



**SOUTHWEST RESEARCH AND INFORMATION CENTER**  
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ENTERED



June 17, 2002

Steve Zappe  
New Mexico Environment Department  
2905 Rodeo Park Drive, Building 1  
Santa Fe, NM 87505

RE: WIPP Booster Fan Permit Modification, June 10, 2002

Dear Steve,

Southwest Research and Information Center (SRIC) requests that NMED deny the permit modification because it is not properly classified as a Class 1 modification.

Regulations under the New Mexico Hazardous Waste Act (20 NMAC 4.1.900, incorporating 40 CFR 270.42(a)(iii)) provide that NMED may reject any Class 1 modification. As the permittees are well aware, NMED has rejected several previous Class 1 modifications, which were not in compliance with regulatory requirements for such modifications.

In this particular case, DOE was told more than a month ago that the requested modification was not properly classified as a Class 1 modification and that more detailed information was needed for an adequate request. Yet, the permittees did not address that public comment in the modification request. Despite the history of inadequately supported permit modifications and DOE's commitment to improve the modification requests and to involve the public before modifications are submitted, the practice used by the permittees in this case is no better than the flawed processes previously used.

The modification request states that the basis for the classification is Appendix I to 40 CFR 270.42, A.8. Page A-2. That classification is if a condition "is no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility)."

Apparently, the permittees view the standards that are no longer applicable as being the Mining Safety and Health Administration (MSHA) requirements in 30 CFR 57.4760(a). However, those requirements have not changed. The control doors that the permittees now say allow the underground hazardous waste disposal unit to meet the MSHA requirements existed at the time the permit was issued, so the booster fans were apparently not required by MSHA regulations even at the time of the permit hearing in February 1999. Indeed, during the permit hearing, the permittees did not try to justify the booster fans solely to meet the MSHA requirements, but as

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also being part of the overall ventilation system that is necessary to protect public health and the environment. Testimony Vol. I, pages 88-92. In the permit modification request, permittees have submitted no information to supersede that testimony.

Of course, the standards under 40 CFR 264.601 that WIPP must be operated and maintained for the "protection of human health and the environment" have not changed. Thus, based on the testimony at the permit hearing and the permit conditions themselves, the purpose of the booster fans was not just to meet MSHA requirements but to comply with the Hazardous Waste Act standards to protect human health and the environment. Permittees rationale in the permit modification request is not correct and cannot be used as the basis for a Class 1 permit modification. Therefore, NMED must deny the requested modification.

If the permittees wish to pursue the removal of the booster fans, it must do so as a Class 2 or Class 3 permit modification. In so doing, they should address, among other issues, the health and safety benefit of removing the fans, including how that removal complies with testimony at the permit hearing. They must discuss the location and status of the booster fans and how they are used currently and how the ventilation system and underground emergencies would be addressed if the booster fans were to be removed. They should also address how evacuation procedures will be improved, because they are currently below MSHA standards. Modification Request, Attachment B, page 3.

Once again, SRIC asks that NMED deny this Class 1 modification request.

Thank you for your careful consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Hancock".

Don Hancock