

The fans were emplaced to enable the airflow in the underground to be reversed in the event of a fire. (at A-3). They are clearly safety-related equipment. The modification states that WIPP does not need to maintain the ability to reverse ventilation because “WIPP also has control doors and evacuation procedures.” (at A-3). Consequently, permittees assert, applicable mine safety regulations at 30 CFR § 57.4760(a) do not require the continued availability of fans for airflow reversal.

NMED has expressed itself clearly on the appropriate scope of Class 1 modification procedures. In its letter dated September 24, 2001, rejecting certain Class 1 modifications, NMED stated:

“NMED hereby rejects all of these as Class 1 modifications under 40 CFR § 270.42(a)(1)(iii) because they are not non-substantive changes. Examples of non-substantive changes provided by EPA in the preamble to the permit modification final rule (53 Fed. Reg. 37914-15, September 28, 1988) include ‘. . . 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.’ Id. The preamble to the final rule also states, ‘the changes listed as Class 1 are minor in nature and for the most part should be easily reversible.’ Id. The preamble to the proposed rule (52 Fed. Reg. 35843, September 23, 1987) further portrays Class 1 modifications as being of a ‘trivial nature.’ These modifications clearly do not meet this standard of simplicity for Class 1 modifications.”

The proposal to remove ventilation equipment that serves a safety purpose does not meet the description of a Class 1 modification as “non-substantive,” “trivial”, and possessing “simplicity.” The proposed modification would allow a reduction in the safety of underground workers, because without the booster fans one method of reducing

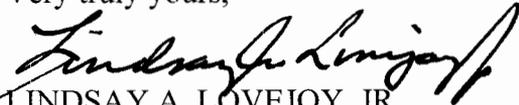
the scope and spread of fire would be taken away. Thus, the statement in the proposal that the change would not reduce protections is incorrect.

In addition, the statement in the proposal about the availability of effective evacuation procedures is contradicted by the Mine Ventilation Investigation Report (Att. B at 3), which states that the ten-minute standard for evacuation was not met in recent exercises at WIPP: “The length of time required for evacuation was greater than that allowed for use of evacuation as an alternative for compliance with Section 57.4760(a).”

The proposal fails to include a diagram showing the location of the fans and how they function in event of fire. Thus, it is not possible for NMED to determine the function and protective value of the fans.

In this situation NMED should reject the proposed Class 1* modification and allow the proposal to be submitted again under the appropriate procedures.

Very truly yours,


LINDSAY A. LOVEJOY, JR.
Assistant Attorney General

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