

# FAX TRANSMITTAL SHEET



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DATE: SEPT. 10, 01

TO: STEVE ZAPPE

FAX: 505.428.2567

FROM: R2  
Western Governors' Association

NUMBER OF PAGES: 16 (Including cover page): Please call (303) 623-9378 in the event that all pages listed above are not received.

COMMENTS:

STEVE -

PER YOUR E-MAIL REQUEST.

R2

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**WGA Annual Meeting: Phoenix, AZ  
June 22-25, 2002**

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## Sample Letter

September 10, 2001

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

Dear Secretary Maggiore:

I am writing in support of the temporary authorization and permit modification requests submitted to the New Mexico Environment Department on August 28, 2001 by the co-permittees of the Waste Isolation Pilot Plant, the U.S. Department of Energy and Westinghouse TRU Solutions.

Each of the three activities covered in the temporary authorization and permit modification requests substantially enhances the safety and health of transuranic waste workers, the public, and the environment:

- **Drum selection for visual examination**—the selection procedure reduces worker radiation exposure and decreases the risk of environmental release. Furthermore, this drum selection approach protects workers from broken glass and other sharp and dangerous objects. It is important to note that this approach does not reduce the number of drums visually examined during the waste characterization process.
- **Sampling through the existing filter vent hole**—This procedure better protects workers while they perform headspace gas sampling, a permit-required waste characterization activity. The procedure reduces the time necessary to access headspace gas, thereby reducing worker radiation exposure time. In addition, the procedure enhances public and environmental safety and health by reducing the generation of new waste caused by the destruction of drum filters.
- **Headspace gas compositing**—The compositing process allow workers to perform headspace gas sampling in a more efficient manner, thereby accelerating the cleanup of the 22 sites across the country that store transuranic waste. This moves the waste to the safest place—1/2 mile below the surface at the Waste Isolation Pilot Plant. Compositing meets all of the stringent testing standards established by your Department.

In summary, these three activities greatly enhance worker, public and environmental protection. Fortunately, these are all simple changes that do not involve new equipment.

You may wonder why I am writing to you in support of the temporary authorization and permit modification requests. I have worked in the environment, safety, and health field for xx years. As the *[add title and organization]*, I am committed to the protection of my employees, colleagues, fellow citizens, and the environment. The temporary authorization and permit modification requests follow the internationally recognized principles for radiological protection—ALARA (As Low as Reasonably Achievable) and TD&S (Time, Distance, and Shielding). As such, I strongly urge you to approve the temporary authorization and permit modification requests.

Please call me at (xxx) xxx-xxxx if you would like additional information.

Sincerely,

xxxxxxx

**SOUTHWEST RESEARCH AND INFORMATION CENTER**  
 P.O. Box 4684 Albuquerque, NM 87108 505-262-1000 FAX: 505-262-1004

September 6, 2001

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

VIA FAX and U.S. MAIL

Dear Secretary Maggione:

✓ On August 29, 2001, NMED received the Department of Energy (DOE) Westinghouse TRU Solutions "Temporary Authorization Request." The request was not available on DOE's website to the public until yesterday morning. SRIC strenuously objects to the Temporary Authorization, which is totally contrary to regulations regarding permit modifications. SRIC asks you to deny the Temporary Authorization.

SRIC also strongly states that the so-called "Class 1 modifications" discussed in the Temporary Authorization do not meet the requirements for Class 1 modifications and that there are not in effect, nor have they ever been in effect.

DOE's Temporary Authorization Request

Page 1 of the request states: "these modifications have already been put into effect." That statement is false and must be false.

Regulatory requirements

Under 40 CFR 270.42(a)(1) "the permittee may put into effect Class 1 modifications," under specified conditions. Under the regulations, any other Class 1 modifications (40 CFR 270.42(a)(2)), Class 2 modifications (40 CFR 270.42(b)), Class 3 modifications (40 CFR 270.42(c)), other modifications (40 CFR 270.42(d)), and temporary authorizations (40 CFR 270.42(e)) are not in effect until approved by NMED.

NMED never approved the Class 1 modifications that are cited in DOE's request, nor has NMED approved the requested modification under any other category. Nor does NMED have authority under the regulations to create additional classes of modifications. For example, NMED could not create a modification that is simultaneously both "in effect" and "not in effect."

Simply put, if the modifications are in effect, there is no basis for considering the request or granting a temporary authorization.

*For more than 25 years a continuing tradition of effective citizen action  
 printed on kernel paper*

**The activities included in the Temporary Authorization Request are not Class 1 modifications. As an initial comment, three modifications that require a 204-page application to describe could not be Class 1 modifications.**

In issuing the regulations regarding permit modifications, the EPA stated: 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).

Each of the three activities covered in the Temporary Authorization Request - composited headspace gas samples, airtight sampling device, and drum selection for visual examination - are highly complex and are in no way typographical errors or similar matters covered by Class 1 modifications. Each of the matters are covered in the WIPP permit and DOE has substantially changed its procedures in order to carry out the activities. The permittees are correct that to make such substantial changes requires a permit modification, but the changes cannot be made through a Class 1 modification.

The compositing of Headspace Gas Samples would be accomplished by use a 250 ml SUMMA canister instead of a 25 ml syringe. This is a totally new device, which is not allowed under the Permit. Rather than collecting up to five samples as is done with the syringe, the changed procedure is to provide for 20 composite samples. The new procedure is a very substantial change in equipment and activity from that provided in the Waste Analysis Plan of the Permit.

The airtight sampling device modification would result in using substantially different procedures and new sampling techniques as compared with the WIPP permit. In addition to the substantial changes in how headspace gas sampling is done, multiple and complex changes would be required to various sections of the Permit.

The drum selection for visual examination (VE) would change procedures such that drums that would be subject to VE under the WIPP permit would be excluded from such examination. This is a very substantial change in procedures which could lead to very different results from VE. Visual examination was a controversial issue during the permitting process, the subject of substantial public comment and technical testimony. Any substantial changes in VE practices cannot be considered as Class 1 modifications.

In addition, NMED has apparently determined that the requested modifications are not Class 1. In its "Administrative Completeness Determination" letter of August 31, 2001, NMED did not approve or approve with changes as Class 1 modifications the modifications included in the Temporary Authorization. So SRIC understands that those modifications have been rejected by

**The Temporary Authorization request must be denied.**

As an initial matter, 40 CFR 270.42(e)(2)(i)(A) and (B) provides that a temporary authorization may be requested only for Class 2 or Class 3 modifications. Here again, if the modifications are Class 1, they cannot be considered for a Temporary Authorization.

As already noted, the very first sentence on page 1 of the Temporary Authorization Request falsely states that the modifications are in effect. This statement is repeated in the first sentence of the second paragraph on page 2 and in other places in the Request. Thus, the request is based fundamentally on inaccurate information. The regulations do not provide authority for NMED to approve a Temporary Authorization based on clearly false information. In such a circumstance, NMED must deny the request.

In its appropriate action of December 22, 2000, when NMED rescinded its approval of another DOE requested Temporary Authorization, NMED stated:

In other words, the permittee must demonstrate that NMED should approve the proposed modification immediately because the facility cannot wait until action is taken on the modification request at the conclusion of the public comment period. To construe this provision in any other manner would subvert the regulatory process for permit modifications under the HWA and RCRA. Page 2, emphasis in original.

Nonetheless, DOE is once again asking NMED to subvert the regulatory process, including public comment process. DOE first did this by submitting the Class 1 modifications on July 20, 2000; November 1, 2000; December 12, 2000; and January 29, 2001 that were not appropriately Class 1. DOE is now trying to subvert the process and public comment by requesting a Temporary Authorization, to again avoid public comment. No such action is allowed under the regulations and NMED may not sanction such behavior; instead NMED should again inform DOE that it cannot and will not approve such a request.

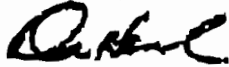
While SRIC has not had time to carefully review the entire 204-page request, we must also point out the ludicrous and insulting nature of the request. For example, on page 14 of the request, DOE states that "granting the temporary authorization will enable timely closure of Panel 1." As you and DOE are well aware, SRIC has advocated for years that Panel 1 not be used and that it be immediately closed. Instead, DOE has continued to use an unsafe Panel 1, even though Panel 2 has been approved for use for a year. For DOE, which has steadfastly resisted requests from SRIC and others to close Panel 1, to now try to justify an inappropriate Temporary Authorization to expedite closure of Panel 1 is hypocritical at best! On page 15, DOE implies that if the Temporary Authorization is not approved, it "could cause a loss of employees" at WIPP. There is absolutely no basis for such a statement, which can only be construed as trying to blackmail NMED to approve a request that has no basis on the grounds that NMED would otherwise be responsible for layoffs.

The other so-called justifications are equally meritless or false and in no way can be used as the basis to approve a Temporary Authorization under 40 CFR 270.42(c)(3).

In summary, SRIC asks that you deny the Temporary Authorization. If there is any doubt that the Class I modifications that are included in the request have been rejected and are not in effect, NMED should clarify that fact to the permittees.

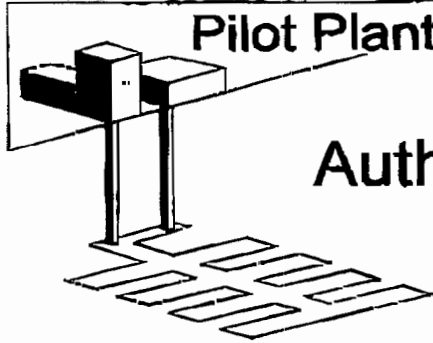
Thank you for your consideration. Please provide us with your decision as soon as it is available.

Sincerely,



Don Hascock

## Waste Isolation Pilot Plant



# DOE Requests Temporary Authorization for Permit Modifications

Between July and December 2000, the Department of Energy (DOE) submitted and implemented three Class 1 permit modifications to the New Mexico Environment Department (NMED). In response to recent questions from NMED, DOE has elected to follow the procedures for the Class 2 modification process. The three modifications in question were presented to NMED on August 28, 2001, under the Class 2 process. DOE has requested Temporary Authorization for these modifications. The modifications allow the generator/storage sites the option to composite headspace samples, authorize two additional methods for obtaining headspace gas samples, and establish safety conditions that will be applied to drums selected for visual examination.

The hazardous waste regulations allow NMED to authorize the implementation of modifications if the applicant can demonstrate, among other things, that the activity is needed to avoid disruption of waste management activities or that the activity is needed to protect human health and the environment.

The DOE's Temporary Authorization Request was submitted on August 28, 2001, and demonstrates that the health and safety benefits from the revised sampling methods and the establishment of criteria for selecting containers for visual examination result in reduced risk of exposure to radiation. In addition, DOE demonstrates in the request that the compositing methodology allows generator sites to maintain reasonable throughput rates, which support efficient operations at the WIPP facility.

The Temporary Authorization request also contains documentation demonstrating that granting the request will not compromise WIPP's ability to protect human health or the environment and that the facility can remain in compliance with the permit and the regulations.

There will be public meetings regarding these modifications in Carlsbad on October 9 and in Santa Fe on October 11, 2001.

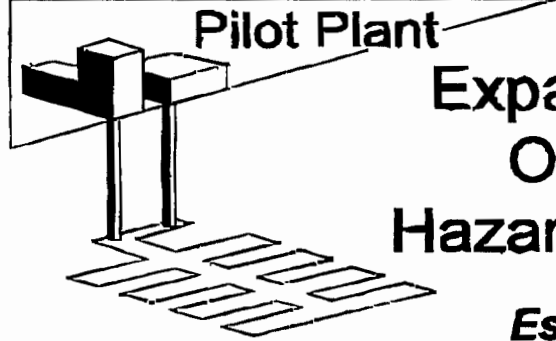
For more information contact the WIPP Information Center at 1-800-336-WIPP (9477). You also may visit the WIPP Home Page at <http://www.wipp.carlsbad.nm.us>.

If you prefer, write to:



WIPP Information Center  
U.S. Department of Energy  
Carlsbad Field Office  
P.O. Box 3090  
Carlsbad, NM 88221



**Waste Isolation****Fact Sheet****Expanded Public Participation  
On Modification to WIPP  
Hazardous Waste Facility Permit*****Establishing Safety Conditions for  
Visual Examination******Background***

In November 2000 the U.S. Department of Energy (DOE) submitted and implemented a Class 1 modification to its Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP) in support of the DOE cleanup effort. The New Mexico Environment Department (NMED) issued the original permit in October 1999.

The modification regards procedures for establishing safety conditions for visual examination. In response to recent questions from NMED, DOE has elected to follow the procedures for the Class 2 modification process. This action will provide NMED and the public with additional information concerning the modification and with another opportunity to review and comment on the modification.

***What Is  
Proposed?***

The permit currently requires DOE to randomly select and visually examine a percentage of containers in each Summary Category Group.

This modification allows sites where transuranic waste is currently being stored awaiting shipment to WIPP the ability to establish criteria for the protection of workers involved in visual examination activities. All safety criteria must be based on the characteristics of the waste being examined. For example, containers may be rejected due to high radionuclide content, broken glass, or sharp objects. If a waste container is randomly selected for visual examination and it does not meet the safety criteria, another container must be randomly selected

from the same summary category group. This modification **does not** reduce the number of containers that must be visually examined, it just gives facilities the ability to protect workers by selecting containers that meet the safety criteria.

### **What are the Benefits?**

This permit modification allows facilities to better protect the worker, while at the same time protecting public health and the environment. The new criteria must be part of the sites' written documentation and must be approved by the DOE Carlsbad Field Office. All containers must meet all safety criteria prior to being opened for visual examination. The change will not adversely affect worker safety, public health, or the environment.

### **Comments**

Comments must be sent to Mr. Steve Zappe, New Mexico Environment Department, 2905 Rodeo Park Drive, Building 1, Santa Fe, NM 87505. They may also be e-mailed: [steve\\_zappe@nmenv.state.nm.us](mailto:steve_zappe@nmenv.state.nm.us) or faxed to 505-428-2567. Only written comments will be accepted and must be received by November 2, 2001. A copy of the permit modification may be viewed or copied at the NMED offices of Mr. Steve Zappe.

### **For more Information**

For more information about transuranic waste shipments and procedures, or to be placed on the WIPP mailing list, call the WIPP Information Center at 1-800-336-WIPP (9477). You also may visit the WIPP Home Page at <http://www.wipp.carlsbad.nm.us>. Comments to the Permittees relative to this permit modification should be submitted to Mr. Bobby St. John, P.O. Box 2078, Carlsbad, NM 88221 by October 26, 2001.

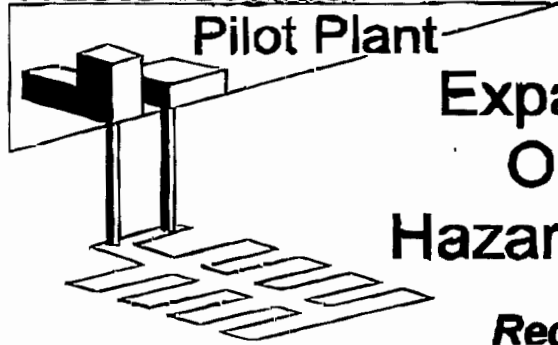
If you prefer, write to:

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U.S. Department of Energy  
Carlsbad Field Office  
P.O. Box 3090  
Carlsbad, NM 88221



## Waste Isolation Pilot Plant

## Fact Sheet



# Expanded Public Participation On Modification to WIPP Hazardous Waste Facility Permit

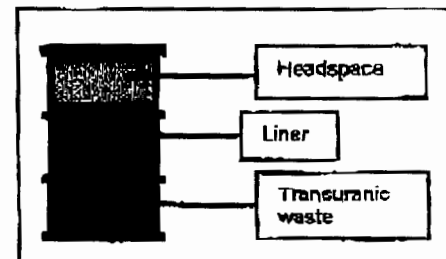
## *Requirements for Sampling Through Existing Filter Vent Hole*

### **Background**

In November 2000 the U.S. Department of Energy (DOE) submitted and implemented a Class 1 modification to its Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP) in support of the DOE cleanup effort. The New Mexico Environment Department (NMED) issued the original permit in October 1999.

This modification regards methods for sampling headspace gas in waste drums. In response to recent questions from NMED, DOE has elected to follow the procedures for the Class 2 permit modification process. This action will provide NMED and the public with additional information concerning the modification and with another opportunity to review and comment on it.

The permit currently requires DOE to perform tests on samples of headspace gas taken from each waste container to be disposed of at WIPP, to gain information on volatile organic compounds, and verify the assignment of hazardous waste codes.



### **What is Proposed?**

The modification changes the methods used to obtain the headspace sample for certain types of containers. It allows sites to (1) use a self-tapping screw to gain access to the drum headspace instead of using a punch, and (2) to replace the drum filter

with an airtight seal for sampling the headspace in drums and pipe overpack components.

A pipe overpack component has been approved by the Nuclear Regulatory Commission as a container that holds transuranic waste and is designed to be placed into another container such as a 55-gallon drum.

A recent study conducted at Rocky Flats Environmental Technology Site, has shown that an airtight seal is an effective mechanism by which headspace gas samples may be collected from both 55-gallon drums, as well as pipe overpack components, without affecting the validity of the sample. This study has been submitted to NMED.

**What are the Benefits?**

Use of the self-tapping screw allows sites without access to specific drum puncturing equipment to use an alternative, equivalent method to access the container headspace. These new methods of collecting headspace gas samples will allow facilities to better protect workers by reducing the exposure time necessary to obtain the headspace gas sample. As a safety feature, the design of the pipe overpack component provides only very limited access between the waste and the filter vent hole. The access is made by four very small holes (3/32 inch) in the plate that separates the filter vent hole from the headspace gas in the pipe overpack. It is extremely difficult and time consuming to locate those holes with the headspace gas sampling apparatus inserted through a carbon composite filter. This activity would unnecessarily expose workers to undue radiation levels because of the time required to locate one of these small 3/32 inch holes.

It will also reduce the generation of additional new waste caused by the destruction of filters. This modification will not adversely affect worker safety, public health, or the environment.

**Comments**

Comments must be sent to Mr. Steve Zappe, New Mexico Environment Department, 2905 Rodeo Park Drive, Building 1, Santa Fe, NM 87505. They may also be e-mailed: [steve\\_zappe@nmenv.state.nm.us](mailto:steve_zappe@nmenv.state.nm.us) or faxed to 505-428-2567. Only written comments will be accepted and must be received by November 2, 2001. A copy of the permit modification may be viewed or copied at the NMED offices of Mr. Steve Zappe.

**For more Information**

For more information about transuranic waste shipments and procedures, or to be placed on the WIPP mailing list, call the WIPP Information Center at 1-800-336-WIPP (9477). You also may visit the WIPP Home Page at <http://www.wipp.carlsbad.nm.us>. Comments to the Permittees relative to this permit modification should be submitted to Mr. Bobby St. John, P.O. Box 2078, Carlsbad, NM 88221 by October 26, 2001.

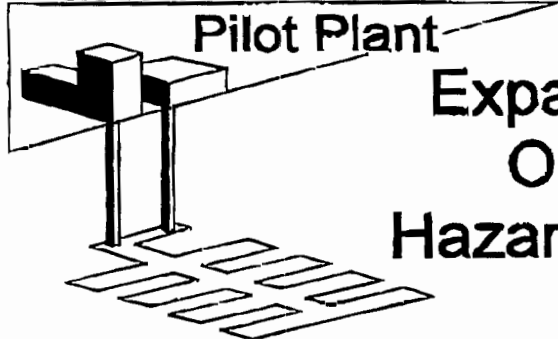
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U.S. Department of Energy  
Carlsbad Field Office  
P.O. Box 3090  
Carlsbad, NM 88221

## Waste Isolation Pilot Plant

## Fact Sheet



# Expanded Public Participation On Modification to WIPP Hazardous Waste Facility Permit

## Headspace Gas Compositing

### **Background**

In July 2000 the U.S. Department of Energy (DOE) submitted and implemented a Class 1 modification to its Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP) in support of the DOE cleanup effort. The New Mexico Environment Department (NMED) issued the original permit in October 1999.

In response to recent questions from NMED, DOE has elected to follow the procedures for the Class 2 modification process. This action will provide NMED and the public with additional information concerning the modification and with another opportunity to review and comment on it.

### **What is Proposed?**

In the modification, DOE clarifies the use of composited headspace gas data. The approved analytical method (SW-846, method 8260) allows for compositing of samples for analysis. Compositing is the process of physically combining multiple samples into one sample that is analyzed for volatile organic compounds.

Tests have been performed using both composited and non-composited headspace gas samples from Rocky Flats Environmental Technology Site and the Idaho National Engineering and Environmental Laboratory. These studies and their results have been provided to NMED. The analyses show conclusively that using

composited samples does not reduce the accuracy and precision of the required tests on waste to be shipped to WIPP.

***What are the Benefits?***

The proposed modification would allow facilities to maintain the same stringent testing standards, while at the same time speed up the cleanup of sites currently storing transuranic waste. This change will not adversely affect worker safety, public health, or the environment.

***Comments***

Comments must be sent to Mr. Steve Zappe, New Mexico Environment Department, 2905 Rodeo Park Drive, Building 1, Santa Fe, NM 87505. They may also be e-mailed: [steve\\_zappe@nmenv.state.nm.us](mailto:steve_zappe@nmenv.state.nm.us) or faxed to 505-428-2567. Only written comments will be accepted and must be received by November 2, 2001. A copy of the permit modification may be viewed or copied at the NMED offices of Mr. Steve Zappe.

***For more Information***

For more information about transuranic waste shipments and procedures, or to be placed on the WIPP mailing list, call the WIPP Information Center at 1-800-336-WIPP (9477). You also may visit the WIPP Home Page at <http://www.wipp.carlsbad.nm.us>. Comments to the Permittees relative to this permit modification should be submitted to Mr. Bobby St. John, P.O. Box 2078, Carlsbad, NM 88221 by October 26, 2001.

If you prefer, write to:



WIPP Information Center  
U.S. Department of Energy  
Carlsbad Field Office  
P.O. Box 3090  
Carlsbad, NM 88221

# Public Information Meetings



## On Modifications to the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant

**October 9, 2001**

**6 to 8 p.m.**

**WIPP Information Center  
Skeen-Whitlock Building  
4021 National Parks Highway  
Carlsbad, New Mexico**

**October 11, 2001**

**3 to 5 p.m.**

**6 to 8 p.m.**

**Courtyard by Marriott  
3347 Carrillos Road  
Santa Fe, New Mexico**

The U.S. Department of Energy Carlsbad Field Office is hosting public meetings to:

- Provide supplemental information to the public concerning modifications to the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP)
- Explain the process for submitting comments
- Provide a forum for an exchange of views among the public, the facility's owner (U.S. Department of Energy), the management and operating contractor (Westinghouse TRU Solutions LLC), and the regulatory agency (New Mexico Environment Department)

DOE submitted and implemented three Class 1 permit modifications in July and November 2000. In response to questions from the New Mexico Environment Department, the permittees concluded that these modifications would benefit from review under the Class 2 process. This will allow for additional regulatory review and expanded public participation. The three requested modifications are (1) the ability to composite up to 20 headspace gas samples, (2) adding two additional methods for obtaining headspace gas samples, and (3) establishing safety conditions that will be applied to drums selected for visual examination.

To obtain information about the Class 2 Permit Modification, contact Bobby St. John at the WIPP Information Center, 1-800-336-9477. The permit modifications are also available on the WIPP Web site, <http://www.wipp.carlsbad.nm.us>, and at the WIPP Information Center, Skeen-Whitlock Building, 4021 National Parks Highway, Carlsbad, New Mexico.

**Send written comments to:**

**Mr. Steve Zappe  
New Mexico Environment Department  
2905 Rodeo Park Drive, Building 1  
Santa Fe, New Mexico 87505  
Phone: 505-428-2517  
E-mail [steve\\_zappe@nmenv.state.nm.us](mailto:steve_zappe@nmenv.state.nm.us)  
Display ad posted on: September 4, 2001  
Comment period begins: September 4, 2001  
Comment period ends: November 2, 2001**

The permittee's compliance history during the life of the permit being modified is available from the Agency contact person (Mr. Steve Zappe).

Comments to the permittees relative to this permit modification should be submitted to Mr. Bobby St. John, P.O. Box 2076, Carlsbad, NM 88221 by October 26, 2001.