



October 3, 2002

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Regarding: Waste Isolation Pilot Plant Permit Modification Requests

- Item 1: Addition of New Mexico Hazardous Waste Number**
- Item 2: Characterizing Re-Packaged Homogenous Solids as Retrievably Stored Waste with Regard to Solids Sampling**
- Item 3: Classified Information Record Keeping and Audit Requirements**
- Item 4: Addition of HalfPACTs**
- Item 5: Use of Radiography for Newly Generated Waste**

Dear Mr. Zappe,

Nuclear Watch of New Mexico (NWNM) requests that the New Mexico Environment Department (NMED) deny the above mentioned permit modification requests.

As you know, regulations under the New Mexico Hazardous Waste Act (20 NMAC 4.1.900 incorporating 40 CFR §270.42(b)(7)) provides that NMED may deny any Class 2 permit modification request for the following reasons:

- the modification request is incomplete;
- the modification request does not comply with other regulations covering operating standards for hazardous waste storage and disposal facilities; or
- the conditions of the modification fail to protect human health and the environment

NWNM is strongly opposed to these modifications as they are a threat to human health and the environment, and they are technically incomplete.

The following reasons will support our request to deny.

Item 1: Addition of New Mexico Hazardous Waste Number

As the permit modification request (PMR) states, the permittees submitted the same modification request to NMED on June 6th, 2002. This original PMR was denied by NMED because of insufficient information, but once again the permittees have not rectified this issue of completeness in this PMR.

There is no mention of the studies done on the hydrofluoric acid (HF) contaminated waste. While this may not be required in the actual permit, the permittees should certainly have included the studies they have performed on this waste in the PMR. Without this data and information, the public is given no reason why we should assume that the permittees facts are correct. This and this alone should be sufficient for NMED to deny this item, however there is more.

Corrosives are a banned substance at the Waste Isolation Pilot Plant (WIPP). While the permittees claim that they have found a way to remove the corrosive nature of HF, the potential danger to human health and the environment is far too great to get only 100m³ of waste to WIPP. NWNM also notes that the main reason why the permittees wish to send this waste to WIPP is because of the Idaho National Engineering and Environmental Laboratory (INEEL). INEEL is notorious for their inability to abide by the permit. They have used inappropriate verification and confirmation tools (i.e., the WAGS system), and they have illegally shipped waste to WIPP because of this, among other violations. INEEL is not the site that we should be making concessions for. They are a danger to the WIPP site already, without giving them the opportunity to send corrosives to WIPP.

NMED must deny this PMR. The PMR is technically incomplete; it is a potential danger to human health and the environment, and because of the permittees wish to allow a previously banned substance into WIPP this should be a Class 3 PMR, not a Class 2. If NMED does approve this PMR, it must prohibit INEEL from using only acceptable knowledge (AK) when characterizing and sending this waste. NMED must have INEEL do visual examination (VE) and testing of this waste prior to shipping to ensure that the waste is non-corrosive. If this PMR is approved, it should be for only the 100m³ of waste that the permittees claim INEEL currently has to dispose of. If any other site in the DOE complex wishes to send HF contaminated waste, NMED should require the permittees to submit a PMR for that particular site.

Item 2: Characterizing Re-Packaged Homogenous Solids as Retrievably Stored Waste with Regard to Solids Sampling

“The proposed modification will allow generator/storage sites throughout the DOE complex more *flexibility* in selecting the *most efficient* approach to performing some waste analysis tasks.” (page A-21, emphasis added) While “flexibility” and “efficiency” may be on the forefront of the permittees concerns, this is not what makes a permit modification appropriate for approval. In fact, with this statement, the permittees assist NMED in reasons to deny this PMR.

Once again this PMR is incomplete. While the permittees claim that their intent is two fold, one to assist in adding more flexibility to generating/storage sites within the Department of Energy (DOE) complex, and two, to correct errors/confusion within the WIPP Permit, their explanation is woefully lacking. While the permittees believe that their PMR will reduce confusion, their explanation is actually more obfuscating than not.

In addition to this, the PMR does not clearly explain why this change is needed. Again, while flexibility and efficiency (i.e., cost savings) may be the priority of the permittees, it is not what makes for an approvable permit modification request. Because of this lack of explanation there is clearly a need for

more data, explanation and justification before this PMR can be considered complete. NMED must deny this PMR.

This lack of information also contributes to NWNM's concerns over human health and the environment. To allow newly-generated/re-packaged waste to be characterized in the same light as retrievable stored waste goes against the logic of the original WIPP Permit and may affect human health and the environment in an adverse way. To give the permittees the opportunity to reduce their characterization standards for re-packaged waste is unacceptable and dangerous. Again, the lack of reasoning within the PMR speaks volumes of the fact that not even the permittees have looked into this sufficiently and hence all the possible contingencies have not been accounted for. Even if there is a remote chance that this PMR could adversely affect health and the environment, NMED should deny this PMR.

Item 3: Classified Information Record Keeping and Audit Requirements

This PMR should be denied outright because it is incomplete and it is detrimental to human health and the environment. If NMED does not deny this PMR, then NMED should reclassify this PMR as a Class 3, for it certainly does not fall under the purview of a Class 2 PMR.

In several stakeholder meetings, the permittees were unable to define how much waste would be classified and fall under the requirements of this PMR. Without a substantial investigation on how much classified waste is in the DOE complex, there is the opportunity for the permittees to be disingenuous on what waste can be deemed "classified." Even with NMED personnel having clearance to view the information that will be classified, NWNM is well aware that NMED is under staffed and the opportunity for something to slip by is a serious possibility.

This PMR also limits the opportunity for stakeholders to maintain a watchful eye on WIPP. This is unacceptable because, as NMED is well aware of, stakeholders have played a valuable role in making certain that WIPP stays true to its own mission.

Additionally, there is no mention of what would clearly be necessary changes to the Permit in the case of a spill. While this contingency may be unlikely, what is to occur if an accident takes place and there is a spill of the waste being transported? When the cleanup crew is sent to the spill site, will they all have to have Q clearance before they are allowed onto the contaminated site? Again, while this is an unlikely scenario, it clearly begs for need to deny this PMR, as the permittees make no mention of changes in their accident protocol.

The need for this PMR is not made clear. There is no discussion as to the pros and cons of the alternatives and hence no rationale as to why this is the only way to deal with their current need to bury classified waste at WIPP.

This lack of information creates an incomplete document and therefore requires that this PMR must be denied.

Furthermore, without additional explanation NWNM can see a variety of reasons why this PMR adversely affects human health and the environment. Using our hypothetical scenario of an accident, if

there is no change as to how WIPP would deal with this situation then we can see how lost time could endanger everything around that spill. There is also cause for concern if this classified approach to waste disposal is abused and waste is inappropriately dumped at WIPP.

National security has never been so blatantly used as a reason for a PMR by the permittees. This PMR must be denied as it currently stands, as the scope of it changes far too many items in the WIPP Permit. Even if NMED were to reclassify this PMR as a Class 3, NMED will need to deny it as it is incomplete and a danger to health and the environment.

Item 4: Addition of HalfPACTs

Once again, this PMR is incomplete, and NMED should deny it. The permittees give no reason to show under what circumstances the HalfPACT will be used. This should be in the PMR as we should know when a TRUPACT-II will be used and when a HalfPACT will be used. In addition to this, the permittees should show documentation of when they have had trouble shipping with the TRUPACT-II. It is inappropriate for the permittees to create a PMR simply to have a wish fulfilled, rather than a need.

The permittees also do not address any plan to deal with the contingency of leaky drums within the HalfPACT. We have recently seen this lack of consideration with respect to the TRUPACT-II, as an INEEL shipment had to be returned to INEEL after contamination was found. The permittees must produce a plan to deal with this potential problem before the HalfPACT is to be used. Again, NWNM believes that this is an incomplete PMR and is a threat to health and the environment and hence NMED must deny this.

Item 5: Use of Radiography for Newly Generated Waste

This PMR item is very similar to item 2 in the fact that it is incomplete and the permittees basis for this PMR is for “flexibility” and “efficiency” rather than quality. Even if efficiency was a reason to allow for a PMR to be approved, which it is not, there are simply no reasons offered by the permittees as to why this is the case. “Generator/storage sites have identified circumstances when post-packaging confirmation of AK using radiography instead of verifying AK at the time of packaging is more efficient.” (A-95) This is the extent of their reasoning. This is not enough to allow this PMR to be approved. NMED must deny this PMR.

NWNM has always believed that DOE’s AK of its waste in the DOE complex is poor. To reduce its procedures for verification of AK, without supporting reasons as to why this is not the case, the permittees open up the opportunity to adversely affect human health and the environment. The permittees also have not fully justified why this PMR needs to be implemented. There is simply no serious explanation as to why this should be approved.

In conclusion, **Nuclear Watch of New Mexico** recommends that Addition of New Mexico Hazardous Waste Number, Characterizing Re-Packaged Homogenous Solids as Retrievably Stored Waste with Regard to Solids Sampling, Classified Information Record Keeping and Audit Requirements, Addition of HalfPACTs and Use of Radiography for Newly Generated Waste should be denied. These PMRs are

incomplete, they are a danger to human health and the environment and some constitute a substantial change in the mission of the Waste Isolation Pilot Plant.

Since WIPP has opened, NWNM has consistently stated that the permittees continue to submit incomplete permit modification request and the permittees continue to say that they will correct this problem. However, this series of PMRs again shows that there is no intent by the permittees to change their procedures and they continue to waste the time and money of the New Mexico Environment Department, our organization, other organizations who watch over WIPP, and the taxpayers. In our eyes, this is simply unacceptable. In addition to this, the permittees continue to put the almighty dollar ahead of human health and the environment as opposed to what is best for the safe cleanup of the DOE complex. Again, this is unacceptable. While the permittees may believe that since WIPP is open, it may change its mission on a whim, or waste the time and money of the taxpaying public, but they cannot. NMED must deny these PMRs and show the permittees that their attempts to endanger the public and the environment will not be allowed.

Thank you for your careful consideration of our comments.

Sincerely,

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