

IN THE COURT OF APPEALS
STATE OF NEW MEXICO

DOCKETED

By The Hearing Clerk

MAY 04 2000

SOUTHWEST RESEARCH AND
INFORMATION CENTER, DARA MARK,
and WAYNE GIBSON,
Appellants,

vs.

No. _____
No. Before the Secretary
of Environment

NEW MEXICO ENVIRONMENT
DEPARTMENT and PETER
MAGGIORE, Secretary,
Appellees.

NOTICE OF APPEAL

Please take notice that Southwest Research and Information Center, Dara Mark, and Wayne Gibson, hereby appeal the final decision of John E. Keiling on behalf of the Secretary of the New Mexico Environment Department, issued on April 25, 2000, granting a Class 1 Modification to the permit issued to United States Department of Energy and Westinghouse Electric Company for the Waste Isolation Pilot Plant. A copy of the decision is attached hereto (Exhibit 1). This appeal is taken against the New Mexico Environment Department and Peter Maggiore in his capacity as Secretary of that department and is taken to the New Mexico Court of Appeals, pursuant to N.M.S.A. § 74-4-14.A.

000514



Respectfully submitted,

Margot Steadman

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Certificate of Service


I hereby certify that on May 2, 2000, I had this notice of appeal, by first-class mail, postage paid,
to:

NM Environment Department
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Margot Steadman



GARY E. JOHNSON
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PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

April 25, 2000

Dr. Inés Triay, Manager
Carlsbad Area Office
Department of Energy
P. O. Box 3090
Carlsbad, New Mexico 88221-3090

Mr. Joe Epstein, General Manager
Westinghouse Waste Isolation Division
P. O. Box 2078
Carlsbad, New Mexico 88221-5608

**RE: NOTICE OF CLASS DETERMINATION AND ADMINISTRATIVE
COMPLETENESS DETERMINATION OF PROPOSED PERMIT MODIFICATIONS
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM 4890139088**

Dear Dr. Triay and Mr. Epstein:

The New Mexico Environment Department (NMED) Hazardous and Radioactive Materials Bureau (HRMB) acknowledges receipt of your April 20, 2000, letters regarding modifications to the WIPP Hazardous Waste Facility Permit. Specifically, one letter was a Notice of Class 2 Modification and the other letter was a Request for Class 2 Permit Modifications to the WIPP permit.

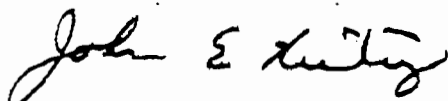
According to the Stipulation and Order filed with the U. S. District Court on March 24, 2000, NMED agreed to issue a classification determination for each of the four requested modifications "promptly and no later than seven (7) calendar days after receipt of DOE's modifications...". Attached to this letter is the basis for NMED's class determination for each modification submitted in the April 20, 2000 letters. NMED conducted this class determination as specified in 20 NMAC 4.1.900 (incorporated 40 CFR §270.42(d)).

Further, HRMB has reviewed these documents and determined that they are administratively complete. The New Mexico Hazardous Waste Fee Regulations require assessment of fees when administrative review of a document is complete, as specified in 20 NMAC 4.2.301. HRMB will issue an invoice to you under a separate cover. Payment is due within sixty (60) calendar days from the date that you receive the invoice.

The modification identified in the Notice of Class 1 Modification has been put into effect in accordance with 20 NMAC 4.1.900 (incorporating 40 CFR §270.42(a)(1)). The modification identified in the Request for Class 2 Permit Modification will be processed by NMED in accordance with the requirements specified in 20 NMAC 4.1.900 (incorporating 40 §270.42(b)).

If you have any questions regarding this matter, please contact Steve Zappe at (505) 827-1560.

Sincerely,



John E. Kicling, Acting Manager
Permits Management Program
Hazardous and Radioactive Materials Bureau

JEK:evm

cc: James P. Bearzi, NMED HRMB
Steve Zappe, NMED HRMB
Susan McMichael, NMED OGC
D. Neleigh, EPA, 6PD-N
David Neleigh, EPA Region 6
File: RED WIPP '00

Attachment**Class Determination for April 20, 2000 Submittals
WIPP Hazardous Waste Facility Permit
EPA I.D. Number NM4890139088****1. Class 2 modification: Permit Condition IV.B.2.b**

This change is a Class 1 permit modification according to 20 NMAC 4.1.900 (incorporating 40 CFR §270.42) Appendix 2, Modification A.2. It is an informational and non-substantive change under the category of "General Permit Provisions" which clarifies the language in Permit Condition IV.B.2.b and is consistent with the Department's intent. Further, as specified in 20 NMAC 4.1.900 (incorporating 40 CFR §270.42(d)(2)(i)), this change does not substantially alter the permit condition or reduce the capacity of the facility to protect human health or the environment.

2. Class 2 modification, Item 1: Permit Attachments B1 and B6 (Three sub-sample Requirement for VOCs During Solid Sampling)

This proposed change is a Class 2 permit modification according to 20 NMAC 4.1.900 (incorporating 40 CFR §270.42) Appendix 1, Modification B.1.d. It is an "other change" to waste sampling and analysis methods under the category of "General Facility Standards". As a proposed Class 2 modification, it is subject to the permit modification requirements 20 NMAC 4.1.900 (incorporating 40 CFR §270.42(b)).

3. Class 2 modification Item 2: Permit Attachments B2 and B6 (Miscertification Rate on a Waste Stream Basis)

This proposed change is a Class 2 permit modification according to 20 NMAC 4.1.900 (incorporating 40 CFR §270.42) Appendix 1, Modification B.1.d. It is an "other change" to waste sampling and analysis methods under the category of "General Facility Standards". As a proposed Class 2 modification, it is subject to the permit modification requirements of 20 NMAC 4.1.900 (incorporating 40 CFR §270.42(b)).

4. Class 2 Modification, Item 3: Permit Condition V.D and Table L-3 in Permit Attachment L (Substitution of Radionuclide-Specific data For Gross Alpha and Gross Beta Data)

The proposed change is a Class 2 permit modification according to 20 NMAC 4.1.900 (incorporating 40 CFR §270.42) Appendix 1, Modification C.5.b. It is a change in indicator parameters, hazardous constituents, or concentration limits as specified in the detection monitoring program under the category of "Ground-Water Protection". As a proposed Class 2 modification, it is subject to the permit modification requirements of 20 NMAC 4.1.900 (incorporating 40 CFR §270.42(b)).