

ENTERED



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PETER MAGGIORE  
Secretary



April 30, 1999

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

**RE: NMED comments on 1998 WIPP Biennial Environmental Compliance Report**

Dear Mr. Wentz:

The Hazardous & Radioactive Materials Bureau (HRMB) coordinated the New Mexico Environment Department's (NMED) review of the 1998 WIPP Biennial Environmental Compliance Report (BECR), which addresses compliance issues at WIPP from April 1, 1996 to March 31, 1998. This letter and attachment summarizes NMED's findings upon completion of the review.

Besides the Letter of Violation issued by NMED related to WIPP hazardous waste generation activities reported in the BECR, WIPP was also in violation of the New Mexico Water Quality Control Commission Regulation, 20 NMAC 6.2, §3104, between January 16, 1997, and July 3, 1997, by discharging without an approved discharge plan. Otherwise, to the best of NMED's knowledge, WIPP was not in violation of other environmental laws and regulations contained in Chapters 25 through 31 of the BECR during the reporting period. However, this statement should not be construed to imply that WIPP actually complied with all other applicable laws and regulations during the reporting period. NMED does not have the information needed to reach an affirmative conclusion, which can only be supported with extensive inspections and oversight by NMED.

Attached are general and specific comments on chapters of the BECR which NMED reviewed. NMED offers these comments to correct and improve the information provided in subsequent editions of the BECR. If you have any questions concerning NMED's review of the BECR, please contact Mr. Steve Zappe of my staff at 827-1560, x1013.

Sincerely,

Gregory J. Lewis, Director  
Waste and Waste Management Division

Attachment

- cc: Jim Najima, NMED
- Susan McMichael, NMED OGC
- Benito J. Garcia, HRMB
- Stu Dinwiddie, HRMB
- Steve Zappe, HRMB ✓
- WIPP File - Red '99



*Comments from NMED on the WIPP Biennial Environmental Compliance Report (DOE/WIPP 98-2171), October 1998. Bold indicates suggested changes to text.*

1. General Comment (repeated from 1997) - Statements such as "A WID procedure is in place that addresses these requirements" or "... are conducted in accordance with WID procedures" are inadequate. Provide direct references to applicable WID procedures relative to the compliance period of the BECR. Otherwise, the reviewer either must assume a procedure exists which is applicable, or must spend time locating and reviewing the procedure to confirm it is applicable.
2. General Comment (repeated from 1997) - Section 25.2.3, page 147 states, "The DOE and WID conduct assessments or audits to review WIPP compliance with requirements ... that pertain to hazardous materials transportation activities" and then provides the dates of pertinent assessments and audits. However, most of the other sections in the BECR do not indicate whether DOE or WID have conducted audits or assessments to ensure procedures have been adequately implemented. The BECR would be greatly improved if any other such audits or assessments were documented and available for review by regulators.
3. Section 25.1 (Summary of the Law), page 134, second paragraph - the dates for additional authorization should April 10, 1990; July 25, 1990; December 4, 1992; August 23, 1994; December 21, 1994; July 10, 1995; and January 2, 1996. Also, on page 135, second paragraph, the dates should be July 10, 1995, and January 2, 1996.
4. Section 25.1 (Summary of the Law), page 134, last paragraph - discussion of 40 CFR §265 Subpart CC (Air Emission Standards for Tanks, Surface Impoundments, and Containers) is irrelevant to WIPP's status as a generator of hazardous wastes under 20 NMAC 4.1.300 (incorporating 40 CFR §262).
5. Section 25.2.4 (Compliance with the Regulatory Requirements for Interim-Status TSDFs, 40 CFR Part 265, [20 NMAC 4.1, §600]), page 149+ - the assertion "The WIPP has met all applicable legal requirements to qualify as an interim status facility" was contested by the State during the period covered by the BECR. On March 22, 1999, US District Judge John Garrett Penn determined that WIPP is an interim status facility. However, the State can not certify the WIPP as being in compliance with regulations relating to interim status TSDFs during the period covered by the BECR because no relevant inspections were performed.
6. Sections 25.2.5.11 and 25.2.5.12 (Operations and Changes During Interim Status), page 176 - for the reasons stated in comment 5 above, the State can not certify WIPP's compliance with regulations relating to interim status TSDFs.
7. Section 30.2.5 (Discharge Plan Required) - this section fails to state that WIPP violated 20 NMAC 6.2, §3104 because their previous discharge plan expired on January 16, 1997, and the current plan was approved on July 3, 1997. During this nearly six month period, WIPP continued to discharge effluent or leachate without an approved discharge plan in direct violation of 20 NMAC 6.2, §3104.
8. Section 30.2.6 (Application for Discharge Plan Approval) - this section does not state that by failing to submit an application for discharge plan renewal at least 120 days before the discharge plan expires as specified in 20 NMAC 6.2, §3106.F, WIPP was not eligible to continue discharging under the previous discharge plan. WIPP submitted the application for renewal on December 16, 1996, only thirty-one days before the previous discharge plan expired on January 16, 1997.

9. Appendix A, Index of Requirements by Technical Subject Areas - several minor typographical errors are identified. On page 277, the citation should be 40 CFR Part 262 (20 NMAC 4.1, **§300**). On page 279, the citation should be 40 CFR Part 265 (20 NMAC 4.1, **§600**). On page 283, the citation should be 40 CFR Part 273 (**20 NMAC 4.1, §1000**), and the BECR Section should be **25.2.6**. On page 283, the citation to RCRA §3016 is a repeat from page 277, and should be replaced with references to requirements identified on pages 176 through 178 relating to compliance with Universal Waste Management Regulations.