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PETER MAGGIORE
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FACT SHEET
MAY 13, 2002

**NOTICE OF INTENT TO APPROVE A CLASS 3 MODIFICATION
TO THE
HAZARDOUS WASTE FACILITY PERMIT
FOR THE
WASTE ISOLATION PILOT PLANT
CARLSBAD, NEW MEXICO
EPA ID NO. NM4890139088**

ACTION: The New Mexico Environment Department (**NMED**) intends to approve, subject to public review and comment, a Class 3 permit modification to establish new drum age criteria (**DAC**) for taking a representative headspace gas sample based on additional packaging configuration groups.

FACILITY: Waste Isolation Pilot Plant (**WIPP**)
Carlsbad, New Mexico

PERMITTEES: United States Department of Energy, owner and co-operator
Westinghouse TRU Solutions LLC, co-operator

PERMIT NO.: NM4890139088-TSDF

BACKGROUND

The WIPP Permit requires that most waste containers must be sampled for hazardous volatile organic compounds in the headspace (or void space) of the container before they can be accepted at WIPP. In order to ensure that these samples are representative of gases within the entire container, the Permit specifies a minimum number of days a container must sit after packaging before it can be sampled. This time period is known as the drum age criteria (**DAC**) and is a function of the physical form of the waste and the number of layers of packaging in the container. The DAC values currently in the Permit conservatively assume that there are five layers of plastic bags in debris waste containers and two layers in homogeneous solids and soil/gravel containers. The Permit does not

consider other specific packaging configurations that might occur in waste containers.

ADMINISTRATIVE HISTORY

On November 13, 2000, the Permittees submitted a Class 1 modification to NMED to establish new DAC for taking a representative headspace gas sample based on additional packaging configuration groups. NMED received this modification on November 18, 2000, and shortly thereafter notified the Permittees informally that the request did not meet the criteria for a Class 1 modification and would be rejected.

On December 7, 2000, the Permittees submitted a virtually identical request, replacing the November 13, 2000 Class 1 submittal with a

Class 2 modification. The Permittees also requested a temporary authorization (**TA**) to implement the new DAC under 20.4.1.900 NMAC (incorporating 40 CFR §270.42(e)) before action was likely to be taken on the modification request. On December 13, 2000, NMED initially approved the TA request but upon further analysis prompted by public comment, NMED rescinded the approval on December 22, 2000, stating that the Permittees' request failed to demonstrate why it was imperative for NMED to grant the temporary authorization, in this case outside the regulatory process for Class 2 permit modification. Upon receipt of a request by the Permittees to reconsider the rescission, NMED reiterated its position that the Permittees failed to demonstrate the necessity of implementing the TA.

Following the close of the public comment period for the Class 2 modification on February 9, 2001, NMED denied the DAC modification on March 26, 2001. NMED cited technical inadequacies, such as the complete failure of the Permittees to address how sites would obtain the required information necessary to determine the appropriate DAC, as the basis for the denial. NMED also stated that it was unable to approve the DAC modification "with changes" as allowed for Class 2 modifications because none of the commentors proposed sufficiently detailed changes to rectify the technical inadequacies they identified. Furthermore, NMED was unable to reclassify the DAC modification request to follow the more involved procedures for Class 3 modifications because the request was not approvable as submitted. Finally, NMED recommended that the Permittees resubmit the DAC modification request as a Class 3 modification, which would allow a potentially deficient request to undergo the notice of deficiency (**NOD**) and NOD response cycle prior to issuance of a draft permit, at which time it would be subject to additional public comment.

On May 1, 2001, the Permittees submitted a Class 2 modification request that included a revised DAC modification and a response to NMED comments on the previously denied submittal. Following the close of the public comment period on July 6, 2001, NMED did not approve the DAC modification "with changes" because the complex nature of these changes necessitated the development of a draft permit. Instead, NMED reclassified the modification

request on August 30, 2001 to follow the procedures for Class 3 modifications.

PROPOSED ACTION

NMED is issuing a draft permit for public comment that considers both the permit modification submittal by the Permittees and all comments received during the previous comment period. This draft permit is therefore a reflection of NMED's proposed action on those requests.

In the May 1, 2001 permit modification request, and subsequently in the comment documents submitted by the Permittees during the public comment period, the Permittees requested: the inclusion of additional tables for determining the DAC for several scenarios of waste and packaging configuration groups; specific sampling requirements; addition of several data fields to the WIPP Waste Information System; inclusion and definition of a "filtered inner lid"; and a description of the information requirements which must be documented for each container from which a headspace gas sample is collected. NMED is proposing to approve these modification requests, with and without changes, in the draft permit.

There are several items included in the modification request that NMED does not propose to approve. The Permittees included a packaging configuration that addressed taking a headspace gas sample from a direct loaded Ten-Drum Overpack (**TDOP**) container. NMED disapproved this packaging configuration because the current permit prohibits direct loading of TDOPs. The Permittees also sought an exemption from innermost layer of containment sampling for Waste Material Type II.2 packaged in a metal container. This language was removed by NMED because it was not included in the current permit and no justification was provided for its inclusion.

Based on public comments, NMED imposed a new condition that radiography and/or visual examination must be used with acceptable knowledge in order to determine and/or verify the appropriate packaging configuration group and sampling scenario for every container sampled. However, if this required information is not available or documented, samplers must use the most conservative assumption in choosing a

DAC. NMED has also imposed an additional requirement for a documented training program to ensure that the radiography test drum includes common waste packaging configurations and rigid liner vent hole diameters appropriate to the specific waste streams for which a waste stream profile form is sought. NMED integrated items into the audit checklists to reflect the DAC modifications sought by the Permittees and the additional conditions imposed by NMED. Finally, NMED inserted section subtitles, corrected several miscellaneous typographical and wording errors, and incorporated new wording and subtitle numbering as needed to conform with the permit modification requests and for consistency.

NMED believes the proposed modifications to incorporate additional DAC for other packaging configuration groups are just as protective of human health and the environment as the current permit. The additional DAC were calculated using the same methodology contained in the original permit application and approved for use in the current permit. Furthermore, NMED has imposed an additional level of conservatism in the application of the DAC by the generator/storage sites. If they are unable to document some of the critical parameters necessary to select the appropriate DAC from the modified tables in the draft permit, in some cases they will be forced to use a more conservative DAC (i.e., wait a longer time before sampling) than previously contained in the current permit.

AVAILABILITY OF ADDITIONAL INFORMATION

The Administrative Record for this proposed action consists of this Fact Sheet, the Public Notice, the permit modification request, all public comments received during the previous comment period, and other relevant correspondence. The administrative record may be reviewed from Monday through Friday 8:00 AM to 5:00 PM at the following location:

New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone: 505-428-2517
Attn: Mr. Steve Zappe

To obtain a copy of the administrative record or any part thereof, please contact Mr. Steve Zappe of the New Mexico Environment Department at the above address. The draft permit is also available on the NMED web site (www.nmenv.state.nm.us/wipp).

PUBLIC COMMENT AND REQUEST FOR HEARING

Any person who wishes to comment on this permit modification or to request a Public Hearing should submit written comments/requests, along with the commentor's/requester's name and address, to Mr. Steve Zappe at the above address. All requests for Public Hearing must provide: (1) a clear and concise factual statement of the nature and scope of the interest of the person requesting the hearing; (2) the name and address of all persons whom the requester represents; (3) a statement of any objections to the permit modification, including specific references; and (4) a statement of the issues which such persons proposes to raise for consideration at the hearing. Written comment and requests for Public Hearing must be filed with Mr. Steve Zappe on or before June 27, 2002 at NMED Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico, 87505.

FINAL DECISION

All written comments received during the public notice period and issues raised at a Public Hearing, if held, will become part of the administrative record and will be considered in formulating the final decision. NMED may approve, modify and approve, or deny the requested permit modification based on the comments received. NMED will notify the Permittees and each person who submitted a written comment during the public comment period or testimony at a Public Hearing of the final decision, including any approved change to the proposed modification, and a detailed statement of reasons for any such change. The final decision will be made according to applicable State and Federal laws.