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Governor

JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

ENTERED



Hazardous Waste Bureau

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DAVE MARTIN
Secretary

RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 15, 2011

Edward Ziemianski, Acting Manager
Carlsbad Field Office
Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Farok Sharif
Washington TRU Solutions LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-5608

**RE: NOTICE OF CLASS DETERMINATION
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088**

Dear Messrs. Ziemianski and Sharif:

The New Mexico Environment Department (NMED) acknowledges receipt of the following request for class determination of a modification request to the WIPP Hazardous Waste Facility Permit:

- Request for Permit Modification Determination (Update Ventilation Language for Consistency), Letter Dated May 20, 2011, Rec'd May 21, 2011

Attached to this letter is the basis for NMED's class determination for the above submittal requesting such. NMED conducted this class determination as specified in 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(d)(2)).

NMED has determined that the requested modification is a Class 2 modification. The Permittees should pursue this request as a Class 2 modification request, and include the customary pre-submittal public participation process with the stakeholders prior to submittal of the Class 2 Permit Modification Request.

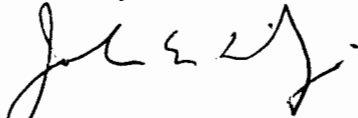
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Messrs. Ziemianski and Sharif
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If you have any questions regarding this matter, please contact me at (505) 476-6035 or
Tim Hall at (505) 476-6049.

Sincerely,



John E. Kielling
Acting Chief
Hazardous Waste Bureau

JEK:th

cc: Raj Solomon, NMED, Deputy Secretary
Jim Davis, NMED RPD
Tim Hall, NMED HWB
Thomas Kesterson, NMED DOE-OB/WIPP
Laurie King, EPA Region 6
Tom Peake, EPA ORIA
Connie Walker, Trinity Engineering
Don Hancock, SRIC
File: Red WIPP '11

Attachment
Analysis of Proposed Permit Modification

The proposed modification seeks to correct an inconsistency between two portions of the Permit. The Permittees propose the modification as a class 1 modification under 40 CFR 270.42, Appendix I.A.1., “Administrative and informational changes.”

40 CFR 270.42 (d)(2)(i) and (ii), require the Department to consider the following criteria: “(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment...”

and

“(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to,

(A) Common variations in the types and quantities of the waste managed under the facility permit,

(B) Technological advancements, and

(C) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.”

The requested modification does not meet the criterion for a class 1 modification under 40 CFR 270.42 (d)(2)(i) because it is not a minor change that keeps “the permit current with routine changes to the facility or its operation.” The Permittees currently implement the requirements in Permit Attachment O to verify the airflow of 35,000 scfm in an active disposal room before workers enter the room. Further, the requested modification *would* substantially alter the permit conditions because it would allow workers to enter an active disposal room without verifying 35,000 scfm airflow in the room, which is currently prohibited by Permit Attachment O.

The requested modification also does not meet the criteria in 40 CFR 270.42 (d)(2)(ii)(A), (B), or (C). The request does not allow the Permittees to respond to variations in the types and quantities of waste managed; it does not allow the Permittees to respond to technological advancements; and it does not allow the Permittees to respond to new regulations.

40 CFR 270.42 (d)(2), also requires the Department to “... consider the similarity of the modification to other modifications codified in appendix I...” when making a class determination.

The requested change is most similar to a class 2 General Permit Provisions change under 40 CFR 270.42, Appendix I.A.4.b. – “Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee: other changes.” The request does

not result in "more frequent monitoring," which is required for a class 1 modification under Appendix I.A.4.a.

The Permittees' request states that the reason for the request is to make Attachment O "consistent with Part 4.5.3.2 and Permit Attachment A2, Section A2-2a(3)." However, the requirement in Attachment O for verifying airflow in active disposal rooms is more restrictive than the requirement in Attachment A2:

Attachment O, Section O-2, requires the Permittees to maintain "a minimum of 35,000 scfm of air through the active disposal rooms when workers are present in the rooms."

Attachment A2, Section A2-2a(3), requires a minimum ventilation rate of 35,000 scfm "in each room where waste disposal is taking place when workers are present in the room..."

Changing the requirements in Attachment O to be consistent with Attachment A2 is a reduction in the frequency of monitoring and/or sampling, because the airflow would no longer have to be verified prior to workers entering the room if waste was not being emplaced at the time.

The requested modification would also be a reduction in the frequency of reporting. Attachment O, Section O-3b(2), requires the Permittees to "notify NMED within seven calendar days if either the minimum running annual average mine ventilation exhaust rate of 260,000 scfm or a minimum active room ventilation rate of 35,000 scfm when workers are present in the room are not achieved."

The requested modification proposes that the Permittees would not have to notify NMED if the ventilation rate in an active room was less than 35,000 scfm unless waste was being emplaced at the time. This constitutes less frequent reporting.

Therefore, the Department determines that the requested modification is a class 2 modification under 40 CFR 270.42, Appendix I.A.4.b.