

**Attorney General of New Mexico**

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Mr. Steve Zappe
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive, Building E
Santa Fe, NM 87505

Dear Mr. Zappe:

We have the Environment Department's (NMED's) letter dated August 31, 2001, concerning administrative completeness determinations with respect to Class 1 permit notifications for the Hazardous Waste Act permit for the Waste Isolation Pilot Plant. From this letter and its attachment we see that NMED has reviewed and found complete various Class 1 modifications, including those dated July 20, 2000, November 1, 2000, December 12, 2000, and January 29, 2001, concerning (a) composited headspace gas data, (b) headspace gas sampling through the filter vent, and (c) safety conditions for selecting containers that are visually examined as a quality control check. The cover letter states that these modifications "have been put into effect."

However, we have also received a Class 2 permit modification request and a Temporary Modification Request, dated August 28, 2001, stating that "[i]n response to recent questions from [NMED] regarding five Class 1 permit modifications that were put into effect in accordance with applicable regulations between July 20 and December 12, 2000, [permittees] have elected" to seek such modifications by Class 2 procedures.

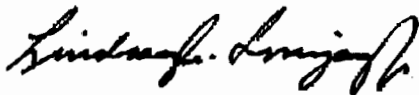


There is no need, nor opportunity, to use Class 2 procedures for modifications (and also no need for a temporary authorization) if the changes in question have already been incorporated into the permit. At the same time, if the year 2000 Class 1 modifications were unauthorized, NMED should reject them, and their submission and subsequent changes of procedure by permittees would not support a temporary authorization to make the same changes. Therefore, would you please advise whether NMED takes the position that the Class 1 changes in question have been adopted as part of the WIPP HWA permit? We request that you advise us promptly of your position, so that we can consider it in commenting on the Temporary Authorization Request.

We note that the applicable rule lists changes in sampling procedures, other than to increase frequency, as Class 2 modifications (40 CFR § 270.42, Appendix I, (A.4.b.)). We further submit that the Class 1 modifications proposed in 2000 do not meet the "standard of simplicity" invoked by NMED (letter, August 30, 2001, re TDOP modification), limiting Class 1 modifications to "non-substantive changes." Therefore, we submit that the year 2000 Class 1 modifications should not be deemed in effect. Moreover, the hasty submission of unauthorized Class 1 modifications, and changes made in unjustified reliance, cannot be the basis for a temporary authorization to make the same changes in conjunction with a Class 2 proposal.

We look forward to a prompt response.

Very truly yours,



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