



Attention Docket ID No. OAR-2002-0005

The following comments are submitted by Nuclear Watch of New Mexico (NWNM) regarding the Environmental Protection Agency's (EPA) proposed rule change regarding 40 CFR 194 as published in the *Federal Register* (FR) on August 9th, 2002, pages 51930 – 51946. The contact person at NWNM regarding these comments is:

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Public Process:

NWNM was disappointed by the lack of consideration that EPA gave toward requests to change the public hearings to a different date. As EPA was informed of, a number of groups were extremely busy dealing with a host of Waste Isolation Pilot Plant (WIPP) permit modification requests (PMR). In spite of being informed of this conflict, EPA chose to have the hearings on the dates they had selected. Ironically, EPA mentions a number of times in the FR how public comment has been lacking with respect to EPA dockets and approvals, yet when they have the opportunity to assist in the public process it chooses not to. Because of the deadline of these WIPP PMRs NWNM was unable to attend the public hearings on the dates chosen by EPA. In the future, NWNM would highly recommend that EPA listen and in fact consult with citizen organizations *before* scheduling hearing dates.

Proposed Changes to §194.6:

The definition of “minor alternative provision” is of concern to NWNM. The proposed definition lacks clarity and requires a more substantial operating definition. Without a more substantial operating definition, there could be misunderstanding or violations that lead to more lawsuits such as the IV.B.2.b WIPP Permit lawsuit that Southwest Research and Information Center is currently involved with. (Please see New Mexico Supreme Court Docket No. 27,578 – Southwest Research and Information Center, et al vs. State of New Mexico, New Mexico Environment Department, et al.)

In addition to this, NWNM believes that the opportunity to comment on “minor revisions” is an excellent for public process and one that we currently do not have available to us at the state level. The concern that NWNM has over this is that 30-day comment period is not enough.

NWNM proposes that EPA offer a 60-day comment period for minor revisions as we believe that there will be times in which a 30-day comment period will be insufficient to provide enough time for the public to comment.

Finally, NWNM is concerned that the proposed rule change does not clearly stipulate a change between 40 CFR §194.6(a) and 194.6(b). Take a case in which public comment persuades EPA to change its decision on whether an item is “minor” under subsection (b). In this case, NWNM believes that EPA must issue a notice of final rule making rejecting the change and then re-notice it for public comment under 40 CFR §194.6(a). Additionally, NWNM believes that EPA should include a provision which states that final determination will depend on public comment.

Proposed Changes to §194.8:

NWNM is deeply concerned and objects to the proposed rule change that states generating site will require only *one* §194.8 approval. This is entirely unacceptable. EPA states that it is *not* interested in reducing oversight and enforcement of DOE sites, however with this reduction in required approvals it is potentially doing just that!

Furthermore, EPA proposed change to allow the Central Characterization Project (CCP) to be approved once for *all* waste streams is equally unacceptable. This opens the door to a number of issues that parallel the problems that occurred with the Idaho National Engineering and Environmental Laboratory on July 2001. (On a side note, the abbreviation given for INEEL on FR 51931 is incorrect. INEEL is the acronym that we have given, not Idaho National Energy and Engineering Laboratory. Although EPA’s acronym may be more honest to the true nature of the lab.) If EPA is sincerely interested in avoiding future problems such as the INEEL case, then careful and consistent re-certifications and approvals must remain in place.

The EPA’s justification for relaxing its oversight is disgraceful. NWNM agrees that oversight of the Department of Energy’s (DOE) transuranic (TRU) waste complex is daunting, however it is the EPA’s responsibility to make certain that the funding is available to maintain that oversight. In addition to this, the WIPP Land Withdrawal Act makes it the responsibility of the United States Congress to provide that funding to the EPA. The justification that the DOE TRU waste complex will overwhelm the EPA is a completely illegitimate and clearly this is something EPA needs to investigate or document on a greater level before such a claim can be made.

As DOE continues its plans for accelerated cleanup and generates a greater volume of waste, it is EPA’s responsibility to stringently oversee DOE. NWNM is concerned that some of the items in the proposed rule change of 40 CFR §194 may in fact reduce the level of oversight of DOE. This cannot happen.

Thank you for your careful consideration of our comments.

Sincerely,

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