

Kliphuis, Trais, NMENV

From: Janet <contactus@cardnm.org>
Sent: Monday, February 18, 2013 4:59 PM
To: Kliphuis, Trais, NMENV
Subject: WIPP Permit Mod Comments
Attachments: WIPP mod, chem anlyis cmmts,2,2013 .docx

Hi, attached

Kliphuis, Trais, NMENV

From: Joni Arends <jarends@nuclearactive.org>
Sent: Monday, February 18, 2013 5:06 PM
To: Kliphuis, Trais, NMENV; Kieling, John, NMENV
Subject: Fwd: Fwd: SRIC Comments on Class 2 Permit Modification Request
Attachments: sriccomm021813lettersampling.pdf

Good afternoon,

Concerned Citizens for Nuclear Safety (CCNS) fully supports the comments submitted by Southwest Research and Information Center to the New Mexico Environment Department (NMED) about the Class 2 permit modification request for the Waste Isolation Pilot Plant (WIPP) regarding eliminating sampling of waste bound for the facility.

CCNS remains very concerned that eliminating sampling of waste bound for WIPP would reduce health and safety protections because such analysis is still needed, including for the many waste streams that have not yet been sampled. NMED should deny the request. Any future requests to reduce or eliminate sampling should only be made after the kind of systematic approach recommended by the National Academy of Sciences is carried out and made public and after representative sampling is done for waste streams that have not yet been shipped to WIPP.

CCNS requests the opportunity to participate in any negotiations between NMED, the Applicant and interested members of the public that may take place about the Class 2 permit modification request.

Sincerely,

Joni Arends, Executive Director
Concerned Citizens for Nuclear Safety
107 Cienega Street
Santa Fe, NM 87501
505 986 1973
www.nuclearactive.org

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

Subject: SRIC Comments on Class 2 Permit Modification Request
Date: Mon, 18 Feb 2013 16:00:35 -0700
From: Don Hancock<sricdon@earthlink.net>
To: Kliphuis, Trais, NMENV<trais.kliphuis@state.nm.us>
CC: Kieling, John, NMENV<john.kieling@state.nm.us>

Thanks for carefully considering and responding to these and all other comments.

For convenience in responding, I'm separately sending a Word version to Trais.

Don Hancock
Southwest Research and Information Center

Kliphuis, Trais, NMENV

From: Haar, David H. <David.Haar@amwtp.inl.gov>
Sent: Monday, February 18, 2013 3:16 PM
To: Kliphuis, Trais, NMENV
Cc: Malmo, James A; Anderson, Carol R.
Subject: Public comment on the proposed WIPP PMR from David Haar at the AMWTP

I would like to offer the following comment on the WIPP PMR concerning revision of the WAP characterization methods.

In our industry, protection of our work force, the public, and the environment is paramount. The foundation upon which this protection is based is our detailed knowledge of the waste we process. We gather a great deal of information about the waste before we begin to process it. We know who generated it, where it was generated, and when it was generated. We have a comprehensive understanding of the processes involved with generation of the waste, including what chemicals were used, how they were used, the radioisotopic content, handling operations, packaging configurations, and storage. We compile all of this information into a summary document, which includes references to every document we reviewed and used. All of the reference documents are maintained on file.

We then perform characterization of the waste, which means we either X-ray the waste or visually examine every container, measure the types and amounts of radiation emitted from every container, perform statistical sampling on a few containers to check the chemical content of the waste stream, and measure or determine the flammable gas concentrations of every container. All of this is done to ensure that the information we gathered is correct.

The current PMR proposes to eliminate the requirement for the statistical sampling to check the chemical content of the waste stream. AMWTP strongly endorses this change, for two significant reasons.

First, for all of the sampling events we have performed at the AMWTP, which amounts to over 35,000 head space gas sampling events, and 400 coring events, with all of the associated laboratory work spanning nearly a decade, we have never found our gathered information to be incorrect. Consequently, the AMWTP has never added a hazardous waste identification number to any of our waste streams, based on the sampling and analysis work. As such, we believe there is no benefit to continuing this sampling and analysis.

Second, we minimize opening the waste containers wherever we can, in order to minimize the risk of exposure to our workers. Waste sampling and analysis work for coring is by definition intrusive, and requires each affected container be opened. While we go to great lengths to ensure this operation is conducted safely, the fact remains that opening waste containers involves some risk. We believe that in the case of sampling, this risk is unnecessary, and should therefore be eliminated.

Thank you for your time and attention to this matter.

David Haar
AMWTP Waste Programs Manager
Idaho Treatment Group

Kliphuis, Trais, NMENV

From: Don Hancock <sricon@earthlink.net>
Sent: Monday, February 18, 2013 4:01 PM
To: Kliphuis, Trais, NMENV
Cc: Kieling, John, NMENV
Subject: SRIC Comments on Class 2 Permit Modification Request
Attachments: sriconm021813lettersampling.pdf

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For convenience in responding, I'm separately sending a Word version to Trais.

Don Hancock
Southwest Research and Information Center

Kliphuis, Trais, NMENV

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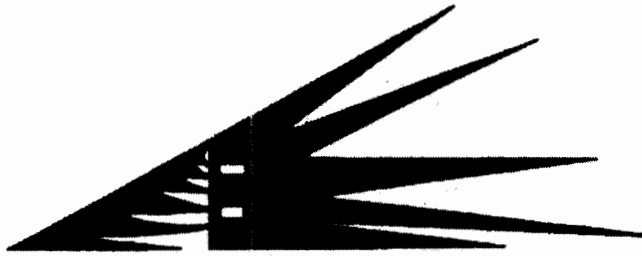
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Thank you for your time and attention to this matter.

David Haar
AMWTP Waste Programs Manager
Idaho Treatment Group



SOUTHWEST RESEARCH AND INFORMATION CENTER

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February 18, 2013

Trais Kliphuis
New Mexico Environment Department
2905 Rodeo Park Drive, Building 1
Santa Fe, NM 87505

RE: WIPP Class 2 Permit Modification – Revise Waste Analysis Plan
Waste Characterization Methods

Dear Trais,

Southwest Research and Information Center (SRIC) provides the following comments on the Class 2 permit modification request that was submitted by the permittees on December 12, 2012, according to their public notice.

SRIC appreciates that the permittees provided a draft of the proposed request and that representatives of the permittees as well as NMED met with SRIC and other citizen group representatives on October 26, 2012. SRIC continues to believe that such pre-submittal meetings are useful and supports continuing that “standard” practice in the future. SRIC also notes that there were some changes made in the modification request after the pre-submittal meeting. Nonetheless, some of the fundamental deficiencies in the modification request that were discussed at the pre-submittal meeting were not addressed, or were inadequately considered.

1. NMED must deny the modification request.

Pursuant to 20.NMAC 4.1.900 (incorporating 40 CFR §270.42(b)(7)), NMED may deny the class 2 modification request for any of three reasons. SRIC believes that denial is required because the request is deficient under each of the three criteria — the request is not complete, the request does not meet the requirements of the Resource Conservation and Recovery Act (RCRA) and the Hazardous Waste Act (HWA), and the request does not demonstrate that the changes requested will protect human health and the environment. SRIC notes that on several occasions, including as recently as January 31, 2012 and as far in the past as March 26, 2001, NMED has denied class 2 modification requests. Thus, NMED has ample precedent, as well as the legal authority, to deny the request. While NMED also has legal authority, and precedent, to approve a class 2 request with changes, it cannot do so for the present request.

A. The request is not complete. 40 CFR §270.42(b)(7)(i).

On page 4 of the modification request Overview, the permittees state:

This proposed Permit modification does not restrict generator/storage sites from utilizing chemical sampling/analysis as a means for characterizing TRU mixed waste streams. For instance, generator/storage sites may need to conduct chemical sampling/analysis of some waste streams to resolve discrepancies in AK information and complete a hazardous waste determination as required by 40 CFR 262.11. In such cases, the chemical sampling/analysis information and data would be incorporated into the AK record for those waste streams.

However, if the chemical sampling and laboratory analysis provisions of the permit are eliminated, as permittees propose, there is no basis for NMED to determine whether such “voluntary” sampling is done, that it is accurate, and that the methods and procedures, including quality assurance and quality control, are consistent with the existing requirements regarding how each site conducts such sampling. The provisions of the WIPP permit have established – and must continue to provide – such requirements. If the generator/storage sites “may need” to conduct sampling and analysis, then such procedures must remain in the permit. Permittees’ statement is clear evidence that sampling and analysis must remain part of the Waste Analysis Plan (WAP) and must continue to be included in the permit.

Moreover, if the permittees want sampling to be reduced to those waste streams that have “discrepancies,” the permittees must submit a modification request that proposes revised language and the need to accomplish that result, which they have not done. Thus, the request is incomplete, and it also cannot be approved with changes because the language for such reduced sampling has not been proposed or publicly discussed.

On page 5 of the modification request Overview, the permittees state:

There are about 60 future waste streams identified in the ATWIR as either WIPP-bound waste (ATWIR Appendix A) or as potential waste (ATWIR Appendix B). This inventory represents a final-form volume of about 9,800 cubic meters of TRU waste. Of this total, no HWNs are specified for approximately 6,900 cubic meters. For the most part, this is because the AK record has not yet been compiled for this waste. Because the descriptions of these waste streams indicate they are generated by processes that generated waste already shipped to the WIPP facility, the Permittees have no reason to anticipate that these waste streams will require chemical sampling/analysis in order to complete the characterization process.

The permittees have not correctly described that 2012 Inventory. Its Table 3-1 shows that there are 68,000 cubic meters of contact-handled (CH) waste in final form at 13 sites that could be shipped to WIPP in the future. That 68,000 cubic meters, not 9,800 cubic meters in about 60 waste streams, is the amount of waste that must be considered. For example, Table 3-1 shows that the Hanford (Richland) Site CH anticipated volume is 20,100 cubic meters. Hanford has shipped less than 5,100 cubic meters of CH waste to WIPP (or about six percent of the total CH waste volume at WIPP). The permittees have provided no basis to conclude that the remaining

waste, which is four times the amount of that shipped, will not require any sampling and analysis. Thus, at best, the permittees have provided incomplete information about Hanford waste.

SRIC believes, based on past experience of incomplete and inaccurate AK at various sites, and the relatively small amount of Hanford waste that has had chemical sampling, that the permittees “anticipation” that no sampling/analysis will be required is unjustified and inaccurate.

Transuranic waste so far emplaced at WIPP is predominantly from the Rocky Flats Plant (more than 65 percent of the CH has been shipped directly from Rocky Flats and in the INL wastes that are mostly from Rocky Flats). Hanford generated transuranic waste from significantly different processes, and most of that waste has not yet been subjected to sampling and analysis. SRIC believes that sampling and analysis will be necessary and must be maintained in the permit.

There are also sites (Knolls Atomic Power Laboratory-Nuclear Fuel Services, Lawrence Berkeley National Laboratory, Material and Fuels Complex, and Nuclear Radiation Development) included in Inventory Table 3-1 that have yet to ship any waste to WIPP. The request does not discuss those four sites, and the permittees have not demonstrated that wastes from those sites, which also differ from the Rocky Flats processes, have been sampled in accordance with the WIPP permit, since those sites have not been audited or certified. Again, at best, the permittees have provided incomplete information that chemical sampling and analysis is not needed at those sites. SRIC believes that it is likely that at least some of those four sites and waste streams also will have inadequate AK and that sampling and analysis will be required.

The modification request does not discuss the impact of eliminating chemical sampling and analysis related to additional Hazardous Waste Numbers (HWN). Currently, the permit sections C-3(d) and C3-1 include procedures for including Tentatively Identified Compounds (TICs) in headspace gas and solids sampling. TICs can also result in assigning of new Hazardous Waste Numbers to the permit. Without the sampling and analysis procedures, TICs will no longer be identified and accurate HWNs may not be in the permit, especially for future waste streams that contain different chemicals than in waste streams already subject to chemical sampling and analysis. The permittees have not presented definitive evidence that additional HWN would not be required for future waste streams. The request does not discuss this issue and is incomplete.

On pages 7-8 of the modification request Overview, the permittees state:

the New Mexico Environment Department (**NMED**) referred to a recommendation by the National Research Council [footnote omitted] for a systematic analysis to support waste characterization reductions. The NMED narrowed the focus of the scope of the National Research Council request to the Permit and the requested modification. The Permittees provided the requested information in the response to the NOD identified as “Appendix I, Response to NOD Comments 3.2.t and 3.2.u.” The conclusion from that study for headspace gas sampling and analysis (**HSGSA**) was: “Generally, AK information is sufficient to assign HWNs. There may be situations, however, when the AK information is not sufficient to resolve the HWN assignment for debris waste. In these cases, the generator/storage site will use HSGSA in accordance with the sampling approach in the revised PMR to sample and test a representative portion of the waste stream.” Data collected since then and discussed above have shown that even this reduced amount of

HSGSA is not needed. Similarly, the conclusion regarding solids sampling and analysis (SSA) was: "Eliminating SSA for every container does not reduce the reliability of the HWN assignment made by the generator/storage site because, generally, AK information is sufficient to assign HWNs. There may be situations, however, when the AK information is not sufficient to resolve the HWN assignment for homogeneous solids waste." Data collected since then and discussed above have shown that even this reduced amount of SSA is not needed.

There are several aspects of that discussion that are incomplete. First, that Response to NOD omits the portion that states that "few (2.8%) changes in the assignment of HWNs from AK have resulted from subsequent chemical testing." at 7. Since that calculation was based on "1,496 assignments of HWNs" (see Table 2), there were 42 changes in HWNs from chemical sampling and analysis. That information is not provided with this request, and contradicts the analysis in Appendix D of the request, which uses a different methodology. Not using the same methodology as in 2004 and not discussing the higher number of HWNs being changed is a significant incompleteness as well as clearly inaccurate.

Second, that NOD Response specifically stated that headspace gas sampling and analysis (HSGSA) would continue on a minimum number of representative samples of the waste stream. at 16. That requirement was a significant reason that SRIC agreed to the reduced sampling in the Section 311 "Monster Modification." Hearing transcript at 1082-1083, June 2, 2006, HWB 06-01(M). Keeping some sampling and analysis was also important to NMED's draft permit. Hearing transcript at 1194-1996, June 3, 2006, HWB 06-01(M). Not fully describing the NOD Response and the importance of continued HSGSA to SRIC and NMED and in the Secretary's decision to approve the "Monster Modification" is a significant incompleteness.

Third, that NOD Response specifically stated that solids sampling and analysis (SSA) would continue on a minimum number of representative samples of the waste stream. As with HSGSA, that was a significant reason that the reduced sampling was agreed to in the "Monster Modification" by SRIC and NMED. Importantly, in sworn testimony at the hearing on that modification request, the permittees expert witness stated: "Yes, there are waste streams that will require sampling." Hearing transcript at 177, June 1, 2006, HWB 06-01(M). Not fully describing the NOD Response and the importance of continued SSA to SRIC and NMED, the permittees own sworn testimony, and in the Secretary's decision to approve the "Monster Modification" is a significant incompleteness. Moreover, the permittees' sworn testimony has not been retracted or shown to be inaccurate, so there is no adequate technical basis for the elimination of sampling.

Fourth, while the Overview does mention the National Research Council Report, it does not mention its main recommendation.

Recommendation 1: DOE should use a systematic and quantitative approach to determine the value of the information currently obtained by its waste characterization activities and the impact of changes to them. This approach should also be used to support permit modification requests and communicate with the public. The approach should include analyses of the following types:

- an assessment of the risks of transuranic waste handling transportation, and disposal activities, including the current characterization activities; and
- an assessment of the impacts-risks, costs, and other impacts, including policy and societal impacts of changes to the current waste characterization activities.

National Research Council, 2004, "Improving the Characterization Program for Contact-Handled Transuranic Waste Bound for the Waste Isolation Pilot Plant", Washington, D.C. at 3, **emphasis in original**.

Not only does the request not mention that main recommendation, but neither in the request nor in any referenced document with the request have the permittees provided that recommended systematic and quantitative analysis. SRIC specifically raised the National Research Council Report recommendation at the pre-submittal meeting, so we are concerned about the request not adequately addressing that issue.

Thus, the request is incomplete. SRIC also believes that the permittees have fundamentally misrepresented that Report by not focussing on the basic recommendation and instead cherry-picking a few sentences, even though the excerpts do not support total elimination of sampling and analysis.

Fifth, the National Research Council Report looked at the accuracy of acceptable knowledge (AK). at 48-49. The findings included:

There is great variability in AK accuracy (degree of agreement between observed measurements and the "true" value) among sites....Therefore, it is unclear how AK accuracy varies among different waste streams and among different waste sites. at 49.

That finding further shows that the permittees' claimed accuracy of AK in the modification request is not warranted. But not addressing the National Research Council Report's findings about AK is another clear example of incompleteness in the request.

Sixth, the National Research Council Report collected waste characterization cost data. at 49-51 and 62-64. On page 7 of the request Overview, the permittees state:

It is currently estimated that approximately \$5,000,000 per year in chemical sampling/analysis costs could be saved by the Central Characterization Project (CCP) and the Advance [sic] Mixed Waste Treatment Project (AMWTP) combined with the approval of this PMR.

However, there is no detailed breakdown of characterization costs, nor comparison of current costs to those calculated in 2003 and including in the National Research Council Report. In addition, there is no data on the costs of confirmation, which were not included in that Report, because that process did not exist at that time. Again, the request is incomplete and the cost

estimates should not be deemed reliable because they greatly vary from those subjected to independent review in the National Research Council Report.

B. The request does not meet the requirements of the HWA and RCRA. 40 CFR §270.42(b)(7)(ii).

On page 3 of the modification request Overview, the permittees state:

This proposed Permit modification is necessary to eliminate redundancy in waste characterization by removing the requirement for generator/storage sites to characterize their wastes using chemical sampling/analysis, thereby reducing waste characterization complexity, cost, and personnel radiation exposure.

That explanation is not consistent with Environmental Protection Agency (EPA) guidance document OSWER 9938.4-03, "Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Waste." That document states:

This preference for corroborative testing, even though it arguably may be redundant, is designed to ensure that the waste is what others have represented it to be (even if the generator also tested the waste or certified that it meets LDR requirements) and provides reinforcement that it will meet LDR treatment standards prior to land disposal. at 1-11.

The EPA guidance document further states:

Wherever feasible, the preferred method to meet the waste analysis requirements is to conduct **sampling and laboratory analysis** because it is more accurate and defensible than other options. Id., **emphasis in original**.

Thus, redundancy through testing is the EPA preference, and such redundancy, contrary to the permittees assertion, is certainly not a regulatory reason to eliminate chemical sampling and analysis. Of course, given that explicit EPA guidance, it is not credible for the permittees to state in Appendix E of the request that they "have been unable to find federal or state guidance that recommends the use of redundant methods for determining waste parameters." at E-3.

The request emphasizes that eliminating redundancy also is based on the Joint EPA-NRC Guidance related to mixed waste and includes that guidance as Appendix C of the request. SRIC agrees that it is appropriate to limit worker radiation and hazardous chemical exposure, and the permit has always allowed methods to reduce exposures. The Joint EPA-NRC Guidance states (not cited in the request): "The use of waste knowledge alone is appropriate for wastes that have physical properties that are not conducive to taking a laboratory sample or performing laboratory analysis." Appendix C-5. But, as shown by the historic practice of the past 13+ years, most WIPP waste streams are conducive to sampling and analysis. Thus, the Joint EPA-NRC Guidance is not an adequate basis for the elimination of sampling and analysis, especially when it has been the historic practice at WIPP for almost 14 years.

Of course, the fact that the request is incomplete, as discussed in 1.A. above, also shows that the request does not meet the HWA and RCRA regulatory requirements.

C. The request does not demonstrate that eliminating sampling and laboratory analysis will protect public health and the environment. 40 CFR §270.42(b)(7)(iii); §74-4-4 NMSA. As has been discussed in 1.A and 1.B above, sampling and analysis is needed in the future for at least some waste streams from some sites. Without such sampling and analysis, toxic chemicals that are not allowed by the permit or in concentrations that endanger public health and the environment could come to WIPP. Therefore, completely eliminating chemical sampling and analysis is not protective of public health and the environment.

Further, the permittees misrepresent the past history of usefulness of sampling and analysis in protecting public health and the environment. On page 3 of the modification request Overview, the permittees state:

The information gained from chemical sampling/analysis activities is not used to make decisions regarding the storage and disposal of transuranic (TRU) mixed waste at the WIPP facility and is not required to meet the Resource Conservation and Recovery Act (RCRA) regulations.

On the contrary, sampling and analysis has been used “to make decisions” about TRU mixed waste. The permittees agree that sampling and analysis has been used between April 8, 1999 and March 15, 2012 to determine hazardous waste numbers on four waste streams. at Appendix D-3. As noted on page 4 above, the National Research Council Report showed that sampling and analysis resulted in additional HWNs on at least 42 occasions.

In addition, chemical sampling and analysis provided essential data to determine which waste streams caused the unexpected amounts of carbon tetrachloride that were detected in the underground air sampling in 2009 and 2010, and which waste streams did not have significant amounts of carbon tetrachloride. The permittees initially stated that “the main contribution of carbon tetrachloride appears to be from wastes in filled panels (Panels 3 and 4).” Letter from Moody and Sharif to Bearzi, November 17, 2009, at 2.

However, examination of chemical sampling and analysis data on Waste Streams ID-RF-S3114 and ID-SDA-Sludge showed that those two waste streams were primary contributors to carbon tetrachloride emissions. Those waste streams were being placed in panels 4 and 5. Therefore, DOE revised its understanding and took actions. Letter from Moody to Hancock, January 14, 2000. At least three decisions were made and implemented as a result of that revised understanding. First, new bulkheads were installed in Panel 5 to reduce the levels of carbon tetrachloride. Second, a planned change request was submitted to allow installation of a granulated activated carbon system at the exhaust of Panel 4 to reduce the amount of carbon tetrachloride emissions. Third, some shipments from those waste streams were curtailed and some containers from those waste streams with high amounts of carbon tetrachloride were overpacked to reduce the amount of carbon tetrachloride released through the container vent filters.

Therefore, sampling and analysis has been used to protect public health and the environment from hazardous waste. In the future, it is certainly possible that knowledge about the

concentrations of particular chemicals in waste streams will again help make decisions. If there are no sampling data available, such decisions would not have adequate information. With sampling and analysis, the additional information could be available. Thus, the request to eliminate all sampling and analysis provisions of the permit is not protective of public health and the environment.

2. The request also has other deficiencies.

On pages 8-9 of the modification request Overview, the permittees state that use of the Acceptable Knowledge Sufficiency Determination (AKSD) provisions of the permit

is inefficient and inappropriate for the following reasons: 1) a list of waste streams for which a Determination Request may potentially be submitted for the upcoming federal fiscal year must be submitted by July 1 of each year; 2) the NMED cannot evaluate more than one Determination Request at a time; and 3) the Permit does not prescribe a time frame by which the NMED must provide its concurrence with a Determination Request.

SRIC notes that the AKSD provision was specifically included to address situations in which sampling and analysis are shown to be unnecessary. The three reasons cited related to AKSD are insufficient and inadequate. If the listing of potential AKSD waste streams needs to be more frequent, the permittees could submit a modification request and justify that change. The permittees could also submit a modification request and justify a time frame for NMED's concurrence. How many AKSDs NMED can evaluate at one time is a function of funding and staff, which could be remedied by the permittees providing the additional necessary funding. Moreover, a significant reason, not mentioned in the request, that NMED's review of the AKSDs so far submitted have taken the timeframes described is because the permittees' submissions have been incomplete, requiring NMED to issue Notices of Deficiency. The permittees have then taken months to submit additional information. Complete and accurate submissions would reduce the time needed by NMED, as demonstrated by the fact that NMED has taken as little as nine weeks once adequate information was submitted for waste stream SR-RL-BCLDP.001. For other AKSDs, NMED has taken only a few months to issue its evaluations, once complete responses have been submitted.

Thus, if the AKSD provision is maintained in the permit, it should be the means to address waste streams for which the permittees believe AK is sufficient. If AKSD is "inefficient and inappropriate," as the permittees state, then the provision should be eliminated from the permit.

More recently, the permittees permit renewal application and technical testimony regarding the permit renewal continued to support the need for representative chemical sampling and laboratory analysis. See Permittees' Notice of Intent to Present Technical Testimony; HWB 10-26 (P), July 16, 2010; Testimony of J.R. Stroble, pages 4-9. Eliminating sampling and analysis could have been part of the permit renewal process, including the extensive public comment, negotiations, and hearing processes. Such a fundamental change in the WIPP WAP should be subject to similar class 3 permit modification processes. Moreover, as SRIC suggested at the pre-submittal meeting, this request and that for changes in underground VOC monitoring could be considered as a class 3 permit modification request.

In summary, regulatory requirements require that NMED deny the modification request, as it cannot be approved and it cannot be approved with changes. In addition, SRIC requests that in its denial, NMED state that if the permittees want to request a similar change when they also wish to change underground VOC monitoring that both changes be in a class 3 modification request.

Thank you very much for your careful consideration of, and your response to, these and all other comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is written in a cursive style with a large initial "D".

Don Hancock

cc: John Kieling