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88. Wald, M.L., "Barrels at Rocky Flats Plant Contain Waste, Judge Rules," *New York Times*, Apr. 17, 1990.
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Energy and Natural Resources Committee, Apr. 26, 1990, P. 8.

APPENDIX 2-A: CONDITIONS OF NO-MIGRATION DETERMINATION

As a condition of granting DOE's no-migration petition, EPA is requiring that the following conditions be met by DOE:

1. **No wastes subject to this determination may be** placed in the WIPP repository for purposes other than testing or experimentation to determine the long-term acceptability of the WIPP. In accordance with 40 CFR 268.6(e), DOE must notify EPA before it conducts any testing or experimentation not within the scope of the "WIPP Test Phase Plan: Performance Assessment," April 1990 (DOE/WIPP 89-011, Revision O), as further explained in section IV.B.1 of this notice. Placement of waste for the purpose of conducting an operations demonstration is prohibited.
2. Wastes placed in the repository may not exceed 8,500 drums or 1 percent of the total capacity of the repository, as currently planned
3. All wastes placed in the WIPP must be removed if DOE cannot demonstrate compliance with the standards of 40 CFR 268.6, before the expiration of this petition approval, with respect to permanent disposal of mixed waste in the repository. DOE must submit a detailed schedule for retrieval of the waste, including times for completing retrieval as quickly as reasonably feasible, no later than 6 months after a determination that the repository cannot meet standards for long-term disposal under 40 CFR 268.6 or 6 months before the expiration of this petition approval, whichever occurs first.
4. All wastes placed in the WIPP must be placed in a readily retrievable manner, as described in section IV.B.4 of this notice.
5. DOE must install and operate action adsorption device designed to achieve a control efficiency of 95 percent in the discharge system of the bin experiment rooms. DOE must monitor the control device outlet airstream in accordance with the monitoring plan described in section IV.K of EPA's proposed decision (55 FR 13089) as amended by section IV.B.7 of today's notice, and it must maintain design and operating records as described in section IV.J of EPA's proposed decision, as amended by section IV.B.6 of today's notice. Records must be maintained at the WIPP facility for the term of this determination or for 3 years after they are created, whichever is longer. Records must also be main-

tained during the course of any enforcement actions for which they are relevant.

6. DOE must implement an air monitoring plan described in section IV.K of EPA's proposed decision (55 FR 13089), as amended in section IV.B.7 of today's notice. Records must be maintained at the WIPP facility for the term of this determination or for 3 years after they are created, whichever is longer. Records must be maintained during the course of any enforcement action for which they are relevant.
7. Conditions relating to waste analysis:
 - (a) DOE must ensure that each waste container emplaced underground at the WIPP has no layer of confinement which contains flammable mixtures of gases *or mixtures* of gases that could become flammable when mixed with air. This prohibition must be implemented by analytical testing of a representative sample of headspace gases from each waste drum or individual container, as described in section IV.B.7 and V.F.1.a of today's notice.
 - (b) DOE must analyze representative samples of the headspaces of containers to be used in the bin-scale test and compare these results to the estimated compositions provided in its petition for each waste types, as detailed in IV.B.7.b of today's notice. If the waste is not compositionally similar, as defined in tables 2 and 3 in IV. B.7.b, that waste cannot be shipped to the WIPP until the waste has been treated or modified such that it is compositionally similar to the estimates provided in the no-migration petition. In addition, as prescribed in IV. B.7.b, DOE must demonstrate the comparability of bin-scale wastes to wastes described in DOE's petition before placing waste in the WIPP for the alcove tests.
 - (c) Waste analysis records must be maintained for the term of this determination or for three years

after generation, whichever is longer. Records must also be maintained during the course of any enforcement action for which they are relevant. The records may be maintained at the generating site or at the WIPP facility.

8. DOE must provide to the EPA Office of Solid Waste and EPA Region VI annual written reports on the status of DOE's performance assessment during the test phase. These reports must include: a description of the tests to date and their results, modifications to the test plan, a summary of DOE's current understanding of the repository's performance, waste characterization data from pre-test waste characterization, and an annual summary of air monitoring data required in item 6 above.

Beyond these specific conditions, the wastes placed by DOE in the WIPP and DOE's activities under this variance must be consistent with those described in the petition. Under section 268.6(e), DOE must notify EPA of 'any changes in conditions at the unit and/or environment that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the unit. . . " If the change is planned, EPA must be notified in writing 30 days in advance of the change; if it is unplanned, EPA must be notified within ten days.

Under section 268.6(f), if DOE determines that there has been migration of hazardous constituents from the repository in violation of part 268, it must suspend receipt of prohibited wastes at the unit and notify EPA within 10 days of the determination. Within 60 days, EPA is required to determine whether DOE may continue to receive prohibited wastes in the unit and whether the variance should be revoked.

Finally, under section 268.6(h), the term of today's petition approval runs for 10 years, that is until November 14,2000.

SOURCE: 55 *Federal Register* 220 (Nov. 14, 1990).