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**NEW MEXICO
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Hazardous Waste Bureau

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RON CURRY
Secretary

SARAH COTTRELL
Deputy Secretary

April 8, 2010

**RE: SPECIFIC RESPONSE TO COMMENTS, CLASS 2 MODIFICATION REQUEST
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088**

Dear Commenter:

On April 1, 2010, the New Mexico Environment Department (**NMED**) took final administrative action on a Class 2 permit modification request (**PMR**) to the Waste Isolation Pilot Plant (**WIPP**) Hazardous Waste Facility Permit. The Department of Energy Carlsbad Field Office and Washington TRU Solutions LLC (**the Permittees**) submitted this PMR to the Hazardous Waste Bureau in the following document:

- Request for Class 2 Permit Modification (Liquid, VE, NCRs), Letter Dated 1/7/10, Rec'd 1/7/10

The Permittees requested the following:

1. Change and clarify language regarding the liquid prohibition in the Permit;
2. Change and clarify language regarding the use of the visual examination method to characterize waste; and
3. Change and clarify the requirements regarding nonconformance reports.

NMED approved this PMR with changes for the reasons specified in the attached response to comments. This Class 2 PMR was evaluated and processed in accordance with the requirements specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(b)). It was subject to a sixty (60) day public comment period running from January 13, 2010 through March 15, 2010, during which NMED received written specific comments from a total of five individuals and organizations. You are receiving this mailing because you provided public comment on this modification.

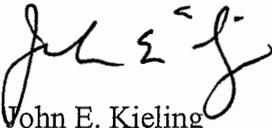
April 8, 2010

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Attachment 1 lists all commenters; Attachment 2 incorporates NMED's specific response to all comments; and Attachment 3 incorporates NMED's general responses to summarized comments. Further information on this administrative action may be found on the NMED WIPP Information Page at <<http://www.nmenv.state.nm.us/wipp/>>.

Thank you for your participation by submitting comments on these permit modification requests. Please contact Steve Zappe at (505) 476-6051 or via e-mail at <steve.zappe@state.nm.us> if you have further questions or need additional information.

Sincerely,



John E. Kieling

Manager

Permits Management Program

Attachments

cc: James Bearzi, HWB
Steve Zappe, HWB
David Moody, DOE/CBFO
Farok Sharif, Washington TRU Solutions LLC

Attachment 1
Commenter List

**Comments Received by NMED on WIPP Permit Modifications
 Modifications Submitted to NMED on:
 January 7, 2010
 Liquid/VE/NCRs Class 2 PMR**

	<u>Receipt Date</u>	<u>Author</u>	<u>Organization/Citizen</u>	<u># Pages</u>
A 1	10-Mar-10	* Marc Italiano	Citizen	1
B 2	11-Mar-10	* Penny McMullen	Loretto Community	1
C 3	15-Mar-10	* Don Hancock	SRIC	4
D 4	15-Mar-10	* Janet Greenwald	CARD	1
E 5	15-Mar-10	* Vernon Daub	CBFO	1
		5 commenters	Total Pages =	8

* Denotes electronic comment submitted

Attachment 2
Specific Response to Comments

Comments Received By NMED on the WIPP Class 2 Permit Modification Request

Comment Number	Commenter/Affiliation	Topic Area	Commenter	Comment Summary	Response
1.1	Marc Italiano, Citizen	Class 2 PMR - Item #3, NCRs	A	<p>Believes that shipping a container under this condition (with an unresolved NCR) in itself should not constitute a RCRA permit violation, but acceptance at the WIPP facility would be a violation.</p> <p>Commenter proposed the language in Section B3-13 be changed to read, "Any waste container for which a nonconformance report (NCR) has been written will not be received and accepted through the B-5b(3) Verification process at the WIPP facility unless the condition that led to the NCR for that container has been dispositioned in accordance with the Permittees' Quality Assurance Program Document (QAPD)."</p>	<p>NMED believes it is imprudent for WIPP to knowingly receive a container that would result in a violation. Allowing shipments from generator/storage sites but prohibiting their receipt at WIPP is a logical inconsistency.</p> <p>Furthermore, the language in Section B3-13 also includes a provision that containers selected for confirmation must undergo examination of any NCR documentation to verify NCRs have been dispositioned for that container. Confirmation must be performed prior to shipment, and thus it makes sense that NCRs for all containers must be dispositioned prior to shipment, not after receipt at WIPP.</p> <p>NMED will modify the text in Section B3-13 as requested in the Permit Modification Request PMR.</p>
2.1	Penny McMullen, Loretto Community	Class 2 PMR - Item #1, Liquid	B	<p>A criteria using percentage is difficult to ascertain. One percent would allow 2 liters of liquid in a 55-gallon drum, which is still too much, not really "residual" liquid.</p>	<p>The current permit allows up to one percent total residual liquid in a waste container. The issue over the past ten years of the permit has not been how to determine one percent, because with proper training, RTR operators can make objective determination based on geometry to calculate volume and percent liquid in a container. The issue has been how to determine whether such liquid is "residual" because this term is subjective. NMED believes replacing subjective terms such as "residual liquid" with objective, quantifiable measurements will make it easier to determine permit compliance, while still retaining overall liquid limits on individual waste containers.</p>
2.2	Penny McMullen, Loretto Community	Class 2 PMR - Item #1, Liquid	B	<p>Object to allowing three percent or more of liquid in internal containers.</p>	<p>In the current permit, allowing up to one inch liquid in internal containers can be significantly more than three percent. Three percent is also the limit in RCRA below which a container is considered "empty" and not subject to regulation. Under the PMR, internal containers may hold either three percent liquid or the de minimis volume (60 mL), so long as the overall liquid in a waste container does not exceed one percent by volume.</p>

Comments Received By NMED on the WIPP Class 2 Permit Modification Request

Comment Number	Commenter/Affiliation	Topic Area	Commenter	Comment Summary	Response
2.3	Penny McMullen, Loretto Community	Class 2 PMR - Item #1, Liquid	B	Object to the exception using AK. Given the amount of time and paperwork required to establish that the liquid does not exhibit the characteristic of ignitability, corrosivity and/or reactivity, it seems to be much more efficient to go ahead and remove the extra liquid.	See response to Comment 3.6 below.
2.4	Penny McMullen, Loretto Community	Class 2 PMR - Item #1, Liquid	B	Appreciate the clarification that containers with Hazardous Waste Number U134 assigned shall have no observable liquid, and the prohibition of overpacking or redistributing.	Comment noted. No response is required.
2.5	Penny McMullen, Loretto Community	Class 2 PMR - Item #2, VE	B	Would like the definition, which the PMR deletes, to remain: "Visual examination (VE) constitutes opening a container and physically examining its contents."	The descriptive language for VE is in Attachment B1, Section B1-4. NMED notes that VE may not always involve "opening a container" if the waste is newly generated and is being visually examined at the time of packaging. NMED is modifying the language in Section B1-4 to read, "Visual examination may be performed by physically examining the contents of waste containers ..."
2.6	Penny McMullen, Loretto Community	Class 2 PMR - Item #3, NCRs	B	Approve of the proposed changes regarding NCRs.	Comment noted. No response is required.
3.1	Don Hancock, Southwest Research and Information Center (SRIC)	General	C	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 others. SRIC continues to believe that such pre-submittal meetings are useful and supports continuing that "standard" practice in the future.	Comment noted. No response is required.
3.2	Don Hancock, SRIC	General	C	SRIC does not believe that all of the specific proposed changes are justified or needed, and believes that the modification must be approved with changes.	See specific comments and responses below.

Comments Received By NMED on the WIPP Class 2 Permit Modification Request

Comment Number	Commenter/Affiliation	Topic Area	Commenter	Comment Summary	Response
3.3	Don Hancock, SRIC	Class 2 PMR - Item #1, Liquid	C	The modification would result in more liquids being managed at WIPP, as the permittees acknowledge on Page 9 of 86 of the request. SRIC does not agree that an increase by an unknown quantity of liquid managed at WIPP has been shown to be protective of public health and the environment. At time when emissions of carbon tetrachloride are a significant problem at WIPP, additional amounts of that liquid or others is not warranted. Thus, the result of any approved modification should be to substantially limit any increase in the amount of liquids to be managed at WIPP	<p>It's not clear that the PMR would result in more liquids being managed at WIPP. While the "de minimis volume of liquid may allow liquid in small containers in quantities that were previously prohibited to be emplaced..." and the "3 percent volume of liquid may allow liquid in internal containers in quantities that were previously prohibited..." (page 9), there are also internal containers that would have been accepted with one inch of liquid now being rejected by the de minimis/three percent criteria.</p> <p>NMED believes there is no connection between the carbon tetrachloride emissions and amount of liquids in waste containers. However, NMED does believe that it is very important to revise the liquid prohibition to make it less subjective (by eliminating the term "residual") and clearer to implement (measurable liquid limits).</p>
3.4	Don Hancock, SRIC	Class 2 PMR - Item #1, Liquid	C	The permittees propose a "de minimis" volume limit in internal containers of "...60 milliliters or 3 percent by volume observable liquid, whichever is greater..." However, those limits can be exceeded "if acceptable knowledge states the liquid does not exhibit the characteristic of ignitability, corrosivity, and/or reactivity...and the requirements in Permit Attachment B, Section B-1c are met." The basis for those changes is that Attachment C of the request shows a small container in a 55-gallon drum of wastes at the Savannah River Site, which had about 45 milliliters of liquid and was the only liquid in the drum, but had to be removed. That sole example in no way justifies the limits (or exceeding those limits in the request. Moreover, SRIC believes that such multiple requirements will be confusing and difficult to determine.	<p>NMED believes that multiple requirements (i.e., determining whether liquid exceeds either the de minimis volume or the three percent volume) are readily addressed by proper training. The Partial Stipulated Final Order for HWB 09-31 (CO) Partial SFO directs the Permittees to submit guidance and training material developed regarding implementation of the revised liquid prohibition within 60 calendar days of NMED approval of this PMR.</p> <p>NMED addresses the issue of allowing liquid in internal containers to exceed the 3% limit based on acceptable knowledge (AK) in response to Comment 3.6 below.</p>

Comments Received By NMED on the WIPP Class 2 Permit Modification Request

Comment Number	Commenter/Affiliation	Topic Area	Commenter	Comment Summary	Response
3.5	Don Hancock, SRIC	Class 2 PMR - Item #1, Liquid	C	Rather than requiring radiography and visual examination operators to calculate volumes and percentages of liquid in an internal container, SRIC believes that there should be a limit on the amount of liquid in an internal container, if the liquid is not otherwise prohibited. Based on the information provided in the modification request, SRIC believes that limit should be no more than 45 milliliters, with no exception based on acceptable knowledge (AK)	Because the difference between 45 mL proposed by the commenter and 60 mL proposed by the PMR is somewhat arbitrary, NMED believes that 60 mL is an appropriate de minimis limit for small internal containers, representing 3% of a 2 L bottle, reflecting the "RCRA empty" concept and acknowledging the intent to minimize radiation hazards associated with remediating small amounts of liquid if the overall volume of liquid in a waste container remains below 1%. See also Permittees' Comment 5.3 below on this subject.
3.6	Don Hancock, SRIC	Class 2 PMR - Item #1, Liquid	C	The AK exception would create a new permit requirement – "to determine the potential for the waste to exhibit the hazardous characteristic of ignitability, corrosivity, and/or reactivity." Page 29 of 86, B4-3b. The permit now does not allow such determinations to be made exclusively by AK because radiography or visual examination also is required. SRIC does not believe that AK can always accurately make such a determination. Moreover, such a practice could have the effect of creating incentives for AK to not require removal of substantial quantities of liquids. Thus, there should be no provision for AK to be used to allow liquid in excess of any specific limit established in the permit. SRIC proposed language changes to Module II.C.3.a and Attachment B-1c consistent with their recommendations.	The proposed AK exemption for the amount of liquid in internal containers would not affect the overall limit of 1% liquid in a waste container. However, NMED shares the commenter's concern about AK's ability to accurately determine that liquid in internal containers could not exhibit the characteristics of ignitability, corrosivity, or reactivity. NMED believes the instance in which AK would be sufficient to make this determination unequivocally for an individual waste stream, coupled with the likelihood that waste containers in this waste stream would include internal containers with liquid exceeding the de minimis 3% limit, make this provision exceedingly unlikely to be invoked. NMED also believes including this provision could result in unnecessary controversy during the permit renewal process with little tangible benefit to the Permittees or the generator/storage sites, and therefore is not including this proposed provision in the liquid prohibition. Otherwise, NMED will incorporate the remaining liquid prohibition language as provided in the PMR.

Comments Received By NMED on the WIPP Class 2 Permit Modification Request

Comment Number	Commenter/Affiliation	Topic Area	Commenter	Comment Summary	Response
3.7	Don Hancock, SRIC	Class 2 PMR - Item #1, Liquid	C	The permittees propose a definition for the new term "Internal Container." Page 22 of 86, I.D.17. SRIC objects to the language "and debris not intended to hold liquid at the time of original waste packaging," because it is vague and requires someone to determine the intent of internal packaging. SRIC does not know of an objective way to make such a determination. Moreover, the permittees provide no basis for that language. Therefore, SRIC supports a clearer definition of internal containers that doesn't include the vague term.	NMED agrees that "debris not intended to hold liquid" is subjective and may be difficult to determine. NMED accepts Permittees' Comment 5.1 below as a reasonable solution to this vagueness by substituting "designed" for "intended." NMED expects the guidance and training materials required by the Partial SFO to provide clear examples of debris items anticipated to occur in waste containers that were not designed to hold liquid at the time of original waste packaging.
3.8	Don Hancock, SRIC	Class 2 PMR - Item #1, Liquid	C	Furthermore, the permittees' proposed additions to Permit Attachment B3-12b(2), Permit Attachment B4-2b (page 28 of 86) and Permit Attachment B4-3b (page 29 of 86) should not be approved, as they are inconsistent with the proposed SRIC provisions.	See response to comments above.
3.9	Don Hancock, SRIC	Class 2 PMR - Item #2, VE	C	SRIC objects to the deletion of language in Permit Attachment B1-4 (page 51 of 86) that currently requires VE to "describe all contents of a waste container, clearly identifying all discernible waste items...." The deleted language is not shown on the Table of Changes for Item 1, nor is any adequate rationale provided for the deletion in the description for either Item. Therefore, SRIC objects to the change, which could lessen the VE requirements in the permit.	See response to Comment 5.4 below.
3.10	Don Hancock, SRIC	Class 2 PMR - Item #2, VE	C	The Permittees also propose changes to Permit Attachment B7-1c (page 53 of 86), including the deletion of "all discernible" waste items. The deleted language is not shown on the Table of Changes for Item 1, nor is any adequate rationale provided for the deletion in the descriptions for either Item. Therefore, SRIC objects to the change, which could lessen the VE requirements of the permit	See response to Comment 5.4 below.

Comments Received By NMED on the WIPP Class 2 Permit Modification Request

Comment Number	Commenter/Affiliation	Topic Area	Commenter	Comment Summary	Response
3.11	Don Hancock, SRIC	Class 2 PMR - Other	C	The permittees propose various editorial changes to clarify provisions of the permit related to liquids, VEs and nonconformances. One clarifying editorial change regarding liquids in Permit Attachment F-1c should be to change "will" to "shall" to be consistent with many other parts of the permit. Therefore, the revised permit language should be consistent with the liquid prohibition in Attachment B-1c.	Proposed revision has been noted and incorporated into the final permit language.
3.12	Don Hancock, SRIC	Class 2 PMR - Suggested improvements to future PMRs	C	To assist in any future permit modification requests SRIC suggests that when changing multiple parts of a permit provision, the modification request also indicates when existing language is not being changed. For example, regarding Permit Attachment B1-4, pages 28 and 51 of 86, the permittees propose no changes to several lines in the existing permit in the second and third paragraphs of the provision. However, the modification request gives no indication that those lines are not included in the language provided. Such omissions are confusing in that the entire provision as it would be in the permit is not being provided. Thus, it is only when comparing the existing permit with the request is it clear that no changes are being proposed to some existing language. Similar omissions occur regarding Permit Attachment B7-1a (pages 29 and 68 of 86), where some lines of the provision are unchanged but are not shown in the modification request. To avoid confusion in the future, SRIC suggests that the modification request indicate where there are lines that would not be changed.	Comment has been provided to the Permittees for their consideration.

Comments Received By NMED on the WIPP Class 2 Permit Modification Request

Comment Number	Commenter/Affiliation	Topic Area	Commenter	Comment Summary	Response
4.1	Janet Greenwald, Citizens for Alternatives to Radioactive Dumping (CARD)	Class 2 PMR - Item #1, Liquid	D	Though we realize that the one inch criteria is not appropriate for purposes of regulation, we feel that percentages are also difficult to determine. The percentage proposed would also modify the permit in a way that would contradict the original intent of the permit, to allow only residual liquids to remain in the drums. For instance, up to two liters of liquid could be allowed in a drum; two liters is beyond what could reasonably be called residual. We also believe that three percent liquid in internal containers would exceed in many cases the amount of liquid now being allowed in the WIPP drums. We object to an increase in liquids in WIPP drums. If percentages are used, a limit of total liquids per drum should be set.	The permit has always imposed a percentage limit in determining acceptable quantities of liquid in a waste container, and with appropriate training by qualified individuals has been adequately implemented since 2000. NMED believes the PMR sufficiently described the issues regarding the use of the term "residual liquid", and that the proposed change to "observable liquid" is clearer and more enforceable. See response to Comment 2.1. One percent (2 L) liquid in a 55-gallon drum as specified in the permit is a more stringent standard than the three percent "RCRA empty" definition for containers (40 CFR §261.7(b)(iii)(A)), and is consistent with the historic overall container limit in the permit. While the three percent or 60 mL de minimis limits for internal containers may exceed the current liquid prohibition for some instances, there are other instances in which the new limit is more stringent due to the variability of determining one inch in containers of varying orientation. Overall, NMED believes the additional amount of liquid deemed acceptable under the new criteria will be relatively insignificant.
4.2	Janet Greenwald, CARD	Class 2 PMR - General Comment	D	As we all know there have been accidents involving both loaded and unloaded WIPP trucks and that the SEIS states that there will eventually be an accident with a release. Though the WIPP route is in many places a lonely route, it also goes through and close to many populated areas. We believe it is the responsibility of regulatory agencies not to allow the diminishing of the safety standards in the original WIPP permit which is one of the few protections for these populations in relation to the transport of radioactive waste through their communities.	NMED has no regulatory authority over the transportation of hazardous waste. The waste acceptance criteria (WAC) incorporated in the permit have always been intended to address storage and disposal of waste at WIPP, not populations along the transportation routes. NMED believes the permit as revised by this PMR continues to be protective of human health and the environment for the State of New Mexico, while affording a relatively minor additional level of protection to waste workers at generator/storage sites responsible for remediating waste containers to remove prohibited items such as liquid in excess of WAC limits.
4.3	Janet Greenwald, CARD	Class 2 PMR - Item #1, Liquid	D	We believe that the current language in the permit is more protective of the safety of those who live along the WIPP route than the proposed language. As well as allowing larger quantities of liquids at WIPP, we consider the use of AK in relation to the examination of liquids as a diminishing of safety standards.	See response to Comments 4.2 and 3.6.

Comments Received By NMED on the WIPP Class 2 Permit Modification Request

Comment Number	Commenter/ Affiliation	Topic Area	Commenter	Comment Summary	Response
5.1	Vernon Daub, CBFO	Class 2 PMR - Item #1, Liquid	E	In the proposed language for Module I.D.17, Internal Container: change the term "intended" to "designed" in order to facilitate implementation of this definition by the generator site personnel.	See response to Comment 3.7 above.
5.2	Vernon Daub, CBFO	Class 2 PMR - Item #1, Liquid	E	Permit Attachment E-2b, first sentence in the paragraph revise the proposed Permit text to read as follows; "TRU mixed waste received for emplacement at the WIPP facility must be certified under this Permit's Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC) as containing no more than 1 percent observable liquid." This will ensure consistency with the intent of the proposed liquid prohibition.	Proposed revision has been noted and incorporated into the final permit language.
5.3	Vernon Daub, CBFO	Class 2 PMR - Item #1, Liquid	E	The Permittees submit the following additional justification for the de minimis liquid volume: Sixty milliliters represents the threshold below which a significant amount of remediation would be required for internal containers which would increase the risk to workers performing the remediation. This is based on discussions with generator site characterization program representatives. The 45 milliliter example in the PMR is not intended to be typical of the volume of liquid in internal containers, but only typical of the consequences to workers, as mentioned above could occur.	See response to Comments 3.4 and 3.5 above.

Comments Received By NMED on the WIPP Class 2 Permit Modification Request

Comment Number	Commenter/Affiliation	Topic Area	Commenter	Comment Summary	Response
5.4	Vernon Daub, CBFO	Class 2 PMR - Item #2, VE	E	<p>The Permittees provide the following justification for deleting the word "all" in B1-4 and B7-1c:</p> <p>The inclusion of "all" presents a problem with regard to implementation because it implies that an operator would have to for example; "count the number of washers in a bag" when it is only be necessary to identify a bag of washers in order to describe the item and quantify the associated material parameter weights.</p>	<p>It is not NMED's intent that VE operators be required to enumerate minutiae to satisfy the requirement to "identify and describe all waste items..." This requirement has been in the permit since issuance in 1999, and generator/storage sites have consistently demonstrated their ability to meet this requirement during waste characterization audits. NMED sees no compelling reason to remove the word "all" in this case.</p> <p>The Permittees should ensure that sites continue to implement this requirement by reviewing and, if necessary, revising guidance and procedures used by the sites to comply with this requirement.</p>

Attachment 3
General Response to Comments

**NMED GENERAL RESPONSE TO COMMENTS ON CLASS 2 PERMIT MODIFICATIONS TO WIPP
HAZARDOUS WASTE FACILITY PERMIT (WIPP PERMIT)
SUBMITTED JANUARY 7, 2010**

Item 1. Change/clarify language regarding liquid prohibition in the Permit

Background: The permit modification request (PMR) proposed to change the liquid prohibition in the Permit. The existing Permit stated, “Waste shall contain as little residual liquid as is reasonably achievable by pouring, pumping and/or aspirating, and internal containers shall contain less than 1 inch or 2.5 centimeters of liquid at the bottom of the container. Total residual liquid in any payload container (e.g., 55-gallon drum, standard waste box, etc.) may not exceed 1 percent volume of that container.” The PMR proposed replacing “residual liquid” with “observable liquid” and replacing the 1 inch limit in internal containers with a de minimis volume of 60 milliliters (mL) or 3 percent, whichever is greater, as long as the overall 1 percent liquid limit was not exceeded for the waste container. The PMR would allow more than 3 percent in internal containers if acceptable knowledge (AK) demonstrated that the liquid was not ignitable, corrosive, or reactive. The PMR clarified that overpacking or redistributing untreated liquid within the container was not allowed as a method to meet the liquid prohibition volume limits. Finally, the PMR defined two terms (“internal container” and “observable liquid”), replaced “payload container” with “outermost container at the time of radiography or visual examination” to make it clear to which container the overall 1 percent liquid limit applied, and proposed a few other minor edits for consistency.

Comments: Most of the comments NMED received on the Class 2 PMR addressed this item. Several commenters believed that the result of implementing this change would allow more liquid to be managed at WIPP. Some thought that 1 percent of a 55-gallon drum, or 2 liters (L), was too much liquid to allow. Several thought that setting a de minimis amount that could vary (either 60 mL or 3 percent) was confusing, and one proposed a fixed limit of 45 mL. Several commenters thought the allowance for greater than the de minimis amount based upon AK was inappropriate. One commenter thought the new definition for internal container that excluded “debris not intended to hold liquid at the time of original waste packaging” would be difficult to objectively determine. One commenter thought the 1 inch criteria is not appropriate, but that percentages were also difficult to determine. One commenter also linked significant emissions of carbon tetrachloride in the WIPP underground with increased liquid in the waste.

Response: In response to public comment, NMED approved the modification with changes. One significant change was to reject the use of AK to allow greater than 60 mL or 3 percent liquid in internal containers. NMED rejected this provision for three reasons. First, NMED is concerned about AK’s ability to accurately and unequivocally determine that any liquid in a waste stream could not be ignitable, corrosive, or reactive. Second, NMED believes that the number of waste streams for which AK could make such a determination is very small. Finally, NMED believes it would be extremely rare to have a container in such a waste stream with liquid in an internal container exceeding the de minimis or 3% limit. Therefore, it would be exceedingly unlikely that this provision would be invoked.

NMED does not believe that approving the PMR with changes would necessarily result in more liquids being managed at WIPP. With respect to allowing up to 1 percent liquid in a waste container, this value has not changed except to replace “residual” (a very subjective

term) with “observable” (a much more objective term), making compliance easier to determine. The previous 1 inch criterion for internal containers was highly dependent upon the orientation of the container, and replacing it with a volume or percentage will be easier to evaluate. NMED believes that multiple requirements are readily addressed by proper training, and NMED believes that 60 mL is an appropriate de minimis limit for small internal containers, representing 3% of a 2 L bottle. This reflects the “RCRA empty” concept, and acknowledges the intent to minimize radiation hazards associated with remediating small amounts of liquid if the overall volume of liquid in a waste container remains below 1%.

Regarding the issue of excluding certain debris from the definition of internal containers, NMED incorporated a comment from the Permittees and changed the definition to read, “...debris not designed to hold liquid at the time of original waste packaging,” in order to exclude items such as tubing or flashlights.

Finally, NMED does not believe that there is any connection between carbon tetrachloride emissions and liquid in containers.

Item 2. Change/clarify language regarding use of the visual examination method to characterize waste

Background: The PMR proposed to allow the Permittees to change the description and requirements for visual examination (VE) in the Permit. The intent was to create more detailed requirements and use consistent terminology within the various attachments to the Permit that describe the VE process. One proposed change was to move detailed descriptions of VE from Attachment B (Waste Analysis Plan) to Attachments B1 (Waste Characterization Sampling Methods) and B7 (Permittee Level TRU Waste Confirmation Process) in order to achieve consistency. Another proposed change was to replace the terminology “visual examination technique” and “VE in lieu of radiography” simply with “visual examination” or “VE”. The PMR proposed to change “visual examination records” and “packaging logs” to “waste container packaging records” and “packaging records” when the Permit describes the ability to use these records to satisfy the VE requirements for waste that had been previously packaged. The PMR proposed to clarify that when VE is performed using two operators, the second operator must also directly observe the waste being examined rather than simply verifying paperwork. The PMR added training requirements for VE operators to ensure they would recognize situations when VE was insufficient to meet the requirements of the Permit and thus could not be used. Finally, the PMR added language requiring justification by the generator/storage site for the selection of radiography and/or VE as the appropriate method(s) of waste characterization for each waste stream, subject to review and approval by the Permittees.

Comments: One commenter objected to the deletion of language in Attachment B that defined VE as “opening a container and physically examining its contents.” Another commenter objected to the deletion of language in Attachment B1 that required VE to describe “all contents of a waste container, clearly identifying all discernable” waste items, and changing it to require VE to “identify and describe waste items...” This commenter similarly objected to deleting the qualifier “all discernable” in Attachment B7. In response, the Permittees justified the deletion of “all” in these two locations by asserting the inclusion of “all” presents a problem with regard to implementation because it implies that an operator

would have to, for example, "count the number of washers in a bag" when it is only be necessary to identify a bag of washers in order to describe the item and quantify the associated material parameter weights.

Response: In response to the first commenter, NMED noted that the descriptive language for VE is in Attachment B1, Section B1-4, and that VE may not always involve "opening a container" if the waste is newly generated and is being visually examined at the time of packaging. NMED modified the language in Section B1-4 from the proposed "Visual examination may be performed on waste containers..." to read, "Visual examination may be performed by physically examining the contents of waste containers ..."

In response to the comments regarding the use of the word "all," NMED saw no compelling reason to remove the word as proposed in the PMR. It is not NMED's intent that VE operators be required to enumerate minutiae to satisfy the requirement to "identify and describe all waste items..." This requirement has been in the permit since issuance in 1999, and generator/storage sites have consistently demonstrated their ability to meet this requirement during waste characterization audits. The Permittees should ensure that sites continue to implement this requirement by reviewing and, if necessary, revising guidance and procedures used by the sites to comply with this requirement.

Item 3. Change/clarify requirements regarding nonconformance reports

Background: The PMR proposed to clarify and add language to ensure that nonconformances noted during waste characterization by the generator/storage site were dispositioned before shipment of the affected waste container to WIPP for disposal.

Comments: NMED received one specific comment regarding this item. The commenter believes that *shipping* a container with an unresolved NCR should not constitute a violation of the Permit, but *acceptance* of that container at WIPP would be a violation. The commenter proposed alternate language in Section B3-13 from that proposed in the PMR in an attempt to reflect this, although it was not clear from the proposed language whether the violation would be clearly identified upon initial receipt of the waste at WIPP.

Response: NMED believes it is imprudent for WIPP to knowingly receive a container that would result in a violation. Allowing shipments from generator/storage sites but prohibiting their receipt at WIPP is a logical inconsistency. Furthermore, the language in Section B3-13 also includes a provision that containers selected for confirmation must undergo examination of any NCR documentation to verify that NCRs have been dispositioned for that container. Confirmation must be performed prior to shipment, and thus it makes sense that NCRs for all containers must be dispositioned prior to shipment, not after receipt at WIPP.