



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

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 ENTERED



PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 31, 2001

Dr. Inés Triay, Manager
Carlsbad Field Office
Department of Energy
P. O. Box 3090
Carlsbad, New Mexico 88221-3090

Mr. John Lee, General Manager
Westinghouse TRU Solutions LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-5608

**RE: ADMINISTRATIVE COMPLETENESS DETERMINATION, CLASS 1 NOTIFICATIONS
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088**

Dear Dr. Triay and Mr. Lee:

The New Mexico Environment Department (NMED) Hazardous Waste Bureau (HWB) acknowledges receipt of numerous notifications of Class 1 permit modifications and requests for Class 2 permit modifications to the WIPP Hazardous Waste Facility Permit. NMED did not review the following documents for administrative completeness because the Permittees subsequently withdrew them:

- Request for Class 2 Permit Modifications and Temporary Authorization, Dated 7/21/00, Rec'd 7/26/00
- Notification of Class 1 Permit Modifications, Dated 11/13/00, Rec'd 11/18/00

NMED has reviewed the following submittal, but is deferring administrative action on it until a later date:

- Notification of Class 1 Permit Modifications, Dated 7/21/00, Rec'd 7/25/00

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The specific submittals reviewed for administrative completeness are as follows:

- Notification of Class 1 Permit Modifications, Dated 3/30/00, Rec'd 4/6/00
- Notification of Class 1 Permit Modifications, Dated 6/23/00, Rec'd 6/28/00
- Notification of Class 1 Permit Modifications (Retrofit), Dated 7/21/00, Rec'd 7/25/00
- Notification of Class 1 Permit Modifications, Dated 8/8/00, Rec'd 8/11/00
- Submittal of Panel 2 Certification of Construction, Notification of Class 1 Permit Modifications, Dated 9/14/00, Rec'd 9/19/00
- Notification of Class 1 Permit Modifications, Dated 9/21/00, Rec'd 9/25/00
- Notification of Class 1 Permit Modifications, Dated 11/1/00, Rec'd 11/6/00
- Notification of Class 1 Permit Modifications, Dated 11/28/00, Rec'd 12/4/00
- Notification of Class 1 Permit Modifications, Dated 12/12/00, Rec'd 12/14/00
- Notification of Class 1 Permit Modifications, Dated 1/29/01, Rec'd 2/5/01
- Notification of Class 1 Permit Modifications, Dated 3/6/01, Rec'd 3/8/01

NMED has reviewed this last list of documents and determined that they are administratively complete. With the exceptions of those modifications identified in Attachment 1 as being either withdrawn, rejected, or accepted with changes, all other modifications identified in the Notices of Class 1 Modification listed above as being administratively complete have been put into effect as requested by the Permittees under the conditions specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(a)(1)). Attachment 2 is a list of figures and other items for which the Permittees must submit clean copies for inclusion in the Permit.

Although NMED has determined the above submittals to be administratively complete, it is concerned with the adequacy of the notice of Class 1 modifications to the facility mailing list required of the Permittees under 20.4.1.900 NMAC (incorporating 40 CFR §270.42(a)(1)(ii)). NMED Secretary Peter Maggiore received a letter dated June 25, 2001 from Don Hancock of Southwest Research and Information Center (Attachment 3) alleging that the September 18, 2000 notice mailed to the facility mailing list regarding the "Class 1 Modifications Summary June 21, July 20, July 21, and August 8" did not constitute proper notice. NMED believes that the public notice required under §270.42(a)(1)(ii) should, minimally, contain a complete and accurate description of the modification sufficient to notify the public of the change and seek review by the Secretary. 20.4.1.900 NMAC (incorporating 40 CFR §270.42(a)(1)(iii)). The Permittees should exercise greater care in developing public notices for Class 1 modifications to ensure they contain sufficiently detailed descriptions of the modifications.

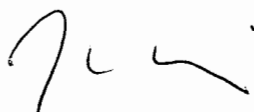
The New Mexico Hazardous Waste Fee Regulations require assessment of fees when administrative review of a document is complete, as specified in 20.4.2.301 NMAC.

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NMED will issue an invoice to you under a separate letter. Payment is due within sixty (60) calendar days from the date that you receive the invoice.

If you have any questions regarding this matter, please contact Steve Zappe at (505) 428-2517.


Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

Attachments:

- Attachment 1 – General comments
- Attachment 2 – Request for specific figures and items for incorporation into Permit
- Attachment 3 – June 25, 2000 letter from Don Hancock, SRIC to Secretary Peter Maggiore, NMED

cc: Greg Lewis, NMED WWMD
James Bearzi, NMED HWB
Steve Zappe, NMED HWB
Cindy Abeyta, NMED HWB
Susan McMichael, NMED OGC
David Neleigh, EPA Region 6
Connie Walker, TechLaw


Attachment 1
General Comments Regarding Class 1 Permit Modifications

March 29, 2000 Notice of Class 1 Permit Modifications

Item 5 The change specified in the notification proposed moving the words “required by this permit” to follow the word “report” in Permit Condition I.F (Signatory Requirement). The Permittees’ main concern is that, as written, the condition requires that every submittal required by the Permit be certified in accordance with 40 CFR §270.11 (a) and (b). As part of the submittal, the Permittees provide an example. While the Permittees’ concern is understood, modification of the condition wording to include the certification of only “reports” may allow certain submittals and documents to not be properly certified. Such documents could include engineer drawings, documentation of data collected, etc. If the Permittees believe it is not necessary to have a submittal certified, the Permittees could call the NMED permit writer to obtain verbal approval that a certification of the submittal is not required.

The language as provided in the notification eliminates the regulatory requirement to certify “information submitted to the Secretary” as specified in §270.30(k) and is therefore less stringent than the current permit. This is unacceptable for a Class 1 modification.

It should be noted that Permit Condition 1.F is a standard condition included in all NMED permits. It combines the requirements of both 40 CFR §270.11 and §270.30(k) which, when taken together, require certification of all applications, reports (required by permits), and information submitted to or requested by the Secretary. NMED has incorporated a more appropriate change to the language of this condition as follows:

“The Permittees shall sign and certify, as specified in 20 NMAC 4.1.900 (incorporating 40 CFR §270.11) all applications, reports ~~required by this Permit~~, or information submitted to or requested by the Secretary ~~or required by this Permit~~. [20 NMAC 4.1.900 (incorporating 40 CFR §270.30(k))]”

Item 6 The change specified in the notification proposed removing the requirement to track observations, replacing this with tracking of CDAs. Technically, observations are conditions that, if not controlled, could result in a CAR and thus should be tracked. This appears to be the intent of the

original language in the Permit application as incorporated in the Permit. Removing the tracking of observations is not administrative in nature. The language as provided in the modification eliminates a current requirement and is not administrative or informational. NMED has incorporated a more appropriate change to the language of this condition as follows:

"Deficiencies, (items corrected during the audit [CDAs] and CARs) and observations, ~~and CARs~~ will be tracked to completion according to established procedure(s)."

July 20, 2000 Notice of Class 1 Permit Modifications

- Item 2.b The Permittees withdrew this modification request in a letter received by NMED on August 29, 2001.
- Item 2.c.2 The Permittees withdrew this modification request in a letter received by NMED on August 29, 2001.
- Item 2.d The change specified in the notification proposed modifying the text to include additional allowable waste containers. The modification includes the direct loading of ten-drum overpack (TDOP) containers and 85-gallon drums (rather than just using them as overpack drums) and the addition of 100-gallon drums. NMED rejected this as a Class 1 modification in a separate administrative action in a letter dated August 30, 2001.
- Item 3.a.1 Replacing the symbol for part (§) with the word "Part" in this single instance is inconsistent with every other occurrence in the permit. This change was not incorporated. The Permittees also need to correct the web version of this modification, since it includes both the word "Part" and the symbol "§".
- Item 3.a.7 See Item 3.a.1. This change was not incorporated.
- Item 3.a.8 The Table of Contents for the Permit has also been modified to correct the name of Attachment E.
- Item 3.a.10 Several other occurrences of "underground HWMU" were located and changed in Attachment I.
- Item 10.b The change specified in the notification proposed correcting a typographical error supposedly introduced as a result of implementing the January 25, 2000 Item 8.b modification. This proposed change is

unnecessary, since NMED's version of the Permit has this word correctly spelled. However, the Permittees might want to change the annotation to their online version of the Permit to indicate the correct date of the original modification (January 25, not March 28, 2000).

Item 11.b NMED has taken this opportunity to change the format of NMAC citations (e.g., from 20 NMAC 4.1.500 to 20.4.1.500 NMAC) throughout the entire Permit. The incorrect citation has also been fixed.

Item 12.b The Permit has been constructed such that modules can reference specific sections in attachments, but attachments do not reference specific permit conditions. Therefore, the reference in this modification has been reduced to Module II, not Module II.C.3. Furthermore, NMED has eliminated a subsequent definition of TSDf-WAC at the end of the Introduction of Attachment B, leaving only the acronym.

Item 12.c There is no need to change the acronym for the US Environmental Protection Agency from EPA to USEPA, since it is clearly defined in the introduction to Attachment B. Any changes from "EPA" to "USEPA" have not been incorporated. This also applies to Items 12.d and 12.5.

Also, each occurrence of "Hazardous Waste Code" in this paragraph and in section B-4b(1) has been changed to leading lower case "hazardous waste code" to be consistent with the rest of the attachment. The adjective "EPA" has been inserted before each phrase "hazardous waste code" in these paragraphs.

Item 14 The change specified in the notification proposed modifying the text to allow the use of composited headspace gas data. The Permittees' August 29, 2001 revised submittal for a temporary authorization and application of the Class 2 process on this previously submitted Class 1 modification is being evaluated and shall be addressed under a separate administrative action.

August 8, 2000 Notice of Class 1 Permit Modifications

- Item 2 Several changes to the proposed language were made in the permit language. Previously defined acronyms for standard waste box and ten-drum overpack (SWB and TDOP, respectively) were used. "85-gal" was used instead of "eighty-five gallon" to be consistent with the rest of the section. The definition of the acronym for TRUPACT-II was moved later into Section M1-1c(1) due to its deletion under the description of the SWB.

September 21, 2000 Notice of Class 1 Permit Modifications

- Item 1.b The Permittees inadvertently retained procedure WP 02-119 in Section L-4c(1)(i) of Attachment L. NMED has modified this section in a similar fashion to the other modifications made to Attachment L.
- Item 1.c.10 The proposed language states "The document following this page has been removed in its entirety and replaced with a Document Summary." However, the next sentence inadvertently continued the language from previous items by saying "The complete and current *procedure* is retained within the WIPP Operating Record." NMED has substituted the word "document" for the word "procedure." This also applies to Items 1.c.11 and 1.c.12.
- Item 2.a.5 Where appropriate, NMED added the word "Permit" before the word "Attachment" to be consistent with the rest of the Permit.
- Item 8.b.1 Although the description, basis, and discussion portions of the modification notification refer to Tables B3-4 and B3-6, the Permittees only modified Table B3-4. NMED has made the footnote change to Table B3-6 as well.
- Item 10.a.1 The change specified in the notification proposed deleting language in Module I that was alleged to be an additional reference to the financial assurance requirements. The language of concern was Permit Condition I.I, item 9 that states, "All other documents required by Module I, Permit Condition I.E.10, and Module II." The Permittees proposed deleting the phrase "and Module II."

All financial assurance requirements were removed from the Permit on August 9, 2000. The subject language is unrelated to any financial assurance requirements, and instead refers to all requirements in Module II regarding documents to be maintained at the facility until closure. Permit

Condition II.B.2 (Required Notification to Off-Site Sources) and Permit Condition II.H.5 (Arrangements with Local Authorities) are two such requirements not otherwise listed in Permit Condition I.I. NMED has not incorporated this proposed change.

- Item 11.a.1 The change specified in the notification proposed modifying Figure G-4 in Attachment G to reflect current operations. Figure G-4 is "Underground Transport Route", not "Waste Transport Routes in Waste Handling Building." The correct figure should have been Figure G-3. Furthermore, the proposed change appears to anticipate waste characterization activities in the Waste Handling Building that have not yet been approved. NMED notes that the Permittees reversed this modification with Item 5, November 1, 2000.
- Item 11.b.1 The change specified in the notification proposed modifying Figures M1-7 and M1-15 in Attachment M1 to reflect current operations. There is no Figure M1-15 in the Permit, and Figure M1-15 was not provided in the modification notification. The proposed change appears to anticipate waste characterization activities in the Waste Handling Building that have not yet been approved. NMED notes that the Permittees reversed this modification with Item 5, November 1, 2000.
- Item 12 Since the requested modification applies to the July 21, 2000 Class 1 permit modification regarding data management and reporting requirements, and because NMED has not yet incorporated these modifications into the Permit, action on this Item is deferred until NMED also takes action on the July 21, 2000 modification.
- Item 13 NMED added the phrase "Permit Attachment B" in front of "Section B-3a(1)" to be consistent with the rest of the Permit.
- Item 14.a The change specified in the notification proposed modifying the reference for EPA Compendium Method TO-14 to TO-14A by changing the date of the EPA citation in the text and reference list. NMED had to locate the documentation for Compendium Method TO-14 since it was not provided in the notification, and has completely revised the reference to reflect the current information. Furthermore, NMED could not locate any reference for the citation "Winberry and others, 1990" so this reference has not been included in the modified language.

It was unclear from the notification information if the Permittees wished to extend the modification from Method TO-14 to TO-14A to all references in the Permit. TO-14 is currently mentioned in Attachment B, Table B-1;

Table B-3; Attachment B1, Section B1-1a; Section B1-1a(2); Section B1-1a(3)(ii); Section B1-1c; Section B1-1c(1); Section B1-1c(3); and Section B1-1c(5). NMED has not made any changes to references to Method TO-14 in these other Permit Attachments.

Item 16.a.1 See Item 2.d, July 20, 2000.

Item 17 The change specified in the notification proposed replacing figures in the permit depicting reactivation of the northern experimental areas in the underground for astrophysics experiments. It appears from "Environmental Assessment for Conducting Astrophysics and Other Basic Science Experiments at the WIPP Site" (DOE/EA-1340), page 1-7, that the proposed "experiment gallery" is unrelated to the northern experimental area, and thus the modification may be unnecessary. Furthermore, the replacement figures appear to undo the same figures submitted under Item 1 of the September 14, 2000 Class 1 notification depicting the completion of Panel 2. NMED is not implementing the proposed change, and instead requests suitable figures depicting both the opening of the underground experimental areas and the completion of Panel 2.

November 1, 2000 Notice of Class 1 Permit Modifications

Item 1 The change specified in the notification proposed reorganizing the waste analysis plan checklists in Permit Attachment B6 into ten checklists categorized by audit function, reconciling inconsistencies, deleting redundant items, and making general corrections. However, the Permittees replaced this specific modification in a May 21, 2001, submittal of a different set of checklists. Therefore, NMED has not incorporated any of these proposed changes to the Permit.

Item 2 The change specified in the notification proposed modifying the text to allow for up to 20 containers to be composited for headspace gas sampling. The Permittees' August 29, 2001 revised submittal for a temporary authorization and application of the Class 2 process on this previously submitted Class 1 modification is being evaluated and shall be addressed under a separate administrative action.

Item 3 The change specified in the notification proposed modifying the text to defined requirements for headspace gas sampling through the filter vent hole. The Permittees' August 29, 2001 revised submittal for a temporary authorization and application of the Class 2 process on this previously submitted Class 1 modification is being evaluated and shall be addressed under a separate administrative action.

- Item 4 The change specified in the notification proposed modifying the text to incorporate requirements for establishing safety conditions for selecting containers that are visually examined as a quality control check on radiography. The Permittees' August 29, 2001 revised submittal for a temporary authorization and application of the Class 2 process on this previously submitted Class 1 modification is being evaluated and shall be addressed under a separate administrative action.
- Item 5.a This modification stated that the contents of Figures B4-1 and B4-3 were inadvertently transposed. NMED's version of the Permit did not have this problem. The Permittees may have taken action to correct their version of the Permit, but no action by NMED is necessary.
- Item 7.a The change specified in the notification proposed removing references to "carbon" or "carbon composite" in relation to describing filters. The notification failed to identify all references to carbon filters in Attachment B1. NMED has modified all occurrences in Attachment B1 to maintain consistency.
- Item 8.a.1 The change specified in the notification added general radiography information to Attachment B1, Section B1-3a. NMED incorporated the modification with some minor editorial changes.
- Item 9 Since the requested modification applies to the July 21, 2000 Class 1 permit modification regarding data management and reporting requirements, and because NMED has not yet incorporated these modifications into the Permit, action on this Item is deferred until NMED also takes action on the July 21, 2000 modification.
- Item 11.a The change specified in the notification updated Attachment B5 to reflect current document revision protocols. NMED incorporated the modification with some minor editorial changes.

November 28, 2000 Notice of Class 1 Permit Modifications

- Item 2.a.1 The change specified in the notification proposed deleting apparent requirements to routinely perform large area wipes from Table I3-2 in Attachment I3. Rather than delete the requirement from the table, NMED has added a footnote to Table I3-2 stating "Surface contamination surveys of TRUPACT II's are performed in accordance with Procedure WP 12-1100 (Permit Attachment P), which stipulates that all such work be

performed under a Radiation Work Permit (RWP). The RWP will only stipulate large area wipes when necessary and not as a routine measure.”

- Item 4.a.3 Although the permit modification replace the acronym “WID” with “MOC” in this single location, there are still numerous references to WID throughout Attachment L. NMED did not performed any additional replacements beyond those specifically requested in the modification. NMED notes that many of these references were addressed by the January 29, 2001 Item 1.n notification.

December 12, 2000 Notice of Class 1 Permit Modifications

- Item 1 The change specified in the notification proposed modifying the text to change the requirements for headspace gas sampling through the filter vent hole (Item 3, November 1, 2000). The Permittees’ August 29, 2001 revised submittal for a temporary authorization and application of the Class 2 process on this previously submitted Class 1 modification is being evaluated and shall be addressed under a separate administrative action.

January 29, 2001 Notice of Class 1 Permit Modifications

- Item 1c.2 This edit was not incorporated, because the portion of text to which it applied was related to another modification submitted as a Class 1 (Item 4, November 1, 2000). The Permittees’ August 29, 2001 revised submittal for a temporary authorization and application of the Class 2 process on this previously submitted Class 1 modification is being evaluated and shall be addressed under a separate administrative action.
- Item 1.k.1 NMED added the acronym for Management and Operating Contractor (MOC) to the List of Abbreviations and Acronyms.
- Item 1.k.2 NMED inserted the phrase “Management and Operating Contractor (MOC)” after the abbreviation for Westinghouse to be consistent with the remainder of the modifications in this attachment.
- Item 1.n.3 The modification proposed in this item is inconsistent with the existing modification made on November 28, 2000. It appears that the Permittees want to limit references to Westinghouse and instead use MOC whenever possible. NMED has not incorporated this change.
- Item 1.n.5 Again, this proposed modification is inconsistent with the intent to replace specific names of Westinghouse and WID with “MOC.” NMED has

replaced “WID” with “MOC” instead of the requested “Westinghouse TRU Solutions LLC.”

Attachment O On the “RCRA Part A Application Certification” on page O-11, NMED has inserted the phrase “Management and Operating Contractor (MOC)” after the edit changing the name to Westinghouse TRU Solutions LLC. Otherwise, the acronym MOC would have been used without first being defined.

Attachment 2
Request for Specific Figures and Items for Incorporation into Permit

Numerous Figures and other items provided in Permit modification submittals are either poor quality or are printed in colors which do not adequately reproduce as gray-scale photocopied images. The Permittees must provide clean copies of the following figures and items for incorporation into a revised Permit.

March 29, 2000 Notice of Class 1 Permit Modifications

Item 7 Attachment B, Figure B-1, WIPP Waste Stream Profile Form

July 20, 2000 Notice of Class 1 Permit Modifications

Item 7.a Attachment F, Figure F-10, WHB Pre-Fire Survey, First Floor
Attachment F, Figure F-11, WHB Pre-Fire Survey, Second Floor
Item 7.b Attachment G, Figure G-3, Waste Transport Routes in WHB
Item 7.c Attachment M1, Figure M1-1, WHB – Container Storage Unit
Attachment M1, Figure M1-14, WHB Plan (Ground Floor)
Item 7.d Attachment O, Figure O3-3, WHB – Container Storage Unit

September 14, 2000 Notice of Class 1 Permit Modification

Item 1.a Attachment F, Figure F-3, WIPP Underground Facilities
Attachment F, Figure F-5, Underground Emergency Equipment Locations
Attachment F, Figure F-9, Designated Underground Assembly Areas
Item 1.b Attachment I, Figure I-1, Location of Underground HWDUs
Attachment I, Figure I-6, Approximate Location of Boreholes
Attachment I2, Figure I2-1, View of the WIPP Underground Facility
Item 1.c Attachment M2, Figure M2-1, Repository Horizon

September 21, 2000 Notice of Class 1 Permit Modification

Item 2.a.1 Attachment H, Figure H-1, Organizational Location of Training...
Item 3.a.1 Attachment F, Figure F-1, WIPP Surface Structures
Attachment F, Figure F-1a, Legend to Figure F-1
Attachment F, Figure F-6, Fire-Water Distribution System
Attachment F, Figure F-8, WIPP On-Site Assembly Areas...
Item 3.b.1 Attachment G, Figure G-2, WIPP Traffic Flow Diagram
Item 17.a.1 Attachment F, Figure F-2, Spatial View of WIPP Facility
Attachment F, Figure F-3, WIPP Underground Facilities
Attachment F, Figure F-5, Underground Emergency Equipment Locations

- Item 17.b.1 Attachment F, Figure F-9, Designated Underground Assembly Areas
- Item 17.c.1 Attachment I, Figure I-6, Approximate Location of Boreholes
- Item 17.c.1 Attachment M2, Figure M2-1, Spatial View of the Miscellaneous Unit

November 1, 2000 Notice of Class 1 Permit Modification

- Item 5.b Attachment G, Figure G-4, Underground Transport Route
Attachment M1, Figure M1-7, Waste Handling Building – Facility Pallet
Temporary Storage Area
- Item 5.c Attachment O, Figure O3-1, Spatial View of the WIPP Facility
Attachment O, Figure O3-2, Repository Horizon

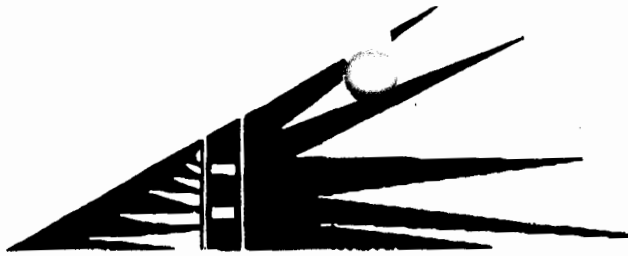
January 29, 2001 Notice of Class 1 Permit Modification

- Item 1.n.15 Attachment L, Figure L-17a, Example Chain of Custody Record
Attachment L, Figure L-17b, Example Request for Analysis
- Item 1.p.3 Attachment N, Figure N-3, Example Request for Analysis Form

March 6, 2001 Notice of Class 1 Permit Modification

- Item 1.a.1 Attachment J1, Figure J1-2, Standard Waste Box and Seven Pack
Configuration
- Item 1.b.1 Attachment M1, Figure M1-13, WIPP Facility Surface and
Underground... Process Flow Diagram
- Item 1.c.3 Attachment M2, Figure M2-5, Backfill Sacks Emplaced in a Room
- Item 1.c.4 Attachment M2, Figure M2-12, WIPP Facility Surface and
Underground... Process Flow Diagram

Attachment 3



SOUTHWEST RESEARCH AND INFORMATION CENTER
P.O. Box 4524 Albuquerque, NM 87106 505-262-1862 FAX: 505-262-1864

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.

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.

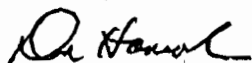
In the July 20, 2000 Class 1 modification, the permittees changed Module III.C.1.c to provide the TDOP with a capacity of 160 cubic feet. (p. A-11). So the TDOP went from a maximum capacity of 73 cubic feet to 160 cubic feet – a 119 percent increase. The change was not to correct a typographical error,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



Department of Energy
Carlsbad Area Office
P. O. Box 3090
Carlsbad, New Mexico 88221

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.

