



**Allen, Pam, NMENV**

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**From:** Maestas, Ricardo, NMENV  
**Sent:** Wednesday, June 25, 2014 3:29 PM  
**To:** Allen, Pam, NMENV  
**Subject:** FW: DRAFT Options for Class 3 Modification

March

**From:** Kieling, John, NMENV  
**Sent:** Tuesday, March 11, 2014 11:32 AM  
**To:** Kendall, Jeff, NMENV; Hower, Jennifer, NMENV  
**Cc:** Flynn, Ryan, NMENV; Blaine, Tom, NMENV; Kliphuis, Trais, NMENV; Smith, Coleman, NMENV; Maestas, Ricardo, NMENV; Skibitski, Thomas, NMENV  
**Subject:** FW: DRAFT Options for Class 3 Modification

ATTORNEY-CLIENT PRIVILEGE

Jeff and Jennifer,

The WIPP Class 3 modification is currently in the public comment period. The draft permit was issued for public comment by NMED. The comment period began on February 14, 2014 for a 60-day period. The comment period ends on April 15, 2014.

This Class 3 modification regards the: 1) Panel Closure; 2) Repository Reconfiguration of Panels 9 and 10; and 3) Revise VOC Target Analyte List and Other Changes to the VOC Monitoring Program.

Since the February 14<sup>th</sup> incident at WIPP a letter (attached), dated February 28, 2014, signed by several non-governmental organizations, to Secretary Flynn requests NMED to use its authority and withdraw the draft permit. That by doing so would allow for resources to be focused on the radiation leak.

HWB discussed options for the Class 3 modification and how it could proceed or not. These include:

1. The Permittees withdraw the Class 3 modification. This would allow all to reassess the situation and if what changes may need to occur due to the incident. This would be the cleanest option.

This would allow for more dialogue and changes than if we allowed the public comment period to run with the draft as is. The withdrawal could be timed to occur soon after the comment period to gather concerns from the public. The withdrawal could happen sooner too.

1a. The Permittees would like to move forward with the Panel Closure portion of the modification as it would provide for protection of human health and the environment. This could be done by the Permittees withdrawing the other two items of the modification (reconfiguration and VOC). To accommodate this we would need to discuss how to continue the comment period with only a portion of the modification.

2. Extend the comment period. This would allow for more time to assess the incident and determine if a draft permit revision would be needed. The Permittees could then submit comments that would address issues related to the incident in addition to the public. This would allow for public comment regarding the incident and could turn the public hearing into an ugly mess. This could work in conjunction with the Permittees withdrawing the modification request.

3. Allow public comment period to conclude on April 15. This may cause problems because we can only change the portions that are subject of public comment. If the draft needs modification due to the incident (which we are pretty



sure will happen) we do not authority to do so. This would limit changes to the permit depending on the comments received. The public hearing could be ugly.

4. NMED withdrawal of the draft permit. Not sure if NMED can do so. Regulations are silent on this.

5. Deny the PMR (now or at a later date)

I suggest we discuss these and nuisances of each in the next couple weeks.

Thanks,  
John Kieling