



**BILL RICHARDSON**  
GOVERNOR

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**

*Water and Waste Management Division*

*Harold Runnels Building*

*1190 St. Francis Drive, P.O. Box 26110*

*Santa Fe, New Mexico 87502-6110*

*Telephone (505) 827-2855*

*Fax (505) 827-2836*

*www.nmenv.state.nm.us*



**RON CURRY**  
SECRETARY

**DERRITH WATCHMAN-MOORE**  
DEPUTY SECRETARY

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

July 8, 2005

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

Mr. Richard D. Raaz, General Manager  
Washington TRU Solutions LLC  
P.O. Box 2078  
Carlsbad, New Mexico 88221-5608

**RE: FINAL DETERMINATION, CLASS 3 AND CLASS 1\* MODIFICATION REQUESTS  
WIPP HAZARDOUS WASTE FACILITY PERMIT  
EPA I.D. NUMBER NM4890139088**

Dear Dr. Triay and Mr. Raaz:

The New Mexico Environment Department (**NMED**) hereby approves with changes the permit modification requests (**PMR**) to the WIPP Hazardous Waste Facility Permit as submitted to the Hazardous Waste Bureau in the following documents:

- Request for Class 3 Permit Modification (Construction and Use of Panels), Letter Dated 5/13/03, Rec'd 5/14/03
- Request for Class 1\* Permit Modification (Panel 2 Closure Schedule), Letter Dated 2/24/05, Rec'd 3/7/05

The following items were included in these submittals:

1. Construction and Use of Hazardous Waste Disposal Units (Class 3)
2. Change to Closure Schedule for Panel 2 (Class 1\*)

The Class 3 PMR was processed in accordance with the requirements specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(c)). It was subject to an initial sixty (60) day public comment period running from May 16 through July 14, 2003, during which NMED received written specific comments from a total of seven individuals and organizations. NMED then

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issued a draft permit on September 17, 2004, which was subject to a forty-five (45) day public comment period ending November 1, 2004. NMED received written comments from a total of seven individuals and organizations.

The Class 1\* PMR was processed in accordance with the requirements specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(a)(2)). Although no public comment period is specified by regulation, NMED encourages members of the public to submit comments. NMED received written comment from one organization prior to rendering this final determination.

NMED notes that these two PMRs each proposed changes in the closure schedule for the Underground Hazardous Waste Disposal Units (**HWDUs**) specified in Table I-1 of Permit Attachment I, "Anticipated Earliest Closure Dates for the Underground HWDUs." However, the changes proposed in the Class 1\* PMR introduced discrepancies in the dates for activities in Panels 4 through 10 that had been previously specified in the Class 3 PMR. Furthermore, changes to Note 1 to Table I-1 proposed in the Class 1\* PMR were also inconsistent with dates provided on the table. The Permittees subsequently submitted additional comments on the Class 3 PMR on June 30 and July 1, 2005, clarifying and providing current estimates for dates of operations and closure for each Underground HWDU. NMED used the dates from the most recent comments as the basis for modifying Permit Attachment I.

As stated in NMED's administrative completeness determination letter dated June 30, 2005, NMED is also revising the permit to incorporate all previous Class 1 notifications received between December 30, 2004 and April 29, 2005. NMED has also initiated minor edits to specific Modules and Permit Attachments (inclusion of missing "\$" symbols, correcting internal references, etc.) as noted in Attachment 1 to this letter.

NMED hereby approves these modifications with changes as noted in Attachment 1. Attachment 2 contains the redline/strikeout pages of the modified permit to help the reader rapidly identify each modification. Language deleted from the permit is ~~stricken out~~. Language added to the permit is **highlighted in redline**. Specific language changes imposed by NMED are distinguished from language changes proposed in the modification request by **yellow highlighting**.

Also enclosed is a CD-ROM containing the modified files in WordPerfect 12 redline/strikeout format as well as files with markings and comments removed. An electronic version of the modified permit with markings removed will be publicly posted on the NMED WIPP Information Page at <<http://www.nmenv.state.nm.us/wipp/download.html>>.

For purposes of version control, please note that NMED has established the date of these modified pages and attachment as July 8, 2005. The effective date of the permit modification approval is your date of receipt of this letter.

NMED is providing full response to all public comments under separate cover next week.

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If you have any questions regarding this matter, please contact Steve Zappe of my staff at (505) 428-2517.

Sincerely,

*original signed by*

Cindy Padilla

Director

Water and Waste Management Division

CP/soz

Attachment 1 – changes to permit modification requests

Attachment 2 – redline/strikeout pages

cc w/o Attachment 2:

James Bearzi, NMED HWB

John Kieling, NMED HWB

Steve Zappe, NMED HWB

Tom Klein, NMED DOE-OB

Laurie King, EPA Region 6

Sharon White, EPA ORIA

Connie Walker, Trinity Engineering

cc w/ Attachments

Chuck Noble, NMED OGC

Connie Walker, Trinity Engineering

File: Red WIPP '05

## **Attachment 1**

### **Changes to Permit Modification Requests**

This following list identifies each instance where NMED changed the language from the original permit modification request, either as a result of public comment, for clarity or accuracy, or the need to impose consistency on permit language conventions

Module IV, Table IV.A.1 - May 12b, 2003, Item 11.a.2, except retain the Total row and recalculate the values for Maximum Capacity and Container Equivalent. Also, edit the table to address SRIC Comment 3, November 1, 2004.

Module IV, Permit Condition IV.B.1.c – NMED edit to correct typographical error (incorrect reference).

Module IV, Permit Condition IV.E.2 – create subsection heading “IV.E.2.a - Construction requirements” and indent to match new subsection IV.E.2.b, “Notification requirements”.

Module IV, Permit Condition IV.F.1.a – add section symbol (§).

Module IV, Permit Condition IV.F.1.b – Permittees’ response to Comment 66 on July 14, 2003.

Module V, Permit Condition V.A – add section symbol (§).

Permit Attachment A, Section A-6, September 16, 2004, Item 1.a.1 – NMED edits to basic language to conform to the style and content of preceding language.

Permit Attachment B, List of Tables, April 27a, 2005, Item 1.a – NMED changes to make title of Table B-10 consistent with actual table title.

Permit Attachment B, Introduction and Highlights, April 27a, 2005, Item 1.b – NMED edit to have the sentence make sense.

Permit Attachment B, Section B-2, April 27a, 2005, Item 1.b – NMED edit to include U-listed waste codes.

Permit Attachment B, Table B-10, April 27a, 2005, Item 1.c – NMED edit to replace reference to Permit Condition II.C.3.g with a statement of the actual condition, and to identify those hazardous waste numbers affected by that condition.

Permit Attachment B, various locations – add section symbol (§).

Permit Attachment B1, Table B1-4 – delete row in Table B1-4 regarding PCB sampling requirements (previously contained ~~strikeout~~ language)

Permit Attachment B6, Checklist Question 8, April 27a, 2005, Item 2.a – NMED edit to include U-listed waste codes.

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Permit Attachment B6, Checklist Question 139, April 27a, 2005, Item 2.b – NMED edit to make the sentence grammatically correct.

Permit Attachment B6, Checklist Question 308, April 27a, 2005, Item 2.c – change not made because NMED was in error identifying this as a problem.

Permit Attachment B6, Checklist Question 309, April 27a, 2005, Item 2.c – retain reference to Section B1-3b(5) as well.

Permit Attachment I, Section I-1 – add section symbol (§).

Permit Attachment I, Section I-1d(1), May 12b, 2003, Item 11.c.2 – retained the sentence “This schedule assumes there will be little contamination within the exhaust drift of the panel” because the PMR does not address the schedule shown in Figure I-2.

Permit Attachment I, Section I-1d(1), February 24, 2005, Item 1.a.1 – edited to be consistent with Note 5 on Table I-1.

Permit Attachment I, Table I-1, May 12b, 2003, Item 11.c.3 (Class 3 PMR), and February 24, 2005, Item 1.a.2 (Class 1\* PMR) – further modified by comments on draft permit submitted by Permittees dated June 30 and July 1, 2005, to fix the inconsistencies introduced by the February 24, 2005, Class 1\* PMR. Additional NMED edits include changing the Closure End date for Panel 5 to be consistent with the six-month interval for all other panels, and changing the Operations Start date for Panel 7 to coincide with the Operations End date for Panel 6, consistent with other panels.

Permit Attachment I, Table I-2 and footnote – modified by comments on draft permit submitted by Permittees dated June 30 and July 1, 2005. Further modified by NMED to make the notification of closure date consistent.

Permit Attachment L, Section L-4c(2)(ii) – NMED edit removing reference to and footnote for WIPP Procedure WP02-EM1015 to be consistent with Class 1 modification dated September 21, 2000, Items 1.b.5 and 1.c.6.

Permit Attachment M2, Section M2-1, May 12b, 2003, Item 11.d.1 – edit to address SRIC Comment 3, November 1, 2004.

Permit Attachment M2, Section M2-2a(3), May 12b, 2003, Item 11.d.2 – edit to address SRIC Comment 3, November 1, 2004.

Permit Attachment M2, Section M2-5b(2)(a), May 12b, 2003, Item 11.d.4 – modified by Permittees’ response to Comment 58 on July 14, 2003.

Permit Attachment N, Section N-1a, May 12b, 2003, Item 11.e.1 – didn’t delete “contact-handled”.

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Permit Attachment N, Section N-3a, May 12b, 2003, Item 11.e.2 – deleted the phrase “, if necessary” to be consistent with original intent.

Permit Attachment O, Section XII, May 12b, 2003, Item 11.f.1 – additional edit to address SRIC Comment 3, November 1, 2004.

Permit Attachment P, Table of Contents and summary page – NMED edit removing reference to WIPP Procedure WP02-EM1015 to be consistent with Class 1 modification dated September 21, 2000, Items 1.b.5 and 1.c.6.

Permit Attachment P, description of WIPP Procedure WP 02-RC.04 – add section symbols (§).

Attachment 2  
Redline/Strikeout Pages