

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF THE INTENT
TO APPROVE A CLASS 3 MODIFICATION
TO THE HAZARDOUS WASTE FACILITY
PERMIT FOR THE WASTE ISOLATION
PILOT PLANT, CARLSBAD, NEW MEXICO
U.S. EPA NO. NM4890139088**

No. HWB 02-01 (M)

FINAL ORDER

This matter comes before me following a hearing before the Hearing Officer on August 26, August 27 and August 28, 2002, in Santa Fe, New Mexico.

Applicants Department of Energy (DOE) and Westinghouse TRU Solutions (“Applicants” or “permittees”) seek a modification to their hazardous waste facility permit for the Waste Isolation Pilot Plant (WIPP) located 26 miles east of Carlsbad in Eddy County, New Mexico. The requested modification is to establish new drum age criteria (DAC) for taking a representative headspace gas sample based on additional packaging configuration groups. The New Mexico Environment Department (NMED) Hazardous Waste Bureau (Bureau) supports the issuance of the permit modification with conditions necessary to protect public health and welfare and the environment.

Having considered the administrative record in its entirety, including the Proposed Findings of Fact and Conclusions of Law submitted by the Applicants, the Bureau, and third parties, the Hearing Officer’s Report; and being otherwise fully advised regarding this matter;

I HEREBY ADOPT THE HEARING OFFICER'S REPORT AND THE BUREAU'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

I have considered the post-hearing submittals made by the Applicant and Southwest Research and Information Center (SRIC). SRIC's statements are not well taken: (1) It is not the agency's usual practice to lengthen the comment period; the comment period is discretionary, and the reasons given for shortening it in this case are appropriate. I have been reviewing the record over the past two weeks. (2) This is neither the time nor the place to address a previous Secretary's alleged commitment to assign a hearing officer from outside the agency to handle WIPP permit modification requests. SRIC should address their concerns to the new Secretary. (3) This permit modification is supported by the record, and it is not necessary for the Applicant to demonstrate that the existing DAC leads to errors in order to justify a new DAC. (4) I have reviewed the transcript, and find that the Hearing Officer appropriately summarized the testimony given in this matter, and that the testimony supports her discussion of why the modification should be granted.

IT IS THEREFORE ORDERED:

1. The Hazardous Waste Bureau shall prepare a Final Permit that incorporates all modifications shown in the August 26, 2002 Proposed Final Permit, with the changes indicated below and any other Class 1 or Class 2 modifications then in effect, and shall issue it within thirty days. The changes are as follows:
 - a. Table B1-9, Packaging Configuration Group 3, should be changed so that the value of 197 days is changed to 199 days.

- b. The sentence appearing in blue highlight in the August 26 Proposed Final Permit at page B3-22 should be moved to page B3-26 under the requirements for signature release of the site project manager. The requirement should also be included in the B6 checklist, item 40. Tr. Tr. 8-27-02, p. 374.
- c. The last sentence of footnote “a” in Tables B1-7, B1-9 and B1-10 should be stricken and the following sentence should be added in its place: “If a filter H2 diffusivity for a container is undocumented or unknown or is less than 1.9×10^{-6} filter H2 diffusivity, a filter of known H2 diffusivity that is greater than or equal to 1.9×10^{-6} filter H2 diffusivity must be installed prior to initiation of the relevant DAC period.”
- d. The following language should be added to Permit Attachment B1, Section B1-1a (3), following the sentence ending on line 36 of page B1-3 of the August 26 Proposed Final Permit: “Consistent with footnote “a” in Table B1-8, any waste container that cannot be assigned a packaging configuration specified in Table B1-8 shall not be shipped to, or accepted for disposal at WIPP.”
- e. The following language should be added to the August 26 Proposed Final Permit, Table B1-8, Scenario 3 Packaging Configuration Groups, following the footnotes:

“Definitions:

Liner Bags: One or more optional plastic bags that are used to control radiological contamination. Liner bags for drums have a thickness of approximately 11 mils. SWB liner bags have a thickness of

approximately 14 mils. Liner bags are typically similar in size to the container.

Inner Bags: One or more optional plastic bags that are used to control radiological contamination. Inner bags have a thickness of approximately 5 mils and are typically smaller than liner bags.”

- f. Table B1-8 should be amended such that the words “55 gal.” precede the word “drums” where it is used in Table B1-8.

_____ Original Signed by _____
JOHN R. D'ANTONIO, JR.,
SECRETARY

Certificate of Service

I hereby certify that on December 31, 2002, a copy of the Final Order was mailed to the following persons by first class mail:

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And a copy was sent via inter-agency mail to:

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Original Signed by: _____
Geraldine Madrid-Chavez, Administrator