

Steve Pullen

m: Tom or Susan McMichael [susan_mcm@mindspring.com]
sent: Monday, October 08, 2001 3:12 PM
To: Steve Pullen
Cc: Clay Clarke
Subject: Re: TP Testimony

Steve,

Based upon the testimony below, NMED has concluded that the draft permit with the proposed conditions are reasonable and adequate to meet all regulatory requirements for the Secretary to issue a final HWA permit under 264. __ to [all applicable requirements]

The above is a broad statement covering the whole thing, but we need it!

Txs,

Susan

----- Original Message -----

From: "Steve Pullen" <Steve_pullen@nmenv.state.nm.us>
To: "Susan McMichael" <susan_mcm@mindspring.com>
Sent: Monday, October 08, 2001 2:51 PM
Subject: TP Testimony

~ Susan,

.f you have an example of a statement that the Permit/Application meets the

> requirements of the regulations, could you send it to me?

>

> Tx SP

>

formatting

Jocia,
Heter's
another

FINANCIAL ASSURANCE

I. Introduction.

Set forth the regulatory standards for (a) requirement; (b) mechanisms; and (c) cost estimates

II. Permit Condition.

~~(a)~~ This section contains a short description of the permit condition and relationship to application.

EG

(a) ~~(a)~~ First para. Permit condition ___ states:

(b) ~~(b)~~ Second para. The applicant proposed to meet the cost estimate requirements of ___ by letter dated ___. The applicant proposed [spell out what he proposed]

(c) ~~(c)~~ Third, para.
NMED informed the applicant that the proposal was deficient by NOD dated ___

(d) ~~(d)~~ Fourth, para.
NMED determined that the applicants' proposal was deficient because [FILL IN - COBRAIN]

(e) ~~(e)~~ Fifth,
NMED determined that a cost estimate of \$_____ is reasonable and sufficient to meet the requirements of 264.____.

[STATE REASONS SUPPORTING CONCLUSION WITH CITATIONS TO ADMINSTRATIVE RECORD]

To: Dave
Cobrain
From: Jocia
Miller,
OCC

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I. REGULATORY HISTORY

A. Standard.

20 NMAC 4.1.900 (incorporating 40 CFR '270.14(b)(2)) requires a permit application for a hazardous waste management facility to contain:

Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Part 264 of this chapter.

In addition, 20 NMAC 4.1.900 (incorporating 40 CFR '270.14(b)(3)) requires a permit application for a hazardous waste management facility to contain, AA copy of the waste analysis plan required by '264.13(b) and, if applicable '264.13(c).@

B. Application and Notice of Deficiencies.

The permit application contains a waste analysis plan at Permit Attachment F. Section 4.1 identifies the types of wastes accepted at GMI. Section 4.2 lists the criteria for waste acceptance. Section 4.3 and 4.4 contains the pre-acceptance procedures for initial waste acceptance of hazardous waste received from off-site generators and management procedures for incoming shipments of waste. Section 4.5 contains the waste analysis protocols and the sampling and analysis methods and procedures, including QA/QC are in Sections 4.6 and 4.7. Section 4.8 contains the facility's waste tracking system.

NMED issued GMI an NOD on September 12, 2000 and January 30, 2001. GMI responded to the January 30, 2001 NOD by letter dated March 14, 2001. [after March 14th ? - when did we "draft" sampling plan?][CONNIE - I'LL FILL IN THIS PARAGRAPH]

II. PERMIT CONDITION.

A. Waste Analysis Procedures.

1. Sampling Plan.

The permit application - CONNIE CAN YOU EXPLAIN HOW THE SAMPLING PLAN IS ENFORCEABLE TO MEET RCRA REQUIREMENTS. [SUMMARIZE THE REQUIREMENTS OF THE SAMPLING PLAN.

2. Acceptable Knowledge.

FINAL REGULATORY HISTORY ORAL TESTIMONY

Q. HAVE YOU PREPARED TESTIMONY REGARDING THE REGULATORY PROCESS FOR THE ISSUANCE OF THE REVISED DRAFT PERMIT FOR WIPP?

A. Yes I have.

Q. CAN YOU IDENTIFY IT FOR THE RECORD?

A. Yes, it's identified in NMED's Exhibit A - the Department's prepared testimony - I believe it marked and tabbed.

Q. CAN YOU SUMMARIZE THE START OF THE REGULATORY PROCESS FOR ISSUANCE OF THE WIPP DRAFT PERMIT?

A. In processing the WIPP permit application, NMED followed the same regulatory process it follows for other RCRA facilities, as you can see in the viewgraph. An owner or operator of a proposed hazardous waste management facility must submit a comprehensive permit application covering all aspects of design, operation, maintenance, and closure of the facility. The application is divided into Parts A and B.

Q. WHAT IS A RCRA PART A APPLICATION?

A. Part A is a short, standard form that summarizes general information about a facility, including the name of the owner and operator, a list of the types of wastes managed at the facility, a facility layout diagram, and the activities requiring a permit. The requirements of Part A are regulatory and specified in 40 CFR §270.13.

Q. WHAT DOES A RCRA PART B REQUIRE?

A. Our hazardous waste management regulations require both general and specific Part B requirements which are integral to review of the application. The general requirements are specified in 40 CFR §270.14 and require, for example: a general description of the facility; chemical and physical analyses of hazardous waste and hazardous debris to be handled at WIPP; a copy of a waste analysis plan; information on the design and operation of all hazardous waste management units; procedures to prevent hazards; a contingency plan; and other relevant information, such as a groundwater monitoring program. Specific information requirements are further set out for WIPP as a miscellaneous unit under §270.23 which require more detailed information requirements as set out in that section.

Q. CAN YOU SUMMARIZE THE SPECIFIC INFORMATION REQUIREMENTS?

A. Yes. The applicants must provide information that demonstrates compliance with the environmental performance standards for Subpart X facilities (also known as miscellaneous units) contained in 40 CFR §§264.600 through 264.603. These standards require that the units be located, designed, constructed, operated, maintained, and closed in a manner that ensures protection of human health and the environment.

Q. DOES THE SUBMITTAL OF A PART B PERMIT APPLICATION PROVIDE ANY INDICATION REGARDING IF AND WHEN THE FACILITY WILL GET A RCRA PERMIT?

A. No. There are several factors which impact the facilities' ability to receive a final permit once an application has been submitted. These factors relate entirely to the application - the completeness and accuracy of the application, the complexity of the application and the length of the application. Further, WIPP is the first facility in the nation to apply for a permit for disposal of mixed radioactive waste in a geologic repository. This presents the department with a unique opportunity to apply the environmental performance standards specified in §264 Subpart X to a geologic repository.

Not
Needed
Only

Q. LET' TALK ABOUT THE WIPP PERMIT AND HOW IT FITS INTO THIS PROCESS -- WHEN DID THE APPLICANTS TO SUBMIT PARTS A AND B OF THE RCRA PERMIT APPLICATION?

[REFER TO FLOWCHART - DIAGRAM]

Not Needed

A. I'd like to use an enlargement of a figure which will help describe the process. It's identified as "WIPP Specific Flow Diagram of Permitting Process" which is attached to my testimony -- I believe it is Attachment 1. On May 26, 1995, the applicants submitted Parts A and B of the permit application for the storage and disposal of TRU mixed waste at WIPP under the New Mexico Hazardous Waste Act. The submittal was in direct response to former NMED Secretary Espinosa's September 2, 1994, order requiring, among other things, the applicants to submit a revised application for future WIPP activities.

Q. WHAT IS THE NEXT STEP IN REVIEWING THE WIPP PERMIT APPLICATION?

A. The next step in the regulatory process is the determination by NMED that the application is "administratively and technically complete" as specified 20 NMAC 4.1.901.A.1.

Q. WHAT IS AN ADMINISTRATIVE COMPLETENESS DETERMINATION?

A. NMED determines administrative completeness by comparing the contents of the permit application against a checklist identifying the required elements as specified by the relevant regulations, such as 20 NMAC 4.1.500 and .900 (incorporating 40 CFR §§264 and 270).

When it has been determined that the application addresses all the administratively required elements, the department notifies the applicant that the application has been deemed to be complete. The department then evaluates the application to determine if the facility complies with the applicable legal and technical requirements. An applicant must provide NMED with all necessary information to review an application for compliance with the HWA and RCRA

Q. WHAT IS A TECHNICAL COMPLETENESS DETERMINATION?

A. NMED evaluates the application from a different perspective to ensure that the facility included sufficient detail to demonstrate how they will comply with the applicable legal and technical requirements. For instance, although the application may have satisfied a checklist requirement to address, say, the existence of a waste analysis plan, from a technical standpoint it would be considered inadequate or incomplete if there were insufficient detail contained within that waste analysis plan to ensure compliance with the relevant waste characterization requirements of §264.13.

Q. IF THE APPLICATION IS ADMINISTRATIVELY OR TECHNICALLY INCOMPLETE, WHAT HAPPENS?

A. If the department deems an application to be incomplete, it issues a Notice of Deficiency to the applicants describing the additional information which must be provided for a complete application. The department may issue a notice of deficiency at any time, and as often as necessary, during the permitting review process.

Q. WHY IS IT IMPORTANT THAT AN APPLICATION BE COMPLETE AND ACCURATE?

A. If a facility fails to submit an application demonstrating how it will comply with applicable legal and technical requirements, or if the application is incomplete or contains false information, NMED may either condition compliance in the permit, or prepare a Notice of Intent to Deny the permit application for public notice and comment.

Q. WHEN DID THE DEPARTMENT FIRST DETERMINE THAT THE WIPP APPLICATION ADMINISTRATIVELY COMPLETE?

A. On July 25, 1995, following a checklist review of Revision 5.0 of the Application, NMED issued an administrative completeness determination. NMED then began its technical review of the Application.

Q. DID THE DEPARTMENT DETERMINE THAT THE WIPP APPLICATION WAS TECHNICALLY INCOMPLETE?

A. Yes, many times - the facts and dates are in my testimony. To summarize, we had two major reviews, and both reviews concluded that the application was technically incomplete for many significant reasons. During November 1995, as outlined on the flow chart, NMED issued three requests for information, totaling approximately one hundred fifty pages, which stated that the application "lack[ed] necessary and important detailed information required for the development of the draft permit." As stated in my testimony, these deficiencies were serious and substantial. On March 14, 1996, NMED determined that Revision 5.2 of the Application still contained numerous technical deficiencies. This time, NMED issued a more formal Notice of Deficiency, comprising nearly eighty pages, which contained numerous requests for specific information regarding most chapters of the revised application. Once again, there were significant general areas of deficiency including waste characterization, risk assessment, monitoring plans, and closure plans.

Q. IF THE APPLICANTS DID NOT CORRECT THESE DEFICIENCIES, WHAT WOULD THE DEPARTMENT HAVE DONE?

A. There would have been no choice but to recommend denial of the permit application.

Q. WHEN DID THE DEPARTMENT INITIALLY DETERMINE THE APPLICATION TO BE TECHNICALLY COMPLETE?

A. On June 27, 1996, NMED determined that the application met the requirements for a RCRA application under the regulations, and proceeded to develop the draft permit based upon the information available at that time. NMED identified several deficiencies in Revision 6.0 which the applicants had failed to address despite prior requests for information and notices of deficiency (e.g., remote-handled waste characterization procedures). However, NMED determined that further requests for information and notices of deficiency were unlikely to obtain additional information.

Q. CAN AN APPLICATION BE DEEMED "COMPLETE" BUT TECHNICALLY INADEQUATE?

A. Yes, that is very common. NMED frequently receives applications or permit modification requests which, although they address all administrative requirements under HWA and RCRA, fail to provide sufficient detail to fully satisfy technical requirements.

Q. AFTER THE JUNE 27, 1996 COMPLETENESS DETERMINATION, DID THE APPLICANTS SUBMIT ANY MORE INFORMATION?

A. Yes. The applicants continued to submit information to NMED which they asserted supplemented or modified the Application. The volume of this information was substantial - an additional 11,400 pages between April 12, 1996, and November 20, 1997.

Q. WAS ANY OF THE INFORMATION NEW?

A. Yes. After the applicants notified NMED that the ground water monitoring program was inadequate for their purposes, NMED was compelled to request a revised ground water monitoring plan. Similarly, NMED was compelled to request additional information as a result of Congress amending the LWA to exempt all WIPP-destined TRU mixed waste from RCRA treatment standards and land disposal prohibitions.

Q. WHY WAS THIS NECESSARY?

A. The application relied heavily on the WIPP No-Migration Variance Petition submitted to EPA Office of Solid Waste, which presumably demonstrated compliance with these standards and prohibitions. But due to the LWA amendments, the EPA was no longer required to, and in fact had not reviewed, the Petition. The applicants' response to NMED's request consisted of nearly 7300 pages contained in seven volumes. This is Document #AK in the administrative record.

Q. CAN THE RECEIPT OF NEW INFORMATION AFFECT THE COMPLETENESS DETERMINATION?

A. Absolutely. The department follows the procedure specified in 40 CFR §124.3(c), which states that, after the application is completed, the department may request additional information from the applicant, but only when necessary to clarify, modify, or supplement previously submitted information. It further states that requests for such additional information will not render an application incomplete.

Q. IF THE APPLICANT PROVIDES THE NEW INFORMATION NOT AT THE REQUEST OF THE DEPARTMENT, CAN IT RENDER THE APPLICATION INCOMPLETE?

A. Yes.

Q. WHY DID THE DEPARTMENT EVENTUALLY RESCIND THE JUNE 27, 1996 COMPLETENESS DETERMINATION?

A. There were several reasons. First, the HWA requires in §74-4-4.7 that "Every applicant for a permit pursuant to the Hazardous Waste Act shall file a disclosure statement with the

department... at the same time the applicant files the application for a permit with the secretary." Westinghouse did not provide a disclosure statement or inform NMED of any basis or reason that it would be exempt from this requirement. NMED informed Westinghouse of this fact on April 28, 1997 (AR #970421).

Q. WHEN DID THEY MEET THIS REQUIREMENT?

A. On July 14, 1997, Westinghouse responded by provided the necessary information to meet the disclosure requirements (AR #970711).

Q. WHAT WERE THE OTHER REASONS?

A. The second reason is because our statute and regulations require financial assurance for private operators of hazardous waste management facilities. I will fully address this issue later. In summary, Westinghouse failed to satisfy this requirement as well.

Q. WHEN DID THEY SATISFY THIS REQUIREMENT?

A. On November 20, 1998, Westinghouse submitted Revision 6.5 of the permit application, which included estimates for closure and post-closure care costs (AR #971114)

Q. ANY OTHER REASONS FOR RESCINDING THE COMPLETENESS DETERMINATION?

A. Well, just the sheer volume of new and revised information we received between April 1996 and November 1997 that was not covered by the certification statement signed back in April 1996 played a significant role in our rescinding the completeness determination on September 26, 1997 (AR #970939). Attachment 12 to my written testimony indicates the applicants submitted over 11,000 pages of material, both as changes to the application and as technical data related to corrective action issues during that time period. In fact, that number doesn't even consider the number of pages in the final Shaft Sealing System Compliance Submittal Design report we received September 30, 1996, nor the two failed attempts by the applicants to submit an accurate Revision 6.3 to the application.

Q. DID THE DEPARTMENT ISSUE A NEW COMPLETENESS DETERMINATION?

A. Yes. After the applicants submitted the necessary information as Revision 6.5 of the Application, NMED issued a new completeness determination on January 5, 1998. (AR #971114, 980102)

Q. HOW LONG WAS THE APPLICATION WHEN IT WAS FINALLY DEEMED COMPLETE?

A. Revision 6 started out consisting of approximately 10,400 pages in 13 volumes. Including all the supplemental submittals and estimating that about 2500 pages were removed by submittal of revised pages, I'll guess the total number of pages considering for the development of the initial draft permit at around 21,000 pages. Remember, this wouldn't consider the number of pages of comments submitted after we issued it for public comment. I'll leave it to someone with more time on their hands to actually count how many pages there really are!

Q. AFTER THE APPLICATION WAS DEEMED COMPLETE, WHAT HAPPENED?

A. We drafted the permit, and as required by statute only after the completeness determination was made (§74-4-4.2.D)

Q. AFTER THE DRAFT PERMIT IS PUBLIC NOTICED, CAN AN APPLICANT SUBMIT NEW INFORMATION TO THE DEPARTMENT?

A. There is no regulatory process for this other than what I've already testified about which allows the department to [receive] or request additional information from the applicant. However, any subsequent submittals could directly affect the completeness of the application

Q. DID THE APPLICANTS EVER INFORM THE AGENCY AFTER THE JANUARY 5, 1998, COMPLETENESS DETERMINATION THAT THEY INTENDED TO MODIFY THE PERMIT APPLICATION?.

A. Not to my recollection.

Q. WHEN DID THE NMED ISSUE A FIRST DRAFT OF THE PERMIT?

A. On May 15, 1998, NMED published a notice announcing the availability of the draft permit and fact sheet, and establishing a ninety day public comment period.

Q. WHAT IS THE PURPOSE OF THIS PROCESS?

A. It is for the department to solicit comment from the public and the applicants on the draft permit.

Q. WHAT HAPPENED AFTER THE FIRST FULL ROUND OF PUBLIC COMMENT?

A. After the comment period ended on August 14, 1998, NMED reviewed and considered all public comment, and revised the initial draft permit according to those comments.

Q. HOW MANY COMMENTS DID WE RECEIVE?

A. The department received roughly 3300 pages of comments from 30 groups and individuals.

Q. DID NMED ISSUE A REVISED DRAFT PERMIT?

A. Yes. On November 13, 1998, NMED published a public notice announcing the availability of a revised draft permit, fact sheet, and the decision to hold a public hearing. NMED subsequently published a second public notice announcing the availability of a supplemental fact sheet.

Q. WHAT IS THE NEXT STEP?

A. Well, we are at this hearing to consider all public written and oral comment on the revised draft permit.

Q. AFTER THE FINAL PERMIT IS ISSUED, HOW CAN IT BE MODIFIED?

A. 20 NMAC 4.1.900 (incorporating 40 CFR §270 Subpart D) describes the circumstances under which changes can be made to a permit. Generally, either the department can determine a permit modification is needed based upon information received, or the permittees themselves can request a permit modification. There are 3 classes of modifications:

- Class 1 covers routine changes, such as typographical errors or replacing equipment with functionally equivalent equipment.
- Class 2 covers common changes, such as those needed to maintain safety or to conform to new regulations.
- Class 3 covers major changes that substantially alter the facility or its operations.

Q. DO ALL TYPES OF MODIFICATIONS - EVEN TO CORRECT TYPOGRAPHICAL ERRORS - REQUIRE PUBLIC NOTICE?

A. Yes, even the simple Class 1 modifications - like typographical errors - require the public be informed. Further, Class 2 and 3 require opportunity for public comment, and reserve the option for a public hearing

10/9/01
June 0.

CONTINGENCY PLAN

I. REGULATORY HISTORY

A. STANDARDS FOR CONTINGENCY PLANS

The regulatory requirements for Contingency Plans are contained in 20 NMAC 4.1.500 (incorporating 40 CFR 264.50 to 264.56), or Subpart D of 40 CFR. The Contingency Plan requirements were developed to assist the Permittee in preparing for an emergency by requiring the development of an action plan designed to minimize the hazards from fires, explosions, and any unplanned releases of hazardous constituents. These requirements are contained in 20 NMAC 4.1.500 (incorporating 40 CFR 264. 51)

The Contingency Plan describes the emergency procedures the Permittee must take including how the emergency will be assessed, how the hazardous constituents will be identified, how the plan will be implemented, and how internal and external notifications will be completed. In addition, the Contingency Plan must also describe the emergency equipment to be utilized, and provide a list and the capabilities of that equipment. (20 NMAC 4.1.500, incorporating 40 CFR 264.56). It is also important during an emergency that individuals are familiar with their roles and responsibilities. Therefore, the regulations require that an Emergency Coordinator and Alternate Emergency Coordinators be designated (20 NMAC 4.1.500, incorporating 40 CFR 264.55), and that the names, addresses, and phone numbers of these individuals be included in the draft permit. (20 NMAC 4.1.500, incorporating 40 CFR 264.52).

The Contingency Plan must also document arrangements with local, state, and federal agencies, such as local police departments, fire departments, hospitals, contractors and emergency response teams in order to ensure that the proper agencies will be notified and able to respond as necessary. The Permittee is also required to provide copies of the Contingency Plan to these various agencies and submit up dated plans when necessary.

A major component of the Contingency Plan is the requirement to include evacuation routes for facility personnel, and to include information on how personnel are notified of an emergency.

Provisions also require the Permittee to notify NMED of the implementation of the Contingency Plan, and of modifications of the Contingency Plan due to fail during an emergency, changes to the permit requirements, or if modifications are made to the site. (20 NMAC 4.1.500, incorporating 40 CFR 264.54)

B. APPLICATION AND NOTICES OF DEFICIENCIES

The initial application from Gandy-Marley Inc. (GMI) was submitted to NMED on _____. (Susan/Clay I don't know about the early history here, including the draft permit etc. so you may need to add a few sentences here. I will start from the August 8, 1995 NOD)

- 1st Permit Notices
in 96.
- were talking new
Permit.
- Should I know
about early
history.

On August 8, 1995 NMED submitted to GMI a Notice of Deficiency (NOD) which included issues pertaining to the Contingency Plan. The main concerns included personnel response issues, surface impoundment removal or repair, notification to the Secretary, and reporting requirements. The facility responded to the requested information on _____. (Susan/Clay we don't have this information). After the initial NOD, the facility submitted additional material, which was reviewed by NMED, and another NOD was drafted and submitted to GMI on March 21, 1997. Major issues addressed in that NOD included the emergency coordinator list, incompatible wastes, emergency repair of the surface impoundment, coordination agreements, and evacuation plans from the facility. On April 7, 2000 a request for additional information was submitted to GMI, which also included issues associated with the Contingency Plan. Those issues included inspection of emergency equipment, and minor editorial problems. On December 14, 2000 a

request for additional information was submitted to GMI. The requested information included evacuation routes and alternate routes, a list of emergency equipment including equipment located on the response vehicle, identification of emergency coordinators, and a description of emergency procedures. To facilitate the process NMED provided examples of other contingency plans to the applicant

(Susan/ Clay, I don't have any documentation from NMED on how these issues from the NODs or requests for additional information were resolved? Not sure how you want me to handle this)

II. PERMIT CONDITIONS

A. Permit Conditions 2.11.1 to 2.11.6; NMED has imposed conditions regarding the Contingency Plan at the Triassic Park Waste Facility. This written testimony provides justification for those conditions and provides a detailed discussion of the Contingency Plan including conditions imposed by the draft permit.

Permit Condition 2.11.1 imposes the following requirements:

If the Permittee implements the Contingency Plan as a result of a spill or release to the environment and after 30 calendar days the Permittee has not been able to remove all contaminated soils or water to appropriate action levels, in accordance with Permit Condition 9.2, the Permittee shall comply with the requirements of either Permit Part 9 or 10, as appropriate. The Permittee may submit for the Secretary's approval a one time, 30-day extension to the above 30-calendar compliance period.

The applicant indicated during the public comment period that, "Thirty (30) calendar days is too restrictive and not stipulated by any regulations. The applicant suggests that this time frame be increased to 90 days and that the one time extension be clarified to indicate that this is a per event"

It is NMED's position that compliance with this provision does not require that the length of time be extended to more than thirty (30) days, since the facility will have already conducted several basic evaluations of the situation as part of the implementation of the Contingency Plan. The facility will have made an assessment of the hazards involved, including identification and characterization of the wastes, and a determination of the potential risks (Section 6.3.3). The constituents of concern and their potential impacts should already be known. In addition, Section 6.3.5.b.i of the Contingency Plan also indicates that "if soils or surface water are visible affected, they will be removed until contaminant concentration in the remaining soils or water is below appropriate levels for the contaminants of concern". Therefore, most of the preliminary clean up associated a spill or release will have been completed as part of the implementation of the Plan, and the amount of residuals remaining should be minimal. In addition, as required by the draft permit in the Corrective Action Parts 9 or 10, the facility has already provided in Appendix R a Facility Corrective Action Outline/ Work Plan which includes the standard procedures for conducting an investigation. Attachment S also includes an outline for a RCRA Facility Investigation-Scope of Work, which would be utilized to determine the nature and extent of the release. Since the corrective action process has been outlined in the draft permit NMED does not believe this to be an onerous process requiring more than thirty days. In addition, the corrective action process is designed to be flexible and proportional to the problem.

Based on the above reasoning NMED does not believe that a modification to the draft permit is necessary.

B. NMED received public comments that the permit failed to identify actual local authorities in its Contingency Plan or to build the capacity of local emergency response authorities to the level necessary.

40 CFR 264.37 (1) and (4) states that the owner/operator must attempt to make the following arrangements, as appropriate for the type of waste handled at the facility:

(1) Arrangements to familiarize police, fire departments, and emergency responses teams with the layout of the facility, properties of the hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes.

(4) Arrangements to familiarize local hospitals with the properties of the hazardous waste handled at the facility and types of injuries or illnesses, which could result from fires, explosions, or releases at the facility.

In addition, if a local authority declines to enter into such an arrangement the owner/operator must document the refusal in the operating record.

NMED is aware that the Coordination Agreements provided by the applicant and contained in Attachment C-3 of the draft permit are vague and do not include specific information, such as the names, addresses and telephone numbers of local agencies such as the fire department, police department, ambulance services, sheriff office or local and state planning committees. The language in the draft permit indicates that these agencies listed above will be contacted by the permittee and arrangements made. NMED agrees with the applicant that it may be premature to contact these agencies until such time as the facility is build and ready to begin operations. In order to address this issue NMED required in Permit Condition 1.10 that the Notification of Agreements with Local Authorities be provided to NMED 30 days prior to the first receipt of wastes at the facility. The draft permit requires that the Notification of Agreements with Local Authorities comply with 40 CFR 264.37, including an up-dated list of the names or agencies, the addresses of the agencies, and phone numbers of all local, State, and Federal agencies, including hospitals, which may be involved in or provide assistance to Triassic Park Waste Disposal Facility during an emergency. The Notification of Agreements with Local Authorities should also include copies of agreements with all of the above agencies and shall document any refusal to enter into an arrangement in the operating record. Permit Condition 1.10 also requires that the Revised Contingency Plan be provided to NMED 15 days prior to the first receipt of wastes and the facility. NMED expects that the revised Contingency Plan will include a description of the arrangements with local authorities.

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WASTE ANALYSIS PLAN

I. INTRODUCTION

A. Standard.

20 NMAC 4.1.900 (incorporating 40 CFR ' 270.14(b)(2)) requires a permit application for a hazardous waste management facility to contain:

Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Part 264 of this chapter.

In addition, 20 NMAC 4.1.900 (incorporating 40 CFR ' 270.14(b)(3)) requires a permit application for a hazardous waste management facility to contain, AA copy of the waste analysis plan required by ' 264.13(b) and, if applicable ' 264.13(c).@ One of the requirements of a waste analysis plan ("WAP") is for the owner and operator to obtain a detailed chemical and physical analysis of a representative sample of waste before accepting waste for treatment, storage or disposal. 40 CFR ' 264.13(a).

B. GMI's Application and Notice of Deficiencies.

The permit application contains a waste analysis plan at Permit Attachment F. Section 4.1 identifies the types of wastes accepted at GMI. Section 4.2 lists the criteria for waste acceptance. Section 4.3 and 4.4 contains the pre-acceptance procedures for initial waste acceptance of hazardous waste received from off-site generators and management procedures for incoming shipments of waste. Section 4.5 contains the waste analysis protocols and the sampling and analysis methods and procedures, including QA/QC are in Sections 4.6 and 4.7. Section 4.8 contains the facility's waste tracking system.

NMED issued GMI several NOD's regarding their WAP, including September 12, 2000 , January 30, 2001 and March 7, 2001. AR #00-076, 01-007, 01-017. GMI responded to the January 30, 2001 NOD by letter dated March 14, 2001. AR# _____. NMED determined that GMI's sampling plan was inadequate and determined to impose a sampling plan (Section 4.6) by letter dated March 7, 2001. AR# 01-017. GMI revised its WAP to address these deficiencies in May and June of 2001. AR# 01-080 and 01-088.

II. PERMIT CONDITION.

A. Waste Analysis Procedures.

1. Sampling Plan.

20 NMAC 4.1.900 (incorporating 40 CFR 264.13 (a) requires that a detailed chemical and physical analysis of a representative sample of waste be obtained before an operator treats, stores, or disposes of any waste. As part of this requirement, the operator must repeat the analysis as necessary to ensure that the information is up to date. Additionally, 40 CFR 264.13(c) specifically requires that WAPs from sites accepting waste from off-site must specify the procedures used to inspect and, as necessary, analyze each movement of waste at the facility to determine whether it matches the identity of the waste as presented on manifests or shipping papers. Owner/operators must develop and follow a written Waste Analysis Plan (WAP) which describes how the above requirements will be met, and the WAP must include the sampling methods whereby required samples shall be obtained. The WAP should also address on-site sampling procedures used to ensure continued waste compliance and to track the various treatment and management activities performed at the site.

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Section 4.5 of the Permit Application (December, 1997, Revised November 1998 and June 2001 ?) included a brief description of Sampling Methods that will be used to sample waste as required in 40 CFR 264.13 (a),(b), and (c) referencing 40 CFR Part 261 Appendix I for sampling methods. While the reference to 40 CFR 261 Appendix I was accurate, the section did not include specific information regarding sampling techniques to allow the sampling plan to be used as an enforceable and implementable document, nor did it explain the circumstances under which the Sampling Plan would be implemented. To address this deficiency, NMED prepared Section 4.6 of the Permit which detailed specific sampling methodologies as described or referenced in 40 CFR Part 261 Appendix I, and which described the sampling that would be performed at various locations and times at the facility. See Letters from NMED to GMI dated September 12, 2000 (AR#00-076) and March 7, 2001 (AR# 01-017). Information detailed by NMED was based upon commitments made by the Permittee in their permit application and sought to clarify the Permittee's intent with respect to sampling and analysis, as well as to detail specific sampling and analysis techniques the Permittee committed to perform via referencing 40 CFR 261 Appendix I in the Permit Application. ~~NMED also recognized that it is impossible to predict the specific sampling technique that should be used for all wastes to be accepted at the Facility. With this in mind, NMED required sampling to first consider and follow, as applicable possible, methods committed to within the permit application and presented on Table 4-5 in the permit (formerly Table 4-3 of the Permit Application). If methods in this table were not appropriate, NMED allowed the Facility to use alternative sampling methods, so long as the method was well documented, justified, placed in the Operating Record, and approved by NMED prior to use by a permit modification.~~

Section 4.6 first presents the sampling methodologies by sampling type, specifying the matrix that the sampling method is applicable to (see Table 4-5 and Section 4.6.1 of the Draft Permit). Sampling using a coliwasa, dipper, thief sampler, weighted bottle, scoop/shovel, auger, and tube sampler are described, including the general sampling procedure to be followed for each method. The Sampling Plan then addresses, in Section 4.6.2, the specific types of samples that will be collected at the Facility, which includes fingerprint samples, annual samples, spills/releases, evaporation pond output, stabilization tank input, stabilization tank output, and landfill input (Table 4-6 and Sections 4.6.2.1- 4.6.2.7). Note that much of the information presented in Section 4.6.2 was presented elsewhere in the Permit Application, but was collected and presented in a single location in Section 4.6 to clearly communicate the sampling and analysis intended to track waste movement at the facility. However, NMED did add specific sampling sample collection and location requirements but also recognizing that modifications to the sample collection and location could be required. Should the NMED-specified sampling require modification based on site-specific conditions, the Permittee must seek NMED approval prior to implementation and place relevant information concerning sampling and analysis into the operating record. **NMED's approval is required to be through a permit modification.**

Section 2.6.3 was added by NMED to more succinctly communicate how random vs. biased sampling shall be determined. Information presented in this section was included in the Permit Application, but was augmented by NMED. The Sampling Plan provides guidance as to the selection of the appropriate procedure, requiring that the Facility document the sampling technique used in the Operating Record. Section 2.6.4 presents the Sampling QA/QC as presented in the Permit Application, with the addition of reporting requirements to the NMED, sample preservation/holding/volume, and equipment decontamination requirements. These were added to ensure that those using the WAP were knowledgeable of sample preservation, holding and volume requirements, as well as equipment decontamination requirements which were not detailed in the Permit Application.

To summarize, the Sampling and Analysis Plan is required to ensure that samples collected to demonstrate compliance with 40 CFR 264.13 (a), (b), and (c) (as applicable) are done so in a well described, technically appropriate, and enforceable manner. The Sampling Plan, ~~as required while prepared~~ by NMED, reflects general commitments and activities reflected in the Permit Application, with clarifications and additions made to detail ~~vagaries and incomplete information.~~ **NMED based the requirements of the sampling plan upon SW-846 and Section 9 guidance... [YES - A SHORT EXPLANATION IS ALL THAT IS NECESSARY]**

**ROUGH WORKING DRAFT
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NOTE: DO WE WANT TO SAY WE FOLLOWED SW-846 SECTION 9 GUIDANCE? WE DID SO, BUT ALSO ADDED IN INFORMATION FROM OTHER BASES/SOURCES (I.E. SAMPLING DESCRIPTIONS). NOTE THAT WHILE WE INCLUDED ALL OF THIS INFORMATION/REQUIREMENTS, WE ALSO LEFT A LOT OF WIGGLE ROOM FOR THE PERMITTEES TO JUSTIFY ALTERNATIVE APPROACHES, WHICH MAY BE WHY THERE WASN'T A TREMENDOUS UPROAR ABOUT IT (YET!!!!)

The permit application - CONNIE CAN YOU EXPLAIN HOW THE SAMPLING PLAN IS ENFORCEABLE TO MEET RCRA REQUIREMENTS. [SUMMARIZE THE REQUIREMENTS OF THE SAMPLING PLAN.

2. Acceptable Knowledge.

PCB remediation wastes.

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disposal and include a justification for each increase. For extensions to the duration of the R&D for PCB disposal activity, the request shall also include a report on the accomplishments and progress of the previously authorized R&D for PCB disposal activity for which the extension is sought. The EPA Regional Administrator may grant a waiver in writing for an increase in the volume of PCB material, the maximum concentration of PCBs, the total amount of pure PCBs, or the duration of the R&D activity. Approvals will state all requirements applicable to the R&D for PCB disposal activity.

(3) The EPA Regional Administrator for the Region in which an R&D for PCB disposal activity is conducted may determine, at any time, that an R&D PCB disposal approval is required under paragraphs (e) and (i)(2) of this section or §761.70(d) to ensure that any R&D for PCB disposal activity does not present an unreasonable risk of injury to health or the environment.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §761.60, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§761.61 PCB remediation waste.

This section provides cleanup and disposal options for PCB remediation waste. Any person cleaning up and disposing of PCBs managed under this section shall do so based on the concentration at which the PCBs are found. This section does not prohibit any person from implementing temporary emergency measures to prevent, treat, or contain further releases or mitigate migration to the environment of PCBs or PCB remediation waste.

(a) *Self-implementing on-site cleanup and disposal of PCB remediation waste.* EPA designed the self-implementing procedure for a general, moderately-sized site where there should be low residual environmental impact from remedial activities. The procedure may be less practical for larger or environmentally diverse sites. For these other sites, the self-implementing procedure

still applies, but an EPA Regional Administrator may authorize more practical procedures through paragraph (c) of this section. Any person may conduct self-implementing cleanup and disposal of PCB remediation waste in accordance with the following requirements without prior written approval from EPA.

(1) *Applicability.* (i) The self-implementing procedures may not be used to clean up:

- (A) Surface or ground waters.
- (B) Sediments in marine and freshwater ecosystems.
- (C) Sewers or sewage treatment systems.
- (D) Any private or public drinking water sources or distribution systems.
- (E) Grazing lands.
- (F) Vegetable gardens.

(ii) The self-implementing cleanup provisions shall not be binding upon cleanups conducted under other authorities, including but not limited to, actions conducted under section 104 or section 106 of CERCLA, or section 3004(u) and (v) or section 3008(h) of RCRA.

(2) *Site characterization.* Any person conducting self-implementing cleanup of PCB remediation waste must characterize the site adequately to be able to provide the information required by paragraph (a)(3) of this section. Subpart N of this part provides a method for collecting new site characterization data or for assessing the sufficiency of existing site characterization data.

(3) *Notification and certification.* (i) At least 30 days prior to the date that the cleanup of a site begins, the person in charge of the cleanup or the owner of the property where the PCB remediation waste is located shall notify, in writing, the EPA Regional Administrator, the Director of the State or Tribal environmental protection agency, and the Director of the county or local environmental protection agency where the cleanup will be conducted. The notice shall include:

(A) The nature of the contamination, including kinds of materials contaminated.

(B) A summary of the procedures used to sample contaminated and adjacent areas and a table or cleanup site map showing PCB concentrations

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measured in all pre-cleanup characterization samples. The summary must include sample collection and analysis dates. The EPA Regional Administrator may require more detailed information including, but not limited to, additional characterization sampling or all sample identification numbers from all previous characterization activities at the cleanup site.

(C) The location and extent of the identified contaminated area, including topographic maps with sample collection sites cross referenced to the sample identification numbers in the data summary from paragraph (a)(3)(i)(B) of this section.

(D) A cleanup plan for the site, including schedule, disposal technology, and approach. This plan should contain options and contingencies to be used if unanticipated higher concentrations or wider distributions of PCB remediation waste are found or other obstacles force changes in the cleanup approach.

(E) A written certification, signed by the owner of the property where the cleanup site is located and the party conducting the cleanup, that all sampling plans, sample collection procedures, sample preparation procedures, extraction procedures, and instrumental/chemical analysis procedures used to assess or characterize the PCB contamination at the cleanup site, are on file at the location designated in the certificate, and are available for EPA inspection. Persons using alternate methods for chemical extraction and chemical analysis for site characterization must include in the certificate a statement that such a method will be used and that a comparison study which meets or exceeds the requirements of subpart Q of this part, and for which records are on file, has been completed prior to verification sampling.

(ii) Within 30 calendar days of receiving the notification, the EPA Regional Administrator will respond in writing approving of the self-implementing cleanup, disapproving of the self-implementing cleanup, or requiring additional information. If the EPA Regional Administrator does not respond within 30 calendar days of receiving the notice, the person submitting the notification may assume that it is com-

plete and acceptable and proceed with the cleanup according to the information the person provided to the EPA Regional Administrator. Once cleanup is underway, the person conducting the cleanup must provide any proposed changes from the notification to the EPA Regional Administrator in writing no less than 14 calendar days prior to the proposed implementation of the change. The EPA Regional Administrator will determine in his or her discretion whether to accept the change, and will respond to the change notification verbally within 7 calendar days and in writing within 14 calendar days of receiving it. If the EPA Regional Administrator does not respond verbally within 7 calendar days and in writing within 14 calendar days of receiving the change notice, the person who submitted it may deem it complete and acceptable and proceed with the cleanup according to the information in the change notice provided to the EPA Regional Administrator.

(iii) Any person conducting a cleanup activity may obtain a waiver of the 30-day notification requirement, if they receive a separate waiver, in writing, from each of the agencies they are required to notify under this section. The person must retain the original written waiver as required in paragraph (a)(9) of this section.

(4) *Cleanup levels.* For purposes of cleaning, decontaminating, or removing PCB remediation waste under this section, there are four general waste categories: bulk PCB remediation waste, non-porous surfaces, porous surfaces, and liquids. Cleanup levels are based on the kind of material and the potential exposure to PCBs left after cleanup is completed.

(i) *Bulk PCB remediation waste.* Bulk PCB remediation waste includes, but is not limited to, the following non-liquid PCB remediation waste: soil, sediments, dredged materials, muds, PCB sewage sludge, and industrial sludge.

(A) *High occupancy areas.* The cleanup level for bulk PCB remediation waste in high occupancy areas is ≤ 1 ppm without further conditions. High occupancy areas where bulk PCB remediation waste remains at concentrations > 1 ppm and ≤ 10 ppm shall be covered with a cap meeting the requirements of

paragraphs (a)(7) and (a)(8) of this section.

(B) *Low occupancy areas.* (1) The cleanup level for bulk PCB remediation waste in low occupancy areas is ≤ 25 ppm unless otherwise specified in this paragraph.

(2) Bulk PCB remediation wastes may remain at a cleanup site at concentrations >25 ppm and ≤ 50 ppm if the site is secured by a fence and marked with a sign including the M_L mark.

(3) Bulk PCB remediation wastes may remain at a cleanup site at concentrations >25 ppm and ≤ 100 ppm if the site is covered with a cap meeting the requirements of paragraphs (a)(7) and (a)(8) of this section.

(ii) *Non-porous surfaces.* In high occupancy areas, the surface PCB cleanup standard is $\leq 10 \mu\text{g}/100 \text{ cm}^2$ of surface area. In low occupancy areas, the surface cleanup standard is $<100 \mu\text{g}/100 \text{ cm}^2$ of surface area. Select sampling locations in accordance with subpart P of this part or a sampling plan approved under paragraph (c) of this section.

(iii) *Porous surfaces.* In both high and low occupancy areas, any person disposing of porous surfaces must do so based on the levels in paragraph (a)(4)(i) of this section. Porous surfaces may be cleaned up for use in accordance with §761.79(b)(4) or §761.30(p).

(iv) *Liquids.* In both high and low occupancy areas, cleanup levels are the concentrations specified in §761.79(b)(1) and (b)(2).

(v) *Change in the land use for a cleanup site.* Where there is an actual or proposed change in use of an area cleaned up to the levels of a low occupancy area, and the exposure of people or animal life in or at that area could reasonably be expected to increase, resulting in a change in status from a low occupancy area to a high occupancy area, the owner of the area shall clean up the area in accordance with the high occupancy area cleanup levels in paragraphs (a)(4)(i) through (a)(4)(iv) of this section.

(vi) The EPA Regional Administrator, as part of his or her response to a notification submitted in accordance with §761.61(a)(3) of this part, may require cleanup of the site, or portions of it, to more stringent cleanup levels than are otherwise required in this section,

based on the proximity to areas such as residential dwellings, hospitals, schools, nursing homes, playgrounds, parks, day care centers, endangered species habitats, estuaries, wetlands, national parks, national wildlife refuges, commercial fisheries, and sport fisheries.

(5) *Site cleanup.* In addition to the options set out in this paragraph, PCB disposal technologies approved under §§761.60 and 761.70 are acceptable for on-site self-implementing PCB remediation waste disposal within the confines of the operating conditions of the respective approvals.

(i) *Bulk PCB remediation waste.* Any person cleaning up bulk PCB remediation waste shall do so to the levels in paragraph (a)(4)(i) of this section.

(A) Any person cleaning up bulk PCB remediation waste on-site using a soil washing process may do so without EPA approval, subject to all of the following:

(1) A non-chlorinated solvent is used.

(2) The process occurs at ambient temperature.

(3) The process is not exothermic.

(4) The process uses no external heat.

(5) The process has secondary containment to prevent any solvent from being released to the underlying or surrounding soils or surface waters.

(6) Solvent disposal, recovery, and/or reuse is in accordance with relevant provisions of approvals issued according to paragraphs (b)(1) or (c) of this section or applicable paragraphs of §761.79.

(B) Bulk PCB remediation waste may be sent off-site for decontamination or disposal in accordance with this paragraph, provided the waste is either dewatered on-site or transported off-site in containers meeting the requirements of the DOT Hazardous Materials Regulations (HMR) at 49 CFR parts 171 through 180.

(1) Removed water shall be disposed of according to paragraph (b)(1) of this section.

(2) Any person disposing off-site of dewatered bulk PCB remediation waste shall do so as follows:

(i) Unless sampled and analyzed for disposal according to the procedures set out in §§761.283, 761.286, and 761.292,

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the bulk PCB remediation waste shall be assumed to contain ≥ 50 ppm PCBs.

(ii) Bulk PCB remediation wastes with a PCB concentration of <50 ppm shall be disposed of in accordance with paragraph (a)(5)(v)(A) of this section.

(iii) Bulk PCB remediation wastes with a PCB concentration ≥ 50 ppm shall be disposed of in a hazardous waste landfill permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA, or a PCB disposal facility approved under this part.

(iv) The generator must provide written notice, including the quantity to be shipped and highest concentration of PCBs (using extraction EPA Method 3500B/3540C or Method 3500B/3550B followed by chemical analysis using EPA Method 8082 in SW-846 or methods validated under subpart Q of this part) at least 15 days before the first shipment of bulk PCB remediation waste from each cleanup site by the generator, to each off-site facility where the waste is destined for an area not subject to a TSCA PCB Disposal Approval.

(3) Any person may decontaminate bulk PCB remediation waste in accordance with §761.79 and return the waste to the cleanup site for disposal as long as the cleanup standards of paragraph (a)(4) of this section are met.

(ii) Non-porous surfaces. PCB remediation waste non-porous surfaces shall be cleaned on-site or off-site for disposal on-site, disposal off-site, or use, as follows:

(A) For on-site disposal, non-porous surfaces shall be cleaned on-site or off-site to the levels in paragraph (a)(4)(ii) of this section using:

(1) Procedures approved under §761.79.

(2) Technologies approved under §761.60(e).

(3) Procedures or technologies approved under paragraph (c) of this section.

(B) For off-site disposal, non-porous surfaces:

(1) Having surface concentrations <100 µg/100 cm² shall be disposed of in accordance with paragraph (a)(5)(i)(B)(2)(ii) of this section. Metal surfaces may be thermally decontaminated in accordance with §761.79(c)(6)(i).

(2) Having surface concentrations ≥100 µg/100 cm² shall be disposed of in accordance with paragraph (a)(5)(i)(B)(2)(iii) of this section. Metal surfaces may be thermally decontaminated in accordance with §761.79(c)(6)(ii).

(C) For use, non-porous surfaces shall be decontaminated on-site or off-site to the standards specified in §761.79(b)(3) or in accordance with §761.79(c).

(iii) Porous surfaces. Porous surfaces shall be disposed on-site or off-site as bulk PCB remediation waste according to paragraph (a)(5)(i) of this section or decontaminated for use according to §761.79(b)(4), as applicable.

(iv) Liquids. Any person disposing of liquid PCB remediation waste shall either:

(A) Decontaminate the waste to the levels specified in §761.79(b)(1) or (b)(2).

(B) Dispose of the waste in accordance with paragraph (b) of this section or an approval issued under paragraph (c) of this section.

(v) Cleanup wastes. Any person generating the following wastes during and from the cleanup of PCB remediation waste shall dispose of or reuse them using one of the following methods:

(A) Non-liquid cleaning materials and personal protective equipment waste at any concentration, including non-porous surfaces and other non-liquid materials such as rags, gloves, booties, other disposable personal protective equipment, and similar materials resulting from cleanup activities shall be either decontaminated in accordance with §761.79(b) or (c), or disposed of in one of the following facilities, without regard to the requirements of subparts J and K of this part:

(1) A facility permitted, licensed, or registered by a State to manage municipal solid waste subject to part 258 of this chapter.

(2) A facility permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste subject to §§257.5 through 257.30 of this chapter, as applicable.

(3) A hazardous waste landfill permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA.

(4) A PCB disposal facility approved under this part.

(B) Cleaning solvents, abrasives, and equipment may be reused after decontamination in accordance with §761.79.

(6) *Cleanup verification*—(i) *Sampling and analysis*. Any person collecting and analyzing samples to verify the cleanup and on-site disposal of bulk PCB remediation wastes and porous surfaces must do so in accordance with subpart O of this part. Any person collecting and analyzing samples from non-porous surfaces must do so in accordance with subpart P of this part. Any person collecting and analyzing samples from liquids must do so in accordance with §761.269. Any person conducting interim sampling during PCB remediation waste cleanup to determine when to sample to verify that cleanup is complete, may use PCB field screening tests.

(ii) *Verification*. (A) Where sample analysis results in a measurement of PCBs less than or equal to the levels specified in paragraph (a)(4) of this section, self-implementing cleanup is complete.

(B) Where sample analysis results in a measurement of PCBs greater than the levels specified in paragraph (a)(4) of this section, self-implementing cleanup of the sampled PCB remediation waste is not complete. The owner or operator of the site must either dispose of the sampled PCB remediation waste, or reclean the waste represented by the sample and reinitiate sampling and analysis in accordance with paragraph (a)(6)(i) of this section.

(7) *Cap requirements*. A cap means, when referring to on-site cleanup and disposal of PCB remediation waste, a uniform placement of concrete, asphalt, or similar material of minimum thickness spread over the area where remediation waste was removed or left in place in order to prevent or minimize human exposure, infiltration of water, and erosion. Any person designing and constructing a cap must do so in accordance with §264.310(a) of this chapter, and ensure that it complies with the permeability, sieve, liquid limit, and plasticity index parameters in §761.75(b)(1)(ii) through (b)(1)(v). A cap of compacted soil shall have a minimum thickness of 25 cm (10 inches). A concrete or asphalt cap shall have a minimum thickness of 15 cm (6 inches).

A cap must be of sufficient strength to maintain its effectiveness and integrity during the use of the cap surface which is exposed to the environment. A cap shall not be contaminated at a level ≥ 1 ppm PCB per Aroclor™ (or equivalent) or per congener. Repairs shall begin within 72 hours of discovery for any breaches which would impair the integrity of the cap.

(8) *Deed restrictions for caps, fences and low occupancy areas*. When a cleanup activity conducted under this section includes the use of a fence or a cap, the owner of the site must maintain the fence or cap, in perpetuity. In addition, whenever a cap, or the procedures and requirements for a low occupancy area, is used, the owner of the site must meet the following conditions:

(i) Within 60 days of completion of a cleanup activity under this section, the owner of the property shall:

(A) Record, in accordance with State law, a notation on the deed to the property, or on some other instrument which is normally examined during a title search, that will in perpetuity notify any potential purchaser of the property:

(1) That the land has been used for PCB remediation waste disposal and is restricted to use as a low occupancy area as defined in §761.3.

(2) Of the existence of the fence or cap and the requirement to maintain the fence or cap.

(3) The applicable cleanup levels left at the site, inside the fence, and/or under the cap.

(B) Submit a certification, signed by the owner, that he/she has recorded the notation specified in paragraph (a)(8)(i)(A) of this section to the EPA Regional Administrator.

(ii) The owner of a site being cleaned up under this section may remove a fence or cap after conducting additional cleanup activities and achieving cleanup levels, specified in paragraph (a)(4) of this section, which do not require a cap or fence. The owner may remove the notice on the deed no earlier than 30 days after achieving the cleanup levels specified in this section which do not require a fence or cap.

(9) *Recordkeeping*. For paragraphs (a)(3), (a)(4), and (a)(5) of this section,

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recordkeeping is required in accordance with § 761.125(c)(5).

(b) *Performance-based disposal.* (1) Any person disposing of liquid PCB remediation waste shall do so according to § 761.60(a) or (e), or decontaminate it in accordance with § 761.79.

(2) Any person disposing of non-liquid PCB remediation waste shall do so by one of the following methods:

(i) Dispose of it in a high temperature incinerator approved under § 761.70(b), an alternate disposal method approved under § 761.60(e), a chemical waste landfill approved under § 761.75, or in a facility with a coordinated approval issued under § 761.77.

(ii) Decontaminate it in accordance with § 761.79.

(3) Any person may manage or dispose of material containing <50 ppm PCBs that has been dredged or excavated from waters of the United States:

(i) In accordance with a permit that has been issued under section 404 of the Clean Water Act, or the equivalent of such a permit as provided for in regulations of the U.S. Army Corps of Engineers at 33 CFR part 320.

(ii) In accordance with a permit issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act, or the equivalent of such a permit as provided for in regulations of the U.S. Army Corps of Engineers at 33 CFR part 320.

(c) *Risk-based disposal approval.* (1) Any person wishing to sample, cleanup, or dispose of PCB remediation waste in a manner other than prescribed in paragraphs (a) or (b) of this section, or store PCB remediation waste in a manner other than prescribed in § 761.65, must apply in writing to the EPA Regional Administrator in the Region where the sampling, cleanup, disposal or storage site is located, for sampling, cleanup, disposal or storage occurring in a single EPA Region; or to the Director of the National Program Chemicals Division, for sampling, cleanup, disposal or storage occurring in more than one EPA Region. Each application must contain information described in the notification required by § 761.61(a)(3). EPA may request other information that it believes necessary to evaluate the application. No person

may conduct cleanup activities under this paragraph prior to obtaining written approval by EPA.

(2) EPA will issue a written decision on each application for a risk-based method for PCB remediation wastes. EPA will approve such an application if it finds that the method will not pose an unreasonable risk of injury to health or the environment.

[63 FR 35448, June 29, 1998, as amended at 64 FR 33761, June 24, 1999]

§ 761.62 Disposal of PCB bulk product waste.

PCB bulk product waste shall be disposed of in accordance with paragraph (a), (b), or (c) of this section. Under some of these provisions, it may not be necessary to determine the PCB concentration or leaching characteristics of the PCB bulk product waste. When it is necessary to analyze the waste to make either of these determinations, use the applicable procedures in subpart R of this part to sample the waste for analysis, unless EPA approves another sampling plan under paragraph (c) of this section.

(a) *Performance-based disposal.* Any person disposing of PCB bulk product waste may do so as follows:

(1) In an incinerator approved under § 761.70.

(2) In a chemical waste landfill approved under § 761.75.

(3) In a hazardous waste landfill permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA.

(4) Under an alternate disposal approval under § 761.60(e).

(5) In accordance with the decontamination provisions of § 761.79.

(6) For metal surfaces in contact with PCBs, in accordance with the thermal decontamination provisions of § 761.79(c)(6).

(7) In accordance with a TSCA PCB Coordinated Approval issued under § 761.77.

(b) *Disposal in solid waste landfills.* (1) Any person may dispose of the following PCB bulk product waste in a facility permitted, licensed, or registered by a State as a municipal or non-municipal non-hazardous waste landfill:

(i) Plastics (such as plastic insulation from wire or cable; radio, television

REGULATORY HISTORY

I. Introduction

The State of New Mexico is authorized by the New Mexico Hazardous Waste Act (HWA) and the Resource Conservation and Recovery Act (RCRA) to permit and regulate hazardous waste facilities. NMSA 19878, 74-4-1 *et seq.* 50 Fed.Reg. 1515 (Jan.11, 1985) [EPA's authorization of New Mexico to implement and enforce RCRA hazardous waste facility permits]. The New Mexico legislature has designated the New Mexico Environment Department (NMED) as the state agency responsible for administering, implementing, and enforcing all requirements under the HWA and the regulations promulgated to carry out the HWA.

II. Triassic Park Waste Disposal Facility

A. Permit Application

Gandy Marley, Inc. (GMI) submitted Part A of its RCRA permit application to NMED on November 17, 1994. Administrative Record (AR) # 94-013. GMI submitted Part B of its RCRA permit application on December 3, 1997. AR # 97-037. NMED deemed GMI's permit application for the proposed Triassic Park facility administratively complete on October 16, 1998.

B. Notices of Deficiency

Prior to issuance of the Draft Permit for the proposed Triassic Park facility, NMED issued several Notices of Deficiency (NOD) regarding GMI's permit application. In total, NMED issued twenty-eight (28) NODs to GMI regarding the permit application. NODs were issued on the following dates: August 8, 1995 (AR # 95-021), January 30, 1996 (AR # 96-007), February 10, 1997 (AR # 97-009), March 21, 1997 (AR # 97-012), March 5,

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information. On August 27, 2001, NMED issued a Supplemental Fact Sheet to reflect changes made in the Permit Application just prior to issuance of the Draft Permit. AR # 01-142.

E. Public Hearing

As part of the June 15, 2001 Public Notice, NMED stated that a public hearing on the Draft Permit was scheduled for October 15, 2001. AR # 01-090. The Public Notice stated, however that if no requests for a public hearing were received, the hearing would be canceled. *Id.* Based on public interest in the proposed facility and the Applicant's request for a public hearing, by order of the Secretary of the New Mexico Environment Department (Secretary), a public hearing on the Draft Permit was set for October 15, 2001. Hearing Record (HR) # 8. Additionally, the deadline to file Notice of Intent to Present Technical Testimony (NOI) at the Public Hearing was extended, by order of the Secretary, to allow for submittal until September 21, 2001. HR # 7. NMED again published notice of the October 15, 2001 Public Hearing along with notice of extension of the public comment period on August 15, 2001. HR # 11.

On August 23, 2001, counsel for CURE moved that the Public Hearing be rescheduled for no earlier than November 12, 2001 and that GMI be required to hold additional public meetings to better disseminate information in Spanish regarding the proposed facility. HR # 15. On October 3, 2001, CURE's motion was denied in part, by order of the appointed Hearing Officer, and no extension was granted. Pursuant to CURE's motion, an additional public meeting prior to the hearing with a Spanish translator was ordered along with a translator for the Public Hearing. *Id.*

Five NOIs were filed on before the September 21st deadline with the Hearing Clerk. *See generally* HR. Six Entry of Appearances were filed with the Hearing Clerk before the deadline. *Id.*

The Public Hearing in this matter is being held one-hundred-twenty five (125) days after the June 15, 2001 Public Notice.

F. Public Outreach

In addition to the regulatorily required Public Notice, NMED has worked with GMI to provide for greater public outreach and dissemination of information to the public. GMI, with support from NMED, has held five public information meetings. These meetings were held twice in Roswell on May 4, 2001 and July 17, 2001, in Santa Fe on July 16, 2001, in Tatum on July 18, 2001, and in Hagerman with a Spanish translator on July 19, 2001. NMED has provided the Fact Sheet in Spanish to all those who have requested.

G. Endangered Species Consultation

NMED has sought and received consultation from the New Mexico Game and Fish Department regarding threatened or endangered species at or near the proposed facility. HR (Comment, September 21, 2001). The US Fish and Wildlife Service has been copied on the consultation. *Id.*