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**NEW MEXICO
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Hazardous Waste Bureau

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RON CURRY
Secretary

JON GOLDSTEIN
Deputy Secretary

October 23, 2008

**RE: NOTICE OF APPROVAL AND GENERAL RESPONSE TO COMMENTS; CLASS 3
MODIFICATION FOR NO FURTHER ACTION OF SOLID WASTE MANAGEMENT UNITS AND
AREAS OF CONCERN
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088**

Dear Interested Person:

This letter is a notification of the final administrative action by the New Mexico Environment Department (NMED) to approve a Class 3 permit modification request (PMR) to the Waste Isolation Pilot Plant (WIPP) Hazardous Waste Facility Permit. The Department of Energy Carlsbad Field Office and Washington TRU Solutions LLC (the Permittees) submitted this PMR to the Hazardous Waste Bureau in the following document:

- Request for Class 3 Permit Modification (NFA), Letter Dated 8/27, Rec'd 9/4/07

In this PMR, the Permittees requested the following:

1. Modify the permit to reflect the determination by NMED that no further action is necessary to investigate fifteen Solid Waste Management Units (SWMUs) and eight Areas of Concern (AOCs) at WIPP.

This Class 3 PMR was evaluated and processed in accordance with the requirements specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(c)). It was subject to a 60-day public comment period running from September 1 through October 30, 2007, during which NMED received written comments from one individual and one organization. NMED then issued a draft permit on March 7, 2008, accompanied by a fact sheet and public notice announcing a 60-day public comment period running from March 7 through May 6, 2008 and an opportunity for public hearing. By the conclusion of the public comment period on the draft permit, NMED had received no public comments on the draft permit and no request for a public hearing. NMED's

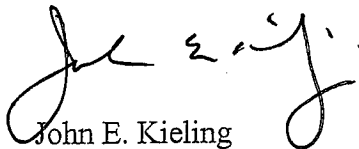
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received no public comments on the draft permit and no request for a public hearing. NMED's general responses to the comments related to the submitted PMR are summarized in the attachment to this letter.

NMED is approving the draft permit without change to remove the fifteen SWMUs and eight AOCs from Module VII as requiring no further action. The modification will become effective 30 days after the approval of the modification, which makes the effective date of the permit modification November 22, 2008. Further information on this administrative action, including the modified permit and the Permittees' approval notification, may be found on the NMED WIPP Information Page at <<http://www.nmenv.state.nm.us/wipp/>>. Please contact Steve Zappe at (505) 476-6051 or via e-mail at <steve.zappe@state.nm.us> if you have further questions or need additional information.

Sincerely,



John E. Kieling
Manager
Permits Management Program

Attachment

cc: James Bearzi, HWB
Steve Zappe, HWB
David Moody, DOE/CBFO
Farok Sharif, Washington TRU Solutions LLC

**NMED GENERAL RESPONSE TO COMMENTS ON CLASS 3 PERMIT MODIFICATION TO WIPP
HAZARDOUS WASTE FACILITY PERMIT (WIPP PERMIT)
SUBMITTED AUGUST 27, 2007**

Item 1. Modify the WIPP Permit to accurately reflect that No Further Action is required for Solid Waste Management Units and Areas of Concern at WIPP

Background: The PMR proposed to modify the WIPP Permit to reflect a determination by NMED on April 20, 2007, which had concluded that no further action was necessary to investigate fifteen Solid Waste Management Units (SWMUs) and eight Areas of Concern (AOCs) listed in several tables in Module VII of the WIPP Permit. NMED had issued this determination based upon evaluation of relevant sampling information for each site, which supported the conclusion that a more formal RCRA Facility Investigation (RFI) was unnecessary because either there had never been a release of hazardous constituents to the environment at a site or, if there had been a release, a release assessment indicated that the concentrations of hazardous constituents were at acceptably low levels to require no further action. Below is a summary of the changes proposed by the PMR:

- Delete Table 2 entitled “SWMUs Requiring an RFI”
- Delete Table 3 entitled “AOCs Included in the Permit”
- Add Table 4 entitled “SWMUs/AOCs Requiring No Further Action”

NMED received two comments during the public comment period for this PMR, which are addressed below. Based upon public comment and the administrative record, NMED issued a draft permit on March 7, 2008, accompanied by a fact sheet and public notice announcing a 60-day public comment period and opportunity for public hearing. By the conclusion of the public comment period on the draft permit, NMED had received no public comments and no request for a public hearing.

Comments: The first commenter submitted a redacted version of the Permittees’ fact sheet for the PMR, suggesting that the Permittees had written the fact sheet intentionally to obscure the truth. The second commenter expressed no objection to the approval of the PMR, but noted that the proposed modification did not address a different minor modification to update another table in Module VII of the Permit. This commenter requested that the PMR not be approved until this specific table had been updated and finalized.

Response: The first comment did not provide any technical or regulatory suggestions relevant to the PMR, and no response is necessary.

Regarding the second comment, NMED incorporated the change to Table 2A, “SWMUs Not Requiring an RFI”, which addressed the commenter’s concern.

The only other changes from the original PMR that NMED incorporated in the draft permit consisted of not deleting Tables 2 and 3 in their entirety, but deleting all entries from each table and indicating that future entries in each table were “Reserved.” This change was necessary because Permit Condition VII.J contains requirements associated with newly-identified SWMUs and potential AOCs, which would necessitate their listing on these tables that would otherwise have been deleted.