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State of New Mexico
ENVIRONMENT DEPARTMENT

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PETER MAGGIORE
SECRETARY

September 14, 2001

**RE: RESPONSE TO SPECIFIC COMMENTS, CLASS 2 MODIFICATION REQUESTS
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088**

Dear Concerned Citizen:

On August 31, the New Mexico Environment Department (NMED) took administrative action on two Class 2 permit modification requests to the WIPP Hazardous Waste Facility Permit, as submitted to the Hazardous Waste Bureau in the following document:

- Request for Class 2 Permit Modifications, Letter Dated 5/1/01, Rec'd 5/2/01

These modifications were processed by NMED in accordance with the requirements specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(b)). The Department of Energy Carlsbad Field Office and Westinghouse TRU Solutions LLC (**the Permittees**) identified two separate modifications in their submittal: Ten-Drum Overpack (TDOP) Volume – Class 2, and Drum Age Criteria (DAC) – Class 2.

For the TDOP Volume Class 2 modification request, NMED denied it because the agency also rejected the underlying proposed Class 1 modification (“Item 2.d” contained in the Permittees’ July 20, 2000 submittal) upon which it was premised. Because the proposed volume increase was based upon direct loading of TDOPs, and direct loading of TDOPs was precluded by denial of the inappropriate Class 1 modification, no change could be made based upon the Class 2 TDOP Volume modification request.

For the DAC Class 2 modification request, NMED did not approve it “with changes” as allowed under 20.4.1.900 (incorporating 40 CFR §270.42(b)(6)(ii)(A)) because the complex nature of these changes necessitate the development of a draft permit. Therefore, NMED reclassified this modification request to follow the procedures for Class 3 modifications specified in 20.4.1.900 (incorporating 40 CFR §270.42(b)(6)(ii)(C)). NMED anticipates issuing a draft permit incorporating the DAC modifications for public comment within the next thirty to sixty (30 – 60)

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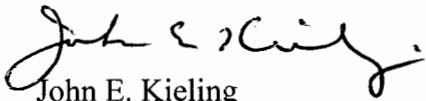
days. NMED will provide public notice regarding public participation opportunities upon issuance of the draft permit.

The TDOP Volume and DAC modifications were subject to a sixty (60) day public comment period, which ran from May 8, 2001 through July 6, 2001. NMED received written comments from ten individuals and organizations, including you, during this time. NMED's specific responses to each of the comments related to the TDOP Volume modification are incorporated in the attachment to this letter. NMED will address comments regarding the DAC modification in the forthcoming draft permit, and will respond to all comments at the conclusion of the public comment period for the draft permit.

Further information on this administrative action may be found on the NMED WIPP Information Page on the World Wide Web at <http://www.nmenv.state.nm.us/wipp/>.

Thank you for your participation by submitting written comments on this permit modification request. If you have any questions regarding this matter, please contact Steve Zappe at (505) 428-2517.

Sincerely,



John E. Kieling
Manager
Permits Management Program

JEK/soz

Attachment

cc: James Bearzi, HWB
Steve Zappe, HWB
Inés Triay, DOE/CBFO
John Lee, Westinghouse

**Response to Comments by NMED on WIPP Class 2 Modification Request (TDOP Only)
Received May 2, 2001**

Comment Number	Commentor/ Affiliation	Topic Area	Commentor Number	Comment Summary	Response	Include in Permit? y/n	Reviewer (initials)
2	Robert Kehrman, Westinghouse TRU Solutions	Drum Age Criteria Permit Modification Request and Ten Drum Overpack	B	The Commentor provided revised pages reflecting changes to the permit for the Ten Drum Overpack and Drum Age Criteria modifications on behalf of DOE. The changes update the B6 checklist revisions, presenting the changes in the six part rather than 10 part format.	The response is satisfactory in that the revisions must be presented in the six part rather than ten part B6 checklist format. However, NMED has denied the TDOP request revisions (see comment 3).		
3	Don Hancock, Southwest Research and Information Center	Ten Drum Overpack	C	The Commentor believes that because the Permittees did not properly notice the Class 1 permit modification allowing direct loading to TDOPs and because the it is questionable whether the change would be considered Class 1 in nature, this Class 1 should not be in effect. Also, the TDOP should be considered a Class 3 rather than Class 2 modification because of the dramatic increase in storage capacity. Additionally, the Commentor objected to the increase in storage capacity to show that the 160 cubic ft capacity is reasonable and the TDOP is designed to handled double the intended weight.	NMED agrees that the supporting Class 1 permit modification allowing direct loading to TDOPs was inappropriate as a Class 1 permit modification. As such, because the Class 2 permit modification is predicated on an improper Class 1 request, the Class 2 request has been denied. NMED notes that the basis for determining the class of a modification which increases storage capacity is based upon an increase of the total facility capacity, not the capacity of individual containers as the commentor suggested.		
4.1	Don Hancock, Southwest Research and Information Center	Ten Drum Overpack	C	The Commentor believes that the class 2 modification for the 10 drum overpack must be denied because the modification request is incomplete, the modification does not comply with other regulations covering the operating standards for hazardous waste storage and disposal facilities, and the conditions of the modification fail to protect human health and the environment.	See response to comment no. 3		

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5.1	Matthew Silva/ EEG	Ten Drum Overpack	D	The Commentor believes that the request combines two separate and unconnected modifications -- increased storage capacity in the WHB and consolidation of container descriptions -- into the same item. The Commentor points out that the downside of this approach is that rejection of one aspect spells rejection of the other, and the Commentor further points out that the Class 2 process makes this approach problematic.	NMED agrees that the TDOP requests lead to many questions pertaining to the appropriateness of permit modification classification, and the approach used by the Permittees to achieve TDOP approval was problematic. See response to comment 3.		
5.2	Matthew Silva/ EEG	Ten Drum Overpack	D	The Commentor believes that the portion of the modification request dealing with expansion of the storage capacity is reasonable.	NMED agrees that the request to expand the storage area is not necessarily unreasonable, but the request failed to consider the need to increase storage capacity in the Parking Area Unit at the same time for the same reason (i.e., direct loading of TDOPs). Other Commentors believe that the associated increased storage capacity for direct TDOP loading was not appropriately public noticed, and therefore this Class 2 permit modification, which is dependant on allowance of TDOP direct loading, should not be granted. See response to comment 3.		
5.3	Matthew Silva/ EEG	Ten Drum Overpack	D	The Commentor points out that the container-related modifications made in previous (i.e., July, 2000) Class 1 permit modification requests cannot be considered administrative and informational changes and exceed the boundaries of what should be considered a Class 1 permit modification.	NMED agrees with this analysis. See response to comment 3.		

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Received May 2, 2001**

5.4	Matthew Silva/ EEG	Ten Drum Overpack	D	The Commentor points out that the Permittees did not request changes to all necessary portions of the permit (i.e., Module IV,) with respect to container descriptions. The expressed intent of the modification request-- to consolidate container descriptions-- has not been met by the alterations.	NMED concurs with this analysis.		
5.5	Matthew Silva/ EEG	Ten Drum Overpack	D	The Commentor states that changes to the HWFP should be placed in the proper locations, as there are incorrect citations in the permit modification request.	NMED agrees with the observations made by the Commentor.		
7	Marina Day, citizen	Drum Age Criteria Permit Modification Request and Ten Drum Overpack	E	The Commentor believed that the storage capacity increase should be considered a Class 3 permit modification request.	See response to Comment 3.		
8.1	Penelope McMullen, Loretto Community of Sisters and Comembers	Ten Drum Overpack	F	The Commentor opposes surface storage of any waste, stating that the TRUPACTs should be unloaded in rooms with air locks. The Commentor does not oppose consolidation of container descriptions.	Allowable surface storage areas are presented in Module III of the permit, which specifies four allowable locations in the WHB storage unit. See response to comment 3.		
9	Lindsey Lovejoy, NMAGO	Ten Drum Overpack	G	The Commentor points out that the multiple permit modification requests confuse the issue of storage volume increases, making it unclear what the ultimate increase in storage size would be. An increase in container storage capacity in excess of 25% requires a Class 3 modification. The Commentor concludes that the TDOP proposal should be denied and all proposals for capacity increases be consolidated with the Centralized Confirmation Facility proposal and be considered under Class 3 procedures.	NMED concurs that the multiple permit modification requests confuses the actual storage capacity increases, imparting through incremental "small" changes an overall larger change. However, the overall change in capacity does not appear to exceed 25%. See response to comment 3.		

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11.29	Inés Triay, DOE	Ten Drum Overpack	H	Response to EEG Comment No. 1: Comment 5.1.	See response to comment 5.1		
11.30	Inés Triay, DOE	Ten Drum Overpack	H	Response to EEG Comment No. 2, Comment 5.2. No response necessary.	See response to comment 5.2		
11.31	Inés Triay, DOE	Ten Drum Overpack	H	Response to EEG Comment No. 3, Comment 5.3. The Permittees indicate that the placement of filters on TDOPs (cited by the EEG as an example of an inappropriate Class 1 permit modification request) were requested to cover the possibility that such configurations may be acceptable. The Permittees also states that the requirements that the filters work and that the container meet applicable transportation requirements have not changed.	The Permittees' response does not address the issue raised by EEG that inappropriate Class 1 permit modification requests were made. See response to Comment 5.3.		
11.32	Inés Triay, DOE	Ten Drum Overpack	H	Response to EEG Comment No. 4, Comment 5.4. The Permittees requested a modification to address EEG's concerns about Module IV.	See response to comment 5.4.		
11.33	Inés Triay, DOE	Ten Drum Overpack	H	Response to EEG Comment No. 5, Comment 5.5. The Permittees	See Response to comment 5.5		
12.1	Joni Arends/ CCNS	Ten Drum Overpack	I	The Commentor believes that the TDOP permit modification request should be denied. The request was incomplete, as the copy CCNS downloaded from the Internet prior to the June 7, 2001 public meeting is different from the redline copy sent after the meeting, specifically with respect to Acceptable Disposal Containers. In addition, the container volumes are not consistent within the Permit.	See response to comment 3.		
13.1	Deborah Reade, CARD	Ten Drum Overpack	J	The Commentor believes that the TDOP Class 2 permit modification request should be denied because more than one version of the request was submitted.	See response to comment 3.		

**NMED RESPONSE TO COMMENTS ON CLASS 2 MODIFICATIONS TO WIPP
HAZARDOUS WASTE FACILITY PERMIT
SUBMITTED MAY 2, 2001**

Comment A. The Permittees proposed a Class 2 permit modification to increase the capacity in existing permitted storage areas within the Waste Handling Building to accommodate the volume of direct loaded ten-drum overpacks (TDOPs). The Permittees also proposed to consolidate the descriptions of all containers into one attachment to the Permit. Several commentors believed an earlier modification implemented by the Permittees under the Class 1 modification process (not requiring public comment or NMED approval) was improperly classified and public noticed by the Permittees, calling into doubt whether that change was truly a Class 1 modification. Many commentors believed the increase in capacity exceeded 25% or that the modification was complex, such that the modification should undergo the Class 3 process involving greater public participation. One commentor stated that multiple permit modification requests confuse the issue of storage volume increase, making it unclear what the ultimate increase in capacity would be. Several commentors asked that the modification be denied because they believed the request was incomplete, the request failed to comply with regulations, or more than one version of the modification was submitted. One commentor pointed out that combining two unrelated modifications (increase capacity, consolidate container descriptions) was problematic, in that rejection of one item could result in rejection of the other. This commentor also pointed out that the modification to consolidate container descriptions did not address all necessary portions of the Permit. One commentor opposed surface storage of any waste at WIPP.

Response: NMED considered all public comment and information provided by the Permittees, and decided to deny the requested permit modification. The following explains how NMED assessed the issues raised by the public, and is offered to explain how NMED's decision was made:

- As stated in the cover letter, NMED denied this Class 2 modification because the agency also rejected the underlying proposed Class 1 modification ("Item 2.d" contained in the Permittees' July 20, 2000 submittal) upon which it was premised. This Class 1 modification proposed altering the text to include additional allowable waste containers, including the direct loading of ten-drum overpack containers and 85-gallon drums (rather than just using them as overpack drums), and the addition of 100-gallon drums. NMED rejected this Class 1 modification under the regulations because it was not a non-substantive change. Because the proposed volume increase was based upon direct loading of TDOPs, and direct loading of TDOPs was precluded by rejection of the inappropriate Class 1 modification, no change could be made based upon the Class 2 TDOP Volume modification request.
- The hazardous waste regulations stipulate that modification of container storage units resulting in up to 25% increase in the facility's storage capacity are considered Class 2 modifications. NMED notes that the 25% increase is based upon the total permitted capacity of the *facility*, not the capacity of a particular storage area or individual container. Based upon this standard, this permit modification appears to have been appropriately submitted as a Class 2 modification.

- Complexity is not the only standard to determine whether a modification request should be processed as a Class 3 modification, which further requires a draft permit and additional public participation. In some instances, the Permittees might benefit from following this course, but NMED does not believe that a modification should be processed as a Class 3 solely because some perceive it as “complex.”
- NMED concurs that the multiple permit modification requests (TDOP Volume, Central Confirmation Facility, etc.) confuse the storage capacity increase issue, imparting an overall large increase through a series of incremental “small” increases. While the change in capacity in this modification request did not appear to exceed 25%, NMED has advised the Permittees that a subsequent revised submittal might be considered a Class 3 modification if the total increased capacity exceeds 25% of the existing, approved capacity of the facility.
- Because the proposed modification was denied for the reasons stated above, NMED did not further evaluate the modification for completeness or compliance with the regulations. Regarding whether different versions were available for public review, NMED notes that the official submittals are a matter of public record and are available for review at NMED’s Hazardous Waste Bureau in Santa Fe.
- The approach used by the Permittees in combining two loosely related modification requests (storage capacity increase in the Waste Handling Building and consolidation of container descriptions) created some problems. Because the underlying Class 1 modification was rejected, both elements of this Class 2 modification became mute. NMED has suggested that the Permittees submit a complete modification request embodying the aspects of all proposed modifications to date as well as relevant public comment.
- While the permit modification request only addressed capacity increases in the Waste Handling Building Unit, it appears that similar consideration of direct-loaded TDOPs stored in TRUPACT-II shipping containers in the Parking Area Unit also should have been included in the capacity increase request. The Permittees did submit additional information in their comments regarding consolidated container descriptions in an attempt to address all portions of the Permit.
- NMED notes that the Permit as originally issued already allows temporary storage of waste in the Parking Area Unit and Waste Handling Building Unit for up to 60 days. This modification sought to increase the storage capacity, not to increase the storage time limit. Under existing hazardous waste regulations, the Permittees are allowed to request modification to their permit providing they demonstrate compliance with applicable standards.



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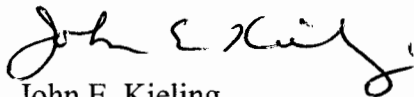
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John E. Kieling

Manager

Permits Management Program

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Inés Triay, DOE/CAO
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NMED Response to Comments
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