

**SOUTHWEST RESEARCH AND INFORMATION CENTER**

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June 25, 2001

Peter Maggiore, Secretary  
New Mexico Environment Department  
PO Box 26110  
Santa Fe, NM 87502-6110

VIA FAX and U.S. MAIL



Dear Secretary Maggiore:

On July 20, 2000, the Department of Energy (DOE) submitted to NMED its "Notice of RCRA Class 1 Permit Modification." Item 2.d of the notice was described as:

Allow ten drum overpacks (TDOPs) and 85-gallon overpacks to be directly loaded with waste. Allow the use of a 100-gallon container. (p. A-9)

On September 18, 2000, DOE mailed to SRIC, and presumably other persons on the facility mailing list, a one-page "Class 1 Modification Summary June 21, July 20, July 21, and August 8." Attachment 1. That was the only "notice" that SRIC received regarding the July 20, 2000 Class 1 modification, and it did not include the words "ten drum overpacks" or "TDOPs." Neither does the document use any words that would notice the public that any changes were being made to TDOPs or 85-gallon overpacks. Indeed, SRIC was unaware that the Class 1 modification for TDOPs or 85-gallon overpacks even existed until our review of the pending Class 2 modification related to TDOPs, which DOE submitted to NMED on May 2, 2001.

Because the permittees did not properly notice the public within 90 days, as required by 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(a)(1)(ii)), as a condition for a class 1 modification to be put into effect (pursuant to 40 CFR 270.42(a)(1)), item 2.d of the July 20, 2000 Class 1 modification could not have been put into effect and cannot now be in effect.

Therefore, SRIC requests that NMED inform the permittees that item 2.d of the July 20, 2000 Class 1 modification is not in effect.

Such notice by NMED would ensure that the permittees are aware that if they use TDOPs based on that Class 1 modification, they could be in violation of the permit. SRIC also believes that such a notice to the permittees would have the further benefit of encouraging them to provide complete and accurate notice to the public on any future Class 1 modifications, as well as providing an incentive for them to follow regulatory requirements with future modifications.

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If NMED does not agree that the notice was inadequate, SRIC requests, pursuant to 40 CFR 270.42(1)(iii), that NMED reject item 2.d of the July 20, 2000 Class 1 modification because it is not properly a Class 1 modification.

Class 1 modifications are generally "correction of typographical errors; necessary updating of names, addresses, or phone numbers identified in the permit or its supporting documents; upgrading, replacement, or relocation of emergency equipment; improvements of monitoring, inspection, recordkeeping, or reporting procedures; updating of sampling and analytical methods to conform with revised Agency guidance or regulations; updating of certain types of schedules identified in the permit; replacement of equipment with functionally equivalent equipment and replacement of damaged ground-water monitoring wells." 53 Fed. Reg. 37914-15 (September 28, 1988).

In contrast to those minimum changes that are properly Class 1, the July 20, 2000 modification more than doubles the capacity of the TDOP. In Module III.C.1.c of the permit as issued, the TDOP may contain "up to ten standard 55-gallon drums of one SWB." A standard 55-gallon drum has a gross internal volume of 7.3 cubic feet (Module III.C.1.a), so 10 drums would be 73 cubic feet. A SWB contains 66.3 cubic feet (Module III.C.1.b). Thus, as issued, the permit provided that a TDOP could contain up to 73 cubic feet.

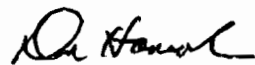
In the July 20, 2000 Class 1 modification, the permittees changed Module III.C.1.c to provide the TDOP with a capacity of 160 cubic feet. (p. A-11). So the TDOP went from a maximum capacity of 73 cubic feet to 160 cubic feet – a 119 percent increase. The change was not to correct a typographical error, it was a significant, major change to the permit.

Under the regulations, the modification would be appropriately classified as a Class 3 modification, because it creates such a large increase in the TDOPs storage capacity. 40 CFR 270.42, Appendix I.F.1.a provides that greater than a 25% increase in facility container storage capacity is a Class 3 modification. Using TDOPs as the storage container, as the permittees are now proposing in their pending Class 2 modification, more than doubles the amount of waste that could be stored in TDOPs in the Waste Handling Building, as compared with when the permit was issued. Such an increase must be considered as a Class 3 modification.

Moreover, SRIC strenuously objects to such a dramatic increase in the TDOP storage capacity when DOE has provided no experimental or engineering data with its modification request to show that the 160 cubic feet capacity is reasonable, that the TDOP is designed to handle what could be a more than doubling of the amount and weight of waste, and that the increase is protective of human health and the environment.

Thank you for your consideration. We would appreciate your prompt response.

Sincerely,



Don Hancock

*Attachment 1***Department of Energy**

Carlsbad Area Office

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**Class 1 Modifications Summary  
June 21, July 20, July 21, and August 8**

The following is a summary of the Class 1 Modifications submitted to the New Mexico Environment Department (NMED) since June 21, 2000.

June 21, 2000

Removed Fourier Transform Infra-Red (FTIR) method-specific language from the Permit, as there are several on-line sampling methods authorized by the Permit.

July 20, 2000

1. Several changes were made per the NMED's direction regarding the Class 1 Modifications submitted on November 10, November 15, November 30, 1999; January 7 and January 25, 2000.
2. Included 100-gallon drums as approved waste management containers.
3. Procedures were updated as a result of the annual review.
4. Changed a procedure to make it specific the groundwater monitoring program.
5. Several figures were updated to reflect internal modifications.
6. Inspection forms were updated to remove unnecessary information, to reflect updated information, and to make minor corrections.
7. Changes were made to update general information regarding the Permittees.
8. A change was made to allow generators to also identify waste by unique state hazardous waste codes.
9. References to the Waste Stream Profile Form were corrected.
10. Revisions were made to allow compositing of headspace gas samples.
11. Leak testing requirements for canisters used for headspace gas sampling were clarified.

July 21, 2000

Revised the Permit attachment text that establishes reporting requirements to eliminate inconsistencies, reporting overlaps, and to clarify requirements.

August 8, 2000

1. Added room-based VOC emission rate limits.
2. Revised Attachment M1 to clarify the use of filter vents.

