PUBLIC HEARING

EPA PROPOSED ALTERNATIVES TO THE COMPLIANCE CRITERIA FOR THE WIPP

TRANSCRIPT OF PROCEEDINGS
SEPTEMBER 24, 2002

BE IT REMEMBERED that on the 24th day of September, 2002, this matter came on for public hearing before FRANK MRACINOWSKI, Director of EPA’s Radiation Protection Division, as the Hearing Officer, and BARBARA K. HARRIS, Certified Court Reporter of the firm SANTA FE DEPOSITION SERVICE, 110 Delgado Street, Santa Fe, New Mexico, at the Albuquerque Convention Center, Albuquerque, New Mexico.

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EPA PANEL:

FRANK MARCINOWSKI - HEARING EXAMINER
Director EPA's Radiation Protection Division

BETSY FORINASH - Director of the Federal Regulations Center

KEITH MATTHEWS - Office of General Counsel

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MR. MARCINOWSKI: Good afternoon. We're going to get started here and open up the hearing at this point. Currently we don't have anybody scheduled to testify, but I wanted to get the opening remarks on the record right now and get things started. So good afternoon. I want to welcome you to the U.S. Environmental Protection Agencies public hearing to receive oral testimony on the Proposed Alternative Provisions to the Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the Disposal Regulations.

I'm Frank Marcinowski, the Director of EPA's Radiation Protection Division. I'm going to serve as today's Presiding Officer. Before I explain the ground rules and procedure for today's hearing, I would like to introduce Betty Forinash. She's the director of our Center for Federal Regulations within EPA and is responsible for the day-to-day management of our regulation of the WIPP facility. And I would also like to introduce Keith Matthews. He's an attorney with EPA working with us on the WIPP project.

Now let me briefly describe our reason for being here. In 1992 Congress established EPA as the regulator of the WIPP site. We set disposal standards in 1993, requiring radioactive waste disposal facilities, such as
the WIPP, to perform safely for thousands of years into the future. In 1996 we followed these general standards with more specific Compliance Criteria for the WIPP site itself. We used these criteria to determine whether the WIPP complies with our radioactive waste disposal regulations. In October 1996 we received DOE's Compliance Certification Application and immediately began its review. On May 18, 1998, we recertified that WIPP met our disposal regulations and could safely contain transuranic radioactive waste. This decision was based on our independent technical evaluation of DOE's plans for the WIPP and on public input.

Since that time, we have conducted many independent technical reviews and inspections of the WIPP and DOE's transuranic waste facilities around the country to verify continued compliance with our WIPP disposal regulations and with the conditions we established for the WIPP's certification. So based on nearly four years of oversight of the WIPP's operation, we have determined that several changes should be made to our criteria to improve the effectiveness and efficiency of our oversight.

The most significant of these changes we propose is to revise the procedures for approving DOE's waste characterization programs. The proposed changes are intended to provide EPA more control and flexibility to
schedule and conduct inspections of the ways
characterization programs at DOE's waste generator sites.
These alternative provisions would not change the
technical approach EPA uses during these independent
inspections and does not lessen the waste characterization
requirements the site must meet to demonstrate
compliance. In fact, we believe that these changes will
provide equivalent or improved oversight of waste
characterization activities.

We will continue to enforce the waste
characterization requirements, to ensure that DOE's waste
characterization programs are properly implemented. And
the proposed alternative provisions will give us
flexibility to focus our oversight efforts on the most
important waste characterization activities at a given
site. We are also clarifying and updating several other
provisions, and you may comment on any of the changes that
we proposed.

Now, for the process that we will follow for the
hearing. No one will be sworn in and there is no cross
examination. The speakers will be asked to present their
testimony and not expect a response from the panel
members. We are here to listen to your comments. We will
respond to all comments received after the public comment
period closes.

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We have a court reporter present whose job is to produce a verbatim transcript of today's proceedings, so it is important that we get a clear and uninterrupted record. If you have a written copy of your statement, we will be glad to accept it when you are called to testify. I ask all speakers to identify themselves for the court reporter, to spell their names, speak slowly and clearly, and stop if either the court reporter or I signal a halt. Of course, it may be necessary for the court reporter, members of the panel, or I to ask some questions of the speakers for the purpose of clarifying their statements.

Individuals are allowed five minutes to testify and individuals representing an organization, such as a citizens group, are allowed ten minutes. As stated in the Federal Register Notice announcing the public hearings, only those people who registered in advance are guaranteed an opportunity to do so. Speakers not registered in advance may register at the table outside the door and will be scheduled to testify. We will use a timer that operates similar to a traffic light. I will tell you when it is time to begin your statement, and the timekeeper will start the timer and the green light will appear. When you have two minutes left, the light will turn yellow and you should begin closing your remarks. When your time has elapsed the light will turn red and I will ask you to stop.

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Those of you whose statements are longer than the allotted five or ten minutes will be recalled and allowed to continue speaking to the extent possible. Time permitting, this procedure will be repeated until everybody who wishes to be heard has completed their statements or the session reaches its closing time. I believe this system will be fair to all parties.

As I mentioned earlier, we gladly accept written comments today, or you can submit them to the official EPA docket until December 9, 2002. That means that anything you do not get to say today, or anything you want to say in response to what someone else says, may be submitted in writing for our consideration. Comments may be submitted electronically, by mail, or by fax. We consider all comments equally, whether presented to this panel or provided to the docket.

Please see the information table or refer to the flyer that was passed out on your way in for the docket locations and hearing ground rules. A transcript of today's proceedings will be available for review at the dockets in a few weeks.

Again, EPA's purpose today is to solicit comments only on the Proposed Alternative Provisions published in the Federal Register on August 9, 2002. So
we ask you to confine your comments and remarks to that
topic.
I want to thank all of you for taking the time
to attend and testify today, and we look forward to
hearing from as many people as we can.
At this point in time we have nobody currently
registered to speak, so if anybody would like to step up
and speak we would certainly be willing to hear you now.
If not, I think we're going to recess until somebody comes
who wants to speak. So is there anybody willing at this
point?
(Negative response.)
MR. MARCINOWSKI: Okay, then I think
officially we'll go on recess until we get somebody who
wants to speak.
(There was a recess until 1:27 p.m.)
MR. MARCINOWSKI: Okay. We're going to reopen the hearing now. And when we initially opened it, there were some procedures that we have with regard to the time allotted for speakers. At this point in time we don't have a great many speakers, so if you want to go beyond your time limit at this point, I would say let's just keep proceeding until you're through with your statement, or somebody else comes in and wants to testify, and we'll schedule it at that point, but this is Sharla Bertram. Maybe you could just spell your name for the court reporter.

MS. BERTRAM: I also gave her a copy.

MR. MARCINOWSKI: That would be great.

MS. BERTRAM: My name is Sharla Bertram, S-h-a-r-l-a B-e-r-t-r-a-m. I'm speaking on behalf of John Hart Associates of Albuquerque. Good afternoon to the hearing officers and ladies and gentlemen. Thank you for the opportunity to comment. John Hart and Associates performs environmental and regulatory analyses for the WIPP Project. Prior to employment with JHA I was with Sandia National Laboratories, the WIPP's scientific advisor. While at SNL, I was responsible from 1986 to 1999 for analyzing and tracking the development and implementation of 40 CFR Parts 191 and 194 and assisting the laboratory to
focus scientific investigations to be responsive to
relevant requirements of the regulatory program. And in
that capacity I analyzed all of the EPA's proposed and
final requirements for the Department of Energy. Our
comments today build on that experience.

We are particularly concerned about the
reference in the proposed Section 194.8(b)(3)(i), to
Section 194.4(b)(1) and (2). We believe this simple
reference could change the relationship between the
processes of certification and recertification of the WIPP
and the processes of determining baseline and continued
compliance of waste generator sites.

More separation is needed between Section 194.8
and the remainder of Part 194. Waste generator sites
should be dealt with separately from and independently of
the WIPP certification and recertification requirements.
The provisions dealing with waste generator sites should
implicitly state that the EPA's decisions regarding waste
generator sites have no bearing on the WIPP certification
or recertification.

The problem. The title of Part 194 does not
address certification of waste generator sites to ship
waste to the WIPP. The title implies that the rule
addresses nothing but certification and recertification of
the WIPP. The proposed Section 194.8(b)(3)(i)
inappropriately invokes Section 194.4(b)(1) and (2). The provisions of Section 194.4 are specific to the WIPP certification and are not appropriate responses to noncompliance at a waste generator site. In fact, EPA made this argument in the Supplemental Information for the Final Certification Decision, and I quote:

"The EPA certification is based on the Agency's determination that the WIPP will comply with the disposal regulations for the inventory described in the performance assessment. Conditions 2 and 3 of the certification (related to waste generator sites) change neither the performance assessment assumptions nor the terms on which the WIPP is authorized for disposal, but ensure that DOE adheres to the assumption on which compliance is based. The EPA believes this approach is consistent with Congressional intent (as reflected in the WIPP Land Withdrawal Act) and with the disposal regulations and compliance criteria." This was quoted from 63FR27360.

"In the Response to Comments for 40 CFR Part 194," this was in docket, A-92-56, Item V-C-1, pages 6-5, 6-8, and 6-20, "EPA emphasized that compliance with the requirements would be confirmed through inspections or audits and would not serve to

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reopen the certification rulemaking."

This is at 63FR27359 CFR. End quote of that one.

The EPA stated in the Supplemental Information to the currently proposed rulemaking that, quote:

"The principal difference between the existing and proposed provisions is the process by which EPA verifies compliance with the provisions and notifies the public of that process. This new process will not substantively affect the Compliance Criteria's implementation of EPA's radioactive waste disposal regulation 40 CFR Part 191."

This is from 67FR51938, and I added emphasis.

If you invoke Section 194.4(b)(1) and (2) in the proposed Section 194.8(b)(3)(i), you imply that the WIPP certification rulemaking would be reopened and would be substantively altered -- or would substantively alter the circumstances under which the WIPP certification can be suspended, modified, or revoked. Suspending shipments is a reasonable measure to correct a problem at an individual waste generator site. Inspections of a waste generator site and the subsequent findings are irrelevant to the long-term performance of the WIPP repository. Suspending, revoking, or modifying the WIPP Certification due to problems at a waste generator site would be arbitrary and
capricious because the EPA has neither explained how nor
justified why noncompliance at a waste generator site
could invalidate the certified performance of the WIPP.
The result. This exacerbates confusion on the
part of stakeholders and others as to whether
certification and recertification of the WIPP is dependent
on certification of the waste generator sites. It
contradicts the stated intent of the EPA in the
Supplemental Information to the Final Certification
Decision and in the SI to the present proposal. And I
would ask you to see, for example, Docket A-98-49, items
II-A3-27 and 29, and an August 11, 1999 letter to
Administrator Browner from the Southwest Research and
Information Center, all of which attempt to apply to waste
generator sites certain provisions of the rule that are
specific to the WIPP. The results are confusion, I
think.
The solution to this problem. The EPA is
proposing to amend Section 194.8 so that first the system
for approving waste sites and waste streams will be
optimized; and second, stakeholder confusion will be
avoided. And this was at 67FR51938. We believe the EPA
should at the same time resolve the confusion that the
agency perhaps inadvertently created when it included
Section 194.8 in the WIPP certification rule.
We propose two options, each of which could resolve this problem. Referring back to the First Circuit Court statement in the 1987 remand decision, and I quote, A final rule which contains changes from the proposed rule need not always go through a second notice and comment period. An agency can make even substantial changes from the proposed version, as long as the final changes are 'in character with the original scheme' and 'a logical outgrowth of the notice and comment,’” end quote.

And on the basis of that quote, Option 1, you could resolve the problem within Part 194 by:


Second. Move the requirements into two separate subparts, one for the WIPP which would be the current Part 194 minus Section 194.8, and one for the waste generator site, which would be the current 194.8 as amended in this proposed rulemaking.

Third. Add to the new subpart containing Section 194.8(b)(3)(i) some new language to clarify that such actions are specific to approved waste generator

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sites for the situation where waste characterization
programs or processes are not adequately established or
implemented, and clarify that such actions do not affect
the WIPP Compliance Certification and Recertification.
The reference to Section 194.4 should be deleted. If
actions analogous to those in Section 194.4 are intended,
the EPA should add sufficient language to the new subpart
containing Section 194.4(b)(3)(i) to delineate and
authorize the intended actions.
And fourth. Under that option, add to the new
subpart new reporting requirements for changes at waste
generator sites. The reporting requirements in Section
194.4(b)(3) B-3 and (4) are not appropriate for waste
generator sites because the requirements pertain to the
WIPP disposal system.
Another possible option, our second option,
would be to separate the requirements into two separate
rules. The WIPP specific rule would remain 40CFR Part 194
without Section 194.8. The waste generator site rule
would become a new part at Title 40 CFR containing the
current Section 194.8 as amended in this proposed
rulemaking. And there are seven steps which I think would
be necessary for this option.
First, for example, the new rule could be titled
Approval Process for Waste Shipment from Transuranic Waste
Generator Sites for Disposal at the Waste Isolation Pilot Plant.

The rule could contain a subpart A which would be Quality Assurance Programs at Waste Generator Sites, which now resides at 194.8(a).

Subpart B could be Waste Characterization Programs at Waste Generator Sites, which now resides at Section 194.8(b) and is the subject of the EPA's proposed amendments.

Fourth. References to Sections 194.21 194.22, 194.24, and 194.67 could remain in this new rule.

Fifth. The reference to Section 194.4 should be removed. The new rule should contain its own discussion of suspension, modification, and revocation of a waste site's Baseline Compliance Decision, because the provisions of Section 194.4 are specific to the WIPP Compliance Certification and Recertification and are not appropriate responses to noncompliance at a waste generator site.

Subpart C to the new rule could be analogous to Section 194.4, but specific to approved waste generator sites for the situation where waste characterization programs or processes are not adequately established or implemented. This subpart C would incorporate the proposed Section 194.8(b)(3) and should clarify that

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actions under this new subpart do not affect the WIPP Certification, thereby avoiding any reference to Section 194.4. Reporting requirements should be specified in the new subpart.

And finally in this option, Section 194.8 should be deleted from Part 194 and references to Section 194.8 in Conditions 2 and 3 of Part 194 should be corrected appropriately.

Thank you for your attention and your consideration to our suggestions.

MR. MARCINOWSKI: Thank you, Ms. Bertram.

Both your oral and written statements will be entered into the record.

MS. BERTRAM: Thank you.

MR. MARCINOWSKI: Is there anyone else in the audience right now who would like to come up and make a statement? If not, then again we will be in recess --

MR. HANCOCK: I suppose if there is nobody else here. My name is Don Hancock from Southwest Research and Information Center here in Albuquerque. I won't go through my background because I think the panel is familiar with me and my organization's extensive involvement in this rule and the certification.

I guess I want to start off by noting for the
record that when the proposed rule was issued and before
the hearings were scheduled, we told EPA that the hearings
should not occur in New Mexico until at least mid
October. And the reason that was stated at the time and
is still true today is because there are too many other
things going on at WIPP that related organizations and
contered members of the public are involved in.

We have seven major modifications to the WIPP
RCRA permit that are currently in public comment. The
comments are due next Friday, October 3rd, so folks are
working on those. And the fact that, appropriately, your
rule has a comment period going on for more than two
months more from now, means that the hearings in
Albuquerque and Santa Fe are being prematurely scheduled
in terms of the public having an adequate time to look at
the proposed rule, prepare comments, and come and
testify.

So as I said at the time when I talked to EPA, I
and other people would give you better comments if you had
the hearing in October. That's still true here today. )
So my point is twofold.
The first point is that in the future, when EPA
has hearings either related to proposed rule changes or
other matters, I believe before EPA establishes actual
hearing dates they should confer with state agencies and
stakeholder groups in New Mexico as to the best and
appropriate times to do such hearings. If you do that,
you will get better and more extensive public comment in
the future than what will occur today and tomorrow.
The second issue, or the substantive issue, I'll
get to in a second when we deal with some of the changes
that you are proposing in the 194 certification.

My last little caveat here is obviously I am
speaking for Southwest Research when I say more time is
needed, so the comments I'm giving today are some initial
thoughts that we have on the proposed rule. We will be
making more extensive written comments, and we would be
able to make more extensive oral comments at the hearings
then scheduled for later.

So let me go through various proposed changes.
Regarding 194.6, our major concern relates to how there
may be differing impressions or interpretations between
EPA and the public about what constitutes a, quote, "minor
alternative provision." My organization is especially
crnered about this issue because of our experience with
how a different agency, the New Mexico Environment
Department in this case, has interpreted a somewhat
similar EPA regulation on a similar matter.
The other regulation I refer to is 40 CFR
270.42(d)(2)(i), which relates to, quote, "minor changes,"

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the operative word being "minor" in both your proposal and
in the existing EPA RCRA rule, minor changes to RCRA
permits, because New Mexico Environment Department
interpreted "minor changes" to include a total reversal of
Condition 4(b)(2)(b) of the WIPP permit.

Just yesterday my organization filed its brief
in chief before the New Mexico Supreme Court challenging
the Environment Department's decision and its
interpretation of what is minor.

So for your reference, the docket number of that
case is 27,578, Southwest Research and Information Center
et al. vs. State of New Mexico, New Mexico Environment
Department, et al.

MR. MATTHEWS: Could you give me that
again, please, Don?

MR. HANCOCK: The Supreme Court docket
number is 27,578, Southwest Research and Information
Center, et al., vs. State of New Mexico, New Mexico
Environment Department, et al. So I want to note I
recognize there are differences between RCRA procedures
and 194 procedures. That, in fact, is good, because under
your so-called Class 1 minor modifications in RCRA, there
is no public hearing. There in fact isn't even a public
notice in this case that we are challenging. There wasn't
even a public notice of the change. It was put into
I recognize the fact under your minor alternative provisions there still is an opportunity for 30 days of public comment. However, as you might imagine, I don't think 30 days is sufficient. If, for example, we have exactly the same situation that has happened now, if you would have noticed this -- if you would have noticed the what you consider minor modifications that you were proposing in early August as you did, the 30 days would have been up in early September, precisely the same time we have all of these other things going on. So while you may think 30 days is sufficient, I don't. And it's for several reasons.

One is the reason I just mentioned. You can have circumstances where EPA may think the only thing that is related to WIPP and stakeholders going on is your supposed minor modification, but we in New Mexico might say, Hey, there is a lot else going on. So 30 days is not enough. 30 days is also really not 30 days for the public because the public doesn't get notified instantaneously, number one.

Number two, your 30 days can also occur during, for example, between Thanksgiving and Christmas, or over the Christmas holidays, when once again people are going to want to be able to focus on something other than
commenting on an EPA proposed rule.

So, we would strongly oppose the 30-day provision. We think at least 60 days should be required to ensure that the public has the opportunity to be informed and have an adequate time in which to comment.

Another issue related to proposed 194.6 is that we don't see that the rule or the explanation addresses the specific possibility of a proposed rule change being considered under both Subsection A and B. And let me give you more than one for instance I can think of when that might apply. Let's assume that EPA proposes something under B as a minor change, but based on the public comment it becomes clear that it's not a minor change. What do you then do?

Our view would be that you would have to not approve the change under 194.6(b) and instead, if you were going to do it, you would have to reissue and renotify it under 194.6(a). And if you are going to have this new Subsection B, we would argue that that would need to be what you do. But clearly EPA must, in issuing any final rule, clarify its thinking, either in the actual regulations or in the preamble and the explanation that goes with it.

Okay. So let's move on to the famous, what is now famous, based on the earlier testimony this afternoon,
Subsection 194.8. I guess I want to say two things in kind of introduction about this. One is that part of the problem which was either inferred or it might have been actually stated by the previous speaker, but it's something that we have always been concerned about, is that there wasn't any public comment on any proposed 194.8. There was no 194.8 in the original Part 194 rule, and you-all developed it as part of certification process. And so some of the problems that you all are now seeing, my organization and others recognized immediately when we first saw it in May of 1998.

So I guess part of the point of that is that that's the reason you need to propose things and get public comment on them before you do them. Whether you believe, as was discussed by the previous speaker, you have the legal authority to do it or not, you will have better regulations if you have public comment on them as proposals.

Now, I guess the second introductory point is I agree, we agree, organizationally, with what you have said in the proposed rule that there needs to be improvement in the public involvement process related to waste characterization programs. And we say that as one of the few persons and parties who have, in fact, commented on more than one occasion under the existing 194.8
requirements. And we note, as EPA itself has said, there
hasn't been a lot of public involvement. And I would
strongly suggest that's not because there isn't public
interest. It's because primarily a couple of things: One
is that it's unclear to us, as an organization that has
commented, that EPA pays much attention to what those
comments are; and number two, it's an ineffectual
process. The public is supposed to comment on paperwork
that they may or may not be able to understand and can't
ask questions of, can't get more information about, et
cetera.
So it is more appropriate, in my view, for the
public to be able to comment, not only on waste
classification plans, which is what we're commenting on
up to now, as well as more substantive detail in terms of
what is actually going on at the site related to any kind
of audit or inspection.
However, having said that there is a need for
change, we're extremely concerned about EPA's rationale
for the change. What you say on page 51939 of the
proposed rule is that EPA wants to change the existing
requirement because DOE's program "will overwhelm our
resources." That's not an appropriate reason to change.
There is a need for a change, but because DOE is going to
overwhelm you is not a reason to change.
People in New Mexico were promised in the 1992 WIPP Land Withdrawal Act, which sets EPA up as the regulator, codified this whole regulation, or statutorily authorized EPA to issue the compliance regulations under the law, that EPA was supposed to be a regulator and there were going to be adequate resources for EPA to be a regulator. So to tell us that there are not adequate resources for EPA to be a regulator is not okay. And the solution to that problem is not to change your regulations; it's to tell Congress that you don't have enough money. And the implication for that is sites aren't going to be -- sites are not going to have their characterization programs certified, and the implication for that is that sites aren't going to be able to ship to WIPP.

And if Congress says, "Fine, you don't need anymore money," then, fine, that will delay the shipment of waste to WIPP. If Congress wants to make -- Congress said there were going to be enough resources. If Congress is now saying there aren't going to be enough resources, the implication of that is that health and safety and characterization requirements and public involvement are going to be sacrificed, which is arguably what you're proposing. Rather the solution -- there is a different solution to the problem.
So, while we can agree, and I'll talk more about some of the specific provisions that you're proposing, we can agree that there should be improvements in 194.8, we don't think any improvements should be made based on a resource question, and that EPA needs to go back to Congress if that is, in fact, what your problem is.

So, let's talk about your proposed solution to this problem. It's not okay. It is -- I've tried to think of a good analogy and I don't have a real good one, but, you know, you're going from a situation where you're thinking you have too many inspections and too many audits and too many requirements, you know, so you're going from what you think is that extreme, basically to the total opposite extreme. That's not the way you fix a problem. You're going to the opposite extreme because your proposed Baseline Compliance Decision, the way it's written, could mean that a site gets certified, approved, based on the Compliance Decision, and that's what's going to apply to all the waste that it generates and characterized for 30 years.

Well, that's obviously absurd on its face. That's way too long a period of time. The other reason it's absurd is all of the sites, with the possible exception of Rocky Flats, have a lot more waste that they are going to generate and send to American Reporting
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WIPP than even exists now. So your baseline compliance is going to be based on existing waste and existing programs and then basically some speculation, if you're going to actually be talking about the generators, based on total speculation in terms of what the wastes are, what the processes are, what are the characterization that they would use, what the methods, et cetera, would be. So that's absurd. So that is not okay. We would strenuously object to that.

We think that if you are going to do some kind of baseline program, it has to be very specifically in the rule time limit, not just, as I take you're proposing, you can give a time limit, give it various times, and in terms of your actual decision, the rule needs to be time limited.

We would suggest that the time limit be no more, no longer, than three years, so that at least every three years you would have to come back and relook at the baseline and update it and see how it's going.

As further support for this concern, we note the fact that all the existing sites, those five sites that you have approved at one time or another, all of the sites one way or another have had problems. And, frankly, the deficiency of what you have proposed is that you didn't talk about or mention any of those and you need to talk
about what the problems have been. I mean, you're changing this based on what is going to be happening in the future. DOE is going to overwhelm you with all the sites and all the waste streams, et cetera. You need to be talking about how the rule has worked up to now, how it's worked and hasn't worked, and how a change that you make is going to improve the situation.

So, for example, as you all are well aware, a little over a year ago EPA suspended shipments from INEEL because at least 54 shipments containing more than 800 drums were not properly certified. How does the change that you are proposing, how would the change you are proposing fix that problem and prevent it from happening in the future? I don't think it would. In fact, I think it's more likely if you put your new procedure in effect that we will have many more occurrences like what happened at INEEL. That's the opposite of what you should be doing. So you need to talk about what the problems have been and how what you are proposing is going to improve the situation. There are other examples of problems which I won't go into. You all know what they are, and if you don't, ask.

So let me talk briefly, knowing that I've already exceeded my time limit, about 194.12 and 13, innocuous minor changes that you all are proposing,
according to your discussion. Let me first of all say
that Southwest Research and Information does not oppose
reducing the number of paper copies, necessarily. One of
the things we are very concerned about, though, is we
don't see -- we did not understand and we don't see stated
in the proposal what the purpose of the five paper copies
are. We think one of the purposes of the paper copies
should be that each of the New Mexico dockets will get a
paper copy. And if that's what you are proposing, you
should so state. And if you have a different idea -- and
I see Frank shaking his head so I'm assuming that you're
saying, yes, the idea of five is so there would be one,
but if the five does not include paper copies for each of
the New Mexico dockets, the number needs to be changed to
ensure that there are sufficient number of paper copies so
that New Mexico dockets all get a paper copy.
New Mexico is a poor state, one of the poorest
in the country. A lot of people don't have access to the
internet and other kinds of things, so it's very important
for members of the public to be able to go and see a paper
copy and read it, et cetera. So the paper copies in the
dockets are extremely important and they have to be
maintained.
Now, what about electronic versions? Yes, we
are fine with CDs or other kinds of things. That's more
efficient for you all in some cases, and that's fine. We think electronic versions, however, need to be available and that the rule should require that not only EPA is able to get them, but that DOE, in this case, should also be providing copies to interested members of the public.

As we move forward, particularly with things like recertification where comment periods are going to be short, we think that you should not just go on DOE's goodwill that they will not only submit to you, but make them available to the public, but you clearly have the authority to make that -- put that requirement in the rule. And we would urge you to do so to ensure that copies of documents are -- certification related documents and the references are available not only to EPA in an easily accessible form, but to interested members of the public and public organizations. I will stop now. Thank you.

MR. MARCINOWSKI: Okay. Thanks, Don. Is there anyone else at this point in time that wishes to make a statement? Then I think we will be in recess until another speaker joins us. Thanks.

(There was a recess from 2:05 until 5:05 p.m., at which time the proceeding was adjourned until the evening session at 7:00 p.m.)
MR. MARCINOWSKI: All right. I think we will just reconvene this hearing, and actually the only one signed up this evening is yourself, Ruth.

MS. WEINER: Well, thank you.

MR. MARCINOWSKI: And we'll forego any time limitations, so take as much time as you would like, and if other people show up we'll adjust accordingly, but for now the floor is yours.

MS. WEINER: I don't have very much to say anyway.

MS. FORINASH: But you have two hours to fill.

MS. WEINER: We can have a big discussion about WIPP. We can pay 25 cents. You guys can answer questions. I'm Ruth Weiner, and I'm a resident of Albuquerque. My address is 7336 Lou Wallace, Northeast. I'm here testifying for myself only. So I was going to drop my time from ten minutes to five minutes, but who cares at this point?

On a whole, I think the revisions that have been suggested are very good. I mean, anything that makes -- that speeds the process up and makes it more efficient is a good idea. And I especially would like to commend EPA for substituting "acceptable knowledge" for "process knowledge" and for accommodating small changes that are

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like, you know, changes, minor changes in the rules and things like that.

The question I have, the big thing that you're doing, is saying that you are going to have a single -- you're going to make a single determination per site instead of a determination on each waste stream. And that looks good, because that saves a great deal of, you know, regulatory back and forth. You have fewer publications in the Federal Register, the comment periods don't overlap, and it probably saves some work for DOE.

My question is, if you're going to have a public comment period, before, and receive comments and respond to them before you certify a site -- certify isn't quite the right word, I can't find it now -- what is to prevent the people who would like to stop the shipments from simply asking for delay after delay after delay?

I mean, we all know that the standard mantra is there is not enough time for the comment period, it's a 30-day comment period and that does not give us enough time, we want 45 days, we want 60 days, we want 120 days, in which case a site could be stopped more or less indefinitely from shipping anything. And I think there needs to be something in the rule that either says we're going to stick to our comment period and under no circumstances is it going to be longer than X, or some

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other way to prevent some kind of endless extension of comment periods that essentially limit the ability of a site to ship anything.

One of the advantages of the waste stream by waste stream certification, if you will, was that a site could ship some stuff while waiting to get another waste stream approved. This way they can't do anything until the site can be approved.

And I think that is really the burden of my comments. And it's the major point I wanted to make. I think this is something you really have to think about. Otherwise there will be sites that will simply be bottled up and prevented from shipping anything for indefinite periods of time.

The other question I have is that you're going to reinspect, it says on page 51937, that EPA is proposing to reinspect the sites that have already been authorized to ship, using the revised process. In other words, you'll perform a full scope inspection at Hanford, INEEL, Los Alamos, Rocky Flats, and Savannah River in order to meet the Baseline Compliance Decision, based on current activities at the site.

I'm not quite sure of your rationale for that. Does it imply that EPA hasn't been doing their job when they authorized the sites to begin shipment? Wouldn't it
make sense if you have authorized shipments of several
waste streams at each site, wouldn't it make sense for
those sites to complete that authorization, and looking at
the waste streams that haven't yet been authorized to be
shipped?

But again you're putting these sites, which are
big sites, especially INEEL, in a position of essentially
having to start all over again, and the rationale for that
is not very clear. The implication, in fact, is that the
authorization was not particularly well done in the first
place, and I'm sure that that's not true. So I think you
need to take another look at that. You need to consider
whether there isn't some intermediate, other than doing a
complete reauthorization, Complete Baseline Determination,
for the sites where you have already authorized shipment.

That's all I have. And if you have any
questions.

MR. MARCINOWSKI: Any questions?
MS. FORINASH: No.
MS. WEINER: Okay. You all can go home
now.

MR. MARCINOWSKI: Thanks for your comments,
Ruth, and actually if you had anything written you wanted
to submit we can take that.

MS. WEINER: I wish that I had. I just
would have submitted it.

MR. MARCINOWSKI: Okay. Thank you for your comments.

MS. WEINER: Sure.

MR. MARCINOWSKI: I have feel obligated to ask. Anything else? Okay. Does anybody else want to speak at this time? Then I guess we're in recess again until other speakers show up.

(There was a recess from 7:14 until 8:07 p.m.)
MR. MARCINOWSKI: It's 8:07. We haven't had a speaker or anybody sign up since 7:15. And so we're going to close the hearings for the evening and start them up again in Santa Fe tomorrow.

(The hearing was in recess until September 25, 2002.)
CERTIFICATE OF COMPLETION

I, Barbara K. Harris, CCR #114, DO HEREBY CERTIFY that on September 24, 2002 I did report in stenographic shorthand the proceeding set forth herein, and the foregoing is a true and correct transcript of the proceeding to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

________________________________
BARBARA K. HARRIS, RPR-CM
Certified Court Reporter #114
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