



State of New Mexico
ENVIRONMENT DEPARTMENT
Hazardous Waste Bureau



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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

June 27, 2018

Todd Shrader, Manager
Carlsbad Field Office
Department of Energy
PO Box 3090
Carlsbad, NM 88221-3090

Bruce C. Covert, Project Manager
Nuclear Waste Partnership LLC
PO Box 2078
Carlsbad, NM 88221-2078

**RE: TECHNICAL INCOMPLETENESS DETERMINATION OF CLASS 3 MODIFICATION
CLARIFICATION OF TRU MIXED WASTE DISPOSAL VOLUME REPORTING
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Messrs. Shrader and Covert:

On February 2, 2018, the New Mexico Environment Department (“NMED”) received the Department of Energy’s (“DOE”) and Nuclear Waste Partnership’s (“NWP”) (collectively, the “Permittees”) Class 2 Permit Modification Request (“Request”) *Clarification of TRU Mixed Waste Disposal Volume Reporting* dated January 31, 2018. The Request proposes changes to Permit Parts: 1, 3, 4, 6, and Permit Attachments A1, A2, B, C, G, H, H1 and J.

After a thorough review of the Request and the submitted public comments (which can be found at: <https://www.env.nm.gov/hazardous-waste/wipp/>), NMED made a final decision to elevate the Request to follow the procedures for Class 3 modifications in accordance with 40 CFR 270.42(b)(6)(i)(C) on June 1, 2018. The Class 3 modification is currently being processed by NMED in accordance with the requirements specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(c)), and was determined to be administratively complete on June 22, 2018.

In its technical review of the Class 3 modification, NMED has determined that additional information is needed. The attached comments list the specific additional information requested by NMED. The Permittees must respond to the information request in order for NMED to

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complete its technical review and prepare a draft Permit. The Permittees must submit responses to NMED no later than July 30, 2018.

If you have any question regarding this matter, please contact Ricardo Maestas of my staff at (505) 476-6050.

Sincerely,


Ricardo Maestas
for

John E. Kieling
Chief
Hazardous Waste Bureau

cc: R. Maestas, NMED HWB
D. Biswell, NMED HWB
H. Tellez, NMED HWB
M. McLean, NMED HWB
S. Lucas-Kamat, NMED DOEOB
M. Brown, DOE CBFO
A. Stone, DOE CBFO
R. Chavez, NWP
L. King, EPA Region 6
T. Peake, EPA ORIA
File: WIPP '18

NMED Comments on Permit Modification

1. Overview

Page 2, pdf page 6 states: *"The TRU waste VOR [volume of record] will be tracked and reported, separately from the Permit, by the DOE pursuant to the WIPP Land Withdrawal Act ("LWA") so that the LWA total capacity limit for TRU waste is not exceeded."*

Page 3, pdf page 7 states: *"The DOE will establish and implement a written policy to formalize the tracking and reporting of the TRU waste VOR."*

Page 6, pdf page 10 states: *"...a mechanism that is not associated with the Permit will be used by DOE to track and report the VOR pursuant to the LWA."*

Page 9, pdf page 13 states: *"This change will allow the DOE to establish a formal tracking and reporting mechanism, independent of the Permit, for comparing the disposed TRU waste VOR to the 6.2 million ft³ (175,564 m³) capacity limit of the WIPP LWA."*

Please provide details of DOE's plan or mechanism to track and report waste volumes pursuant to the LWA. Please clarify if DOE will use fill factor or inner container volumes. Explain how and when the plan will be implemented. Also, please clarify if the action will be retroactive. Provide the conversion factors or calculations that will be used to convert RCRA volume to LWA volume.

2. Overview

Page 2, pdf page 6 states: *"...40 CFR Part 194 requires the reporting of the volume of waste and also information regarding material parameter waste estimates and radionuclides for purposes of comparison to the input data used in the Compliance Certification Application."*

Page 9, pdf page 13 states: *"...the authority for overseeing RCRA at the WIPP facility has been granted to the NMED by the Environmental Protection Agency, and the authority for management, tracking, and reporting the LWA TRU waste volume has been granted to the DOE by Congress."*

In order to address public concern regarding the oversight of DOE, please clarify to whom or what organization the LWA volume and additional information mentioned above will be reported to, and how this will be documented. Provide details, if any, regarding regulatory oversight. Provide a list of regulatory agencies or organizations who oversee the WIPP Permittees.

3. Overview

Page 3, pdf page 7 states: *"...the tracking and reporting will be subject to the DOE Quality Assurance program which will assure consistent application of the policy."*

Please provide information on the DOE Quality Assurance program and how it will apply to LWA volume reporting.

4. Overview

Page 3, pdf page 7 states: *“The DOE intends to make the status of the WIPP LWA TRU waste volume tracking results publicly available.”*

Please provide further details on the location, method, and reporting frequency for the WIPP LWA TRU waste volume tracking results, to include how the public will have access to this information.

5. Overview

Page 3, pdf page 7 states: *“This packaging information is recorded by the generator/storage sites in the WWIS [WIPP Waste Information System]. The WWIS is the Permittees’ database in which generator/storage sites record the necessary information for reporting both the TRU mixed waste volume and the LWA TRU waste VOR.”*

Page 9, pdf page 13 states: *“The WWIS database is the single database used by the Permittees to record the types and quantities of TRU mixed waste characterized, managed, stored and disposed at the WIPP facility. There is sufficient container data information in the WDS [Waste Data System] to query and report waste volumes as needed pursuant to the proposed definitions.”*

Please describe the processes and procedures that are in place to review and verify that waste volumes entered into the WWIS are accurate, to include external reviews of these processes and procedures.

6. General

Please provide information for the basis of the designation of the LWA 6.2 million ft³ volume of TRU waste.

7. General

The Overview of the Modification did not discuss the Federal Facility Compliance Act (“FFCA”). The FFCA amended the Solid Waste Disposal Act (“SWDA”), which includes the Resource Conservation and Recovery Act (“RCRA”). The FFCA requires federal facilities to comply with applicable hazardous waste laws.

Please describe how the FFCA affected DOE sites and how this might affect the plan to report LWA volume.

8. General

The term “Volume of Record” is neither used nor defined in the LWA. Please provide references, if any, as to where this term has been previously used or defined.

9. General

NMED notes that since there is a proposed change to the Hazardous Waste Permit Application Part A in this Modification, the Permittees shall submit the current version of the Part A form.

10. General

Please provide details of the payload management policy. Describe the effect, if any, this policy has on the proposed changes in this Modification.