

OFFICE OF REGULATORY COMPLIANCE
 CARLSBAD FIELD OFFICE
 U.S. DEPARTMENT OF ENERGY
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 ENTERED
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DATE

3/27/01TO: Peter Maggiale SecretaryLOCATION: NMED SORTOFEFAX # 505 827 2836

FROM: Jody Plum, Acting Assistant Manager, Office of Regulatory Compliance

LOCATION: 4021 National Parks Highway
P. O. Box 3090, Carlsbad, NM 88221PHONE: 234-7462
FAX: 505-234-7008

MESSAGE: SIR, ATTACHED IS A DRAFT LETTER RE THE DR/CT. IN
THE 4TH PARAGRAPH WE ASK FOR YOU TO EXTEND THE PERIOD OF TIME TO
APPROVE OR DENY THE CLASS 2 FOR DR/CT, THUS ALLOWING TIME TO
WORK OUT OTHER ISSUES. THIS APPROACH IS ACCEPTABLE IN 40 CFR 220.42
(b)(6)(ii) (SUPPORTED BY PRECEDENT TO FISS AMENDMENTS, FISS, P 37912,
SEPTEMBER 28, FISS). WE WOULD LIKE TO DISCUSS THIS OPTION BEFORE THAN
SIMPLY WRITING OUR REQUEST. YOUR CONSIDERATION OF THIS MATTER IS APPRECIATED

010336



DRAFT

Mr. Peter Maggiore, Secretary
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87502

Subject: Request for Extension of Time for DR/CT Class 2 Permit Modification Request

Dear Secretary Maggiore:

One purpose of this letter is to acknowledge our discussions of March 26, 2001, regarding NMED's concerns about the Class 2 permit modification request relating to the Drum Age Criteria (DAC). We believe this modification request is appropriate due to operational knowledge (from radiography, acceptable knowledge, and/or visual examination), which indicates the actual number of layers of confinement in containers. We have determined that managing all containers as having the maximum number of layers of confinement is inappropriate, and the current DAC requirement reduces our ability to ship and properly dispose of wastes in a timely manner.

One of the cornerstones of our successful working relationship with the NMED has been the establishment of an ability to discuss issues of mutual concern, determination of a resolution to these, and to move forward. Based on our conversation of March 26, 2001 regarding the Drum Age Criteria Modification, it appears we still may have conflicting understandings regarding the proper classification of permit modification requests. Resolving this conflict involves developing mutually agreeable interpretations of the regulations, and addressing issues such as modification complexity, public concern, and NMED's process of obtaining information.

One of the issues we discussed is the position of NMED staff that technically complex permit modification requests should be submitted as Class 3 requests, even if the regulations allow them to be submitted as a Class 2. We explained why we disagree with this position taken by NMED, and the effect that position will have, not only on the DAC modification request, but other pending modification requests. While my staff will continue to work with your Department to resolve technical issues related to permit modification requests, we believe it is inappropriate to submit permit modification requests as Class 3 simply based upon level of complexity. We are committed to complying with 40 C.F.R. § 270.42, as incorporated in NMAC 20.4.1.900, when classifying permit modification requests.

In view of NMED's position, I consent, pursuant to 40 C.F.R. § 270.42 (b)(6)(vii), as incorporated by NMAC 20.4.1.900, to extend the period to approve or deny the Class 2 modification request submitted to NMED on January 24, 2001, on the use of digital radiography and computed tomography (DR/CT) as an alternative means for providing

quality control of radiography operations. This will allow NMED and us to have adequate time to address any technical issues arising from that request. As the preamble to EPA's final rule on § 270.42 (b)(6)(vii) explained, "[t]his option may be useful where the Director requests additional information from the permittee or when the permittee wishes to conduct additional public meetings." 53 Fed. Reg. 37912 at § IV.B.2.ii (Sept. 28, 1988). Because resolution of any technical issues may necessitate additional opportunity for public comment or public meetings, I request that the public comment period, which is currently scheduled to close on April 2, 2001, be extended as well. It is our hope that this process, which is not only allowed, but encouraged in the EPA permit modification rule, will help NMED and the public understand the technical efficacy of DR/CT as a means to provide quality control for radiography.

The CBFO is committed to safe and compliant management and operation of the WIPP. We continue to appreciate the opportunity to discuss these issues in an open and frank manner. We look forward to further discussions on this matter. Resolving any conflicts that we may have regarding regulatory interpretation is appreciated. I will be contacting you in the very near future to schedule meetings and discussions to resolve this issue.