

July 15, 2003

Steve Zappe
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

**Regarding Waste Isolation Pilot Plant Class 3 Permit Modification Request:
Construction and Use of Hazardous Waste Disposal Units**

Dear Mr. Zappe,

Nuclear Watch of New Mexico (NWNM) **opposes** this proposed modification to the Waste Isolation Pilot Plant's (WIPP) Hazardous Waste Facility Permit (HWFP). NWNM believes that this permit modification request (PMR) is incomplete and will possibly endanger human health and the environment. NWNM **strongly recommends** that the New Mexico Environment Department (NMED) **deny** this proposed modification.

As you know, the New Mexico Hazardous Waste Act (20 NMAC 4.1.900, incorporating 40 CFR 270.42(c)(6)), provides that NMED may deny any Class 3 modification request.

The following reasons support NWNM's recommendation to **deny** this modification:

The Department of Energy (DOE) states that the reason for which it is requesting new hazardous waste disposal units (HWDU), new panels that will be added in addition to the panels already allowed within the HWFP, is because of an expected increase in shipped wastes. On the surface this makes sense, however DOE has not satisfactorily justified this reason.

One of the major reasons DOE expects increased waste shipments to WIPP is because of the Letters of Intent (LOI) signed by many states that have one or more DOE facilities within them. Events have shown that this rationale is flawed. Many LOIs have been renounced or ignored by the states throughout the country, for which New Mexico is an excellent example. It is irrational of DOE to expect that more LOIs will not fall into the same fate as the New Mexico LOI. Without having evidence to the contrary, NWNM can only assume that many more LOIs will not stand the test of time and therefore make DOE's fundamental rationale incorrect.

The DOE also mentions that there are several modifications that it is preparing for WIPP that will assist in accelerated shipments. Some of them are the Advanced Mixed Waste Treatment Facility (AMWTF), the TRUPACT-III and shipping via rail. None of these modifications have been submitted, and from experience we are all aware of the difficulty DOE has in producing timely and complete modifications (one example of this is the Centralized Confirmation/Characterization Facility PMR, which has come and gone several times). Until these procedures are in place, DOE has simply no reason to assume

that these modifications will occur in a timely fashion. NMED should require DOE to have a **real and demonstrated** need for more HWDUs before it is allowed to construct them!

NWNM does not want to see a repeat of what happened with Panel 1. As you know, Panel 1 was mined and constructed prematurely. As a result, Panel 1 was not used for several years before transuranic waste was actually shipped to WIPP and emplaced within Panel 1. Because of this delay Panel 1 showed a number of problems due to its age and was not completely filled. If DOE's shipment forecasting is off, is not the chances of a Panel 1 repeat very likely?

Finally, has DOE taken into account the results of the recent Idaho lawsuit? NWNM believes that this may be the beginning of things to come. More suits, such as this one, will bring the DOE "forecasted" waste shipments down to reality instead of fanciful, self-serving projections by DOE. Again, NWNM does not see the justification for this modification. Until DOE can produce real evidence of demonstrated need, this modification should be denied.

Mr. Zappe, until DOE can realistically show an increase in its shipment forecasting without resorting to incomplete modifications that partially rely on other future modifications that may or may not be submitted or approved, this PMR is greatly premature. Without proper justification, NMED should **deny** this PMR.

Thank you for your careful consideration of our comments.

Sincerely,

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