



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733



SEP 26 2001



Mr. James Bearzi, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

Re: Comments on the proposed RCRA Part B permit modification for Centralized Waste Confirmation at the Waste Isolation Pilot Plant (WIPP) EPA No. NM4890139088

Dear Mr. Bearzi:

The Environmental Protection Agency (EPA) has reviewed the proposed permit modification dated June 6, 2001. We appreciate the opportunity to review the modification and my staff has prepared the comments listed below. Region 6 staff is very concerned with the language used in the proposed modification and I encourage the New Mexico Environment Department to fully consider these comments. The comments below only apply to the hazardous waste components of the mixed waste.

- 1) The proposed modification allows mixed waste from the generator site to be shipped to WIPP where confirmation testing will occur. Region 6 is concerned over the rationale and language used in the proposed permit modification. The proposed modification inserts language defining "waste characterization" as only acceptable knowledge (refer to I.D.9). The modification proposal adds a new term, "waste confirmation" (refer to I.D.10), that describes the sampling portion of the waste characterization process. The permittee also attempts to make a distinction between waste characterized for "transportation" and for "disposal" purposes. The EPA regulations cited below make no such distinction. The hazardous waste portion of any mixed waste must be accurately characterized by the generator. The regulations at 40 CFR 262.11 require the generator site to characterize the waste by testing or using process knowledge to assign hazardous characteristics. In addition, 40 CFR Part 262, which requires the generator to properly manifest, to perform pre-transportation requirements and to do proper record keeping. This can only be achieved if the generator has accurately characterized the hazardous waste component of any mixed waste that is shipped off site. The regulations do not provide relief to the generator to postpone accurate waste characterization. Therefore, the proposed modification implies the generator cannot accurately characterize the waste. The permit must ensure waste is accurately characterized by the generator as required by RCRA. Also, altering the definition of "waste characterization" will have impacts throughout the permit document.




- 2) The current permit requirements utilize a quality assurance audit to demonstrate the adequacy of the knowledge of process determination by each generator site. The proposed modification is unclear regarding quality assurance of the acceptable knowledge of process determination at the various generator sites. Region 6 is concerned that the proposed language is inconsistent with the current quality assurance procedures. The reviewer found no enforceable criteria for the adequacy of acceptable knowledge of process determination at the generator site. Under the proposed modification, waste from any site could be transported to WIPP without complete waste characterization and the WIPP will complete the waste characterization process before disposal.
- 3) In addition, Regional staff could not find any specific or enforceable requirement in the proposed modification that ensures accurate waste characterization before transport to the disposal facility. The Region is concerned that prohibited items, such as fluids and pyrophoric or reactive chemicals, could be transported to the facility inconsistent with the Waste Acceptance Criteria. The disposal facility is a Subpart X waste facility under RCRA. The Waste Acceptance Criteria were developed, in part, to protect the facility from materials that could compromise the disposal cells. The current permit requires accurate waste characterization at the generator site before waste can be accepted at the disposal site.
- 4) The regulations at 40 CFR 262.11(c) require the generator to sample and test the waste or utilize process knowledge to assign hazardous waste characteristics. Failure to properly characterize waste at the generator site would be a violation of 262.11(c) and potentially 40 CFR 262 subparts B, C, and D. Thus the generator may be subject to potential enforcement action under these provisions. The generator must properly characterize and manifest the waste. If the hazardous component of the mixed waste is later tested and found to be different than the characterization at the generator site, DOE may be in violation of RCRA. Under the proposed modification, discovery of inadequate process knowledge at the disposal site might constitute a violation of RCRA at the generator site. EPA would recommend that if NMED approves this modification, that the permittee be required to report any discrepancies in characterization of waste between the generator and the receiving facilities confirmation testing.
- 5) EPA would refer the State and permittee to OSWER Directive 9938.4-03 "Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes." See in particular Part One, section 1.5.1. While confirmation sampling is recommended by the receiving facility it is not meant as a substitute for the generator's waste identification. Further, guidance goes on to say that "RCRA is a self-implementing program, the burden is on you, individual facility owner/operator, to demonstrate that you are operating in compliance with all applicable regulations. Any violations that occur at your facility, regardless of any good faith effort you have made to obtain the information, are your facility's sole responsibility."

- 6) The Office of General Counsel has determined that the exemption from NESHAP Subpart H for disposal activities does not extend to waste characterization activities. NESHAP Subpart H is applicable to the facility and CBFO must obtain approval from EPA Region 6 for its operations under the NESHAP.

Should you have any questions regarding these comments, please contact Nick Stone of my staff at (214) 665-7226 for further information.

Sincerely,


David W. Neleigh, Chief
New Mexico and Federal
Facilities Section

cc: Scott Monroe (ORIA)
Rajani Joglekar (ORIA)
Karen Kraus (OGC)