to newly generated mandates the performance of visual examination of these wastes. Note that repackaged waste is considered newly generated waste. If retrievably stored waste is reclassified as newly generated waste because of insufficient acceptable knowledge, visual examination of these wastes will take place.	No

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II	C.1.e	B4	S-3b, pg. 5 of letter	Documentation of AK	AK for each waste stream should be fully documented. Discrepancies in records should be specified and uncertainties/ assumptions documented on a drum by drum basis.	The acceptable knowledge process requires that acceptable knowledge be assembled, confirmed, and audited according to very specific procedures. It is required that acceptable knowledge documentation be traceable (including discrepancies) and a roadmap be present; audits performed of the generator/storage sites will include analysis of this roadmap and subsequent availability of information cited on the roadmap.	No



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II	C	B4, Pg. B4-14	U-33, (Pg. 13 Row 2)	AK audit scope	Amend the requirement that Acceptable Knowledge for at least one heterogeneous debris and one solidified waste stream will be reviewed during each audit. The commentor recommends the following language: "provided the generator/storage site has characterized a solidified waste stream, including documenting all the acceptable knowledge for that stream." The rationale for this addition is that audits of all waste streams will be delayed until a solidified waste stream is characterized and certified. In addition, 80% of all TRU waste at RFETS is heterogeneous debris and it may be difficult to always have one heterogeneous and one solidified waste stream characterized and ready to audit.	The draft permit has been revised to indicate that the inspection must include one example of the summary waste category group being audited.	Yes

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II	C	B4, general comm	E-50, pg. 131	Use of AK for hazardous waste determination	The draft permit does not reflect that the primary use of acceptable knowledge is to determine whether a heterogeneous waste stream is mixed rather than to characterize waste streams already known to be mixed. The permit does not apply to non-mixed wastes; thus the permit must carefully distinguish between the use of AK for these two purposes.	The applicants have proposed to manage, store and dispose all waste at WIPP as mixed waste. Acceptable knowledge may be used to distinguish between mixed and non-mixed waste. The corrections requested by the commentor do not directly reflect the issue in the comment. The commentor requests the ability to use AK to determine a concentration of material present in the waste and to make a TC assessment based on AK alone. In addition, waste characterization guidance (EPA 1992, 1994, and 1997) advocates the use of acceptable knowledge, particularly in the case of mixed waste. The draft permit has been revised to allow concentration assessments for TC waste based on AK, and to allow alternative designations, if justified. This approach is necessary to encourage accurate waste characterization rather than "worst case" toxicity characteristic assignments that may not be correct.	Yes, in part

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II	C	B4, pg. B4-3	E-52, pg. 134	AK assembly	The draft permit should be clarified to ensure that generator/storage sites do not use incorrect information to characterize hazardous waste streams. The required process for assembling AK involves (1) assembling and evaluating adequacy and relevance of available information, (2) compiling relevant and adequate information in an auditable record, and (3) resolving and documenting discrepancies within the auditable record. This section should be re-written to replace the term "waste stream" with "mixed waste stream".	The commentor suggests allowing sites to assess acceptable knowledge information based upon it's accuracy, relevancy, and adequacy. Determining whether the acceptable knowledge information is "relevant" is very subjective and does not provide precise criteria for determining whether material is relevant. Allowing an accuracy assessment also is a subjective process. The draft permit has been revised to state that generator/storage sites may offer an alternative hazardous waste designation than the assignment of all hazardous waste codes, without regard to the source of information, if the alternative is justified and placed in the auditable record. This provision allows the Permittees to assess the validity of data on a case-by-case basis, reduces the potential for subjectivity, and also requires the analysis to be in the auditable record.	Yes, in part

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II	C	B4, pg. B4-4, 5, 6	E-53, pg. 135, 136	Supplemental AK	The list of supplemental information (for process knowledge information) is not complete and will vary by generator/storage site. By establishing a specific list of supplemental information, the permit prevents sites from identifying and using other, more relevant sources of information. It is also not practical to establish a general prioritization scheme for that information.	The draft permit specifically states that the list of supplemental acceptable knowledge documentation includes those that are listed, but is not limited to those items listed. The draft permit also does not state that the items listed have been put in any sort of order or that they are prioritized in the list. NMED recognizes, however, that all supplemental information may not be available, and will be of varying value to the overall acceptable knowledge characterization process. The draft permit has been revised to indicate that sites shall assemble some supplemental information but does not mandate the specific type or quantity of supplemental information that must be acquired. It is necessary to acquire some supplemental information to augment mandatory information, but availability of the specific supplemental information to be obtained is waste-stream specific and should not be designated to avoid collection of a tremendous quantity of information, some of which could be of limited value.	Yes

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II	C	B4, pg. B4-11	E-58, pg. 144	F-list assignment	If acceptable knowledge establishes that spent solvents were not discarded in the waste stream, the appearance of minute quantities of constituents below the PRQL (practical quantitation limit) for those constituents should not be used as a basis for assigning an F-listed hazardous waste code to a waste stream. A number of F-listed spent solvents are constituents in products that are not solvents, i.e., toluene is used as a plasticizer in plastics and tapes and can be released from these products by radiolytic degradation or other processes. As long as levels are below PRQLs, generators should have no obligation to assign an F-listed code to the waste.	The draft permit has been revised to clarify that mean concentrations are to be compared to the PRQLs, and sites may provide documentation to show that organic constituents in F-listed waste are from uses not consistent with solvent use (i.e., radiolysis).	Yes

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II	C	B4, pg. B4-12	E-59, pg. 145	Application of mean solvent concentrations to hazardous waste determinations	The draft permit condition for determining the mean concentration of solvent VOCs should not be applied to hazardous waste determinations and is inconsistent with the allowed segregation procedure established by lines 1-4 on this page of the permit and with the use of the PRQL and UCL methodology.	The PRQL determination is used as a trigger value above which acceptable knowledge reassessment must take place. The commentor apparently wishes to remove an F-listing from a waste if constituents from that waste are not present in headspace gas above the PRQL. However, headspace gas is used as an indicator and as an additional data source for acceptable knowledge. The absence of constituents in headspace gas is not definitive proof that the F-listed constituent is not present elsewhere in the waste.	No

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II	C	B4, pg. B4-16	E-60, pg. 146	AK discrepancy resolution	The provision in the draft permit for correcting discrepancies in AK obligates the Permittees to require the generator/storage sites to increase sampling, reassess the materials and processes that generate the waste, and resubmit the Waste Stream Profile Form if discrepancies are consistently identified. This single approach may not necessarily be the appropriate corrective action and should reflect more flexibility.	The commentor seeks additional flexibility when determining what generator/storage sites must do when consistent discrepancies with acceptable knowledge are identified. Specifically, removal of the "increased sampling" statement is suggested. The commentors also suggest removing the requirement to resubmit the waste stream profile form(s) and replacing this with a requirement that the generator/storage sites implement a corrective action program. Implementation of the corrective action program may or may not require resubmission of a waste stream profile form depending upon the nature of the discrepancy, and the request is reasonable and more reflective of the actual site options. The draft permit has been modified to clarify that increased sampling is not required and to require the implementation of the generator/storage sites corrective action system.	Yes, in part

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II	C	B4, pg. B4-3	E-51, pg. 133	Obtaining missing AK by visual examination	Reclassifying and managing retrievably stored heterogeneous debris waste as newly generated waste may not be the appropriate action if acceptable knowledge is not available and may only cause additional radiation exposure to workers without providing any additional protection to human health or the environment. The permit should allow a generator/storage site to determine if the missing AK can be obtained by visual examination.	The draft permit has been modified to clarify that supplemental information can include information obtained by visual examination. This information may be used to supplement or clarify questionable mandatory information but may not be used as a replacement for missing mandatory information.	Yes



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N-NMAG/Fettus O-INEEL Oversight/Trever P-INEEL CAB/Rice Q-Carlsbad DOD/Harrison R-Carlsbad City/Perkowski S-SRIC/Hancock T-Chavez  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B4, pg. B4-6	E-54, pg. 138	AK NCRs	See comment E-20. Discrepancies in acceptable knowledge information at the generator/storage site level are resolved in accordance with the site-specific procedures and are considered an in-process activity. Therefore, NCR processing would not be required, the use of an NCR is redundant and unnecessary for compliance with the WAP.	NMED agrees that site-specific procedures include acceptable knowledge discrepancy resolution. The language the commentor wishes removed was in the permit application. The draft permit has been revised to remove specific references to NCRs, while retaining requirements for discrepancy resolution reporting.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B4, pg. B4-7	E-55, pg. 139, 140	Hazardous waste determinations	See comment E-52. Hazardous waste determinations are the responsibility of the waste generator and are not subject to the permitting requirements of RCRA or the HWA. The draft permit should be clarified to ensure that generator/storage sites do not use incorrect information to characterize hazardous waste streams. The required process for assembling AK involves (1) assembling and evaluating adequacy and relevance of available information, (2) compiling relevant and adequate information in an auditable record, and (3) resolving and documenting discrepancies within the auditable record.	The commentor seeks to change the AK process to allow sites to assess the relevancy and accuracy of the AK information. The permit commits sites to collect and assess data without regard to validity of sources so that arbitrary and unsubstantiated disregard of a data source is avoided. A blanket allowance for judgment of relevance on the part of the generator/storage sites may allow valid information to be discarded without justification. NMED has revised the permit to allow generator/storage sites the option of making hazardous waste designations, other than those assigned, by including all sources of information regardless of quality, so long as this designation is justified and placed in the auditable record. In addition, the commentor states that hazardous waste designations are the responsibility of the generator/storage site and "are not subject to the permitting requirements of RCRA." NMED has modified the draft permit to clarify that the WAP applies to TRU-mixed waste characterization.	Yes, in part

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II	C	B4, pg. B4-7	E-57, pg. 142	Hazardous waste determinations	The guidance developed jointly by EPA and NRC states that it is appropriate for waste generators to use acceptable knowledge to make determinations on whether the concentration of a toxicity characteristic code exceeds regulatory levels. The draft permit cannot alter the regulatory requirements for making hazardous waste determinations; at most the permit can provide guidance for making these determinations.	The draft permit has been revised to allow generator/storage sites to use acceptable knowledge sampling and analysis information when making a toxicity characteristic determination. The permit also now allows revision of a toxicity characteristic assignment based on confirmatory sampling and analysis results.	Yes

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II	C	B4, Section B4-1	U-47, (Pg. 17 Row 4)	AK confirmation	As written, the permit would require confirmation of AK on all waste types using nondestructive techniques AND sampling and analysis. The permit should indicate that confirmation is performed through nondestructive techniques and/or sampling and analysis.	Please refer to the permit application, C9-1. The permit application committed to perform both sampling and analysis (i.e., headspace gas) and non-destructive examination (visual examination or RTR) on every waste container. The draft permit is consistent with the permit application.	No

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II	C	B4, Section B4-2c	U-38, (Pg. 15 Row 2)	Supplemental AK	The words "if applicable" should be eliminated from the supplemental acceptable knowledge documentation requirements. The rationale for the comment is that the term "if applicable" would lead to a great deal of investigative effort with little associated benefit.	The draft permit requires the sites to collect only applicable supplemental information, not all the supplemental information available at the site. The draft permit has been revised, however, to clarify this requirement.	No

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II	C	B4, Section B4-2c, Pg. B4-4	W-12, (Page 15)	Supplemental AK	The draft permit should be modified to indicate that the lists of supplemental acceptable knowledge documentation are provided as examples. The list of information sources is not complete and will vary by site and process. In addition, no value exists in forcing sites to review and document potential supplemental information that does not exist for a waste stream.	The draft permit has been modified to clarify that the list of supplemental information may (or may not) include the cited information. Generator/storage sites are not required to collect all available supplemental information listed, but must collect sufficient supplemental information to augment and support the mandatory acceptable knowledge information to make the proper waste characterization determinations.	Yes

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II	C	B4, Section B4-3d, Page B4-11	W-14, (Page 17)	AK discrepancy resolution	The draft permit should be modified so that discrepancies in acceptable knowledge information of the reassigned waste matrix code should be resolved and the drum properly characterized prior to shipment. The permit currently indicates that a nonconformance report must be completed. The technical justification is that an NCR would not serve a useful purpose because the discrepant acceptable knowledge was generated in the past and would not be impacted by an NCR.	The permit has been revised to indicate that the discrepancy should be noted in appropriate documentation (i.e., not necessarily an NCR). This modification is justified because NMED does not expect that an NCR report be filled out, per se, but only that, if after a waste is reassigned and reassessed based on radiographic and visual examinations and the final acceptable knowledge documentation for the resigned waste code has some discrepancies, the generator/storage sites should document the discrepancy and resolve the discrepancy.	Yes

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II	C	B4, Section B4-4, Pg. B4-16	W-15, (Page 18)	Waste shipment cessation based on AK	The draft permit should be modified to indicate that shipments of subject wastes will only cease if an incorrect hazardous waste determination was made. Minor errors in acceptable knowledge should not prevent waste shipment and acceptance and that an unresolved discrepancy with a single drum should not preclude shipment of all drums in a waste stream.	The permit has been revised to indicate only project-level nonconformances must be remedied prior to waste management, storage or disposal (permit Attachment B3).	Yes



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II	C.1.e	B4	N-38, (p. 6/ pp.4)	Collection of representative sample	Section B4-3b (pages B4-7 and B4-8), regarding TC constituent concentration, includes a reference to data from a representative sample of the waste stream. The document should explain how a representative sample is to be obtained, and if it is not possible (as seems likely) the reference to representative sampling should be deleted.	The draft permit has been revised to clarify the intent of sampling and analysis in response to other comments, and to remove the reference to representative sample collection.	Yes

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II	C.1.e	B4	N-40, (p. 6/ pp.6)	Re-evaluation of acceptable knowledge	Section B4-3d (page B4-10) states that sites must develop procedures for evaluating acceptable knowledge if RTR or VE results in a change in waste matrix code. Provision should be made for action in the event of other errors in characterization.	The draft permit includes requirements for reassessing waste based on hazardous waste codes that include either assigning new codes to the waste based on confirmation results, or segregating the waste into new waste streams. The more stringent requirements for radiography and visual examination are enforced because misidentification requires reassignment to a new waste matrix code that is based solely on the physical characteristics of the waste. That is, misidentification of the waste relative to hazardous waste code is addressed through addition of the code or segregation into a new waste stream with the same physical content but different chemical contents. Segregation of the waste would require that all of the required acceptable knowledge documentation for a waste stream (as documented in the revised draft permit, section B4-3b) is assembled for that segregated waste.	No

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II	C.1.e	B4	N-42, (p. 6/ pp.7)	TICs	The commentor suggests that any tentatively identified compounds should be required to be listed.	The permit has been modified to require identification of the most prevalent TICs in accordance with EPA guidance. Please refer to NMED's Exhibit A and Findings (Tentatively Identified Compounds).	No

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II	C	B4, Sections B4-2b and B4-2c	W-38, (Page 53)	Sampling of feedstocks	The permit only allows for the sampling and analysis of a representative sample of the waste stream to determine toxicity characteristics of the waste. The permit should be modified to allow for the sampling of feedstocks or ancillary streams to establish levels per EPA/NRC guidance.	The permit indicates that supplemental AK data may include analytical data, which may be data acquired through sampling of feedstocks or ancillary streams.	No

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II	C.1.e	B4	N-39, (p. 6/ pp.5)	Headspace gas	The effectiveness of headspace gas sampling and analysis to identify hazardous constituents in the innermost layers of confinement has not been established and must be doubted.	See response to E-41.	Yes

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II	C.1.e	B4, B1	N-43, (p. 6/ pp8)	Full waste characterization	It remains to be established that the contents of waste drums and boxes can be adequately characterized by RTR and headspace gas analysis. If these methods do not succeed, VE and full chemical analysis of the contents of each container would be required.	The characterization process is designed to capture radiographic characterization errors through increased visual examination based on miscertification rates. In addition, 100% of all containers will undergo headspace gas sampling which will be compared to AK information.	No

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II	C	B4, Section B4-3d, Attachment B, Section B-3a(1)	U-39, (Pg. 15 Row 3)	Headspace gas sampling of each container	Revise the draft permit to provide a mechanism for alternatives to the requirement to perform headspace sampling on all TRU mixed wastes if an alternate method can be employed that shows that the waste is not F-listed (i.e., thermal treatment).	The requirement to perform headspace gas analysis on 100% of the waste containers is located on pg. C-22, line 14 of the permit application. This requirement was taken directly from this section of the application and directly incorporated into the draft permit. The request to change this requirement is a substantive change from the permit application with both technical and regulatory implications which NMED cannot review and approve at this stage of the permitting process.	No

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II	C	B4, Section B4-2c, Pg. B4-4	W-13, (Page 16)	NCRs	The administrative control to develop a nonconformance process to document and establish corrective action should be deleted. The justification is that identification of nonconforming items results in rejecting and segregating the container. Corrective action is not required for this action.	The draft permit states that a procedure describing management controls must ensure that prohibited items are documented and managed as nonconforming items, while the permit application stated that the generator/ storage sites must include a procedure to develop a nonconformance process. This commentor, as well as the DOE redline/strikeout text, suggests removal of the specification that prohibited items are nonconforming items, which would require a nonconformance report. NMED requires that prohibited items be tracked and the presence of these items be considered cause for miscertification because the presence of prohibited items would be a violation of the TSDf-WAC. The draft permit has been revised to remove this requirement because the NMED is not concerned with the specific documentation process, only that prohibited items are tracked. The draft permit has also been revised elsewhere to clarify that NMED expects the miscertification rate to include the presence of prohibited items. Please refer to NMED's Findings (Miscertification).	Yes



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II	C	B5, Pg. B5-1	U-21, (Pg. 10 Row 2)	QAPjP content	Sites should have QAPjPs that address the requirements of the DOE QAPP as opposed to the WAP.	The requirement for QAPjPs to reference QAPP requirements was found throughout the permit application, specifically section C-4d, pg. C-33. There is no regulatory requirement to incorporate reference to the QAPP, nor does the QAPP provide NMED regulatory oversight authority to any of the generator/storage sites. NMED regulatory authority is implemented through enforcement of the requirements of the WAP contained in the HWA permit.	No

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II	C	B5 Pg B5-2	U-27, (Pg. 11 Row 5)	Document revision by vertical bars	Modify the requirement for vertical bars to document page changes to not apply to full document revisions.	This language is from the permit application C10-2, line 1. Draft permit Attachment B5, page B5-2, has been modified to state that vertical bars will not be required for full document revisions. However, full document revisions shall identify the changes, the reason for the changes, and the justification for concluding that the revised contents continue to satisfy the requirements of the QA program.	Yes

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II	C	B5 pg B5-1 B5-2; B6-1	E-61, pg. 148	Revised document submittal	(1) Revised document submittals do not need to include identification and justification of changes. (2) NMED has authority to take enforcement action if any unacceptable waste as specified in the permit is shipped to WIPP. Speculating on potential violations of the permit is not meaningful or necessary.	Both conditions that the commentor refers to are found throughout the permit application. (1) Revised document submittals shall continue to require identification and justification of changes in order to satisfy the requirements of the quality assurance program. New document submittals may contain additional changes that have not been previously approved and therefore need to undergo the same level of review and approval as the baseline version or individually revised pages of the document. (2) NMED's regulatory authority to enforce the requirements of the revised draft permit is clearly stated in Module I -General Permit Conditions. The statements in the draft permit regarding "if a particular condition is not met, then the Permittees may be in violation of this Permit" are not necessary and have been removed.	(1)No (2)Yes

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Commentor Key: B-Cartwright E-DOE/CAO F-Haney G-NFT/Castagneri H-EPA6/Neleigh I-Reade J-Overbay K-Tanner L-WITCO/Bernardi M-Moore  
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II	C	B5 Section B5-2 Pg B5-1	W-16, (Page 19)	QAPjP format	The draft permit requirement specifying the QAPjP format should be deleted to accommodate the document formatting requirements of the sites.	This language is from the permit application pg. C10-1 lines 25-28. The specific location of document information on the pages of the site's QAPjP has been removed from the revised draft permit. The only requirement is that the current revision number, date, and page number be placed somewhere on each page of the QAPjP.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B6	U-18, (Pg. 9 Row 2)	Eliminate audit checklists	Eliminate the audit checklists and require that checklists should be developed for each audit that will provide a determination of a site's compliance with requirements.	Performance of generator/storage site audits is key to demonstrating that the Permittees ensure WAP compliance at its generator/storage sites. DOE has not provided a detailed chemical analysis of waste intended for WIPP, nor does DOE intend to perform waste "fingerprint" characterization at the WIPP. Instead, DOE will ensure the collection of detailed analytical information at the generator/ storage sites. DOE performance of site audits is the critical method whereby DOE ensures compliance with applicable portions of the WAP at generator/storage sites. The audit checklists included in permit Attachment B6 directly reflect waste characterization requirements presented in the permit. Any generator/storage site-specific checklist must include the same elements. Therefore, development of generator/storage site-specific checklists are an unnecessary effort and could lead to the inadvertent omission of key permit (continued below)	No

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II	C	B6	U-18, (Pg. 9 Row 2)			(continued from above) requirements. NMED recognizes that audits may not address all elements of the checklist and has allowed some flexibility in the permit in this regard. For example, the draft permit states that checklists used in the audits may not be applicable to specific processes within a given facility due to the scope of the audit, or the types of waste (waste summary category groups) being generated at that facility. Attachment B6 specifies that certain items in the checklists may be marked as not applicable as long as the exclusion is justified in the "Comment" column. The checklists have been retained in the revised draft permit. Please refer to NMED's Exhibit A and Findings (Audit Requirement).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.g	B6	N-7, (pg2pg6)	Frequency of generator/ storage site audits	The permit condition calls for annual audits of each generator/storage site. Such audits should be conducted at least annually, and more frequent audits should be held when there is reason to suspect departures from characterization standards.	This language is from the permit application, page 5 of Attachment B.6. The permit states, in Attachment B6, that audits will be conducted to ensure full compliance of generator/storage sites with sampling and analysis requirements, and to ensure the proper management of the information that satisfies the waste screening and acceptability requirements of Section B-4 of the WAP. CARs identified during these audits that pertain to waste characterization issues shall be resolved prior to management, storage or disposal of affected waste at WIPP. Subsequent audits shall be performed to ensure that proper corrective action has been implemented. Additionally, section B6-3, page B6-4 states that audits will be conducted at least annually and that there will be both announced and unannounced audits. Therefore, the language in the draft permit is adequate to ensure that audits are conducted at least annually and as needed to verify that generator/storage sites are in full compliance with waste characterization and acceptance requirements.	No

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II	C.1.g	B6	N-44 (p. 6/pp. 9)	Appropriateness of audits	An audit program is appropriate because WIPP will not perform any waste characterization on-site, and there is insufficient characterization information in the permit application to determine whether the generator/storage sites can comply with the terms of the draft permit. NMED will be relying entirely on the waste characterization performed at the generator/storage site; thus, an audit program is appropriate to ensure adequate characterization.	Commentor is in agreement with WAP requirements.	No



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II	C.1.g	B6	N-45, (p. 7/ pp.2)	Appropriateness of audits	The commentor supports NMED's decision to conduct individual site audits after the permit is made final since without an approved permit, there is no approved WAP.	No response required, commentor is in agreement with WAP requirements.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B6, Pg. B6-5	U-19, (Pg. 9 Row 3)	Self-audit CARs	Eliminate the requirement that CARs identified by the site during self audits will be included in the audit report and tracked in the Permittee tracking system. This requirement would require all sites to have compatible CAR tracking systems and would add costs without any additional benefit and would tend to discourage prompt and complete identification of deficiencies.	The draft permit has been revised to clarify that CARs identified by sites during self-audits will be evaluated by the Permittees during their audit and surveillance. Also, the revised draft permit requires that CARs identified as a result of deficiencies in waste characterization (i.e., WAP requirements) will be resolved before waste will be accepted at WIPP. This applies to all HWA-related CARs and, therefore, the language in the permit has been changed to state that HWA-related CARs identified during self audits will be evaluated during the Permittees' audit and tracked in the Permittees' tracking system.	Yes

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II	C	B6, Pg. B6-5	U-20, (Pg. 9 Line 4)	Audit protocol	The commentor recommends that the SOP for audits include instructions for how sites are to respond to and close CARs. Alternately there should be a procedure issued by the Permittees and concurred with by the sites that provides instructions for arranging and conducting audits, including definitions of interfaces and timing requirements for audits, and instructions for developing responses to CARs and closing CARs.	This language is from the permit application C11, pg. C11-4. Clarification or inclusion of instructions for responding to and closing CARs could be helpful but is out of the scope of this WAP and should be negotiated between the Permittees and the generator/storage sites. The specifics of documenting the closing of a CAR should be proceduralized and is too detailed to be included as part of a HWA permit. The draft permit only states what the requirements are, not procedurally how to implement them.	No

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II	C	B6 Pg B6-29	U-35, (Pg. 14 Row 3)	28-day reporting limit	The commentor recommends deleting the reporting limit of analytical data of 28 days from sample receipt to receipt by the site project office. The comment indicates 28 day requirement is not linked to any known requirement and that the reports must only meet NQA-1 record requirements and that they are transmitted in a reasonable amount of time.	There is no HWA regulatory requirement for a 28 day reporting limit. The 28 day requirement is not included in the revised draft permit. See response to comment U-30.	Yes

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II	C	B6 pg. B6-1	E-62, pg. 150	Eliminate audit checklists	The checklists in Table B6-1 should be deleted because they would be an ineffective tool to use to perform any kind of QA audit due to many of its questions being redundant and unimportant or irrelevant to any given generator's specific compliance issues with the draft permit.	The Permittees are required to ensure that each generator/storage site meets the WAP; checklists in B6 are based on the WAP and generator/storage sites must be able to comply with the WAP, which will be demonstrated by the successful completion of the Permittees' audit. Language in Attachment B-6 states that the audits shall address the applicable requirements of the checklists. Attachment B6 also states that items which are not addressed in a particular audit due to the scope of the audit, or because a certain process (i.e., RTR) is not in use at a particular facility, may be marked as not applicable as long as justification is provided in the "Comment" column of the appropriate checklist item. No change to the draft permit is required. Also refer to response to comment U-18 and to NMED's Exhibit A and Findings (Audit Requirement).	No

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II	C	B6 pg. B6-1	E-63, pg. 152	NMED audit participation	The condition in the permit that specifies that NMED will "participate" in the audits and surveillances conducted by the Permittees should be clarified. NMED should only participate as an observer in the audits at DOE generator/storage sites outside of New Mexico.	While NMED does not have regulatory authority over the generator/storage sites, NMED does have the regulatory authority to oversee the Permittees implementation of the WAP by conducting the audits to ensure that the audits are conducted in an appropriate, thorough, and regulatory compliant manner. Language in the draft permit has been changed to state that NMED personnel will observe these audits.	Yes

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II	C	B6 pg. B6-2	E-64, pg. 154	Deficiency close-out	(1) The manager who oversees the audit program does not have the responsibility for closing all deficiencies; several of the Permittees' managers have the responsibility to close a deficiency. (2) Observations are not deficiencies and do not require formal tracking or closure.	(1) A managerial point of contact is necessary to ensure consistency in all CAR closure decisions. Having a designated point of contact also makes tracking easier. The draft permit language has been changed to specify that the Permittees' manager responsible for quality assurance will be the person responsible for overseeing CARs. (2) Observations will not be tracked in the CAR tracking system, however they will be trended to determine if similar situations exist system wide to provide program improvement suggestions to other sites.	(1)Yes (2)No

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II	C	B6 pg. B6-4, 5	E-65, pg. 155	CAR resolution, documentation, and audit protocol	The Permittees' procedures for audits provide for documentation of items resolved during an audit via the audit checklist as well as the audit report. Observations are not documented as part of the final audit report. CARs identified by a generator during self-audits will be evaluated during the Permittees/audit/surveillance.	(1) Deletion of the requirement to document audit 'observations' in the final audit report is not acceptable. 20 NMAC 4.1.900 (incorporating 40 CFR section 270.32) establishes permit conditions and defines the content of the permit to include "permit conditions necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in part 264 and 266-268 of this chapter". 20 NMAC 4.1.900 (incorporating 40 CFR §270.30(i)(1)) specifies inspection and entry allowed by the State Director. These regulatory requirements establish NMED's authority to ensure compliance and adequate documentation of compliance with the revised draft permit. Documentation of observations would include those items that have the potential to impact compliance issues and therefore are required to be reported as part of a permittees compliance status documentation. DOE Order 5700.6C requires that all items identified that will improve processes or improve quality should be documented and tracked (see criterion 3 and 10). (2) Resolution of items noted during an audit can be documented in the audit checklists, but must be documented in an audit report. (3) RCRA-related corrective action and observation items do not have to be tracked on a separate tracking system, but must be identifiable as RCRA items within the overall CAR tracking system for trending and reporting. The draft permit has been modified to accept the suggested language.	(1)No (2)No (3)Yes



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					E-65 cont.	(4) Also, the draft permit indicates that all CARs must be resolved before waste can be managed, stored, or disposed of at WIPP. CARs identified during self-audits may or may not be related to compliance with the draft permit conditions. Therefore, language in the draft permit has been changed to require that only RCRA-related CARs identified during self audits will be evaluated during the Permittees' audit and tracked in the Permittees' tracking system.	(4) Yes

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II	C	B6, pg. B6-5, 6	E-66, pg. 157	CAR resolution, documentation, and audit protocol	DOE order 5700.6C focuses on significant conditions adverse to quality. In order to clarify how and when a CAR will be fully implemented in accordance with the philosophy of this DOE order, a clarification statement should be added to several areas of these provisions. (1) The commentor wants members of audit team to be allowed to prepare CARs, not just the team leader (in application, pg. C11-4). (2) The commentor wants to change term DOE/CAO and NTP in lines 16-21 of Attachment B6 to 'Permittees.'	(1) Only auditors which have been trained and are properly qualified are allowed to participate in the audits, therefore the language in the draft permit has been changed to allow audit team members to prepare CARs. (2) There is no regulatory requirement governing which term is used, and NMED agrees that the Permittees may decide who reviews CARs. Therefore, the suggested change is accepted and the draft permit modified accordingly.	(1)Yes (2)Yes

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					E-66 cont. (3) The commentor wants site reviews of CARs of "significant conditions to be formally responded to," instead of all CARs.	(3) NMED requires all items related to adverse quality be tracked and reported, as well as items noted to improve any process or items that add preventative measures to any process. Furthermore, tracking of CARs may provide valuable information to other generator/storage sites, irregardless of the issue or how severe the violation. The draft permit was not modified to include the word "significant."	(3)No

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					E-66 cont. (4) The commentor wants removal of NMED in the corrective action visit. (5) The commentor wants to replace the word "preclude" with "avoid" throughout.	(4) NMED has regulatory authority to oversee the Permittees to ensure all corrective actions and all audit findings are addressed and closed in a consistent and correct manner. However, the draft permit has been changed to indicate that NMED will participate in these follow-up visits as observers.  (5) The word preclude is more conclusive and encompassing. The permit has not been revised to remove the word 'preclude' to reinforce the absolute regulatory mandate of this provision.	(4)Yes (5)No

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Commentor Key: B-Cartwright E-DOE/CAO F-Haney G-NFT/Castagneri H-EPA6/Neleigh I-Reade J-Overbay K-Tanner L-WITCO/Bernardi M-Moore  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
					<p>E-66 cont.</p> <p>(6) The commentor wants generator/storage sites to replace term "site management."</p> <p>(7) The commentor changed exit meeting statement to "this meeting will include management personnel."</p> <p>(8) The commentor wants requirement for generator to respond to deficiencies within 30 days to only apply to "significant conditions."</p>	<p>(6) Revision of the draft permit to include the suggested change does not alter the intent of the activities. The term "site management" has been replaced with the term "the sites" so that the language does not preclude involvement of personnel pertinent to resolving CARS that are not considered to be in managerial positions.</p> <p>(7) Revision of the draft permit to include the suggested change does not alter the intent of the activities. The language has been changed from "this meeting will be with site management personnel" to "this meeting will include site management personnel". The change has been incorporated so that the involvement of personnel not considered to be in managerial positions who are pertinent to the results of the audit and ultimate WAP compliance are not precluded from participation.</p> <p>(8) The 30 day requirement has been retained to ensure the timely response to deficiencies.</p>	<p>(6) Yes (7) Yes (8) No</p>

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
					<p>E-66 cont. (9) The commentor adds that generator/storage sites may request information from the Permittees regarding audits of other sites at any time.</p>	<p>(9) The permit states that trend reports will be issued to the generators. By requiring that trend reports be issued to all "generators," the Permittees can ensure that the information is disseminated in an efficient and consistent manner. This should eliminate redundancy in issuing reports and provide for a timely dissemination of information to all interested parties.</p>	<p>(9)No</p>

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B6, pg. B6-5, 6	E-67, pg. 159	Trend reports	Trending and trend reports will not add any value to the system because the processes at each site are generally unique to that site. A separate trend report is unnecessary and should not be required.	The language for this requirement is from the permit application. Trend reports can be useful for those general processes that are common to each site, i.e., waste stream profile requirements, data transmittal requirements, etc. The trending requirement has been retained in the draft permit.	No

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II	C.1.g Pg. II-3	B6	U-23, (Pg. 10 Row 4)	Waste shipment suspension	<p>(1) The requirement to suspend waste acceptance from a generator/storage site based on a failure to complete required audit corrective action should be amended to only apply to the affected waste streams. In addition, there should be a graded approach to the nonconformances where minor nonconformances that do not impact data quality would not warrant suspension of waste acceptance.</p> <p>(2) The permit's current statements would result in complete suspension of waste acceptance when only one small new stream might be noncompliant. The document needs to be consistent in how long a site is given to respond to correct deficiencies.</p>	<p>This language was taken directly from the permit application C11-5 lines 22-25.</p> <p>(1) The draft permit has been modified to clarify that waste will not be managed, stored, or disposed of at WIPP unless all applicable waste characterization requirements of the permit have been met as evidenced through audit. The specific permit condition questioned (former II.C.1.g) has been removed. Attachment B6 has been modified to specify that all CARs identified during an audit that are applicable to the WAP requirements shall be resolved prior to management, storage or disposal of TRU-mixed waste at WIPP.</p> <p>(2) The permit Attachment B6 states that all WAP-related CARs shall be resolved prior to management or disposal of TRU-mixed waste at WIPP. The specific permit condition questioned (former II.C.1.g) has been removed. Also, the site is given the opportunity to resolve deficiencies during an audit, which allows sites to correct issues prior to audit completion. Otherwise, deficiencies and observations must be responded to within 30 days of receipt of any CARs. Please refer to NMED's Exhibit A and Findings (Audit Requirement).</p>	Yes



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.g	B6	U-3, (Pg. 1 Row 3)	Waste shipment suspension	The requirement to suspend waste acceptance from a generator/storage site based on a failure to complete required audit corrective action should be amended to only apply to the affected waste streams. In addition, there should be a graded approach to the nonconformances where minor nonconformances that do not impact data quality would not warrant suspension of waste acceptance.	The language was taken directly from the permit application C11-5 lines 22-25. See response to comment U-23 and W-3 (above).	No

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II	C.1.g	B6	W-3, (Pg 4)	Waste shipment suspension	The commentor is concerned with the requirement to suspend waste acceptance and notify the secretary in writing if audit findings at a generator/storage site indicate failure to comply with the approved acceptable knowledge procedures. The modification should require Permittees to immediately suspend waste acceptance from a site and notify the secretary in writing if audit findings at a site indicate hazardous waste codes have not been correctly assigned using acceptable knowledge as specified in the waste analysis plan.	The draft permit has been revised to remove the language in question (former condition II.C.1.g.i, ii).	Yes

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II	C.1.g Multiple locations in permit	B6	W-4, (Page 5)	Consistency of language	The terms "audit findings" and "CARs" are not consistently used throughout the draft permit.	The term 'audit findings' has been removed from Module II of the revised draft permit. Use of the term 'CAR' remains in this section (Module II). Language in Attachment B6 states that audits may result in the documentation of deficiencies (which may result in a CAR) and/or observations (which do not result in a CAR).	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C.1.g, pg. II-3	B6	E-6, pg. 20	TSDf responsibilities	(1) Intent of HWA is to regulate TSDf sites, not generators. The WAP was formulated to govern the Permittees, major portions of the WAP are inapplicable to generator/storage sites. A TSDf cannot be held responsible for the acts or omissions of a generator/storage site unless the TSDf violates its permit by relying on those acts or omissions.	(1) While it is agreed that this permit applies to WIPP, a hazardous waste generator is subject to RCRA regulation and will always be responsible for the proper characterization, segregation, and management of hazardous waste. This permit is not intended to regulate the generator/storage sites, it applies to the WIPP/Permittees who are obligated to ensure generator/storage site compliance with applicable portions of the WAP because the Permittees have not proposed to perform on-site (i.e., at WIPP) waste fingerprinting. Each generator/storage site will be audited to applicable provisions of the permit (WAP) and the Permittees will be responsible for ensuring compliance with those requirements. NMED will hold the Permittees responsible if the Permittees do not comply with the WAP, which would include Permittee acceptance of waste at WIPP from a generator/storage site that has not complied with applicable portions of the WAP. The draft permit has been revised to clarify this requirement.	Yes, in part

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II	C.1.g, pg. II-3	B6	E-6, pg. 20	Waste shipment suspension	(2) All deficiencies detected in an audit are grounds for suspending waste shipments, especially acceptable knowledge issues. Not all deficiencies are grounds for invoking the costly and lengthy process of additional auditing and request for the secretary's approval. Minor problems need not result in the suspension of waste shipments. The Permittees need to have the ability to determine whether a deficiency represents the potential to endanger human health and the environment or will lead to a noncompliance with the HWA or the permit. Such rationale would be documented and subject to review by NMED. (3) The provision requiring immediate suspension for any deficiency in the acceptable knowledge process is unnecessary. The Permittees have corrective action controls in place to identify and correct adverse conditions.	See response to comment U-23.	(2)Yes (3)Yes

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II	C.1.e	B4	N-41, (p. 6/ pp.7)	UCL	The commentor agrees with NMED's use of the upper confidence level of 95% for the mean concentration level when concentration is relevant.	See response to comment E-15.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	C	B4, Pg. B-19, Section B-4a(6)	U-24, (Pg. 11 Row 2)	Weekly repeat of data verification for one container	The comment requests that the requirement for weekly repeat of data verification for one container should be eliminated because it does not provide any additional assurance of data quality, and does not contribute to protection of the human or environmental well-being.	The permit application provided for quarterly re-review. NMED modified to weekly re-review in draft permit. Weekly re-review conflicts with quarterly requirement in Attachment B3. The draft permit was revised to require quarterly review.	Yes

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II	C	B4, pg. B4-7	E-56, pg. 141	Procedural cross reference	The requirement to provide a cross reference between the applicable summary category group and the confirmation data is confusing and unnecessary.	The purpose of this requirement is to ensure waste summary category group-specific characterization is performed. Elements of this procedure could be included in other procedures, but the requirement has been retained to ensure that generator/storage sites are characterizing waste according to the appropriate summary waste category group process.	No



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II	D	C, pg. C-2	E-68, pg. 160	Security	The Draft Permit condition is overly specific as far as the number and/or frequency of security patrols. Surveillance or barriers are required, in accordance with 20 NMAC 4.1.500, but not both. Under the terms of the Permit, a missed patrol or inspection due to unavoidable conditions or emergencies could be a permit violation. A more realistic approach is to require that missed inspections or patrols be documented in the record along with the reason it was missed. This approach poses little risk to the public since there is a permanent chain security barrier in place. Pg. 160	The language included in Attachment C (Security) was taken directly from the facility permit application. A missed inspection or patrol should be documented in the record along with the reasons it was missed. This requirement ensures that accurate and acceptable documentation are provided in the operating record. Under unusual situations, or in an emergency, an inspection may be missed; however, this should be a rare situation if the facility is operated in a correct manner. In addition, the facility will employ a security force which should be able to adapt to "unavoidable" and emergency situations, including modification of work schedules, calling in additional personnel, overtime, etc.	No

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II	E	D1	E-70, pg. 163	Inspection	The DOE has made three changes at the WIPP facility that affect the inspection forms and checklists found in attachment D1. These include addition of another fire hydrant to protect the new warehouse, the addition of a new forklift and push-pull attachment for underground waste emplacement, and the construction of a TDOP Upender. Pg. 163	These modifications are more protective of human health and the environment, and therefore these additions have been included in the Permit.	Y

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II	F	H	S-7a, pg 6 of letter	Training	Commentor is concerned about air monitoring and personnel training, presumably in association with the surface units. WHB maintenance/ equipment maintenance is of concern.	The operation of continuous air monitors is not a requirement of the WIPP Draft RCRA Permit because the monitors are not required to achieve applicable environmental performance standards.	Y

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	H	E	N-47, (p. 7/ pp.4)	Training	An area of concern with respect to preparedness and prevention is training.	The draft permit indicates in Section H-16(1) that Emergency Preparedness is a topic covered in the facility's training outlines. In addition, several of the training outlines include topics such as emergency preparedness, fire protection, general safety, general security, etc.	N

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	H	E	N-48, (p. 7/ pp.4)	Preparedness and Prevention	An area of concern with respect to preparedness and prevention is management of airflow in normal circumstances and in the event of underground fire or release of radioactivity.	A brief description of the procedures used to ensure proper management of air flow in the Underground Hazardous Waste Disposal Units is provided in Permit Attachment E, Section E-1b (page E-6) and Section E-2g (pages E-14 to E-15). Oversight of the inspection and maintenance of the equipment used for mine ventilation is the responsibility of the Mine Safety and Health Administration. This agency requires that a mine ventilation plan be submitted for review on an annual basis. The management of air flow in the Underground Hazardous Waste Management Units in normal circumstances is also described in Permit Attachment M1, Section M2-2a(3) (pages M2-8 to M2-10). The commentor did not provide clarification of the specific concerns. Please refer to NMED's Exhibit A and Findings (Ventilation Rates).	N

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	H	E	N-49, (p. 7/ pp.4)	Continuous Air Monitors	The performance of the continuous air monitors has been questioned and will need to be closely examined.	The operation of continuous air monitors is not a requirement of the WIPP Draft HWA Permit because these monitors are not necessary to achieve the applicable environmental performance standards.	Y

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Commentor Key: B-Cartwright E-DOE/CAO F-Haney G-NFT/Castagneri H-EPA6/Neleigh I-Reade J-Overbay K-Tanner L-WITCO/Bernardi M-Moore  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	H	E, pg. E-11	E-72, pg. 165	Ventilation	Section 57.8518(b) of Title 30 of the Code of Federal Regulations does not require personnel evacuation within one hour of ventilation loss. The requirement is unnecessary and may cause the DOE to neglect other, more pressing power needs during a power outage.	The language utilized in the draft permit was obtained directly from the permit application. However, it is in the best interest that the RCRA permit be consistent with regulations (30 CFR) of the Mine Safety and Health Administration. Therefore, the language has been modified.	Y

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II	H	E, Pg. E-14	E-73, pg. 167	VOCs	The VOC Confirmatory Monitoring Plan was not developed to perform operational monitoring to confirm whether emissions would have adverse effects on human health or the environment. It was developed to confirm design parameters related to waste disposal, and to quantify the maximum amounts of VOCs that can be emitted under worst case conditions. The analysis was based on VOC emissions for the headspace of waste containers, which are the only source of VOC emissions from HWDUs. This analysis demonstrated that VOC emissions will not exceed applicable EPA and OSHA exposure limits by one order of magnitude or more, and demonstrated that VOC emissions, if any, will fall below those levels.	The language in Permit Attachment E-2F (p. E-14) has been modified to reflect that the permit conditions limit the allowable average concentration of VOC's in the headspace of containers in any single disposal room to ensure that there will be no adverse effects on human health or the environment due to air emissions from the WIPP. However, the information provided in the second part of the comment is not correct since the analysis provided in Revision 6.3 of Appendix D9 of the Permit Application did not take into account the total excess cancer risk due to exposure of an individual. Please refer to NMED's Exhibit A and Findings (VOC Concentration Limits).	Y



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II	H	E, pg. E-14	E-73, pg. 167	VOCs	Additionally, data suggest that any release to the air outside the disposal unit would be far below levels that can be harmful to human health or the environment. According to EPA guidance, when compliance is achieved by one order of magnitude or more, there is no need to establish compliance monitoring. Thus, there is no need for the Draft Permit monitoring requirements and the purpose of this section is misstated.	The references to the confirmatory volatile organic compound monitoring plan have been removed from Permit Attachment E, Section E-2F. However, the assertion in the comment that the data provided in the Permit Application suggest that any release to the air outside the unit is at least one order of magnitude below levels that could be harmful to human health or the environment is not supported since the analysis provided in Appendix D9 (Revision 6.3) did not take into account the total excess cancer risk due to exposure of an individual. Please refer to NMED's Exhibit A and Findings (VOC Monitoring Program).	Y

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II	H	E, pg. E-15	E-74, pg. 168	VOCs	The set points for the monitored gases are for information only. These points are occasionally adjusted to accommodate changes in the MSHA limits for these gases. The Permit should be revised to provide the flexibility to adjust these without seeking a permit modification. When an alarm level is reached, Industrial Safety is notified so that appropriate action can be identified and implemented.	The language specified in Permit Attachment E was directly obtained from the permit application. The wording specified by the commentor is determined to be acceptable since the alarm levels are mainly established by the Mine Safety and Health and the Occupational Safety and Health Administrations to be protective of human health. Any changes in these levels would be regulated by either one of these agencies and not by NMED. Therefore, the language specified has been changed to address this comment. The commentor also indicates that (DOE) industrial safety will be notified and take appropriate action. This has been incorporated into the Permit.	Y

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II	H.2	E, pg. E-10	E-71, pg. 164	Electical Power	The DOE has arranged with the local electric company to provide more reliable electric power for the operation of the WIPP. This comment should be added to the text in attachment E, pg. E-10.	The permit has been modified to include the addition of text in Attachment E since its provision is more protective of human health and the environment.	Y

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II	I	F	N-50, (p. 7/ pp.5)	Contingency Plan	The contingency plan will require close scrutiny at hearings. It is not clear whether the descriptions of operations contained in the plan (Section F-1, pages F-6 to F-7) are mandatory requirements.	It is required that the contingency plan be a "stand alone" document, and as such, certain "general" descriptions of operations be contained in the plan, especially for those agencies, contractors, etc., which may be called on to assist in an emergency. Therefore, while necessary to the plan, they as such do not provide any provisions or actions which implementation the contingency plan.	N

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II	I	F	N-51, (p. 7/ pp.5)	Contingency Plan	It is not clear how the contingency plan coordinates with response to emergencies involving release of radioactivity; since the same events are likely to result in both kinds of release, this aspect should be made clear.	It is not necessary for the Contingency Plan to address releases of radioactivity in order to achieve the applicable environmental performance standard.	N

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II	I	F	N-55, (p. 7/ pp.6)	Contingency Plan	The permit (Contingency Plan) must address the circumstances where a disposal room roof closes sufficiently to contact and press upon drums, crushing them and rendering their removal impossible.	The HWA Permit does not include a requirement for the retrieval of emplaced TRU mixed waste containers.	N

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II	I	F	S-11b, pg. 7 of letter	General	Corrective action measures, contingency planning, closure requirements, and post closure care plans are of specific concern.	The commentor's concerns are noted.	N

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II	I	F, pg F-7	E-76, pg. 172	Off-Normal Event	It is necessary to clarify the amount of time it will likely take to "shut-off" the flow of waste to the WIPP in the event of an off-normal event. Three days represents the time for waste in transit to reach the WIPP. The Permittees do not intend to turn shipments around because they arrive after some self-imposed time limit. This should be reflected in the Permit.	The language contained in the draft permit was obtained directly from the permit application. It is not the intent of the permit to have wastes which are in transit to the site "turn around" and head back to the generator site. Such a determination could mean wastes would be in transit for a longer period than necessary. This modification is acceptable. However, the facility must still meet the requirements contained in the Permit regarding the storage capacity of containers in the WHB unit and the parking area.	N



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II	I.2, pg. II-10		E-12, pg. 33	Contingency Plan	Copies of the Contingency Plan and all revisions of it to the controlled-document locations throughout the facility, and to the Secretary and all entities... This part of the Permit should be revised to reflect that the WIPP is converting its controlled documents, including the Contingency Plan to electronic format and providing general access to all employees through the local area computer network. This obviates the need for most on-site controlled document locations which are costly to maintain.	NMED generally accepts the modification to permit conditions II.1.2 as specified by the commentor. However, there is a concern that a situation may arise where the electronic version of the document is not retrievable. Therefore, an additional sentence was added to the commentor permit change which requires that at least one controlled document in hard copy be located at the facility and readily accessible to the RCRA Emergency Coordinator.	Y

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	I	F	N-52, (p. 7/ pp.5)	Contingency Plan	The responses to fire, including any action as to airflow, is not clearly laid out in the contingency plan.	Permit Attachment F, has been modified to briefly describe the actions the facility will take in the event of a fire in an Underground Hazardous Waste Disposal Unit, including management of air flow during the fire. The actions to be taken in case of a fire are addressed in the Contingency Plan, pages F-22 to F-24.	Y

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II	I	F	N-53, (p. 7/ pp.5)	Ventilation	For events involving puncture of waste containers, Section F-4d, page F-27, lines 1-4) does not say how unfiltered ventilation is closed off, in the absence of automatic action by continuous air monitors.	The referenced language will be retained in the permit to ensure a complete contingency plan.	N

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II	I	F	N-54, (p. 7/ pp.6)	Roof Fall	Special attention must be paid to provisions concerning response to roof falls. The section on response to spalling and roof fall do not seem to recognize the constraints of working within an area of unstable roof.	Permit Attachment F, Section F-4d (page F-31) discusses the procedures that the permittees will follow in the event of a spall of ground to ensure a sound roof prior to clean-up of a spill due to the spall of ground. The permit attachment states (page F-31, lines 17-19) that if the inspection reveals ground that cannot be safely scaled manually, or with the available mining equipment, the affected area, up to and including the entire room, will be barricaded and removed from ventilation flow. With respect to a roof fall, Permit Attachment F, Section F-4d (page F-32) indicates that in the event of a roof fall in an open room of an HWDU, the room will be withdrawn from ventilation flow by closing bulkhead regulators, and a decision will be made to close just the affected room or the entire panel.	N

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II	I	F, pg. F-9	E-77, pg. 174	Contingency Plan	The DOE has improved emergency management by requiring the RCRA Emergency Coordinator, rather than the Emergency Services Technician to serve as the incident commander. This improves communication and relieves the EST of duties that divert his attention from his response activities.	This provision is more protective of human health and the environment and is therefore accepted.	Y

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	I	F, pg. F-23	E-78, pg. 176	Contingency Plan	The requirements that NMED approve sampling and analysis plans for cleanup after an emergency spill or event is not included in <u>Module I</u> of the Draft Permit. <u>Module I</u> requires certain reporting in conjunction with the implementation of the Contingency Plan. This condition should be changed to reflect reporting instead of approval.	This condition requires approval of the sampling and analysis plan by NMED for clean-up after an emergency spill or event. This provision is more detailed than a simple record keeping requirement. The reference to Module I has been removed from the permit conditions.	N

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II	I	F, pg. F-6	E-75, pg. 170	Waste Handling	Clarifications to the handling of CH TRU mixed waste include: The typical processing rate for TRUPACTs is about 14/day, the maximum is 28/day. The Permittees need the flexibility to manage the facility to meet throughput requirements. This may include working for a short duration, 24 hrs/day and weekends if necessary. The section should add TDOPs as waste containers since they are WAC-approved and NRC-approved. The section should delete any reference to weight dependent pallet stacking; a TRUPACT load is placed on a pallet regardless of weight. Finally, the section should be revised to clarify that up to 4 TDOPs can be stored in the TRUDOCK area.	All of the language in Permit Attachment F, Section F-1, that is referenced in the comment was taken directly from Section G-1 of Revision 6.0 of the Permit Application without modification. However, Permit Attachment F, Section F-1, has been modified to indicate that the typical processing rate for CH waste is 14 TRUPACT-Is per day and the maximum is 28. The Permit Attachment has also been modified to add TDOPs as waste containers and to clarify that up to 4 TDOPs can be stored in the TRUDOCK area. However, the request to strikeout the language regarding the weight considerations is not appropriate. (Continued)	Y

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	I (Continued from above)	F, pg. F-6	E-75, pg. 170		(See above)	(Continued from above.) Based on Table D-8 of Chapter D of the WIPP RCRA Part B Permit Application, the capacity of a facility pallet is 25,000 pounds, and the maximum weight of a seven pack of 55-gallon drums is 7,000 lbs. Since a facility pallet may manage up to 4 seven packs of drums, it is possible to exceed the capacity of the facility pallet. Although Permit Attachment M1, Section M1-1C(1) (page M1-6, lines 24-27) states that WIPP facility operational documents define the operational load of a facility pallet as the content of two TRUPACT-IIs, with a max. load of 7,265 pounds for each TRUPACT-II, the statement regarding weight considerations will be maintained in the permit in the event that the WIPP facility operational documents change.	



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	K	B, B1-B6	P-5a, Comment 5, page 2 of letter	Record Keeping	Proposed requirements for documentation would result in an estimated 900 pages of hard copy per barrel at the INEEL. This translates to a million pages of documentation/year.	This provision requires that the WIPP site maintain operating records at the WIPP site. No record-keeping documentation is required in the permit for INEEL site located near Idaho Falls, Idaho.	N

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	K.3, pg. II-11		E-13, pg. 35	Personnel Changes	There is no regulatory basis for the requirement in the Permit which specifies that the Permittees shall inform the Secretary in writing of changes in management personnel ... within 15 days of the changes. The regulations specify which management name changes are to be reported to the regulator. Requesting information beyond what is required by the regulations creates an unnecessary reporting burden and is of no practical use to the regulator.	This is a provision required in order to maintain accurate information.	N

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II	L	I3	AA-1, (p. 1, Issue #1 Sum)	Continuous Air Monitors	The draft permit does not include a description of the network of radiological sensors that can immediately detect radiological releases. The permit should include specific requirements for radiation air effluent and workplace continuous air monitoring to satisfy the commitment to immediately identify radiological releases as per Section I3-3c (page I3-4, lines 5-8) of permit Attachment I3.	The co-detection procedure was accepted and included in the permit because it will be more sensitive and efficient in identifying potential releases of hazardous wastes than the visual (only) inspections typically required in a hazardous waste permit. Visual inspections are also required, so radiological surveying is an added benefit, beyond the standard requirements. In order to avoid further misunderstanding, and to make Attachment I3 consistent with radiation survey procedures at the WIPP, references to a radiological monitoring "network" and other phrases that implied the existence of a continuous air monitoring system were deleted (page I3-4, lines 4 through 8, and line 13; and Attachment D, Section D-1a(3) and Table D-2).	Yes

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II	L	I3	AA-1a, (p. 1, item 1)	Continuous Air Monitors	Contamination surveying can be used as a post-accident indicator of a radioactive release, but the contamination or dose rate surveys described in permit Attachment P (WP 12-HP1100, Rev. 1, Chg 10) are not typically used for transuranic accident monitoring as implied in Section I3-1 (page I3-1, lines 2-5).	The type of contamination surveys to be performed as part of the initial response to an accident depend on the specific circumstances of the incident, and may or may not include routine wipe and external dose surveys. Surveys after an accident situation is stabilized and no further waste releases are occurring must be customized in a Radiation Work Permit. The permit and Attachment I3 do not explicitly or implicitly limit surveys to the routine procedures referenced in Attachment P. Rather, the Contingency Plan (permit Attachment F) is referenced for specific actions to be performed in the event of spills or leaking or punctured containers (page I3--4, line 32). Also please refer to the response to comment AA-1.	No

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II	L	I3	AA-1b, (p. 2, item 2)	Continuous Air Monitors	The draft permit does not describe or define what is meant by an extensive network of radiological sensors to support the statements in Section I3-3c (page I3-4, lines 5-8) of permit Attachment I3. The program described in the draft permit apparently relies on observation by workers to identify accidental releases.	The reference to a network of sensors was removed from the Attachment. Observation by workers is expected to be the main means of rapidly detecting a potential release, e.g., by observing an open top or broken chime on a drum, or by observing an impact on a container (such as by a forklift). Any such incidents would lead directly to further surveys to determine if a release has occurred. Also please refer to the response to comment AA-1.	Yes

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II	L	I3	AA-1c, (p. 2, item 3)	Continuous Air Monitors	The description of radiological surveys provided in Section I3-4 (page I3-4, lines 10-20) of Attachment I3 of the draft permit does not describe the routine radiological monitoring that would indicate an immediate radioactive release or spill and does not document which DOE orders are applicable.	The reference to "...monitoring for releases of particulates or liquids during testing..." was deleted, to avoid the incorrect implication that continuous air monitoring is to be performed. (Continuous air monitoring is not required except in the exhaust air flows.) The commentor is correct in that the routine surveys will only indicate (if contamination is found) that a release has already occurred. There is no planned work area monitoring "that would indicate an immediate radioactive release or spill". DOE Orders are referenced in the WID procedures and the WIPP SAR. Also please refer to the response to comment AA-1.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	L	13	AA-1d, (p. 3/pp. 1-4, p. 4/pp. 1)	Continuous Air Monitors	At the time the RCRA application was prepared, the WIPP had an extensive network of air effluent and work place continuous air monitors (CAMs). Since then, essentially all of the CAMs have been removed. Since the CAMs have been removed, WIPP is relying on workers to quickly identify an event that might cause accidental radioactivity releases. Many release scenarios may not be easily identified by workers, such as leaks from pressurized containers or fires within stacks of waste containers. Much more stringent requirements for radiation monitoring should be in the draft permit.	References to CAMs have been deleted.	Yes

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II	L	13	AA-1e, (p.4/pp. 8)	Continuous Air Monitors	The draft permit statements that an extensive network of radiation sensors are in place is not consistent with the WIPP intention of not having CAMs in workplace areas. The term sensor is not a technically specific term and has ambiguous meaning in the context of the draft permit.	See AA-1	Yes



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II	L	13	AA-1f, (p. 4/pp. 9, p. 5/pp. 1)	Continuous Air Monitors	There is no assurance that radiation monitoring other than that specifically stated in the permit will be used and it is not clear if WIPP will be subject to any routine regulatory compliance inspections of their radiation safety program.	See AA-1	No

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II	L	I	BB- 2 (p. 4-5)	Closure	Seal performance is undemonstrated in terms of mechanical scenarios or seal components, and potential seal failure due to hydrofracturing.	This comment does not address the Subpart X requirement, nor does it account for the limited duration of the post-closure period which is covered by the permit (30 years). These long-term seal performance concerns were originally addressed to the EPA regarding the pending decision on approval of the Compliance Certification Application, and the EPA has already responded to these concerns. Expected seal performance has been demonstrated in extensive laboratory and field testing at Sandia and the WIPP, and similar situations in other salt mines. (Also see 63 FR 27361.) Claims of "frequent failures" of seals in mines are not supported by any details or references. Pneumatic hydrofracturing is not viewed as a significant concern because: 1) maximum gas pressure in the repository will develop after salt creep has completed effective sealing of the shafts; 2) maximum pressurization has been demonstrated to be limited to less than or equal to lithostatic (resulting in little or no fracturing) and	No

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			BB-2 cont'd			3) the existence of numerous high-pressure ancient brine reservoirs throughout the Delaware Basin disproves the repeated claim that hydrofracture will automatically breach repository seals.	No

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II	L	I	BB- 4 (p.14)	Closure	Shaft seal containment capabilities are compromised by the development of seal/salt conduits during seal compaction and repository closure.	NMED reviewers concur with the final DOE evaluation of the shaft seal design. "Conduits" are not likely to develop for several reasons. Compaction during seal construction and natural consolidation (creep of Salado inward compressing backfill materials, as well as vertical loading to lithostatic pressure at the time of completion of each seal) and special components (concrete, asphalt and expanding clay) will provide low initial permeability. Very low permeability will be attained in the salt backfill and DRZ- within one order of magnitude of the original Salado, according to long-term consolidation testing- by the end of the first 100 years after closure. In contrast, gas pressure in the repository at the time of completion of all four seals will be at most a few atmospheres, and will not approach lithostatic for several hundred years, if then.	No

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II	L	12	N-60, (p. 8/ pp.3)	Closure	NMED does not seem to have reviewed or evaluated the seal system. Many questions are raised as to the installation and performance of the proposed seals, including in particular the flow of gas and water through or around the seals.	The seal design was evaluated in detail, with extensive questioning of the conceptual approach, management of unfavorable conditions (DRZ and brine seepage), and insistence on specification of construction materials and methods. NMED provided the incentive for the Permittees to develop the detailed design for the shaft seals, as required by the hazardous waste regulations, by refusing to consider the application complete without a "buildable" design. NMED review of the detailed design, supporting research, and shaft inspection reports, support the conclusion that gas and water flow through the seals will be minimized by the multiple types of low permeability materials (e.g., bentonite, asphalt and concrete provide better sealing than salt during the first 100 years after closure), and relatively rapid attainment of lithostatic pressures in the seal materials (100 years as compared to several hundred years in the repository).	No

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II	L	I	H-6, page 2 comment 6 of letter	Closure	Table I-1, page I-25 indicates that operations begin in July, 1998. Due to the delay in the Part B Permit issuance, the anticipated closure dates will change.	Estimated closure dates for each panel will be revised by NMED in the final permit.	Yes

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II	L	I	N-56, (p. 7/ pp.7)	Closure	The closure plan should be reviewed with an eye to a 100 year period of post-closure surveillance.	The initial post-closure time period is limited to 30 years, as specified in 20 NMAC 4.1.500 (incorporating 40 CFR §264.117(a)(1)). As provided in 40 CFR §264.117(a)(2)(ii), the post-closure care period may be reduced or extended- as a permit modification- at any time before completion of the original 30 year post-closure period.	No

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II	L	11	N-57, (p. 7/ pp.7	Closure	The panel closures must be adequate not only to withstand deflagration but also to withstand the effects of roof falls within the closed rooms and panels.	Panel closures are adequate to withstand roof falls. They are located away from the main panels, within the entry and exit drifts. The structural conditions within these drifts are more stable than in the wider disposal rooms, so roof falls are much less likely to occur in the vicinity of the closures. In addition, a roof fall, whether adjacent to a closure or within the panel, will have little or no effect on a (completed) closure. Each closure will be constructed with high strength reinforced concrete. The roof or "back" above each closure will be excavated before closure construction to remove the disturbed rock zone. The salt around each closure will be tightly confined (held up) by the massive concrete, and cannot fall.	No



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II	L	I	N-58, (p. 8/ pp.1)	Waste Handling	It is unclear what the schedule will be for waste emplacement; Section I-1d(2) (page I-7) of the permit now says 25 years, but elsewhere DOE has said that 35 years will be required.	The schedule for waste emplacement is subject to modification due to many factors. The permit does not require strict adherence to a specific schedule for completing waste emplacement. The schedule may be revised by the Permittees at any time, with NMED approval, as a Class 1 (minor) permit modification in accordance with 20 NMAC 4.1.901.B (incorporating 40 CFR §270.42).	No

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II	L	11	N-59, (p. 8/ pp.2)	Closure	The panel closure should be designed to withstand the stresses of roof fall within the panel, which it does not do at present.	Panel closures are adequate to withstand roof falls within a panel. Roof falls within a panel will result in little or no additional stress to the panel closures.	No

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II	L	I, general	E-79, pg. 177	Closure	The NMED has dictated in the permit that all panels be closed using the most robust design--Option D. In most cases this design is excessive for the conditions anticipated, furthermore, NMED provides no basis for the sole use of Design Option 4. This stipulation should be deleted and a graded design approach to allow the emplacement of the minimum panel closure required to meet the performance specifications should be allowed.	The regulatory bases for limiting the choice of panel closure design to Option D are in 20 NMAC 4.1.500 (incorporating 40 CFR §264.111, 264.112(b) and §264.601. 264.111 requires, among other things, that the post-closure release of hazardous waste constituents must be minimized. DOE's own evaluation of the various options concludes explicitly that "...the fully enlarged barrier is the most protective for restricting VOCs during the operational period of 35 years." (Permit Attachment I1, Detailed Design Report for an Operational Phase Panel Closure System, Section 7.0 Conclusions.) 264.112(b) requires a Closure Plan to provide detailed steps for closing each unit in accordance with 264.111. 264.601 emphasizes the concept that a permit must "...contain such terms and conditions as necessary to protect human health and the environment, including design and operating requirements..." Section 264.601(c) specifically requires prevention of any releases that may have adverse effects on human (Continued)	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
		I (cont'd)	E-79 (cont'd)			(Continued) health or the environment due to migration of waste constituents in the air. The reasons for requiring the use of Option D include the failure to specify (in the application) adequate decision criteria and methodologies for determining which of the other design options would be used, and the benefit of minimizing potential flow of gas and brine out of each panel (by removing the maximum amount of DRZ, as specified for Option D). The Permittees may propose a permit modification for NMED consideration, providing additional support for the "graded approach". The EPA has also agreed that Option D should be the sole Panel Closure design (see 63 Fed Reg 27362).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	L	I, general	E-79, pg. 177	Closure	The WIPP proposed the use of Ground Penetrating Radar and other techniques for choosing a panel closure design option. Since the NMED specified panel closure Option D in all cases, these techniques are unnecessary as the investigation of the disturbed rock zone will be removed under Option D.	Since the excavation limits for Option D are not dependent on radar or other investigative techniques, it is appropriate to remove references to these techniques. Investigations are not mentioned in Attachment I, only in Attachment I1.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	L	I, general	E-79, pg. 177	Closure	Other portions of the Panel Closure Design Report serve no purpose since they were designed to evaluate which closure option to use. The specification of Option D eliminates the need for these evaluations (unless NMED removes the stipulation for the sole use of Option D).	Since the excavation limits for Option D are not dependent on radar or other investigative techniques, it is appropriate to remove references to these techniques.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	L	11 - 13	S-11c, pg. 7 of letter	General	Corrective action measures, contingency planning, closure requirements, and post closure care plans are of specific concern.	Each of these categories is specifically addressed in the permit. The comment letter and attachments provide no indication of what the concerns might be.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	M	J,J1	DD-11, page 7 comment 7	Closure	NMED must retain an oversight role during the entire 100 year duration of the Permittees' post closure active institutional control period. The Permittees must provide assurances of appropriate funding to the State for this oversight.	The initial post-closure time period is limited to 30 years, as specified in 40 CFR §264.117(a)(1). As provided in 40 CFR §264.117(a)(2)(ii), the post-closure care period may be reduced or extended- as a permit modification- at any time before completion of the original 30 year post-closure period.	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	M	J	H-7, page 2 comment 7 of letter	Closure	The text on page J-5, Section J-1a(2) states that groundwater monitoring frequency may be changed during post-closure. The text should be clarified to reflect NMED approval for changes to the monitoring frequency and constituents to be monitored.	After the first "modification of the permit" in this paragraph, the phrase "as approved by the secretary of the NMED in accordance with 20 NMAC 4.1.901.B (incorporating 40 CFR §270.42)" was added for clarification.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	M	I, pg. I-11, 12	E-81, pg 180	Closure	Since Module VI.C of the draft permit complies with the applicable regulation (20 NMAC 4.1.500) and mandates a 30 year post-closure care period, there should be no condition pertaining to passive institutional controls which will be enacted after the post-closure period ends.	Please refer to the response to comment DD-11. However, the cited passage does not include any requirement regarding passive institutional controls (PICs). These controls are only mentioned as part of the general description of decommissioning activities. Removal of any mention of PICs would render the remaining discussion inaccurate. Instead, a sentence was added to permit Attachment I, page I-11, to clarify the fact that "PICs are not included in the permit."	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	M	I, pg. I-19	E-82, pg. 181	Closure	Since Module VI.C of the draft permit complies with the applicable regulation (20 NMAC 4.1.500) and mandates a 30 year post-closure care period, the NMED lacks the authority to regulate active access controls employed after the completion of the post-closure care period. Neither can the NMED regulate passive institutional controls which will be enacted after the post-closure period. The "Permanent Marker Conceptual Design Report" is not included in the draft permit.	The cited section of Attachment I does not explicitly require compliance with active controls after completion of the 30 year post-closure period, or with passive institutional controls. The following clarification was added following the first paragraph in Attachment I, Section I-1e(2)(g): "The NMED permit requires only a 30 year post-closure period. This is the maximum post-closure time frame allowed in an initial permit for any facility, as specified in 20 NMAC 4.1.500 (incorporating 40 CFR §264.117(a)). The secretary of the NMED may shorten or extend the post-closure care period at any time in the future prior to completion of the original post-closure period (30 years after the completion of construction of the shaft seals). The Permanent Marker Design Report and other provisions during the first 100 years after closure are addressed under another Federal regulatory program."	Yes

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II	M	J, pg. J-1	E-83, pg. 182	Closure	Since Module VI.C of the draft permit complies with the applicable regulation (20 NMAC 4.1.500) and mandates a 30 year post-closure care period, there should be no condition that appears to mandate a longer post-closure care period.	The general discussion in the draft permit and the proposed revised language are both accurate, although neither explains the dual nature of the closure and post-closure rules (applying to both units and the facility). To avoid potential confusion, the proposed revision was accepted. The sentence: "Assuming the first underground HWDU is closed three (3) years after issuance of the permit and the operating and closure period is no more than thirty-five (35) years (see permit Attachment I-1), the post-closure care period will extend for sixty-two (62) years" was deleted from Attachment J, Section J-1.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	M	I, pg. I-11	E-80, pg. 179	Air Monitoring	The performance standards for air referenced in Module IV (Table IV.D.1 and IV.F.2.c) are inappropriate, and are also inconsistent with Table A-1 (not attached to the draft permit). The Table A-1 values are based on meeting environmental performance standards established for protecting a member of the public at the site boundary. This is the correct standard and is consistent with other facilities in the State of New Mexico. It appears that NMED has imposed three separate performance standards for air that are in conflict.	The performance standards for air were recalculated and the values in Table IV.D.1 and IV.F.2.c are now accurate. The sentence referring to Table A-1 in Attachment I, Section I-1e(1) was deleted.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	N, O, P, Q		E-1h, Cont., pg. 5, 6, Significant Concern 1.1.8	Financial Assurance	(1)WID is exempted from financial assurance requirements under 20 NMAC 4.1.500 (incorporating 40 C.F.R. §264.140(c)); (2) requiring WID to provide financial assurances is more stringent than the federal regulations and therefore in violation of NMSA 1978 §74-4-4(D); (3) requiring contractors at a major DOE facility to provide financial assurances is unprecedented; and (4) pursuant to the terms of the operating contract, the costs of financial assurances would be passed on to DOE.	(1) The clear language of §140(c) only exempts states and the federal government. A plain reading of this language does not include a private operator of a federal facility, because such an entity is not a state or federal government. EPA Region 6 concurs with NMED's decision to impose financial assurance requirements upon WID. See, TR, S. Zappe, Pg. 2392-93. (2) New Mexico's regulations requiring financial assurance are not more stringent than the federal regulations. In adopting NMED's regulations for financial assurances, neither the EPA nor the Environmental Improvement Board determined NMED's regulations for financial assurances to be more stringent than the federal regulations. See, TR, S. Zappe, Pg. 2395-2399. (3) WIPP is the first federal facility to seek a permit for mixed waste disposal in New Mexico and United States since the passage of RCRA in 1976. Therefore no state has had the opportunity to require financial assurance from a private operator at such a facility. (continued below)	No

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II	N, O, P, Q		E-1h, Cont., pg. 5, 6, Significant Concern 1.1.8	Financial Assurance		(continued from above) There is precedent of requiring financial assurance from private operators listed as co-permittees at a federal facility. The U.S. Army owned Umatilla Chemical Depot provides precedent of the exemption under § 140(c) not precluding the private contractor from providing financial assurances. See, TR, S. Zappe, Pg. 2414-15. (4) WID is required to provide financial assurance even if the cost would be passed onto DOE. DOE is not obligated to enter into an agreement to reimburse WID. The fact that WID and DOE have an agreement that DOE will compensate WID for the cost of compliance in no way exempts WID from the regulation's requirements of providing financial assurance. Given the substantial problems that states have had in obtaining funding from DOE for closure costs at existing federal facilities, NMED has little confidence that DOE will adequately fund clean-up obligations for proper closure of WIPP.	

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II	N.1, pg. II-13		E-14, Pg. 36	Financial Assurance	See comment 1.1.8. Requirements for Permittees to provide Liability Coverage and Financial Assurance for Closure should be deleted.	Please refer to the response to comment E-1h.	No



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II	N-P, p II-13	0	H-3a, page 1, comment 3 of letter	Financial Assurance	These sections refer to the "Permittees" and should be clarified to define the relationship between DOE and the contractor, WID. The permit should describe the financial assurance responsibilities of the contractor as required by NMED.	The permit was revised to refer to WID instead of "the Permittees" as appropriate in Sections II.N-Q and VI.E, and in Attachment K. Specific responsibilities in the regulations are referenced and summarized.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	O	K, K1	DD-10, page 7, comment 6	Financial Assurance	NMED must require financial assurance from DOE and the WID [so] 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.	No response required.	

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II	O	K	N-62, (p. 8/ pp.5)	Financial Assurance	The draft permit provides that financial assurance shall be provided 60 days before receipt of TRU mixed waste. It would be preferable to have such assurance be provided 60 days before the receipt of any waste.	The regulations apply to hazardous and mixed wastes, and therefore do not provide authority for requiring financial assurance 60 days before the receipt of non-mixed or non-hazardous waste.	No

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II	O	K	N-63, (p. 8/ pp.5)	Financial Assurance	The overall question of financial security, covering the facility's operating life, its closure period, and the post-closure period, must be explored at hearings; assurance must not be limited to concerns related to mixed waste, since it is the facility as a whole that is of concern.	The hearings will provide the public with the opportunity to comment on financial assurance.	No

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II	O,P	K	S-13, pg 7 of letter	Financial Assurance	Financial assurance/liability requirements are important for both applicants, especially as they relate to WWID.	No response required.	No

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U-RFETS/LeGare W-INEEL/Fritz X-LANL/Hargis,LeBrun AA-EEG/Neill BB-CARD/Abraham,Greenwald CC-Hesch DD-CCNS/Carde,Arends

Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	O, I	K	O-3a pages 1 and 2, comment 3 of letter	Financial Assurance	New Mexico is requiring financial assurances for WIPP, but under 40 CFR §264.140(c) federal facilities are exempt.	Please refer to the response to comment E-1h.	No

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MODULE II.C**

Commentor Key: B-Cartwright E-DOE/CAO F-Haney G-NFT/Castagneri H-EPA6/Neleigh I-Reade J-Overbay K-Tanner L-WITCO/Bernardi M-Moore  
N-NMAG/Fettus O-INEEL Oversight/Trever P-INEEL CAB/Rice Q-Carlsbad DOD/Harrison R-Carlsbad City/Perkowski S-SRIC/Hancock T-Chavez  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II	O.1	K	O-3b pages 1 and 2, comment 3 of letter	Waste Classification	Permit condition II.C.1 appears to be more stringent than RCRA by proposing to regulate hazardous constituents that are not necessarily tied to (listed) hazardous waste numbers.	The permit is not more stringent than standard RCRA requirements. Some of the waste classifications are based on concentration estimates which are confirmed by process knowledge. DOE may be "conservative" in some of these estimates, but they are not required to be.	No

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Commentor Key: B-Cartwright E-DOE/CAO F-Haney G-NFT/Castagneri H-EPA6/Neleigh I-Reade J-Overbay K-Tanner L-WITCO/Bernardi M-Moore  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	B, D, D1, I	E-91a, pg. 212	General	Specific comments on Attachments B, D, D1, 1, were included with Module II and were not repeated by commentor for Module III.	No response necessary. See the specific comments on the referenced attachments.	N/A



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1 and M2	E-91b, pg. 212	General	Comments on Attachments M1 and M2 are included with the Module II comments as appropriate. Editorial, clarifying, or supplemental comments can be found in the text in the DOE's permit application which are contained in the redline/strikeout version of the draft permit.	NMED evaluated the editorial changes proposed by DOE within the redline/strikeout version of DOE's comments on Permit module III and Permit Attachments M and M1. The revised draft permit incorporated those editorial changes proposed by DOE that NMED determined were an acceptable editorial change. The revised draft permit did not incorporate those editorial changes that NMED determined were, in fact, either substantive regulatory or technical changes.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	A	M1	S-7b, pg 6 of letter	General	Commentor is concerned about air monitoring and personnel training, presumably in association with the surface units. WHB maintenance/equipment maintenance is of concern.	Under 20 NMAC 4.1.500 (incorporating 40 CFR §264.170 to §264.178) there are no specific requirements for air monitoring of container storage units and the requirements for air emissions standards under 20 NMAC 4.1.500 (incorporating 40 CFR §264.179 and 40 CFR §264 Subpart CC) do not apply to the management of mixed waste. Personnel training is addressed in Permit Module II.F and Permit Attachment H. Inspection and maintenance of equipment is addressed in Permit Modules II.E and II.H and Permit Attachments D, D1, and E. The age of the waste handling equipment in the WHB Unit is not relevant as long as the equipment has adequate rated capacity to perform the required activities and is appropriately inspected and maintained.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	H, pg. III-6		E-90, pg. 211	Closure	The inclusion of the term "all" in the condition that specifies removal of hazardous waste and residues at closure of the WHB Unit and Parking Area Unit is problematic. The removal of the hazardous waste and hazardous waste residues will occur in accordance with written procedures which will specify the appropriate clean-up level and the extent to which removal is needed to protect human health and the environment.	The language in the draft permit condition has been changed to be consistent with the language in 20 NMAC 4.1.500 (incorporating 40 CFR §264.178).	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	I, pg. III-6		E-91, pg. 212	Record keeping	The condition that the permittees place the results of waste analyses in the operating record as specified in Permit Condition II.K is unclear. The "results of waste analysis" have been divided among the generator/storage sites and the WIPP based on the use of the records. The scope of this condition should be narrowed and should be consistent with the records provisions in the permit application.	The draft permit condition has been changed to clearly reference Permit Attachment B for the waste analysis record keeping requirements.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	H-9, page 2 comment 9 of letter	Container specifications	In the description of standard 55 gallon drums, SWBs, and 85 gallon overpacks, the permit states that each vessel has a nominal life of 20 years from the date of "TRU mixed waste certification." This language should be changed to "TRU mixed waste loading" to avoid confusion between the certified waste characterization process and the act of container loading.	Draft Permit Attachment M1, Section M1-b, has been modified to delete the requirement for a nominal life for the 55-gallon drums, standard waste boxes and 85-gallon drum overpacks. The revised draft permit now includes a requirement for the containers to be in good condition during storage in accordance with the requirement of 20 NMAC 4.1.500 (incorporating 40 CFR §264.171).	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	O-2b page 1, comment 2 of letter	Container specifications	NMED should consider ALARA concerns when establishing permit requirements (i.e. Idaho reduced waste verification from 10% to 5% when ALARA concerns are present). Also, the commentor suggested eliminating the requirement for limiting waste drums and boxes to a nominal life of 20 years.	See response to Comment H-9.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	P-4, Comment 4, page 2 of letter	Container specifications	Requirement for certification of container life in excess of 20 years from date of certification does not appear to be justified for legacy waste drums. This certification would require overpacking of existing drums.	See response to Comment H-9.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	Q-9, bullet 9 attachment A of letter	Container specifications	The nominal life for waste packaging should be removed from the permit. The proposal to limit drums and boxes to a nominal life of only 20 years is subjective and could result in unnecessary, costly repackaging of waste and would subject workers to needless radiation exposure.	See response to Comment H-9.	Yes



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	R-9, bullet 9 attachment of letter	Container specifications	The nominal life for waste packaging should be removed from the permit. The proposal to limit drums and boxes to a nominal life of only 20 years is subjective and could result in unnecessary, costly repackaging of waste and would subject workers to needless radiation exposure.	See response to Comment H-9.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	S-5, pg 6 of letter	Container specifications	The waste must be repackaged into containers with at least a 20 year design life, and commentor supports stringent requirements on containers received at WIPP.	See response to Comment H-9.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	C	M1	K-2c, page 1 pp 2 of letter	Container specifications	The requirement for certification of the generator sites by New Mexico, after that has already been done by DOE and EPA, the extra analysis required, and the prohibition of even minor amounts of free liquids, the demands for overpacking of drums all seem designed to raise the cost to the nation's taxpayers.	The modification process for certification of generator/storage sites has been removed and replaced with the audit process. The prohibition of liquids was proposed by the applicants and is necessary in order to ensure that no incompatible waste is managed, stored or disposed at WIPP. There is no requirement to overpack all waste containers. Waste containers must be in good condition.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	0	N-9, (p. 2/ pp.7)	Container storage construction or modification	Permit Condition II.C.2.h indicates that RH TRU mixed waste is not acceptable at WIPP. Pending appropriate application to modify the permit and action on such request, DOE should be barred from constructing or reconstructing RH handling facilities. Such facilities should not be modified without regulatory approval.	Please refer to NMED's Exhibit A, RH Waste Prohibition, and to NMED's Findings of Fact and Conclusions of Law (Findings), Module II, RH Waste Prohibition and to the November 13, 1998 Fact Sheet and the December 8, 1998 Supplemental Fact Sheet.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	0	N-11, (p. 3/ pp.1)	Container storage construction or modification	The RH bay is not included as a permitted portion of the facility. However, the RH bay is included in the Waste Handling Building, and shown on Figure M1-1 and the draft permit places no restriction on use, activity, or construction in the RH bay. Such restrictions should be imposed so that this part of the facility is not modified or put into use without authority of a permit. Any such construction or modification should be predicated upon NMED review and approval.	Please refer to the response to Comment N-9.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	A.1, pg. III-1	M1, M2, D, E, F	E-84, pg. 183	RH TRU mixed waste management	The permit does not allow the use of the RH-TRU side of the facility for waste management. See Section 1.1.3 of DOE's August 14, 1998, Public Comments regarding the need to include the RH-TRU waste management facilities and processes. Module III and related attachments should be changed to reflect RH TRU mixed waste storage and disposal.	Please refer to the response to comment N-9.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
II, III	C, A	B, M1	S-2, pg. 4 of letter	RH TRU mixed waste management	Prohibit remote handled waste and construction and/or modification of the RH Bay.	Please refer to the response to Comment N-9.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	N-66, (p. 8/ pp.7)	Container management practices	Attachment M1 should detail much more fully the extent of safety-related procedures used in container storage. For example, the exact process of unloading a TRUPACT-II containing a seven-pack or a SWB, including all safety related apparatus, should be described.	The level of detail provided by the applicants in the WIPP RCRA Part B permit application met or exceeded the regulatory requirements for the use and management of containers in 20 NMAC 4.1.500 (incorporating 40 CFR Subpart I). NMED incorporated this information into Permit Attachment M1. The level of detail regarding the management and handling of containers of hazardous waste requested by the commentor is not typically included in RCRA Part B permit.	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	N-68, (p. 9/ pp.1)	Container management practices	Attachment M1 should include a clear description of the procedures for return or resending or noncomplying containers.	The incorporation of specific of procedures for return of noncomplying containers into the permit is not necessary. If the permittees are required to ship non-complying containers of TRU-mixed waste off site, the permittees will in effect become a generator of hazardous waste, and will be required to comply with the Standards Applicable to Generators of Hazardous Waste under 20 NMAC 4.1.300 (incorporating 40 CFR §262) when shipping the waste.	No

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U-RFETS/LeGare W-INEEL/Fritz X-LANL/Harris.LeBrun AA-EEG/Neill BB-CARD/Abraham.Greenwald CC-Hesch DD-CCNS/Carde.Arends

Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	A.2.d, pg. III-3		E-88, pg. 209	Container management practices	The draft revised permit's restriction on storing or managing empty TRUPACT-II's shipping containers in the Parking Area Unit has no regulatory basis, will create unnecessary logistical problems, and add risk by unnecessarily moving vehicles and large equipment into and out of the radioactive materials area (RMA). The containers pose no risk and do not contain hazardous substances, nor is there any justification based on protection of human health or the environment. This condition would require the empty TRUPACT-II containers to be taken outside the Parking Area Unit in order to be loaded for return to the generator/storage sites.	Permit Module III has been changed to remove the prohibition on storing or managing empty TRUPACT-II shipping containers in the Parking Area Unit. However, Permit Condition III.G.2 of the revised draft permit will include a requirement for placing a clearly legible sign, label or placard on each TRUPACT-II containing waste that is stored in the Parking Area Unit. The intent of the original prohibition on the storage of empty TRUPACT-IIs in the Parking Area Unit was so that an inspector would have no difficulty determining which TRUPACT-IIs stored in the unit contained waste and to allow for the verification of the volume of waste stored in the Parking Area Unit.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	A.2.e, pg. III-3		E-89, pg. 210	Container management practices	The permit requirement for storing the TRUPACT-II shipping containers on TRUPACT-II trailers is arbitrary, has no regulatory basis, and reduces maintenance options available for trailers. It is safe to place TRUPACT-IIs on the ground because the containers provide secondary containment for the waste inside. This condition adversely impacts maintenance and operations because often a trailer will need to be readied for re-use or repair and it will be necessary to off-load the TRUPACT-IIs.	The permit condition was based directly on information provided in Section F-3b (page F-15, lines 5-7) of the RCRA Part B permit application which states that "Waste containers will remain inside the TRUPACT-II shipping containers on the trailers parked outside of the WHB or in RH TRU shipping casks until TRU mixed waste handlers are prepared to handle them." In addition, Section D-1a(3)(b) (page D-10, lines 23-24) of the RCRA Part B permit application states "Inspections of the TRUPACT-IIs and/or road casks stored in the parking area will focus on ... and the spacing between TRUPACT-II trailers and road casks." The referenced permit condition has been deleted from the revised draft permit since it does not impact the Permittees compliance with the regulations.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	N-67, (p. 9/ pp.1)	Container inspections	Attachment M1 should include a description of the specific methods for detection of rusted or leaking containers.	The specific method for the detection of rusted or leaking containers within the WHB Container Storage Unit will be visual inspection. This is clearly stated in draft permit Attachment M1, Section M1-1e(1), Inspection of the WHB Unit (page M1-12). Permit Attachment M1 has been modified in the revised draft permit (Sections M1-1c and M1-1d(2)) to specifically state that after removal of the waste containers from the TRUPACT-II, the waste containers will be visually checked for physical damage, severe rusting, structural integrity, leaks and signs of pressurization. A visual inspection of the containers to look for leaking containers meets the requirements of 20 NMAC 4.1.500 (incorporating 40 CFR 264.174).	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	G	0	F-8	Container inspections	Suggested that the containers should be checked for signs of pressurization and the DOE should have a plan in place for handling them, if found.	All of the containers used to manage TRU mixed waste at the WIPP will be equipped with filtered vents that are installed to prevent the buildup of gases within the container which could result from the radiolysis of waste components. Pressurization of a container would only occur in the event that a filter ceased functioning. The Permit Condition referenced in the comment (III.G) indicates that the inspections of the WHB Unit and the Parking Area Unit are to be conducted to detect leaking containers and deterioration of containers and the containment system caused by corrosion and other factors. The pressurization of containers would fall under "other factors". Thus modification of the draft permit condition is not required. In accordance with 20 NMAC 4.1.500 (incorporating 40 CFR §264.171), Permit Condition III.C and Permit Attachment M1(Sections M1-1c and M1-1d(2)) include requirements that containers used to store TRU mixed waste must be in good condition, (Continued below)	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	G	0	F-8			(Continued from above) and a container showing signs of pressurization would not meet that requirement. The permittees specific response to the pressurization of a container may vary depending on the severity of the situation.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	AA-6d, (p. 19, item 2)	Verification of clean-up	The commentor believes that the analyses of a swipe sample to verify that hazardous materials are not present on a container after radiological decontamination (Section M1-1d(2), page M1-10) is a reasonable approach.	No response necessary since the commentor is in agreement with the draft permit.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	AA-6e, (p. 20, item 2)	Verification of clean-up	With regard to the use of analyses of swipe samples to verify removal of hazardous materials from containers, the commentor has a number of questions regarding the meaning and consequences of finding radiological contamination on a container; what hazardous constituents will be analyzed in the swipe sample and what is the criteria for a container to be uncontaminated; and where will the samples be analyzed and how long will it take to get results.	With regard to whether the presence of radiological contamination constitutes a release, the presence of radiological contamination on a waste container at the time that it arrives at the WIPP facility does constitute a spill of hazardous waste to the secondary containment system (either the TRUPACT-II or the WHB Unit floor). However, in accordance with Permit Attachment F, Section F-3 (page F-10), this would constitute an Incident Level I since the release can easily be confined with readily available resources, and there is no life-threatening situation or potential environmental impact (due to the hazardous waste). The Contingency Plan would not be implemented and there would be no reporting requirements. The incident would be documented in the operating record. (Continued Below)	Yes



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	0	M1	AA-6e, (p. 20, item 2)	Verification of clean-up		(Continued from above) With regard to providing detail regarding the swipe samples, the referenced language was taken directly from Section D-10a(3)(b) (page D-78) of the WIPP RCRA Part B permit application. The language was incorporated into the revised draft permit Attachment M1.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	A	M1	AA-6h, (p. 20-21, item 4)	Permitted container storage volume	The commentor believes that the Permit Condition III.A description of the maximum volume of TRU mixed waste that may be stored in the Waste Handling Building Container Storage Area and the Parking Area Container Storage Area is confusing. The commentor recommends that the capacity limit be based on numbers of TRUPACT-IIs, standard waste boxes, or drums and that permit Module III.A, Tables III.A.1 and III.A.2 should be labeled maximum number of containers, not container equivalents.	Draft Permit Module III, Table III.A.1 has been changed to so that the fourth column of the table now specifies only the maximum number of TRUPACT-II shipping containers or the maximum number of facility pallets that may be stored in each area of the WHB Unit. The maximum number of individual containers, or combinations of containers, that may be stored in a TRUPACT-II shipping container or a facility pallet is specified in Permit Attachment M1, Section M1-1c(1), of the revised draft permit and does not require additional clarification within the module. The intent of the permit condition is to ensure that the permit inspector will have no difficulty verifying that the maximum allowable storage volume has not been exceeded. NMED notes that within Section D-1a(2)(a)(i) (pages D-7 and D-8) of the WIPP RCRA Part B permit application, the Permittees also describe the capacities of the various storage areas within the WHB Unit in terms of maximum number of TRUPACT-II shipping containers and facility pallets.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	A.1, pg. III-2		E-85, pg. 205	Permitted container storage volume	The "container equivalent" column in Table III.A.1 I is unnecessary and may be a source of confusion. The storage areas are permitted to contain a maximum volume, which is the only necessary specification.	Please refer to response to Comment AA-6h.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	A.2.b, pg. III-3		E-87, pg. 207	Permitted container storage volume	The quantities of CH TRU mixed waste stored on the parking lot are not sufficient to accommodate reasonably expected throughput rates and the receipt of waste over weekends. The quantity limits in the permit application better represent the throughput rates and should be used.	The storage quantity limits for the Parking Area Container Storage Unit specified in the permit were based on the WIPP RCRA Part B permit application. The Part A Application and Chapter D, Section D-1a(2)(a)(ii) (page D-8 lines 28-30) both indicate that the volume of CH waste to be stored in the Parking Area Unit is 12 TRUPACT-IIs, corresponding to 1,536 cubic feet of CH TRU mixed waste. The NMED incorporated this information from the permit application into the revised draft permit. The DOE request for additional storage capacity in the Parking Area Unit is a substantive change with both technical and regulatory implications which NMED cannot review at this stage of the permitting process.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	A.1, pg. III-2		E-86, pg. 206	Storage time limits	The limitation on the length of time waste can remain in storage in the WHB is arbitrary and without basis. Derived waste containers may take tens of years to fill. The permittees should be able to make judgements about when a disposal will occur, based on radiological and other operational conditions.	See response to Comment S/DD.1-24.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
III	A.2	M1	AA-7a, (p. 22, item 1a)	Storage time limits	The commentor indicates that Permit Condition III.A.2 prescribes that TRUPACT-II shipping containers stored in the Parking Area Container Storage Unit cannot be sealed for over 59 days. The commentor then cites several statements in Permit Attachment M1 and F. The commentor then provides the following questions: a) are there any requirements for the length of time that a TRUPACT-II can be stored in the Parking Area Container Storage Area; b) does NMED expect that the permit requirements will be exceeded at times; and c) what will be the consequences of exceeding the requirement?	Draft Permit Attachment M1 has been modified to remove or clarify potentially confusing language. Section M1-1c(2) of the draft permit (page M1-7, lines 8-9) has been modified in the revised draft permit to delete the words "that might drive residence times to 60 days or greater in this unit" and replace them with "which results in the need to store a waste container in the Parking Area Unit for a period of time approaching fifty-nine (59) days". Section M1-1d of the draft permit (page M1-7, line 36 and page M1-8, lines 1-2) has been modified in the revised draft permit to delete the sentence "This will minimize the potential for exceeding permit requirements in the Parking Area Unit for extended periods of time." (continued below)	Yes















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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	0	BB-1a, cover letter, 2nd pp	Suitability of site	Hydrologic and geologic suitability of the WIPP site is of question.	The hydrologic and geologic suitability of the WIPP site as a Geologic Repository for the disposal of hazardous waste was addressed in Chapter D and related Appendices of the WIPP RCRA Part B Permit Application. This information was evaluated during the technical review of the WIPP RCRA Part B Permit Application and is not specifically required to be addressed in the RCRA Operating Permit for the WIPP facility.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	D,D1, I1, I2, M1, M2, M3, and N	E-105a, pg. 233	General	There are no specific comments on Attachments D, D1, I1, I2, M1, M2, M3, and N other than what was included with comments for Module IV. However, editorial, clarifying, and supplemental comments are included in the Redline/Strikeout version of the draft permit.	The "editorial, clarifying, and supplemental comments" proposed by DOE within the redline/strikeout version of Permit Module IV and Permit Attachments M2 and N have been evaluated. Each change proposed by the applicants has been noted as being an acceptable editorial change, a substantive regulatory or technical change which may be acceptable, or a substantive regulatory or technical change which is not acceptable.	Yes, in part

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IV	A, D, E, F	M2, N	S-8, pg. 6 of letter	Panel 1	Prohibit use of Panel 1. Permit should include requirements of how/when panels mined, design modifications, and prohibitions on mining during waste emplacement. Room based VOCs must fully protect human health. Backfill type/emplacement methods should be specified. Ventilation, air monitoring equipment, personnel training requirements must be specified/strengthened. Room creep closure must be monitored and adequate room maintenance is necessary.	With respect to prohibition of the use of Panel 1, see the response to Comment N-69. With respect to how panels will be mined, NMED does not have the regulatory authority to specify the method to be used to mine the Underground Hazardous Waste Disposal Units. With respect to specifying in the permit when panels are to be mined, and prohibiting mining during waste emplacement, the comment does not provide information regarding why these specifications are necessary. The permit does specify (Permit Condition IV.E.3.a) that the permittees shall restrict and separate the ventilation and traffic flow areas in the underground TRU mixed waste handling from those used for mining and construction equipment. The VOC room based limits in Module IV of the permit were derived to fully protect human health. The backfill type and emplacement method were specified in permit Attachment M2, Section M2-2a(1). (continued below)	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	A, D, E, F	M2, N	S-8, pg. 6 of letter	Panel 1		(continued from above) With respect to ventilation, air monitoring equipment, personnel training requirements being specified/strengthened, each of these categories is specifically addressed in various attachments to the permit. The comment provides no indication regarding what the specific concerns might be, so a response cannot be formulated. With respect to the need for continuous monitoring of room deformation and creep closure, before and after waste emplacement, this information is provided in Attachment M2 (Section M2-5b(2)). Maintenance of the portions of disposal rooms where waste has not yet been emplaced will be performed in compliance with the requirements of 30 CFR, Section 57, Ground Control. It should be noted that the ability to maintain a room under the Ground Control Program is affected once waste is emplaced in a disposal room.	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	B.1, pg. IV-2		E-93, pg. 215	Derived Waste	Permit Condition IV.B.1 does not allow the disposal of waste generated from the operation of the WIPP, or derived waste, since derived waste is not addressed in subsections (a), (b) and (c). Derived waste will comply with conditions enumerated in Module II.C.2.a through II.C.2.i, except that containers of derived waste will not undergo headspace sampling (II.C.2.i) and may be disposed in accordance with Permit Condition II.C.4.	Permit Module IV.B.1 has been changed to add the following statement: Derived waste may be disposed in the Underground HWDUs as specified in Permit Condition II.C.5. The exact language proposed by the commentor in the redline/strikeout version of Module IV was not incorporated since NMED determined that the statement could be made in paragraph form under Condition IV.B.1, rather than as a new subcondition.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E	0	BB- 5 (p.17-18)	Suitability of site	Pressure buildup down-hole will result in hydrofracturing of marker beds and salts, creating a conduit for fluid and gas flow.	Please refer to response to Comment BB-2 under Module II.L.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E	G, Pg. G-2, 3, M1, pg. M1-6, M2, pg. M2-3, -11	E-106, pg. 233	Container management	Requiring that waste containers be secured to the facility pallet significantly increases the potential for workers to receive the greatest radioactive dose due to the proximity of the worker to the waste container, and should not be required. A load test for the waste containers was used to confirm that waste containers which were not fastened to the pallet did not move during transportation conditions.	The language in Section M2-2a(1) (page M2-3, lines 12-13) of Attachment M2 referenced in this comment was derived from Section D-10a(2)(c) (page D-63, lines 32-38) of the WIPP RCRA Part B Permit Application. The language in Section G-1 (page G-2) of Attachment G and Section M2-2b (page M2-11, lines 30-31) of Attachment M2 was taken directly from Section D-10a(3)(b) (page D-80, lines 6-7) of the WIPP RCRA Part B Permit Application without modification and the permit language will not be modified. The commentor did not provide adequate technical or regulatory information to support the suggested permit modification.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	F.2.a, pg. IV/5		E-103, pg. 228	VOC monitoring	If the NMED chooses to maintain the compliance monitoring approach, then the headspace gas sampling requirement should be eliminated. Using redundant processes (sampling and monitoring) provides no additional protection of human health or the environment.	Please refer to NMED's Exhibit A, Confirmatory Volatile Organic Compound Monitoring Program, NMED's Findings of Fact and Conclusions of Law (Findings), Module IV, Confirmatory Volatile Organic Compound Monitoring Program, the November 13, 1998 Fact Sheet and the December 8, 1998 Supplemental Fact Sheet.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-69, (p. 9/ pp.2)	Panel 1 and ground control	Attachment M2 requires more detail, especially as to the methods and effectiveness of ground control monitoring and maintenance. Most basically, what is the projected useful and safe life of the Panel 1 rooms, and what lifetime can be expected for other rooms after excavation.	The projected safe life of a disposal room and the potential for an expected or unexpected collapse of a roof in an open room or closed room of an Underground Hazardous Waste Disposal Unit (HWDU) has implications to the Hazardous Waste Act (HWA) permit only in that it could result in a release of hazardous constituents (particularly to air) from the Underground HWDU. The HWA permit is concerned with the potential impact of that release on the health of an underground worker, surface worker, and a resident living at the Land Withdrawal Act (LWA) Boundary. The implementation of a Ground Control Program for metal and non-metal mines is required under regulations issued under the Mine Safety and Health Act (30 CFR Part 57, Subpart B), which are administered by another regulatory authority (the Mine Safety and Health Administration, MSHA) that is considered to have the primary authority to administer these regulations. NMED has revised Permit Module IV to delete the requirement for implementation of a ground control program, and Permit (continued below)	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-69, (p. 9/ pp.2)	Panel 1 and ground control		(continued from above) Attachment M2, Section M2-5(a)(1) has been revised to state that the permittees will implement a ground control program for each Underground HWDU in compliance with the requirements of 30 CFR Part 57, Ground Control. In order to meet the requirements of 20 NMAC 4.1.500 (incorporating 40 CFR §264.601(c)) for prevention of any release that may have adverse effects on human health or the environment due to migration of waste constituents in air, Permit Module IV includes limits on the average measured concentration of volatile organic compounds (VOCs) in the headspace gas of all containers in a single room within and Underground HWDU which will ensure protection of worker health in the event of a roof fall in a open or closed room of an Underground HWDU. The commentors have requested additional detail regarding how the ground control program and the geomechanical monitoring program in the WIPP underground will be conducted and how the permit will ensure the stability of the (continued below)	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-69, (p. 9/ pp.2)	Panel 1 and ground control		(continued from above) disposal rooms, particularly within Panel 1. NMED notes that even if the permit included the most stringent requirements for geomechanical monitoring and ground control programs, it would not be possible to absolutely guarantee the stability of an underground opening (especially after waste is emplaced). As a result, NMED has focused on ensuring the protection of worker health (and non-worker health) due to releases of volatile organic hazardous constituents to air in the event of a roof fall in an open or closed disposal room in an open Underground HWDU. As part of the WIPP RCRA Permit Application process, NMED requested that the applicants evaluate the potential impact to worker health due to releases that may occur in the event of a roof fall in an open Underground HWDU. In the WIPP RCRA Part B Permit Application (Appendix D9, Attachment 1) the applicants provided an evaluation of the magnitude of the release of select volatile organic compounds (VOCs) from the waste containers in the event of a roof fall. Two scenarios were (continued below)	No

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IV	0	M2	N-69, (p. 9/ pp.2)	Panel 1 and ground control		(continued from above) considered including a roof fall in an open disposal room that is being filled with waste, and a roof collapse in a closed room with ventilation barriers in place. Both scenarios assumed that the concentrations of VOCs in the headspace of the drums were equal to the maximum average headspace concentration limits for containers that were proposed by the Permittees in Table C-5 and Table D9-7 of the application. During evaluation of the WIPP RCRA Part B Permit Application, NMED found that the maximum average headspace concentration limits proposed by the applicants were not appropriate for several reasons (See Response to Comment E-94) and NMED has calculated the alternative VOC Room-Based Concentration Limits specified in Permit Module IV. In addition, NMED found that within Attachment 1 of Appendix D9, the applicants had made several errors in the reporting of the results of calculations and that the applicants had not evaluated the magnitude of release during a roof fall for several constituents. (continued below)	No



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IV	0	M2	N-69, (p. 9/ pp.2)	Panel 1 and ground control		(continued from above) As a result, NMED performed an independent evaluation of the magnitude of the release of VOCs in the event of a roof fall. NMED used the applicants' equations and a majority of the assumptions, but assumed that the VOC headspace concentrations were the VOC Room-Based Concentrations from Permit Module IV, to calculate the concentrations of VOCs in the air of an open disposal room in the event of a roof fall in both an open room being filled with waste and a closed room with ventilation barriers in place. The results of the calculations were then compared to the most restrictive limits for occupational exposure to each constituent (based on the most recent standards from the National Institute for Occupational Safety and Health (NIOSH) and the American Conference of Governmental Industrial Hygienists (ACGIH)). (continued below)	No

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IV	0	M2	N-69, (p. 9/ pp.2)	Panel 1 and ground control		(continued from above) NMED determined that in the event of a roof fall in either an open room or a closed room of a open disposal panel where the concentration of VOCs in the headspace of the containers in each room of the panel are at, or below, the VOC Room-Based Concentrations specified in Module IV, that the concentrations of VOCs in the air of a disposal room will not exceed the most restrictive limits for occupational exposure. It should be noted that for two constituents (1,2-dichloroethane and 1,1,1-trichloroethane) the VOC Room-Based Concentrations in Module IV are actually based on ensuring that the concentration of these two constituents in the air of a disposal room in an Underground HWDU immediately after a roof fall event do not exceed their respective NIOSH immediately dangerous to life and health (IDLH) concentrations. (continued below)	No

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IV	0	M2	N-69, (p. 9/ pp.2)	Panel 1 and ground control		(continued from above) Thus, NMED has determined that the specification of the VOC Room-Based Limits in Module IV will help ensure protection of the health of the underground worker due to exposure to the volatile organic hazardous constituents that may be released in the event of a roof fall in an open Underground HWDU, and that it is not necessary for the permit to prohibit the use of the Panel 1 disposal rooms, or specify detailed requirements for the ground control programs. Note that NMED is aware that protection of worker health in the event of releases of VOCs during a roof fall event could be accomplished through the use personal protection equipment such as self contained breathing apparatus. However, the use of personnel protective equipment by underground workers was not proposed in the WIPP RCRA Part B Permit Application. In addition, a roof fall may occur as a sudden event in which workers might not have time to don appropriate personal protection equipment. The evaluation of VOC (continued below)	No

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IV	0	M2	N-69, (p. 9/ pp.2)	Panel 1 and ground control		(continued from above) releases conducted by the applicants indicated that the concentration of VOCs in the air of a disposal room increases quickly in the event of a roof fall. Since the concentrations of VOCs released in the event of a roof fall in an open Underground HWDU will not exceed acute health concentrations for the underground worker, it is unlikely that the release will result in exceedances of acute exposure concentrations for the surface worker or the LWA Boundary resident due to the dilution that will occur as a result of the large volume of ventilation air flowing through the exhaust shaft. With respect to the geomechanical monitoring program to be implemented in the WIPP Underground HWDUs, NMED has maintained a requirement to implement the Geomechanical Monitoring Program in permit Module IV and permit Attachment M2 since the MSHA regulations do not contain specific requirements for geomechanical monitoring. In addition, NMED believes that the implementation of the geomechanical monitoring program will provide additional assurance of worker (continued below)	No

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IV	0	M2	N-69, (p. 9/ pp.2)	Panel 1 and ground control		(continued from above) health by providing an indication of potential roof falls that will minimize the chance that workers will actually be present in a disposal room in the event of a roof fall. The permit includes only broad requirements for the geomechanical monitoring program to ensure that the Permittees have the flexibility to address changing geomechanical monitoring technology and procedures.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	A	M2	B-1, page 1 of letter	Panel 1	Panel 1 is caving in.	See N-69	No

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IV	A	M2	N-12, (p. 3/ pp.2)	Panel 1	The authorization of disposal in Panel 1 is hazardous because of the extreme age and instability of the disposal rooms in Panel 1. Panel 1 should be excluded from the permit and subsequent panels, not yet constructed, should be redesigned to make them more stable. See attached statements by Dr. Lokesh Chaturvedi and Dr. Ian Farmer.	See N-69	No

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IV	A	M2	N-81, (Enc. 5, Affidavit of Dr. Ian Farmer )	Panel 1	Retrievability of waste from Panel 1, Room 7 would be difficult after a two year window of opportunity. Enclosure 5 does not include any comments specifically related to the draft permit.	The draft HWA Permit does not include a requirement for retrievability of waste after emplacement in an Underground Hazardous Waste Disposal Unit. Therefore, concerns related to the retrievability of waste are not applicable.	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	A	M2	N-82, (Enc. 6, Affidavit of Dr. Lokesh Chaturvedi	Panel 1	Retrieval of waste from Panel 1 after any significant time would present severe practical problems. Lack of roof support and stability of Panel 1 questioned. Recommends that none of the Panel 1 rooms be used for disposal.	See N-69 and N-81	No

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IV	A	M2	S-1e, pg. 4 of letter	Panel 1	Prohibit the use of and require closure of Panel 1 because of the likelihood of room failures.	See N-69	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	A	M2	S-18, Affidavit, Chaturvedi and exhibits	Panel 1	Retrieval of waste from Panel 1 after any significant time would present severe practical problems. Lack of roof support and stability of Panel 1 questioned. Recommends that none of the Panel 1 rooms be used for disposal.	Please refer to response to Comments N-69 and N-81.	No

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N-NMAG/Fettus O-INEEL Oversight/Trever P-INEEL CAB/Rice Q-Carlsbad DOD/Harrison R-Carlsbad City/Perkowski S-SRIC/Hancock T-Chavez  
U-RFETS/LeGare W-INEEL/Fritz X-LANL/Harris.LeBrun AA-EEG/Neill BB-CARD/Abraham.Greenwald CC-Hesch DD-CCNS/Carde.Arends

Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	A	M2	S-19, Affidavit of Ian Farmer, and exhibits	Panel 1	Retrieval of waste from panel 1, room 7 would be difficult after a two year window of opportunity (1998).	Please refer to response to Comment N-81.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	A.1	M2	CC-2, page 1 of letter	Panel 1	Panel 1 is unstable because of salt bed pressure. It was excavated well in advance of waste placement and its instability makes it unsafe for workers.	Please refer to response to Comment N-69.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	A.1	M2	DD-5, page 4, comment 1	Panel 1	The WIPP permit should prohibit the use of Panel 1 and NMED must include some regulation about how long newly excavated panels may be considered safe for disposal operations.	Please refer to response to Comment N-69.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.4	M2	AA-2a, (p. 6-8, Issue #2)	Panel 1	The commentor is recommending a requirement for certifying each room in Panel 1 prior to operations in that room because of their concern with the stability of the rooms in this panel due to its age and due to the impracticality of performing maintenance operations during and after the period of waste emplacement. Specifically, the commentor is recommending that NMED require submission of a report by the permittees to NMED with evaluation of the projected safe life of operations in a room of Panel 1, without maintenance of the roof support systems. Waste emplacement should not be allowed until NMED is satisfied that the projected safe life of that room is safely longer than the projected period of operations in that room.	Please refer to response to Comment N-69.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.4	M2	AA-2b, (p. 6-8, Issue #2)	Ground control	The commentor recommends that NMED require submission of an annual report by DOE to NMED with evaluation of the projected safe life of the waste disposal panels other than Panel 1.	Please refer to response to Comment N-69.	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-70. (p. 9/ pp.2)	Ground control	The description of the ground control program provided in Attachment M2 (Section M2-5a(1), pages M2-13 through M2-20) does not include an explanation for the methods of monitoring and projecting room behavior.	Please refer to response to Comment N-69.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-71. (p. 9/ pp.2)	Ground control	The description of the ground control program provided in Attachment M2 (Section M2-5a(1), pages M2-13 through M2-20) does not explain why the various support systems are expected to perform in specific ways.	Within the WIPP Part B Permit Application, the applicants provided general information regarding the geomechanical monitoring program and the ground control program that will be conducted to ensure the stability of the underground openings and underground worker health and safety during the operation of the repository. NMED notes that these programs are also required by other regulations issued under the Mine Safety and Health Act (30 CFR Part 57, Subpart B), which are administered by another regulatory authority (the Mine Safety and Health Administration, MSHA) that is considered to have the primary authority to administer these regulations. As a result, Module IV has been changed to delete the requirement for the implementation of a ground control program, and Permit Attachment M2, Section M2-5(a)(1), has been revised to state that the (continued below)	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-71, (p. 9/ pp.2)			(continued from above) permittees will implement a ground control program for each Underground HWDU in compliance with the requirements of 30 CFR Part 57, Ground Control. This will prevent duplication and/or conflicts between regulatory authorities and ensure that the permittees have the flexibility to address changing regulatory requirements and changing ground control technology and procedures.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-72. (p. 9/ pp.2)	Ground control	The description of the ground control program provided in Attachment M2 (Section M2-5a(1)) does not include a description of the rib and floor maintenance.	Please refer to response to Comment N-71.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-73. (p. 9/ pp.2)	Ground control	The description of the ground control program in Attachment M2 does not explain the coordination of monitoring, maintenance, and waste emplacement.	Please refer to response to Comment N-71.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.4, pg. IV-5		E-101, pg. 226	Ground control	The reference to the heading "Ground Control Program" on page IV-5 should be deleted in the discussion to avoid any confusion and so that the entire discussion of the ground control program in Attachment M2, Section M2-5a(1) is clearly cross-referenced. In addition, Attachment M2, Section 5a(1), "Ground Control Program" needs to be revised to add remining/beam removal as a ground control remediation alternative because an unstable roof beam is removed up to the next competent layer. See the Long-Term Ground Control Plan for the WIPP, Section 5.2 and App. A, Section A.4 (June 1998).	Permit Condition IV.E.4 has been changed to delete the requirement for implementation of a ground control program, and Permit Attachment M2 has been revised to delete the description of the ground control program and reference the regulations under 30 CFR Part 57.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	F.1.b, pg. IV/5		E-102, pg. 227	Geomechanical monitoring	The requirement in the permit that the Permittees shall submit an annual report evaluating the geomechanical monitoring program and all geomechanical data for each HWDU to the Secretary is unnecessarily duplicative. At a minimum, the use of the term "all" is too broad in this context. The NMED will receive reports of noncompliance or release, and all routine results for the geomechanical monitoring program are placed in the operating record. Additionally, reports that interpret the geotechnical data record are prepared annually for the DOE.	The referenced Permit Condition in permit Module IV has been revised to delete the word "all", and replace it with the words "shall include".	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	F.1.c	M2	N-13, (p. 3/ pp.3)	Ground control	The circumstance described as "unstable conditions" as regards to ground control, are not described with sufficient specificity. Further, if objective criteria were stated, it would have to be shown that they actually describe conditions of increased instability but provide sufficient warning so that necessary precautions can be taken.	Please refer to response to Comment N-71. The description of what is meant by a "trend toward instability" was provided in Attachment M2, page M2-20, lines 7-17 of the draft permit.	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-75, (p. 9/ pp.4)	Mine ventilation	Attachment M2 should include a description of how the airflow is to be modified upon the transition to a new waste emplacement room.	Within the WIPP Part B Permit Application, the applicants provided general information regarding the underground ventilation design and operation that will ensure underground worker health and safety during the operation of the repository. The operation of the underground mine ventilation system is also important for ensuring that the concentration of hazardous constituent volatile organic compounds in the air emissions from the WIPP repository are below human health risk-based concentrations. In order to meet the requirements of 20 NMAC 4.1.500 (incorporating 40 CFR §264.601(c)) for prevention of any release that may have adverse effects on human health or the environment due to migration of waste constituents in air, permit Module IV specifies a minimum required overall mine ventilation rate and a minimum disposal room mine ventilation rate that must be maintained. NMED notes that underground mine ventilation, including (continued below)	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-75, (p. 9/ pp.4)			(continued from above) specification of an underground mine ventilation plan, is a requirement of regulations issued under the Mine Safety and Health Act (30 CFR Part 57, Subpart G), which are administered by another regulatory authority (the Mine Safety and Health Administration, MSHA) that is considered to have the primary authority to administer these regulations. As a result, permit Module IV and permit Attachment M2 include only broad requirements for the operation of the underground mine ventilation system, which the Permittees committed to performing in the permit application, to ensure that the Permittees have the flexibility to address changing regulatory requirements. Please refer to NMED's Exhibit A (Mine Ventilation Rates) and NMED's Findings (Mine Ventilation Rates) for further information.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-77. (p. 9/ pp.4)	Mine ventilation	Attachment M2 should include and justify procedures for changing airflow in the event of unusual circumstances (e.g., fire in the underground)	Permit Attachment M2, Section M2-2a(3), page M2-10, lines 25-32, includes a brief description of the reversal of air flow within the underground in the event of a fire. The language in this section of the permit has been added to the Contingency Plan (permit Attachment F) to ensure that the regulatory requirements for response to fires in the underground are addressed. Also see the response to Comment N-75.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.3.c	M2	AA-7b, (p. 22-23, item 1b)	Mine ventilation	The commentor indicates that Permit Condition IV.E.3.c specifies that the permittees shall maintain minimum mine ventilation and room ventilation rates as specified in Permit Attachment M2, Section M2-2a(3), while the cited section of the Permit Attachment allows for lower ventilation rates under certain circumstances. The commentor indicates that the permit needs to clearly state whether emplacement operations may proceed if ventilation rates are lower than the permit requirements. The commentor also questions whether lower ventilation rates are a non-compliance instance even if waste emplacement is suspended, and what would be the consequences of a ventilation non-compliance instance.	With respect to the inconsistency between Permit Module IV and Permit Attachment M2, please refer to the response to Comment E-99. With respect to whether waste emplacement operations may proceed if ventilation rates are lower than the permit requirements, the overall mine ventilation rate was specified by NMED to ensure that the concentration of volatile organic constituents in the air emissions from the repository were protective of human health over a long period of time (chronic exposure), and thus has no bearing on waste emplacement activities over a short period of time. The permit condition regarding the minimum mine ventilation rate for an active room has been changed to indicate that the minimum ventilation rate applies when workers are present in an active room. Thus, emplacement operations may not proceed if the minimum ventilation rate in an active room cannot be maintained. (continued below)	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.3.c	M2	AA-7b, (p. 22-23, item 1b)	Mine ventilation		(continued from above) Depending on the nature, severity, as well as the strength of available evidence of the violations, the following enforcement options, if any, may be pursued: (1) Administrative actions; (2) Civil court action; (3) Criminal court action. The principal goals of NMED are to protect human health and the environment by requiring regulatory compliance and deterring noncompliance.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.3.c	M2	AA-7c, (p. 23, item 1b)	Mine ventilation	Regarding the requirement for a minimum mine ventilation rate and active room ventilation rate specified in Permit Condition IV.E.3.c, the commentor believes that lowered mine ventilation rates resulting from a shift to filtration for the purpose of minimizing releases to the environment should not be a cause of non-compliance.	Please refer to response to Comment E-99.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.3.c	M2	Q-5, bullet 5 Attachment A of Letter	Mine ventilation	Mine ventilation rates should be removed from the permit. Stringent mine ventilation rates specified in the draft permit do not allow for non-operational periods and for various operating conditions requiring reduced air flow. Proposed rates would significantly impact operating efficiency and cost.	Please refer to response to Comment E-99.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.3.c	M2	R-5, bullet 5 Attachment of Letter	Mine ventilation	Mine ventilation rates should be removed from the permit. Stringent mine ventilation rates specified in the draft permit do not allow for non-operational periods and for various operating conditions requiring reduced air flow. Proposed rates would significantly impact operating efficiency and cost.	Please refer to response to Comment E-99.	Yes



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.3.c, pg. IV/5		E-99, pg. 224	Mine ventilation	The minimum mine ventilation requirements are inconsistent with Attachment M2 and does not allow for flexibility in mine operation. M2 will allow ventilation rates that are less than the rates specified in this condition, as necessary. This flexibility is needed, as noted in Attachment M2 for the safe and efficient management of the underground.	The draft Permit Condition IV.E.3.c requirement for maintaining a minimum overall mine ventilation rate of 425,000 cubic feet per minute and a minimum active room ventilation rate of 35,000 cubic feet per minute was inconsistent with the language in Permit Attachment M2. The requirement for a minimum mine ventilation rate, however, will remain as a requirement of the permit. The evaluation of potential impacts to human health (underground worker, non-waste surface worker, and a resident at the Land Withdrawal Act Boundary) provided by the applicants in Appendix D9 of the WIPP RCRA Part B Permit Application demonstrates that the overall mine ventilation rate greatly effects the concentration of VOCs that will be present in the repository emissions at the top of the exhaust shaft. (continued below)	Yes

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IV	E.3.c. pg. IV/5		E-99, pg. 224	Mine ventilation		(continued from above) Thus, maintenance of some minimum overall mine ventilation rate at all times is crucial for ensuring that the assumptions used when setting the Module IV VOC Room-Based Concentration Limits remain valid. Based on information provided in the applicants' public comments (the redline/strikeout version of Permit Attachment F and permit Attachment M2), NMED has revised the VOC Room-Based Concentration Limits in Permit Module IV assuming a minimum overall mine ventilation rate of 260,000 cubic feet per minute. As a result, Module IV will be revised to state that the permittees shall maintain a minimum mine ventilation exhaust rate of 260,000 standard cubic feet per minute (or 60,000 standard cubic feet per minute in filtration mode). (continued below)	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.3.c. pg. IV/5		E-99, pg. 224	Mine ventilation		(continued from above) The evaluation of the exposure concentration for underground workers provided in Appendix D9 of the WIPP RCRA Part B Permit Application indicates that the active room ventilation rate is a key factor in calculating the VOC exposure concentrations for the underground worker. Since the Permittees assumed a minimum active room ventilation rate of 35,000 cubic feet per minute for their evaluation, the requirement for a minimum active room ventilation rate of 35,000 cubic feet per minute when workers are present in a room will be maintained in Module IV of the permit. Please refer to NMED's Exhibit A (Mine Ventilation Rates) and NMED's Findings (Mine Ventilation Rates) for further information.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	0	M2	N-76, (p. 9/ pp.4)	Continuous air monitors	Attachment M2 needs to provide support regarding the performance of continuous air monitors.	Permit Attachment M2 has been revised to minimize the references to the use of continuous air monitors, because the use of these monitors is not necessary to meet the environmental performance standards applicable to WIPP under the Hazardous Waste Act.	Yes

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IV	A.1.b		E-92, pg. 213	Additional permitted waste panels	The permittees intend to use 8 waste panels for disposal of TRU and TRU mixed waste at WIPP. While the permittees plan to mine and fill the panels in the order stated in the application, restrictions on the mining order removes any flexibility to manage the underground facility and to make to make best use of the facility. The limitation to Panels 2,3,4,9,and 10 should be eliminated.	NMED incorporated this Permit Condition based on direct statements made by the applicants in the WIPP RCRA Part B Permit Application. Section D-10a(2)(f), Subsurface Structures (page D-70, lines 30-44), states, "The DOE intends to mine panels in the following order: Panel 9 (disposal area drift), Panel 2, Panel 10 (disposal area drift), Panel 3, Panel 4. Future panels are not expected to be needed during the duration of the permit being sought by this application. Panels 5 through 8 will be mined in order under a new permit." Within the public comment, the applicants did not provide technical and regulatory justification for the need for flexibility in the mining order for disposal panel.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E, pg. IV-4		E-95, pg. 219	Design certification	Condition IV.E.1.a is unnecessary. Each HWDU will be mined identically to the HWDU currently being mined and to the drawing in Attachment M3. Panels mined in the future will not be redesigned and there is no reason for the initial design to be certified after the fact. If a new design is found to be necessary in the future, the new design drawing will be certified by a professional engineer licensed in the state of New Mexico and submitted to NMED for review.	Permit Module IV has been revised to delete the requirement for submittal of design drawings for each Underground HWDU not yet constructed.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.2, pg. IV-4		E-96, pg. 220	Design certification	Module I.D.13 should not apply to disposal in a newly constructed HWDU, which is a permitted activity. Requiring certification pursuant to I.D.13 for permitted activities extends the scope of Condition I.D.13 beyond what the regulations (20 NMAC 4.1.900) mandate.	The applicants subsequently withdrew this comment based on the language in the revised draft permit.	No

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IV	E.3.a, pg. IV-4		E-97, pg. 221	Traffic patterns	The statement "Mining and construction equipment traffic shall use the construction area exhaust ventilation drift to access the mining and construction area" is inaccurate because it infers that only W-170 (exhaust) can be used. The permittees intend to use both W-170 and W-30 for access because they will both be free from the possibility of waste-related contamination.	The draft Permit Condition IV.E.3.a has been changed to state that mining and construction equipment traffic shall use either the construction area intake ventilation drift or the exhaust ventilation drift to access the mining and construction areas.	Yes



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IV	E.3.d, pg. IV-5		E-100, pg. 225	Mine ventilation	The term "bulkheads" in this condition (requiring bulkhead barricades in active HWDUs to prevent flow in ventilation air through the full disposal rooms) is inappropriate. A full disposal room will be closed to remove it from the ventilation system and will not include bulkheads.	Draft Permit Condition IV.E.3.d has been revised to remove the words "bulkheads and brattice cloth air".	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	E.3.b	M2	AA-4, (p. 13, Issue #4)	Backfill	The commentor agrees with draft permit requirement that the permittees shall use magnesium oxide (MgO) as a backfill material in each underground Hazardous Waste Disposal Unit (HWDU).	The requirement to use MgO backfill was removed from Permit Module IV, although it remains in the applicable Attachments. The MgO requirement was removed in response to Comment E-98.	No

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IV	E.3.b, pg. IV-5		E-98, pg. 222	Backfill	Requiring backfill as part of hazardous waste management activities in the repository is unnecessary and should be deleted from the permit. Backfill has been specified to alter the solubility of radionuclides in the event a disposal room becomes saturated. Backfill does not impact the performance of the waste or constituents during operations, closure, or the 30-year post-closure period. Backfill is shown in the application to have a negligible impact on panel closure performance. Appendix C1 of the Application demonstrated that backfill is compatible with the mixed waste and its components.	The comment directly conflicts with Comment AA-4. The Permit Condition was established since the applicants included a description of the backfill material and placement techniques in Section D-10a(2)(c) and Appendix D-22 of the WIPP RCRA Part B Permit Application. Permit Module IV, Condition IV.E.3.b., has been deleted from the draft permit since the backfill is not necessary to achieve environmental performance standards under the HWA. However, the description of the backfill material and placement techniques will remain in permit Attachment M2 since it is consistent with the language in Chapter D of the Permittees WIPP RCRA Part B Permit Application.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	D.1, p. IV-3	0	H-4, page 1 comment 4 of letter	VOC concentration limits	Clarify the media that the concentrations on Table IV-D.1 apply to; i.e. air or waste material.	Permit Module IV.D.1 has been changed to read "The average measured concentration of VOCs in the headspace gas of the containers in any single room within an Underground HWDU shall not exceed the limits specified in Table IV.D.1 below:". It was not the intent of the draft Permit Condition to require that the concentration of VOCs in the air of a disposal room be monitored.	Yes

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IV	D.1, pg. IV-3		E-94, pg. 216, 217	VOC concentration limits	Please refer to response to Comment E-1.1.5. The draft permit establishes "room-based" VOC concentration limits and requires room concentrations to be at or below these levels. The levels proposed are lower than necessary to protect human health and the environment and are far below those proposed in the application. It is not feasible to measure the room VOC concentrations accurately because of the ventilation system and air flow through the room. The limits are well below the EPA standards for environmental exposures and OSHA standards for occupational exposures. There is no basis for the limits.	Please refer to NMED's Exhibit A (Volatile Organic Compound Concentration Limits) and NMED's Findings (Volatile Organic Compound Concentration Limits).	Yes

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IV	D.1, pg. IV-3		E-94, pg. 216, 217	VOC concentration limits	EPA risk assessment methods demonstrated that proposed VOC concentration limits for carcinogens and non-carcinogens are protective of human health and the environment. Maximum headspace concentrations were then determined and maximum permissible exposures were calculated in accordance with EPA's public risk policy. This analysis showed that in all cases exposures would be well below acceptable levels. The applicants use the OSHA time weighted averages as the applicable standard in the application and then demonstrated in the application that these standards are met with the container headspace limits. Establishment of vastly lower VOC limits in the permit is unnecessary to protect workers.	In response to Item 1 of Comment E-94, NMED's evaluation of the analysis provided by the Permittees in Appendix D9 of the WIPP RCRA Part B Permit Application found that the analysis contained several major errors which rendered the maximum allowable average VOC concentrations that were proposed in the application inappropriate. First, the maximum allowable average VOC concentration limits proposed by the Permittees were calculated using assumptions from Revision 5.2 of the permit applications, which were subsequently changed in Revision 6 of the application. These assumptions include the number of open panels in the underground and the air dispersion factor. Thus the actual values for the maximum allowable average VOC concentration limits proposed in Table C-5 and Table D9-7 of the permit application were inappropriate. The most significant concern with the Permittees evaluation of human health risk due to exposure to potential exhaust air from the repository is (continued below)	Yes

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IV	D.1, pg. IV-3		E-94, pg. 216, 217			(continued from above) that the Permittees did not take into account the total individual excess cancer risk due to exposure to multiple potentially carcinogenic compounds. EPA guidance requires that evaluation of human health risk be based on total individual cancer risk. For the non-carcinogenic VOCs chlorobenzene, toluene and 1,1,1-trichloroethane, the maximum allowable average VOC concentration limits proposed by the Permittees were based on incorrect averaging times for exposure and did not take into account the fact that the proposed limits could result in the concentrations of these constituents in the air of a closed room with ventilation barriers in-place (continued below)	Yes

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IV	D.1, pg. IV-3		E-94, pg. 216, 217			(continued from above) exceeding the lower explosive limits for these compounds. With respect to Item (2) of Comment 94, the NMED concurs that the Permittees demonstrated that the maximum allowable average VOC concentration limits proposed by the Permittees would result in concentrations of these constituents in the air of an open disposal room that were below the OSHA 8-hour time weighted averages for both normal operations and potential roof fall events. However, NMED notes that for potential roof fall events, the proposed concentration limits for 1,2-dichloroethane and 1,1,1-trichloroethane would result in exceedances of the NIOSH immediately dangerous to life and health concentrations in the air of an open room immediately after a roof fall in a closed room. NMED has thus revised the VOC Room-Based Concentrations in Module IV of the permit accordingly. Please refer to NMED's Exhibit A (Volatile Organic Compound Concentration Limits) and NMED's Findings (Volatile Organic Compound Concentration Limits).	Yes



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IV	D.1, pg. IV-3		E-94, pg. 216, 217	VOC concentration limits	The "room-based" limits do not account for exposures to individuals, the limits are therefore more stringent than necessary to protect human health.	Please refer to response to Comment E-94.	Yes

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IV	F.2.a, pg. IV/5		E-103, pg. 228	VOC monitoring	The VOC Confirmatory Monitoring Plan is excessive and unnecessary. EPA states that if an applicant can demonstrate that compliance with health-based standards is achieved by at least one order-of-magnitude, then the follow up monitoring requirements are unnecessary. The applicants have demonstrated that public exposure to VOCs will never be more than one order-of-magnitude below acceptable levels, even under a worst-case scenario. Compliance monitoring should therefore be eliminated from the permit.	The Permittees WIPP RCRA Part B Permit Application did not demonstrate the under worst-case scenario, that public exposure to VOCs will never be more than one order of magnitude below acceptable levels for the following reasons: 1) The maximum allowable average VOC headspace concentrations proposed by the Permittees were based on not exceeding a one in 1,000,000 or a one in 100,000 excess cancer risk target level for each individual volatile organic compound (VOC) and were not an order of magnitude lower than the target levels as stated in the comment. 2). The derivation of the maximum allowable VOC headspace concentrations proposed by the Permittees did not take into account the total individual excess cancer risk associated with exposures to multiple potential carcinogens, which is not in conformance with EPA guidance. Thus the demonstration provided by the Permittees that was referenced in the comment was not completely appropriate. (continued below)	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	F.2.a, pg. IV/5		E-103, pg. 228			(continued from above) In order to derive the Module IV human health risk-based VOC Room-Based Concentration Limits for the potential carcinogenic VOCs to be emplaced at the WIPP, NMED used the applicants' equations and assumptions. The NMED Target Level was a total individual excess cancer risk associated with exposure to the VOCs in the exhaust air of the repository (assuming an overall mine ventilation rate of 260,000 cubic feet per minute) not exceeding 1 in 100,000 for the non-waste involved surface worker, and not exceeding 1 in 1,000,000 for a resident living at the WIPP LWA Boundary. Thus the potential maximum concentration of potentially carcinogenic VOCs in the exhaust air will not be an order of magnitude below acceptable levels. Please refer to NMED's Exhibit A (VOC Monitoring Program) and NMED's Findings (VOC Monitoring Program) for further information.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	F.2.a, pg. IV/5		E-103, pg. 228, 229	VOC monitoring	The monitoring program from panel 1 is sufficient to confirm the modeling data presented in the Application, which established that VOCs will not be emitted in significant quantities. If the data from Panel 1 confirms the model, then there will be no need to conduct modeling from other panels until and following closure.	Please refer to the response to Comment E-103.	

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	F.2.a, pg. IV/5		E-103, pg. 229	VOC monitoring	Post-closure monitoring is unnecessary because there is no possible pathway for a VOC release after closure. Closure of each panel will involve sealing off the ventilation system leading from the disposal area to the outside atmosphere, which will seal off any VOC migration pathway. Furthermore, monitoring for 6-months after closure of the last panel may interfere with final facility closure.	The draft permit Condition IV.F.2.a has been changed to state that the Permittees shall implement the plan until the certified closure of all Underground HWDUs.	Yes

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IV	F.2.c, pg. IV-7		E-104, pg. 230	VOC monitoring	The NMED has set the VOC concentrations of concern significantly lower than necessary to protect human health and the environment. The permit Application correctly identifies EPA's health based concentration limits and OSHA time weighted average exposure limits as the appropriate regulatory standards.	The VOC Concentrations of Concern in Permit Module IV have been changed, based on revisions that NMED has made to the VOC Room-Based Concentration Limits in permit Module IV. The VOC Concentrations of Concern are calculated using the target exhaust shaft concentration and the ratio of the overall mine ventilation rate and the mine ventilation rate through the E-300 Drift. Please refer to NMED's Exhibit A (VOC Concentration Limits) and NMED's Findings (VOC Concentration Limits) for further information.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	F.2.c, pg. IV-7		E-104, pg. 230	VOC monitoring	Secondly, in its guidance on no-migration petitions, the EPA distinguished between the need to comply with OSHA standards for occupational exposures, and the public and environmental exposure limits established by the EPA. The EPA considers it improper to apply environmental exposure limits to workers. This is generally because (1) worker exposures are generally short term and not chronic as would be received by a nearby resident, and (2) worker exposures are totally controllable and preventable while environmental exposures are generally not controllable and preventable. Therefore, any public exposure limits that are set to be less than those health-based limits are arbitrary.	The revised Concentrations of Concern in Module IV of the permit are based primarily on public exposure health-based limits. The Concentrations of Concern for the constituents chlorobenzene and toluene are based on ensuring that the concentrations of these constituents in the air of a closed room of an open Underground HWDU are below the lower explosive limit for the compounds. The Concentrations of Concern for 1,2-dichloroethane and 1,1,1-trichloroethane are based on ensuring that the concentrations of these constituents in the air of an open room in an Underground HWDU immediately after a roof fall do not exceed their respective NIOSH immediately dangerous to life and health concentrations. For the potential carcinogen methylene chloride, the VOC Room-Based Concentration Limit was set below the target levels and the LEL since the applicants had explicitly requested a limit that was below target levels and the LEL. Please refer to NMED's Exhibit A (VOC Concentration Limits) and NMED's Findings (VOC Concentration Limits) for further information.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	F.2.d	0	Q-2, Bullet 2 Attachment A of letter	VOC concentration limits	Limits on [VOC] emissions should be substantially increased. Limits are unnecessarily low that trigger room closure and are based on the minimum detection capabilities of modern monitoring technology. Limits are unwarranted and unnecessary to protect human health and the environment.	Please refer to response to Comment E-94.	Yes



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IV	F.2.d	0	R-2, Bullet 2 Attachment of letter	VOC concentration limits	Limits on [VOC] emissions should be substantially increased. Limits are unnecessarily low that trigger room closure and are based on the minimum detection capabilities of modern monitoring technology. Limits are unwarranted and unnecessary to protect human health and the environment.	Please refer to response to Comment E-94.	Yes

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IV	0	M2	N-74, (p. 9/ pp.3)	Waste disposal records	More specific details should be provided on waste emplacement than appear in Section M2-2b (page M2-12). It should be connected with a description of how records of container location will be organized.	The level of detail regarding the procedures for waste emplacement in the underground provided by the applicants in Chapter D of the WIPP RCRA Part B Permit Application (and incorporated by NMED into Permit Attachment M2) is appropriate to meet the regulatory requirements.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) see commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
IV	H.2	0	N-14, (p. 3/ pp.4)	Waste disposal records	The commentor believes that it is necessary and appropriate to require maintenance of a record of the location of each container or container assembly.	See response to Comment E-105 below.	N/A

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IV	H.2, pg. IV-8		E-105, pg. 232	Waste disposal records	The requirement that the information regarding the location of the waste in the underground be included in the WWIS exceeds the regulatory requirements of 20 NMAC 4.1.500 which requires only that the information be recorded on a map with a cross-reference to the specific manifest number if the waste is accompanied by a manifest.	§264.73(b)(2) requires that the location of each hazardous waste within the facility and the quantity at each location must be recorded and maintained in the operating record. While it further requires this information be recorded on a map or diagram for disposal facilities, it clearly does not limit the recording of this information to a map or diagram. Whereas the cross referencing capabilities of the WWIS clearly meet the requirements of §264.73(b)(2), the applicants have not indicated how such cross referencing will be accomplished on a hand drawn map or diagram. NMED believes §264.73(b)(2) authorizes requiring location, type, and quantity of waste from being recorded in the WWIS database, which the applicants committed to perform in their application. Please refer to NMED's Exhibit A (Access to WWIS Database) and NMED's Findings (Access to WWIS Database).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	Not Applicable	Not Applicable	AA-3a, (p. 10-12, Issue #3)	Accuracy of hydrology information	The commentor states that the application incorrectly describes the hydrology of the geologic formations overlying the Rustler Formation near the WIPP facility and shafts. The commentor further states that the results of DOE's 1997 investigations near the exhaust shaft and the WIPP surface facilities show the presence of better quality ground-water in the lower Santa Rosa/Upper Dewey Lake formations than was indicated in previous studies. The NMED should require the permittees to provide an accurate description of the hydrology of these formations.	Shallow water-bearing intervals are present in the Dewey Lake and Santa Rosa near the WIPP site. This information is presented in the Compliance Certification Application, which presents an analysis of water quality within these horizons in the WIPP area (Appendix USDW) and identifies these units as possible underground sources of drinking water (USDWs) in the WIPP area. The description of groundwater in the revised draft permit does not reflect all of the information currently available. NMED, however, did review additional sources of information to assess information in the permit application. These data, including the 1997 study, do not change NMED's conclusion that the Culebra is the aquifer that should be monitored in the WIPP area because the Culebra is the most transmissive zone closest to the repository (continued below)	No

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V	Not Applicable	Not Applicable	AA-3a, (p. 10-12, Issue #3)			(continued from above) to which contaminants might migrate and therefore could serve as a contaminant transport pathway to potential receptors. The Detection Monitoring Program and applicable Subpart F requirements may be modified by NMED if required by new information in accordance with 20 NMAC 4.1.900 (incorporating 40 CFR 270.41(a)(2)).	No

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V	0	0	BB-1b, cover letter, 2nd pp	Hydrologic and geologic suitability of the WIPP site	The commentor questions the hydrologic and geologic suitability of the WIPP site.	The issue raised by the commentor is very broad, and does not specify those aspects of site suitability that are in question. Based on NMED's review of the revised draft permit pursuant to the requirements of 20 NMAC 4.1.500 Section 264 Subparts F and X, NMED concludes the site geologic and hydrologic conditions satisfy the requirement to locate the unit in an area that will ensure protection of human health and the environment and that the Detection Monitoring Program meets applicable requirements. NMED recognizes that additional site investigation is taking place and more groundwater information is being obtained. The Detection Monitoring Program requirements may be modified by NMED if mandated by new information and in accordance with 4.1.900 (incorporating 40 CFR §270.41(a)(2)).	No

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V	0	0	BB- 7 (p.26-46)	Hydrologic and geologic suitability of the WIPP site	This comment includes a number of questions raised by the commentor designated as issues comments 7, 9, 20, 21, and 22 in the commentor's submission. The commentor questions the occurrence of karst at the WIPP, as well as how this affects fluid flow and potential contaminant transport in the Culebra Formation.	The existence of karst conditions in the vicinity of the WIPP LWA is documented. The degree of development and significance of those conditions has been investigated. Evaluation of future groundwater monitoring data and regional geologic information (e.g., from potash mines) may provide additional relevant information which will be evaluated in permit renewal reviews for information and incorporated into the permit as necessary to meet regulatory requirements. Refer to response to comment BB-1b.	No



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V	0	0	BB- 8 (p.26-46)	Recharge	This comment includes two questions raised by the commentor designated as issues 19 and 21 in the commentor's submission. The commentor questions whether the treatment of recharge in Performance Assessment (PA) modeling is accurate, and whether climate variations assumed and modeled in PA are appropriate.	The Performance Assessment (PA) modeled recharge and associated climate change to the Culebra Formation as a modification of the Culebra head. The PA modeling was used by EPA in the compliance certification to assess hydrologic changes over the next 10,000 years, and the term of this permit is much shorter (30 years post closure from the date of last HWDU closure). It is highly unlikely that the significant climate change and subsequent head variation in the Culebra modeled in PA will occur during the term of the Hazardous Waste Act (HWA) permit. The appropriateness of climate variations assumed and modeled in the PA are not directly relevant to the regulatory term of this permit.	No

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V	0	0	BB- 9 (p. 26-46)	Performance assessment	This comment includes two questions raised by the commentor, designated as issues 14 and 18 in the commentor's submission. The commentor disagrees with borehole data used to set parameters for Compliance Certification Application (CCA) models.	The CCA models use many parameters to assess groundwater flow in the Culebra Formation. However, as indicated in the response to BB-8, these parameters are used in modeling extended through a 10,000 year compliance period, and model results over the 10,000 year period are not appropriately applied to the HWA permit period. It is assumed that the commentor questions the use of parameters that do not support hydraulic conductivities and subsequent flow variations suggesting that other values be used indicative of karst terrain. As indicated in the response to comment BB-7, the presence of karst in the WIPP area is documented. If additional information is obtained which indicates modification to the Detection Monitoring Program approved in the permit is required, action may be taken by the NMED as allowed under 20 NMAC 4.1.900 (incorporating 40 CFR §270.41(a)(2)).	No

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V	0	0	BB- 10 (p.26-46)	Ground-water flow modeling used in performance assessment modeling	This comment includes a number of questions raised by the commentors designated as issues 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 20, and 22 in the commentor's submission. The commentor questions the adequacy of the groundwater flow modeling used in performance assessment modeling.	Groundwater flow modeling used in Performance Assessment (PA) was not submitted in the permit application for consideration, although related data were acquired by the NMED and reviewed. NMED has reviewed site hydrologic information and has determined that the current RCRA groundwater monitoring network will provide the required water quality and water level information to meet the performance requirements of 20 NMAC Subparts F and X, and to further assess site conditions. NMED may also revise the groundwater monitoring network in accordance with 20 NMAC 4.1.900 (incorporating 40 CFR §270.41(a)(2)), if additional information becomes available during the permit period which indicates additional wells, parameters, or sampling frequency is required to satisfy detection monitoring requirements.	No

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N-NMAG/Fettus O-INEEL Oversight/Trever P-INEEL CAB/Rice Q-Carlsbad DOD/Harrison R-Carlsbad City/Perkowski S-SRIC/Hancock T-Chavez  
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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	0	BB- 14	Ground-water flow modeling used in performance assessment modeling	The commentor questions the hydrologic model used to characterize groundwater flow in the Culebra and offers an alternative flow model that includes karst-related groundwater flow.	The existence of karst conditions in the vicinity of the WIPP LWA is documented. The degree of development and significance of those conditions has been investigated. Evaluation of future groundwater monitoring data and regional geologic information (e.g., from potash mines) may provide additional relevant information which will be evaluated in permit renewal reviews. If additional information is obtained which indicates modification to the Detection Monitoring Program approved in the permit is required, action may be taken by the NMED as allowed under 20 NMAC 4.1.900 (incorporating 40 CFR §270.41(a)(2)). Also see response to comments BB-9, BB-10, and BB-21.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	0	BB- 18	Karst	Groundwater flow direction in the Culebra Formation is influenced by karst and is predominantly directed at Nash Draw along karst channels.	See response to Comments BB-9, BB-10, BB-14, and BB-21.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	0	BB- 19	Karst	Groundwater flow in the Culebra is influenced by karst features that affect groundwater flow and recharge. Karst hydrology results in a modified hydrologic model for the WIPP site wherein the groundwater flow and recharge rates are rapid, and discharge is to Laguna Grand de la Sal.	See response to Comments BB-9, BB-10, BB-14, and BB-21.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	0	BB- 21	Karst	The commentor provides information regarding the presence of karst features at WIPP wells H-6 and H-3 and believes that dissolution features are present at WIPP as evidenced by the presence of karst which would impact groundwater flow and infiltration.	The existence of karst conditions in the vicinity of the WIPP is not disputed. The degree of development and significance of those conditions has been investigated by EPA and DOE, and results of these analyses have been reviewed by NMED. NMED agrees with EPA in that information obtained to date indicates that while dissolution features are present at the WIPP, groundwater flow is not dominated by karst features. As such, the Detection Monitoring Program described in the permit provides required information. However, evaluation of future groundwater monitoring data and regional geologic information may provide additional relevant information which will be evaluated in permit renewal reviews. If additional information is obtained which indicates modification to the Detection Monitoring Program approved in the permit is required, action may be taken by the NMED as allowed under 20 NMAC 4.1.900 (incorporating 40 CFR §270.41(a)(2)).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	0	BB- 22	Ground-water flow	The commentors believe that hydrologic evidence at WIPP require the performance of sorbing tracer tests to assess flow/transport in the Culebra.	Sorbing tracer tests are suggested to determine Kd values in Culebra; this comment was made relative to determining Kds for radionuclides and is not directly applicable to the permit. If additional information is obtained which indicates that modification to the Detection Monitoring Program approved in the permit is required, action may be taken by the NMED as allowed under 20 NMAC 4.1.900 (incorporating 40 CFR §270.41(a)(2)).	No



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	0	N-16, (p. 3/ pp.5)	Ground-water flow	The commentor believes that questions remain regarding the hydrologic models that have furnished the theoretical basis for the Detection Monitoring Plan. Characterization of the Culebra Formation does not take into account, for example, possible changes in hydrology with increased precipitation, karstic features, and fracturing due to well injection.	See response to comments BB-7, 19, and 21. 20 NMAC 4.1.500 (incorporating 40 CFR Subparts F and X) does not require analysis of potential disruption of the permitted unit by human activities beyond those that may take place at the facility during the regulated time frame, and therefore analysis of fluid injection effects is not required.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	L	J-4, Comment 4, page 1 and 2 of letter	Monitored hydrologic zones	Questioned whether the potential for upward movement of contaminants to occur from WIPP has been demonstrated. If it has, recommended monitoring the hydrostatic pressures in over and underlying formations so that the continuance of conditions can be confirmed with two piezometers below WIPP (one in the north and one in the south). If these conditions aren't currently present then wrong zones are being monitored; zones below the WIPP should be monitored.	Upward movement of hazardous waste constituent from the repository through WIPP shafts to Culebra is the most likely flow path for future releases. The permit application did not indicate any natural pathways for either downward or upward contaminant migration during the operational period, and NMED agrees with this analysis. In addition, Appendix HYDRO of the CCA indicates an upward vertical gradient between units underlying and overlying the salado Formation (i.e., Bell Canyon and Rustler Formation). Therefore, monitoring of the Culebra is the most appropriate approach given the viable contaminant migration pathway.	No

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V	0	0	N-15, (p. 3/ pp.5)	Ground-water monitoring is necessary	The commentor believes that it is necessary and appropriate to require monitoring pursuant to a groundwater monitoring plan.	No response required; commentor is in agreement with the permit.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	A, B, D	L	Q-6, bullet 6 Attachment A of letter	Ground-water monitoring is not necessary	Groundwater monitoring requirements should be exempted from the permit. Requirements for formaldehyde and methanol should be removed because there is no analytical method approved to perform such analysis. The Point of Compliance (POC) should be the land withdrawal act boundary as interpreted by the Environmental Protection Agency (EPA) Office of Radiation and Indoor Air (ORIA). Overall, the proposed groundwater monitoring conditions would add significantly to WIPP operating costs.	Refer to response to Comments E-109 and E-108.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	A, B, D	L	R-6, bullet 6 Attachment of letter	Ground-water monitoring is not necessary	Groundwater monitoring requirements should be exempted from the permit. Requirements for formaldehyde and methanol should be removed because there is no analytical method approved to perform such analysis. POC should be the land withdrawal act boundary as interpreted by EPA (ORIA). Overall, the proposed groundwater monitoring conditions would add significantly to WIPP operating costs.	Refer to response to Comments E-109 and E-108.	Yes, in part

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	L	N-64, (p. 8/ pp.6)	Ground-water monitoring network	The groundwater monitoring plan is premised on several assumptions (particularly pages L-5 through L-11 of Attachment L), and the hypothesis are not entirely consistent with existing data. Different conditions may require different monitoring. For example, if karstic conditions are identified, different monitoring is appropriate.	Refer to response to comments BB-9, BB-14, and BB-21.	No

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V	0	L	N-65, (p. 8/ pp.6)	Ground-water monitoring network	Different conditions than those that are assumed on pages L-5 through L-11 of Attachment L may require different monitoring. For example, if underground rock units are fractured by reason of well injection, the monitoring program would need to be modified.	The potential disruption of a regulated unit by human activities beyond those that may take place at the regulated facility is beyond the regulatory scope and timeframe of the HWA permit. During the regulatory timeframe for the HWA permit, the permittees must provide security and control access which is designed to prevent human intrusions, such as well injection within the facility boundary.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	L	S-12, pg 7 of letter	Ground-water monitoring program	Location, sampling parameters, and frequency of monitoring will be examined.	No response in permit required; no comment provided.	No



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V	A	L	AA-3b, (p. 10-12, Issue #3)	Ground-water monitoring network should include other zones	Since a water saturated horizon was encountered in the lower Santa Rosa/upper Dewey Lake Formations during DOE's 1997 testing in the vicinity of the WIPP exhaust shaft, the commentor recommends that NMED require an additional monitoring well to be completed in the lower Santa Rosa/Upper Dewey Lake Redbeds formations near the WIPP exhaust shaft. This well should be monitored in addition to the seven wells listed in Module V of the draft permit.	Detection monitoring requires the installation of wells upgradient of the waste management area and at the point of compliance pursuant to 20 NMAC 4.1.500 (incorporating 40 CFR Subpart F). Installation of a well in this location would be within the footprint of the waste management area which is inconsistent with how RCRA wells are typically located. Groundwater within the Santa Rosa and upper Dewey Lake does not appear to be a continuous interval across the WIPP site, which complicates the installation of a viable groundwater monitoring system. Also, the presence of saturation in an interval does not necessarily indicate that it is an aquifer requiring monitoring as defined in (continued below)	No

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V	A	L	AA-3b, (p. 10-12, Issue #3)			(continued from above) 20 NMAC 4.1.500. In addition, the Santa Rosa and Dewey Lake are farther from the WIPP repository than the Culebra Formation, and the objective of RCRA groundwater monitoring is to monitor the horizon immediately below (or in the case of WIPP, above) the regulated unit because that unit could be a potential contaminant transport pathway. Installation of an additional monitoring well without defined regulatory need will not provide useful or required information for the Detection Monitoring Program. If additional information is obtained which indicates modification to the Detection Monitoring Program approved in the permit is required, action may be taken by the NMED as allowed under 20 NMAC 4.1.900 (incorporating 40 CFR §270.41(a)(2)).	No

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V	A	L	J-5, Comment 5, page 2 of letter	Ground-water monitoring network	The proposed groundwater monitoring network is inadequate to comply with the 40 CFR 264.97 requirement to accurately detect a release from the regulated unit. The groundwater monitoring system was designed with two objectives: 1) no releases from the unit will occur, and 2) this rudimentary system could be installed to placate WIPP detractors. The commentor believes the NMED must either: 1) make a technical determination that no release will occur and therefore require no groundwater monitoring, or 2) assume a release may occur and include much more stringent monitoring wells located immediately downgradient of the waste rooms.	The likelihood of contaminant release from the WIPP facility during the operational period is very remote. However, NMED believes that groundwater monitoring should be performed to ensure no releases occur and to acquire hydrologic and water quality information about the site, particularly in light of questions raised regarding karst and other site hydrologic characteristics. Refer to response to comments J-2, J-6, E-108 and E-109.	No

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V	A	L	J-6	Ground-water monitoring network	If the NMED accepts this monitoring network it sets the precedence for allowing a very poor monitoring well system to suffice to meet the regulatory requirements of RCRA. Other companies will propose such [insufficient] systems. It would be difficult to support the system for the WIPP even it if is a unique setting because fate and transport are the same at any site. To require vastly different groundwater monitoring systems at different facilities (beyond what can be technically justified by site-specific conditions) would be difficult to defend in future disputes.	The NMED fully recognizes that the proposed monitoring network may not be applicable for a typical land disposal facility. The WIPP site, however, presents unique characteristics, such as the most likely pathway for a release from the facility to an aquifer overlying the repository. Decisions regarding the detection monitoring requirements are made on a case-by-case basis. Please refer to response to Comments E-108 and E-109.	No

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V	C, F	L	J-2, Comment 2, page 1 of letter	Ground-water monitoring network	Location of the 6 Culebra wells shows them (on Figure L-8) to be a mile apart. Significant releases could occur that could go undetected. This design does not meet the requirement of 40 CFR 264.97 to require a sufficient number of wells to determine background and water quality passing the POC.	The downgradient wells are emplaced south of the most likely contaminant release pathways, the WIPP shafts. Groundwater flow pathways described in the permit application and other referenced sources indicate that the downgradient wells, while widely spaced, are along this southern transport direction. NMED recognizes that additional information may be obtained that sheds new light on the specific contaminant flow transport pathways. (continued below)	No

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V	C, F	L	J-2, Comment 2, page 1 of letter		(Continued from above.)	(continued from above) In addition, NMED recognizes that site hydrologic conditions are probably in a state of flux (i.e., rebound from shaft installation activities), and the most prudent course of action is to use the monitoring system in place while examining new information to continually assess system viability. If additional information is obtained which indicates modification to the Detection Monitoring Program approved in the permit is required, action may be taken by the NMED as allowed under 20 NMAC 4.1.900 (incorporating 40 CFR §270.41(a)(2)).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	L	E-114, Pg. 251	Operating procedures should be removed from draft permit	The draft permit should not include operating procedures. The permittees should have the flexibility to meet the requirement to protect human health and the environment in a manner that is determined to be the "best management program" by the permittees.	20 NMAC 4.1.500 (incorporating 40 CFR 264 Subpart F) includes requirements for operating procedures (sampling and analysis, statistical procedures, etc.) as part of the Detection Monitoring Program.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	L, page L-17, lines 6 to 14	E-115, Pg. 257	Ground-water level change notification	The requirement to promptly notify the NMED of any increased frequency of groundwater surface elevation is not legally required and places an unnecessary reporting burden on the WIPP with regard to water level monitoring. Furthermore, because the WIPP is also a research facility, measurements in water levels may be made for purely academic reasons.	Commentors have correctly noted that the WIPP site is in an area that exhibits karst features. Abnormal groundwater surface elevation changes would be indicative of these conditions, and would constitute new information that could change NMED's current interpretation of site hydrologic conditions. The WIPP is a RCRA Subpart X unit, which clearly gives NMED the authority to include in the permit "such terms and provisions as necessary to protect human health and the environment," (20 NMAC 4.1.500, incorporating 40 CFR §264.600). The draft permit has been revised to require notification to NMED of abnormal, unexplained water level changes. However, the draft permit condition requiring the permittee to promptly notify NMED of any increased frequency of water-level measurement has been removed, as such increased frequency could be due to site testing and may not be indicative of abnormal conditions of which NMED should be notified.	Yes, in part



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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	L, page L-23, lines 1 to 9	E-116, Pg 258	Serial sampling	Serial sampling is not required by the regulations, and the draft permit should instead allow the permittees to modify the existing serial sampling process.	Serial sampling was proposed in the permit application as the method to be used to provide representative samples of groundwater, as required by 20 NMAC 4.1.500 (incorporating 40 CFR §264.97(a)). The commentor also proposed, through redline/strikeout, removal of information pertaining to performance of serial sampling. This information was included in the permit application submitted to NMED and provides information required under 264.97(d).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	L, page L-24, lines 24 to 29	E-117, Pg 259	Duplicate samples	Duplicate samples preserved with nitric acid and placed in storage within the ES&H Environmental Sample Storage area applies only to radionuclides and are not part of the DMP. Reference to the duplicates should be removed.	Collection of a duplicate sample for storage is not required by regulation. However, the sentence requiring that duplicates be provided to NMED, as requested, has been retained.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	0	L, page L-30, lines 14 to 18	E-118, Pg. 260	Reported sample values	One-half the detection limit, as opposed to the detection limit, should be incorporated into the database as sample values when sample values are reported below detection limits.	The one-half requirement is consistent with EPA protocol and therefore will be incorporated into the revised draft permit.	Yes

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V	0	L, page L-30, lines 23 to 26	E-119, Pg 261	Statistical analysis of ground-water data	Section 8.2 of the "Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities" states that if a value is one order of magnitude greater than its neighbor, it should be suspect of being an outlier. The draft permit should be changed to reflect this instead of "orders of magnitude" higher.	EPA guidance cites the "one order of magnitude" analysis in an example problem but does not mandate this as formal guidance. The draft permit has been revised to reflect EPA (1992) Guidance document language.	Yes

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V	0	0	BB- 20	Compliance Certification Application comments, groundwater	The commentor provided responses to DOE's response to the commentor's (CARD's) comments on the CCA (see NMED Comments BB-1d- 10, above).	See BB-1d thru BB-10	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
V	A		E-107, pg. 236	Reaction products	Monitoring for "reaction products" is not applicable the WIPP and is not legally required. The WIPP is unaware of any reaction products from the WIPP that are a reliable indication of the presence of hazardous constituents. Second, the term "reaction product" as used in Module V.A is unclear. If this term refers to reaction products that are used as indicator parameters then these are already included under the title "indicator parameters" and need not be repeated.	The reference to "reaction products" has been removed.	Yes

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V	A		E-107, pg. 236, 237	Reaction products	Second, 20 NMAC 4.1.500 does <u>not</u> require monitoring for "reaction products" but allows for monitoring for indicator parameters, waste constituent, <u>or</u> reaction products to provide a reliable indication of the presence of hazardous constituents in groundwater. "Reaction product" is redundant and should be deleted.	Please refer to response to Comment E-107.	

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V	B, pg. V-1		E-108, pg. 238-240	Point of compliance	Module V.B's definition of the "point of compliance" should be revised because the horizontal dimension fails to include the WIPP "waste management area" as required by 20 NMAC 4.1.500, and the condition impermissibly places it upgradient of the detection monitoring wells. Both the regulations and EPA (no migration determination) require setting the compliance point at the site boundary to include the WIPP's natural barrier.	Please refer to NMED's Exhibit A (Point of Compliance) and NMED's Findings of Fact and Conclusions of Law (Point of Compliance).	No



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V	C	L	J-3, Comment 3, page 1 of letter	Point of compliance	The Detection Monitoring Program (DMP) Wells are not placed at the point of compliance. Could have wells closer to the POC, since the wells don't penetrate the Salado Formation.	Please refer to response to Comment E-108.	No

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V	C, F	L	J-1, Comment 1, page 1 of letter	Dewey Lake Well	What is the purpose of the single Dewey Lake Well? 40 CFR §264.97 requires sufficient number of wells to determine background and the quality of water passing the compliance point; a single well (in the Dewey Lake) cannot accomplish this.	The Dewey Lake well is included to provide additional information on the vertical water quality and head differences at the specified location; the well is not intended to represent a horizon that requires monitoring. The well was voluntarily included in the monitoring network by the applicants and will provide information useful in understanding changes (such as variations in piezometric head) in the site hydrologic system.	No

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V	C	L	H-8, page 2 comment 8 of letter	Map scale	Figure L-8, page L-63. The application needs to include a larger scaled map of the monitoring well locations. The map is too small to clearly appreciate well placement.	Attachment A includes a map of larger scale.	Yes

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V	D, pg. V-2, -3		E-109, pg. 242	Analytical suite	Table V.D should be revised to delete the following compounds for the reasons indicated as follows: (1) chloroform, zinc, iron, 1,2-dichloroethane - these four compounds are not listed in Table L-3 which has been approved by the NMED and are not relevant to WIPP because they are not hazardous constituents associated with TRU mixed waste and are not included in Table D18-3; (2) Radium - it has been deleted from the radiological data suites reported for groundwater at WIPP and is not a constituent in the WIPP waste stream.	The NMED must determine the analytes to be monitored for in accordance with 20 NMAC 4.1.500, incorporating 264.93(a). NMED included chloroform and 1,2 dichloroethane because these constituents are present in Table 1, §261.24, and the applicants provided no information to indicate that these constituents are not included in the waste, particularly as degradation compounds. The inclusion of zinc was a typographic error, and therefore has been deleted. NMED has removed radium, as it is probably not in WIPP waste. However, (continued below)	Yes, in part

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V	D, pg. V-2, -3		E-109, pg. 242			(continued from above) inclusion of iron in a monitoring system is clearly warranted, since the presence of excessive iron could indicate corrosion of WIPP containers (which contain iron) and subsequent release of hazardous waste constituents, especially during the post closure period. In summary, removal of radium and zinc is appropriate although the other constituents have been retained.	

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V	D, pg. V-2, -3		E-109, pg. 242, 243		(3) Methanol, formaldehyde, and hydrazine - Methanol is generally used as a solvent in analyses and is poorly purged and not well analyzed by SW-846 Method 8260. Formaldehyde purges poorly and is unsuitable for Method 8260. There is no EPA method known for the analysis of hydrazine. Finally, these constituents will not appear in groundwater samples without WIPP detecting the presence of previously identified and monitored constituents. The applicants proposed monitoring the constituents listed in Appendix IX in the application; the NMED responded with comments and the applicants revised the permit application accordingly. It is reasonable to assume that methanol, hydrazine, and formaldehyde would travel no faster in groundwater than the Appendix IX volatile organics for which the baseline has already been established.	Poor purging and subsequent erroneous results do occur for methanol, formaldehyde and hydrazine. Because of poor purging and subsequent questionable analysis, these constituents will be removed from the analyte list.	Yes

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V	F.2, page V-4		E-110 Pg. 246	Replicate sample collection	Background sampling has been completed using the plan presented in the permit application which is consistent with Attachment L, Section L-4a with regard to frequency. Draft Permit Condition V.F.2 alters the frequency by appearing to require four replicate samples for all Appendix IX and Table V.D parameter and constituent analyses. This exceeds what is required by 20 NMAC 4.1.500, § 264.97(g) and the condition, therefore, should be revised consistent with the requirements and Attachment L.	There is an apparent discrepancy between what was presented in Attachment L, Section L-4a and the permit module. The NMED's intent was that for four sampling events, each of the background wells should be sampled, obtaining four data points from each of the background wells. As worded, the Module implies that four samples will be collected from each well each time it's sampled, for a total of 16 samples/well (not four samples/well). The draft permit Module has been revised to accept the commentor's suggested changes (page V-4).	Yes

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V	J.2.a, page V-7		E-111, Pg. 248	Reporting schedule	The proposed "data evaluation results reporting schedule" allows only 45 days after the collection of the final suite of samples to submit the semi-annual data report. Generally, the analytical results from the laboratory are not received by the DMP staff for at least 30 days after the samples are sent to the laboratory, thus allowing only 15 days or less to perform QA/QC, review the results, and prepare and submit the report to the NMED. This is not an adequate amount of time to complete these reports. Change the text to require data evaluation results to be reported in an Annual Site Environmental Report by October 1 of each calendar year.	The language in the permit has been revised to require the reports 60 days after the last sample is taken. This should allow sufficient time for the information to be assembled and assessed. Also, the draft permit has been revised to indicate that one of these reports can be included in the annual report, so that a separate report need not be prepared.	Yes



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V	J.2.c, page V-7		E-112, Pg. 249	Annual report	Requirement of a separate annual report for groundwater flow results would be redundant and the condition should be changed to reflect that annual groundwater flow rate and direction data can be reported in the Annual Site Environmental Report, which is submitted to the NMED.	The draft permit has been revised to include the suggested revision.	Yes

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V	J.3.b, page V-7 and V-8		E-113, Pg. 250	Sampling frequency	Because of the unique character of the geological structure of the Culebra and spatial variability of groundwater chemistry from well to well, it is not technically feasible to sample all of the WIPP detection monitoring wells (DMWs) within one month time frame following sampling protocols prescribed in the draft permit. The permittees should be required to sample and analyze the groundwater in the DMWs specified in Table V.C.1 for which there was statistically significant evidence of contamination.	20 NMAC 4.1.500 (incorporating 40 CFR §264.98(g)(2)) requires that the Permittees "immediately" resample all wells for Appendix IX parameters (i.e., no time limit). 264.98(g)(3) allows (but does not require) resampling of the specific well(s) where exceedances occurred, within 1 month after receipt of the Appendix IX analyses. The draft permit has been revised to allow a longer time period for wells other than those in which statistically significant concentrations of contaminants were detected.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VI	C	J	N-61, (p. 8/ pp.4)	Post-closure	The post-closure period in Attachment J should be extended to 100 years after final closure so that NMED maintains a role in oversight for that period.	The post-closure period in the original permit is required to be 30 years, as specified in 20 NMAC 4.1.500 (incorporating 40 CFR §264.117(a)(1)). As noted elsewhere in the permit (e.g., Attachment J, page 1), the Secretary of the NMED may shorten or extend the post-closure period, as a permit modification, at any time in the future before expiration of the original facility post-closure period (anticipated to be more than 60 years from now), as provided in 40 CFR §264.117(a)(2).	No





















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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	B.4.d, page VII-6		E-122, pg. 266	Land disposal restriction	The condition that annual analyses be performed on wastes except as exempted by § 9(a)(1) in the WIPP Land Withdrawal Act Amendment from the Land Disposal Restrictions should be deleted. All of the waste that will be sent to the WIPP for disposal and all derived waste that will be disposed of at the WIPP are exempted. The operating record will include a notice that the wastes stored and disposed of at the WIPP are exempt from the Land Disposal Restrictions as the result of the WIPP Land Withdrawal Act Amendment.	NMED agrees that the TRU Mixed Waste and the derived waste that will be disposed at WIPP are exempt from Land Disposal Restrictions (LDRs) under the WIPP Land Withdrawal Act. However, the exemption from LDRs does not apply to any hazardous waste generated at the WIPP site (e.g., solvent wastes generated during maintenance of vehicles and equipment). Draft Permit Condition VII.B.4.d has been changed in the revised draft permit to clarify that the requirement to perform a waste analysis at least annually or when a process changes is to demonstrate that any hazardous waste generated at the facility meets applicable treatment standards.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	A	0	H-5, page 2 comment 5 of letter	Definitions	Section VII.b.4.a references the Administrator with regard to treatment standards. The revised draft permit should include the definition of Administrator to the definitions section, VII.A.	Draft Permit Condition VII.A has been changed in the revised draft permit to define the term "Administrator" as the Administrator of the U.S. Environmental Protection Agency, or designee. The term Administrator is used in Permit Condition VII.B.4.a since the Secretary of the NMED has not been authorized to establish disposal or treatment standards.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	A, B	0	F-9	Definitions	The commentor questions whether the definition of disposal and release include the disposal/release of radioactive waste, and whether waste minimization requirements under VII.B.1 apply to radioactive wastes as well as hazardous wastes.	The definitions of disposal and release in draft Permit Condition VII.A apply only to hazardous waste and hazardous waste constituents. The definition of disposal is from 20 NMAC 4.1.100. The definition of release is from the Hazardous and Solid Waste Amendments (HSWA) Codification Rule (50 Fed Reg 28702, July 15, 1985).	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	0	0	E-120, pg. 263	Community relations	Because of the widespread interest and impact associated with the WIPP, the commentor believes it would be more appropriate to change "Community Relations Plan" to "Stakeholder Information Plan."	It is common usage or practice to use the term Community Relations Plan and is present in most of the HSWA modules issued by other states and EPA.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	Table 1 (#8, #9), page VII-47		E-144, pg. 328-329	Definitions	The term "AA" is not defined anywhere in this module of the draft permit. It should be replaced with the word "Secretary" to clarify the appropriate administrative authority to make such determinations. In addition, the numbering in Table 1 is inaccurate and should be corrected.	Table 1 of draft Permit Module VII has been changed in the revised draft permit to delete the term "AA" and replace it with the term "Secretary" and the numbering has been corrected.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	I.3, page VII-14		E-125, pg. 270	Semi-annual briefings	The request of the Secretary to have status reviews through semi-annual briefings with the permittees is not required by the regulations and should either be deleted or include a statement that the Secretary will notify the permittees at least 30 days prior to the semi-annual briefing.	The draft Permit Condition (VII.I.3) referenced in the comment was taken directly from the U.S. EPA Region 6 Model permit and is standard language included in all RCRA permits issued by the U.S. EPA and States. However, the permit condition has been changed in the revised draft permit to specify that the Secretary will notify the permittees at least thirty (30) calendar days prior to the semi-annual meeting.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	M.3, Table 1 (#3), page VII-19		E-128, pg. 304	Schedule for corrective action	Thirty calendar days is not sufficient to amend the RFI Work Plan, depending on the deficiencies found. Add to the third paragraph on page VI-19 that the permittees will automatically be granted an additional thirty (30) calendar days to submit the modified RFI Work Plan if requested, in writing, from the Secretary.	The Secretary does not grant automatic extensions. The Secretary may grant extensions based on the reasons the extension is needed and the amount of time requested. The draft Permit Condition VII.M.3 has been changed in the revised draft permit to include a statement that the time periods set forth in the permit may be extended for good cause upon the permittees' written request and the Secretary's written approval. However, see response to Comment H.1-4 on the revised draft permit.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	N.2, page VII-19		E-129, pg. 305	Approval of deviations from plans	The condition that all deviations, no distinction between minor and major, from the approved RFI Work Plan must be approved by the Secretary is impractical, cumbersome, and costly. Clarify that only major deviations from the approved RFI Work Plan must be approved by the Secretary and that the Secretary shall provide such approval or disapproval of major deviations on an expedited basis.	The permit condition (VII.N.2) referenced in the comment was taken directly from the U.S. EPA Region 6 Model permit and is standard language included in all RCRA permits issued by the U.S. EPA and other states. The intent of this condition is to prevent the permittees from working "at risk" in the event that field conditions require modifications to approved plans. The commentors suggestion to revise the permit condition to distinguish between minor and major deviations is not practical due to the difficulties that would be encountered in attempting to define what constitutes a "minor" and "major" deviation. Further, approval is required for all deviations, and there is no regulatory basis for distinguishing between major and minor. NMED notes (continued below)	No

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VII	N.2, page VII-19		E-129, pg. 305			(continued from above) that the permit condition does not require that the permittees receive the approval of the Secretary prior to implementing an activity that is not specified in an approved plan. However, the permittees will be working "at risk" if approval by the Secretary is not obtained prior to deviating from an approved plan.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	O.1, page VII-19 and VII-20		E-130, pg. 306	Schedule for corrective action and reporting	The provision that within sixty (60) calendar days after the completion of the RFI, the permittees shall submit an RFI Report and Summary is impractical. The RFI investigations will be finished over a multiple-year period. The condition should provide that the investigations and reports should be staggered. Furthermore, one report should not cover all SWMUs and AOCs.	Draft Permit Condition VII.O.1 has been changed in the revised draft permit to state that the RFI Work Plan may provide for the implementation of the RFI in stages and that the permittees shall submit an RFI Report and Summary within sixty (60) calendar days after the completion of each stage of the RFI. However, NMED notes that at the present time, the RFIs for the SWMUs at the WIPP Facility will primarily involve the collection of surface and shallow subsurface soil samples. The commentor provided no supporting argument as to why the RFI will take many years.	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	O.2, Table 1 (#5), page VII-20		E-131, pg. 307	Schedule for corrective action and reporting	Thirty calendar days is not sufficient to amend the RFI Report and Summary depending upon the deficiencies found. The provision should provide the permittees with a longer time period to amend the RFI Report and Summary, if requested. Table 1 and the text needs to be revised to reflect this change.	The Secretary may grant extensions based on the reasons the extension is needed and the amount of time requested. The draft permit condition (VII.O.2) has been changed in the revised draft permit to include a statement that the time periods set forth in the permit may be extended for good cause upon the permittees' written request and the Secretary's written approval. However, see response to Comment H.1-4 on the revised draft permit.	Yes

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VII	U.3.a.1(a), page VII-24		E-133, pg. 309	Requirement for maps	The condition that map(s) depicting all future work performed at the site is impossible to comply with. The permittees cannot develop maps for all future work since much of the work has not been identified. The provision should be revised to require such map development for current and planned future work.	The revised draft permit indicates that the maps shall be of sufficient detail and accuracy to enable the location of future work, not actually depict future work.	No

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VII	U.3.a.1(d), page VII-25		E-134, pg. 311	Reference to all studies	The requirement that a reference to all environmental, geologic, and hydrogeologic studies performed by any person or entity should be specified to include only a representative number of relevant studies. There are a great deal of studies associated with the WIPP Project which would result in thousands of pages of references and summaries. The permittees need to have the flexibility to use some appropriate subset of all of the available information.	Draft permit condition VII.U.3.a.1)d) has been changed in the revised draft permit to require a reference to a representative number of relevant environmental, geologic, and hydrogeologic studies.	Yes

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VII	U.3.a.2(a)(2), page VII-25		E-135, pg. 312	Provision of information	It may be impossible to quantify solid waste placed in the SWMU mudpits based on the historical information that is available. Revise the condition to include "to the extent known."	Draft permit condition U.3.a.2)a)(2) has been changed in the revised draft permit to add the words "to the extent known" to be consistent with the U.S. EPA Region 6 Model Permit.	Yes

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VII	U.3.d, page VII-28 to VII-30		E-139a, pg. 320	Pathway characterization	1) The condition's requirements are too broad. 2) Surface water [VII.U.3.d(3), page VII-29] and subsurface gas [VII.U.3.d(5), page VII-30] should be deleted from this section since they are not media of interest for the RFI according to the technical support document (TSD). 3) The groundwater and air sections should be quantified to state that characterization will be performed only if deemed necessary based on significant releases of constituents to soil observed at the SWMUs that could impact these media.	The first sentence of draft permit condition VII.U.3.d clearly states that the permittees shall describe a program to collect analytical data on ground water, soils, surface water, sediment, and subsurface gas contamination when necessary to characterize contamination from a SWMU. The permit condition further states that "If the permittees believe that certain media could not be affected by a release from a specific SWMU, a detailed justification for not investigating those media shall be provided." The permittees may utilize this proposed permit language, as appropriate. Specification of requirements for investigation of contamination in all environmental media is required in the revised draft permit in the event that initial investigations indicate that additional environmental media may be impacted, or if the permittees identify new SWMUs which have impacted other environmental media.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	U.3.I, page VII-35		E-140, pg. 323	Community relations	The condition of the preparation of a Community Relations Plan is overly broad and should be removed from this module.	A requirement for preparation of a community relations plan is required in most RCRA permits issued to date in U.S. EPA Region 6 and is a reasonable requirement for this permit because of the significant amount of public interest in the WIPP.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	V.4.a, page VII-38		E-142, pg. 326	Corrective measures study	The term "all" is not needed and should be deleted from this condition.	The permit condition (VII.V.4.a) referenced in the comment was taken directly from the U.S. EPA Region 6 Model permit and is standard language included in all RCRA permits issued in U.S. EPA Region 6 and other states. The purpose is to ensure that the permittees at least consider all of the potential corrective measures alternatives for a particular unit or facility, and do not preliminarily discount potential alternatives. In addition, the second paragraph of permit condition VII.V.1 states that "If the permittees believe that certain requirements of the Scope of Work are not applicable, the specific requirements shall be identified and the rationale for inapplicability shall be provided." The permittees may utilize this proposed permit language, as appropriate.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	V.4.c, page VII-39		E-142, pg. 326	Corrective measures study	The term "all" is not needed and should be deleted from this condition.	The permit condition (VII.V.4.c) referenced in the comment was taken directly from the U.S. EPA Region 6 Model permit and is standard language included in all RCRA permits issued in U.S. EPA Region 6. The purpose is to ensure that the alternatives developed by the permittees do not exclude a particular SWMU, environmental media, or contaminant that is considered to be a problem. In addition, the second paragraph of permit condition VII.V.1 states that "If the permittees believe that certain requirements of the Scope of Work are not applicable, the specific requirements shall be identified and the rationale for inapplicability shall be provided." The permittees may utilize this proposed language, as appropriate.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	0	HSWA SWMU Technical Support Document	E-146, pg. 334	Existing data/land use scenarios	The permittees should be allowed to use the existing, adequate, and approved (by NMED and EPA Region 4) analytical data using Toxicity Characteristic Leaching Procedure (TCLP) methodology to evaluate releases at WIPP SWMUs instead of resampling WIPP SWMUs. The Permittee should be allowed to use TCLP data, analyzed with appropriate industrial constituent screening values instead of residential screening values to evaluate releases at WIPP SWMUs.	It is U.S. EPA Region 6 and NMED's policy not to utilize TCLP data for determining whether releases of hazardous constituents have occurred from a unit, or for delineating the nature and extent of releases from a unit. TCLP data is to be used only for determining whether a solid waste is classified as a characteristic hazardous waste. See Hazardous and Radioactive Materials Bureau Position Paper dated February 26, 1998. The NMED agrees that the use of a residential scenario for establishing whether corrective action at a site is conservative, but it is appropriate when performing an initial screening of a site.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	U.3, page VII-23		E-132, pg. 308	Existing data	The condition that requires the permittees to prepare an RFI Work Plan with specific information should include a statement that the permittees may use information provided to the NMED in existing corrective action documents. Many elements of the RFI Work Plan have already been developed under the Voluntary RA/CA program, and detailed discussions have been developed for the required elements and previously provided to the NMED.	The revised draft permit language does not preclude the use of existing data. Permit condition VII.M.2 states that "Historical analytical data may be submitted in justification of RFI Work Plan activities for each of these SWMUs." The permittees may utilize this proposed permit language, as appropriate.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	U.3.c, page VII-28		E-138, pg. 315	Unit and waste character-istics	Since the permittees have already compiled the available information for the units where wastes have been placed, the subparts on the disposal area and waste characteristics should be accompanied by the phrases "as applicable" and/or "as discernible."	NMED is aware that the permittees may have already researched and compiled available information regarding the unit and waste characteristics and that not all of the information requested in permit conditions VII.U.3.c.1) and 2) will be available. However, the permit conditions are necessary to ensure that the permittees have (or will) conducted an appropriate research effort to obtain the required information. The language suggested by the commentor is ambiguous and unenforceable.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	H	0	Q-7, bullet 7 Attachment A of letter	Future land use scenario	RCRA environmental standards [HSWA] should be for industrial sites. The revised draft permit requires that SWMUs at WIPP meet environmental standards set for residential rather than standards for industrial sites.	The permit application did not identify the land use at the facility as residential or industrial. Use of the residential standard is reasonably conservative.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	H	0	R-7, bullet 7 Attachment of letter	Future land use scenario	RCRA environmental standards [HSWA] should be for industrial sites. The revised draft permit requires that SWMUs at WIPP meet environmental standards set for residential rather than standards mandated for industrial sites.	The permit application did not identify the land use at the facility as residential or industrial. Use of the residential standard is reasonably conservative.	No

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VII	U.3.a.2(b)(2), page VI-25		E-136, pg. 313	RFI scope of work	The overly broad condition that all potential migration pathways, whether or not they are relevant to the SWMU, the releases, or the media of concern, be included should be revised to include only relevant information.	The referenced permit condition [VII.U.3.a.2)b(2)] has been changed in the revised draft permit to require relevant information on geology, pedology, hydrogeology, etc. The second paragraph of permit condition VII.U.1 states that "If the permittees believe that certain requirements of the Scope of Work are not applicable, the specific requirements shall be identified and the rationale for inapplicability shall be provided." The permittees may utilize the proposed permit language, as appropriate.	Yes

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VII	U.3.b(2), page VII-27		E-137, pg. 314	RFI scope of work	The provision should be revised to require the description of an appropriate program designed to characterize soil and rock units above the water table to the extent necessary to make remediation decisions. Otherwise the provision requires extensive characterization of soils which may not be appropriate for the types and limited extent of the releases from the WIPP SWMUs. Additionally, this section should prescribe detailed characterization of soil to the water table only if releases to the water table are possible.	The second paragraph of permit condition VII.U.1 states that "If the permittees believe that certain requirements of the Scope of Work are not applicable, the specific requirements shall be identified and the rationale for inapplicability shall be provided." The permittees may utilize the proposed permit language, as appropriate.	No

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VII	U.3.d, page VII-28 to VII-30		E-139a, pg. 320	Authority for releases to groundwater	4) RCRA statutory and regulatory provisions [42 U.S. C. §6924(u) and 40 CFR § 264.10(a)] authorize corrective action (and, thus, remedial investigation) only with respect to releases from SWMUs. The NMED is precluded from imposing corrective action requirements other than with respect to such releases. The draft permit groundwater investigation requirement [VII.U.3.d(1), page VII-28] is impermissibly broad and the NMED has exceeded its authority to require corrective action. The permit should be revised to be limited to the characterization of groundwater contamination caused by releases from SWMUs.	The referenced permit condition [VII.U.3.d.1]) is included under the main heading of RFI Scope of Work, and the subheading of RFI Work Plan, and thus applies to SWMUs that NMED has determined will require an RFI. Tables 1 and 2 of permit module VII clearly require an RFI to be performed to address releases only from SWMUs or AOCs. In addition, the first sentence of permit condition VII.U.3.d clearly indicates that the permittees shall describe a program to collect analytical data on groundwater contamination when necessary to characterize contamination from a SWMU. This sentence in Section VII.U.3.d also applies to all of the subsections of Section VII.U.3.d.	No

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VII	U.5, page VII-36 and VII-37		E-141, pg. 324	RFI report requirements	This provision should be revised to reflect that soil is the media of concern and emphasis of RFI Report requirements on groundwater data should be limited or reduced because soil will be the focus. Additionally, the extensive requirements for soil characterization may not be appropriate for the types and limited extent of releases from WIPP SWMUs. Performing the required investigations could result in more environmental harm from drilling and trenching than the potential benefit from the information. The use of the term "all" is overused and should be limited.	The referenced permit condition (VII.U.5) has been changed in the revised draft permit to add the words "as applicable" with respect to the requirement for the RFI Report to contain soil and groundwater contamination profiles. NMED notes that while releases to soil appears to be the primary media of concern for the SWMUs that have been identified to date at the WIPP facility, the requirements specified in the Corrective Action Module permit conditions must address the potential for releases to all environmental media in the event that releases from existing or newly identified SWMUs have impacted, or are suspected of impacting, environmental media other than soil.	Yes

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VII	0	0	S-11d, pg. 7 of letter	General	Corrective action measures, contingency planning, closure requirements, and post-closure care plans are of specific concern.	No revision to the permit is necessary. The comment does not address a specific issue.	No

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VII	0	HSWA SWMU Technical Support Document	E-148, pg. 338	Calculation of hazard indices	The NMED's hazardous index (HI) calculations are too conservative. They should be recalculated with the exclusion of background levels and non-detects.	The Technical Support Document for permit module VII has been revised to delete the use of hazard index calculations. The decision criteria for the exclusion or inclusion of Solid Waste Management Units and Areas of Concern as units requiring an RFI is now based solely on whether a release of hazardous constituents has been detected at a particular unit. A release of hazardous constituents has occurred if hazardous constituents are detected in an environmental medium at a unit at concentrations above the detection limit for organic hazardous constituent and above background concentrations for inorganic constituents.	Yes

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VII	0	HSWA SWMU Technical Support Document, Section 4.4, page 18	E-150, pg. 341	Ecological receptors	The sand dune lizard, kit fox, and bald eagle are listed as "key ecological receptors" in the draft permit but they were not identified within the WIPP Land Withdrawal Area (WLWA) during the 1996 Threatened and Endangered (T&E) species survey. Accordingly, the draft permit's reference to those species as key ecological receptors within the WLWA for release assessment purposes should be deleted. Moreover, although the Western Meadowlark is found on the WLWA, it is the Eastern Meadowlark that is much more prevalent on the WLWA. The reference to Western Meadowlark should be changed to Eastern Meadowlark.	The Technical Support Document for permit module VII has been revised to delete the information related to a screening level ecological risk assessment. The decision criteria for the exclusion or inclusion of Solid Waste Management Units and Areas of Concern as units requiring an RFI is now based solely on whether a release of hazardous constituents has been detected at a particular unit. A release of hazardous constituents has occurred if hazardous constituents are detected in an environmental medium at a unit at concentrations above the detection limit for organic hazardous constituent and above background concentrations for inorganic constituents. NMED does note however, that the sand dune lizard was identified on the WLWA in the WIPP Threatened and Endangered Species Survey (1996, Tables 5-1 and 5-2). The kit fox was identified on the WLWA in the Final Environmental Impact Statement for the WIPP (1980). NMED notes that bald (continued below)	Yes

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VII	0	HSWA SWMU Technical Support Document, Section 4.4, page 18	E-150, pg. 341			(continued from above) eagle habitat existed on the WLWA but the bald eagle was not selected as a key ecological receptor for assessment purposes. According to the BISON-M database maintained by the New Mexico Dept. of Game & Fish, the Western Meadowlark is a very common inhabitant of the WLWA and the Eastern meadowlark is just a common inhabitant.	Yes

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VII	G.1, page VII-11		E-124, pg. 268	Need for corrective measures	The requirement to conduct a Corrective Measures Study (CMS) whenever concentrations of hazardous constituents in ground water, soil, or air exceed action levels for any environmental medium should allow for the permittees to establish no further action and should take into account the presence of background concentrations.	The referenced permit condition (VII.G) in the draft permit included the statement "Except as otherwise specified in permit condition VII.Q, the permittees shall conduct a CMS whenever..." Permit condition VII.Q.1 allows the Secretary discretion in determining whether a CMS is necessary. However, permit condition VII.G.1 has been changed in the revised draft permit to add a reference to permit condition VII.P, Determination of No Further Action, and clarifying language which states that "and there is reason to believe that such hazardous constituents have been released from a SWMU at the facility."	Yes

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	0	0	E-121, pg. 265	Dispute resolution	The dispute resolution provision and all references to the dispute resolution process should be deleted from the draft permit. It is unlikely that corrective action dispute issues would be resolved through the proposed conflict resolution process. Additionally, the Alternative Dispute Resolution (ADR) process contemplated in the proposed regulations utilized a neutral, third party mediator as opposed to the draft permit's use of the NMED's Secretary as the decision-maker.	The dispute resolution provision has been retained for the permittees' benefit. The use of alternate dispute resolution is not supportable under New Mexico law and statute. The final decision maker for any dispute which arises under this module of the permit is the NMED Secretary.	No

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VII	M.2, page VII-17		E-127, pg. 303	No Further Action at SWMUs	The commentor indicates that the permittees have compiled a significant amount of technical data to establish that the solid waste management units (SWMUs) at WIPP should be designated no further action (NFA). The commentor then provided a substantial volume of information to demonstrate that the criteria for the determination for NFA for all the SWMUs listed in Table 2 (Page VII-48) and areas of concern (AOCs) listed in Table 3 is appropriate. Issue a determination of NFA for the SWMUs in Table 2 and the AOCs in Table 3. Contingent upon completion of the Voluntary Release Assessment/Corrective Action Program Work Plan (VRA/CA Work Plan), determine the NFA status for the three mudpit SWMUs.	The rationale for the inclusion for SWMUs and AOCs in the revised draft permit is provided in the Technical Support Document which has been revised such that the decision criteria is now based solely on whether a release of hazardous constituents has been detected at a particular unit. A release of hazardous constituents has occurred if hazardous constituents are detected in an environmental medium at a unit at concentrations above the detection limit for organic hazardous constituent and above background concentrations for inorganic constituents.	No

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VII	V.4.d.1(c), page VII-42 and VII-43		E-143, pg. 327	Residual levels of contamin- ation	The term "residual levels" to which existing criteria, standards, or regulations acceptable to the Secretary are compared is ambiguous and should be clarified. It could refer to either background or some difference between background and the EPA established clean-up level.	The term residual contamination refers to contamination that is left in place after implementation of a RCRA Corrective Measure. The commentor implies that Corrective Measures always involve removal of contamination to some clean-up level. Implementation of a RCRA Corrective Measure could involve isolation of the "contamination" via capping or some other method and does not always entail removal of contamination. The intent of the requirement is to have the facility demonstrate that the proposed RCRA Corrective Measure is protective of human health. In addition, the commentor implies that EPA established clean-up levels exist, which is incorrect. Cleanup levels are determined on a case-by -case basis.	No

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VII	0	HSWA SWMU Technical Support Document	E-147, pg. 336	Hazardous constituents	The "hazardous constituents" for which the NMED is requesting corrective action in connection with Badger Unit (SWMU 001o) and Cotton Baby (SWMU 001p) should be specified in the TSD (Table 2, page 91). If the "hazardous constituents" are those precluded from requiring corrective action based on an exclusion applicable to drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy [40 CFR § 261.4(b)(5)], these SWMUs should be deleted from corrective action requirements.	In the Hazardous Waste Codification Rule for the 1984 RCRA Amendments (52 FR 45789 to 45790, December 1, 1987), the U.S. EPA concluded that "Bevill wastes" and oil and gas wastes are subject to the corrective action requirements of section 3004(u) when they are found in solid waste management units that need permits to manage hazardous wastes.	No

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VII	0	HSWA SWMU Technical Support Document, Section 4.4, page 18	E-149, pg. 339	Risk due to thallium	The revised draft permit should not require SWMU corrective action/remedial investigation with respect to thallium because there is no underlying basis for proposing that thallium may be an issue at WIPP SWMUs. Thallium has not been justified on a case-by-case basis, and the revised draft permit improperly and unrealistically applies a residential exposure level to determine risks. All SWMU corrective action requirements with respect to thallium should be deleted.	NMED is requiring additional investigation of WIPP SWMUs with respect to thallium because the data collected during the Release Assessment performed by the permittees was not of adequate quality to demonstrate that a release of thallium has not occurred at the units. The detection limit for thallium achieved during the analysis of soil samples collected during the release assessment was unacceptably high. The rationale for the inclusion for SWMUs and AOCs in the revised draft permit is provided in the Technical Support Document which has been revised such that the decision criteria is now based solely on whether a release of hazardous constituents has been detected at a particular unit. A release of hazardous constituents has occurred if hazardous constituents are detected in an environmental medium at a unit at concentrations above the detection limit for organic hazardous constituent and above background concentrations for inorganic constituents.	No

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Module No.	Condition No.	Attach. No.	Cmt. No. (pg & par) See commentor key above	Comment Subject	Summary of Comment	NMED Response	Include in Permit? y/n
VII	E.1, page VII-9		E-123, pg. 267	Requirement for corrective action	The "key qualifier" of "as necessary to protect human health and the environment" should be included in the condition of imposing corrective actions at the WIPP. The omission of the key qualifier has led the NMED to request corrective actions that are unnecessary and not required by the regulations because the SWMUs do not pose a threat to human health or the environment.	The referenced draft permit condition (VII.E.1) has been changed in the revised draft permit to include the phrase, "as necessary to protect human health and the environment" in order to be consistent with the regulations. However, NMED does not agree with the commentors statement that the omission of this language from the permit led NMED to request corrective actions that are unnecessary and not required by the regulations because the SWMUs do not pose a threat to human health and the environment. The release assessment conducted by the permittees did not collect data that was appropriate for determining whether or not the SWMUs posed a threat to human health and the environment. First, for the hazardous constituent thallium, the data collected by the permittees was not of appropriate quality to determine whether or not a release had occurred. For many of the other SWMUs, the results of the release assessment indicated that a release of (continued below)	Yes

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VII	E.1, page VII-9		E-123, pg. 267			(continued from above) hazardous constituents had occurred, but the release assessments did not provide data which was adequate to delineate the full nature and extent of the contamination. This information is required prior to evaluating whether the release of hazardous constituents poses a threat to human health or the environment. The rationale for the inclusion for SWMUs and AOCs in the permit is provided in the Technical Support Document which has been revised such that the decision criteria is now based solely on whether a release of hazardous constituents has been detected at a particular unit. A release of hazardous constituents has occurred if hazardous constituents are detected in an environmental medium at a unit at concentrations above the detection limit for organic hazardous constituent and above background concentrations for inorganic constituents.	Yes

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VII	K, page VII-16		E-126, pg. 271	Notification of release	The provision should be revised to clarify which bureau should be notified of a "newly discovered release." Moreover, such notification may be unnecessary since there is already a notification requirement in the New Mexico Water Quality Control Commission regulations.	The referenced permit condition (VII.K) states that the Secretary should be notified and permit condition VII.B.5 specifies information submittal requirements. The relevance of the last statement in the comment is not clear. A discovered release may not require notifying other Bureaus of NMED. The jurisdiction and authorities under the New Mexico Hazardous Waste Act and the New Mexico Water Quality Act are separate.	No

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VII	Table 3, page VII-49		E-145a, pgs. 331-332	Delete corrective action for TRU Mixed Waste Management Units	Under the proposed Subpart S regulations [42 U.S.C. §6924(u), 40 CFR §264.101(a)], the NMED is not authorized to require corrective action at the five TRU Mixed Waste Management Units (AOC 013a, 013b, 013c, 013d, and 013e) because, in order for a unit to be potentially subject to the corrective action requirements, it must be a SWMU with waste already placed in it, not merely be designated for waste placement in the future. In addition, the regulatory provisions which govern the applicability of the SWMU corrective action/remedial investigations, the NMED's own documents related to the WIPP (draft permit and TSD) provide for corrective action/remedial investigation applicability only where waste has already been placed.	Table 3 of draft permit module VII has been changed in the revised draft permit to delete the TRU Mixed Waste Management Units as Areas of Concern. The TRU Mixed Waste Management Units are now included in Table 2A, which identifies SWMUs not requiring an RFI. Table 2A includes a footnote that indicates that these units will become SWMUs upon initial receipt and subsequent management of solid waste.	Yes

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