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June 3, 2024

Megan,

I am submitting comments on the March 29, 2024 Class 2 permit modification request (**PMR**) submitted by the US Department of Energy (**DOE**) Carlsbad Field Office and Salado Isolation Mining Contractors, LLC (**Permittees**) to the New Mexico Environment Department (**NMED**), proposing changes to the Waste Isolation Pilot Plant (**WIPP**) Hazardous Waste Facility Permit (**Permit**). Please consider and provide responses to my comments when you deliberate modifying the Permit as requested in the PMR.

The Permittees divided their PMR discussion into two topics. These are:

- Topic 1 – Addition of four new shielded containers
- Topic 2 – Revision to site certification audit scheduling from annual to graded approach

I have no substantive comments on the first topic, and will comment only on the proposed changes to audit scheduling. However, I will first provide general comments about the pre-submittal and public meeting processes for this PMR and how the Permittees must modify their implementation to avoid the frustrations experienced by the public.

#### Pre-Submittal Meetings

Pre-submittal meetings are not required by the Permit, but have been incorporated in the Community Relations Plan, Section 3.7 “Public Meetings,” which states:

*“In addition to the meetings required by RCRA regulations, the Permittees conduct pre-submittal meetings prior to finalizing a Class 2 or 3 PMR. These meetings are intended to gather comments from interested parties that help the Permittees finalize a Class 2 or 3 PMR...”*

The Permittees held two pre-submittal meetings with members of the public. The first was an informal in-person meeting, held on March 14, 2024 in Santa Fe with interested groups and persons who had been a party to the recent permit renewal process. Unlike pre-submittal meetings that had previously been held for many years, the Permittees did not

provide a copy of the draft PMR for participants to review in advance of the meeting, and the Permittees were unwilling to provide a copy during or even after the meeting. We only saw it briefly projected on a screen. The participants were thus unable to provide any substantive comments based upon the limited information shared by the Permittees.

The second pre-submittal meeting was hybrid in-person/virtual meeting on March 20, 2024. This meeting suffered the same problem as the previous meeting by not providing a copy of the draft PMR for review and comment, but the Permittees finally conceded that they would do so at future meetings after they couldn't justify their lack of candor.

This hybrid pre-submittal meeting also suffered by being modeled after the "town hall" meeting format used for other WIPP online meetings, with strict time limits on comments, rigid controls on un-muting and muting people, and other barriers to group dialogue such as disabling the chat function in Zoom. From a public participation perspective, the following recommendations would greatly improve the outcome of these Permit-related hybrid meetings:

- Make accommodations for the meeting to be in a round-table discussion format, by diminishing the role of the moderator to intervene only when necessary
- Allow participants to unmute and mute themselves
- Encourage those who intend to speak to leave their camera on
- Dispense with time limits on individual commenters
- Enable the chat function so that individuals can ask questions or communicate with others without having to speak
- Allow screen sharing so participants can show (or see) actual permit language under consideration

### Class 2 PMR Public Meeting

The public meeting was held on April 17, 2024, again in a hybrid in-person/online format. Obviously, the PMR language could now be discussed, and much new information that had not been in the actual PMR was provided in response to public questions. The meeting format could also be improved by adopting the above recommendations, but it is vitally important that the online meeting session be recorded and uploaded for public access to allow review of statements made by the Permittees during the meeting that were not in the PMR submittal.

### Comments on the Graded Approach for Scheduling Small Quantity Site Recertification Audits

1. The pre-submittal PMR, although never provided for public review, intended to use the graded approach to allow any generator/storage site up to three years between recertification audits, whereas the submitted PMR restricts the graded approach scope to only three small quantity sites, allowing only two years between recertification audits instead of three. When questioned during the Class 2 public meeting, the Permittees clarified that they originally proposed a

broader risk assessment approach of all sites, but that NMED requested them to propose the graded approach in a stepwise manner. This change of scope is the Permittees' attempt to take that initial small step and demonstrate how the process can work. But there is no specific method described in the PMR or in the revised permit language stating how this will be implemented. The Permittees indicated this method will be contained in a standard operating procedure outside of the Permit.

2. Although not stated in the PMR, the proposed scheduling criteria are based largely on existing language in Permit Attachment C6, Section C6-4 related to Generator Site Technical Reviews (**GSTRs**). However, with audits currently occurring annually, it may be reasonably inferred that GSTRs likely occur in addition to audits, thus providing more frequent evaluations of generator site waste characterization activities than audits alone.

However, these nearly identical criteria are now being proposed in this PMR to support **less** frequent evaluations via the audit process without any evidence that such actions are equally protective with the current audit scheduling requirements. The Permittees state twice (PMR pages 1 and 5):

*“The changes in this PMR **do not reduce the ability of the Permittees to determine** generator/storage sites’ TRU mixed waste characterization program implementation and compliance with the WAP...” (emphasis added)*

In fact, the PMR language as written **increases the risk** to the Permittees' ability to determine whether the sites' waste characterization programs are compliant with the WAP. This PMR is proposing to decrease the frequency of scheduled audits in exchange for a (presumably) acceptable level of risk that something may be missed... perhaps similar to failing to identify the incidents at LANL that led to the February 14, 2014 event that shut down WIPP.

3. The PMR fails to indicate what information the Permittees will submit along with their annual audit schedule for NMED approval, other than that they “will consider” some criteria in developing the schedule. Furthermore, comments by the Permittees at the public meeting suggested that they would be happy to discuss their grading criteria procedure with NMED, but there is no language proposed in the PMR to accomplish that. Without clear language in the Permit, those discussions could occur after the proposed annual schedule was submitted and occur totally off the record.

And the proposed PMR language never directly connects the graded approach criteria with the three small quantity sites granted a waiver to the annual audit requirement. It simply states, “... ANL, SNL, and LLNL, due to the small quantity of waste being generated currently at these generator/storage sites, ... may be audited every two years...” (if approved by NMED in the annual audit schedule). Note that it doesn't say “if approved by NMED based on concurrence with the

graded approach criteria,” no, just by NMED approving “the annual audit schedule.” In fact, the term “graded approach” never appears in the proposed permit language. It’s all done behind the curtain, as far as the public is concerned.

4. I have included significant language changes to the proposed language in Permit Attachment C6, Section C6-1, as attached shown in redline/strikeout format. Here is an explanation for my changes.
  - a. NMED’s approval must be written, not a verbal concurrence. This may be unnecessary, but I wanted to make sure that NMED responded on the record, especially if any reduction of audit frequency was granted.
  - b. I inserted ”criteria” between “the following for developing” because I refer back to them in the final paragraph.
  - c. I carved out a separate category for small quantity sites rather than making them an “exception,” both because I have more to describe about this second category, and it will make it easier for the Permittees to adapt this language in future modifications that broaden the scope of the graded approach.
  - d. I spelled out clearly what the Permittees have to submit to qualify for this reduced frequency of scheduled audit: “... a detailed risk-based graded approach analysis using the above criteria for each site, demonstrating how the site will effectively implement and comply with applicable requirements of the WAP in the absence of an annual audit.” I believe it is crucial for the Permittees to demonstrate how a site will continue to comply with the WAP, not to just assume the site will because they say so (reference my Comment #2 above).

Please consider using my proposed language as a starting point for NMED to further clarify how the public can be fully informed on any joint decision by the Permittees and NMED to reduce the frequency of waste characterization audits for generator/storage sites

As always, please feel free to contact me if you have any questions about my comments.

Sincerely,



Steve Zappe  
Santa Fe, New Mexico

Attachment: Recommended Changes to Permit Attachment C6, Section C6-1

## Attachment

### Recommended Changes to Permit Attachment C6, Section C6-1

The Permittees will provide a proposed annual generator/storage site audit schedule for the upcoming calendar year to the NMED, by October 1, for written approval by NMED within 90 days of receipt. Any subsequent changes to the annual schedule proposed by the Permittees will be promptly submitted to the NMED for approval. The Permittees will consider the following criteria for developing the annual audit schedule:

- initial audits if any required,
- replacement of the contracting organization performing the TRU waste management,
- new Permit-related waste characterization activities (e.g., new radiography or VE processes),
- changes in waste types or forms (e.g., additional Summary Category Groups not previously approved by the NMED),
- quantity of waste being characterized,
- unexpected issues and events, and
- input received from the NMED.

Before the Permittees begin the process of accepting TRU mixed waste from a generator/storage site, an initial audit of that generator/storage site will be conducted as part of the Audit and Surveillance Program. Each generator/storage site shipping TRU mixed waste to the WIPP facility must be audited at least annually. However, specific small quantity generator/storage sites with the exception of (limited to ANL, SNL, and/or LLNL), due to the small quantity of waste being generated currently at these generator/storage sites, which may be audited at a reduced frequency of every two years if approved by NMED in the annual audit schedule only if the Permittees submit, for NMED approval, a detailed risk-based graded approach analysis using the above criteria for each site, demonstrating how the site will effectively implement and comply with applicable requirements of the WAP in the absence of an annual audit.