

**Determination of Class Modification**

**Revise Comment Period**

**Waste Isolation Pilot Plant  
Carlsbad, New Mexico**

**WIPP HWFP #NM4890139088-TSDF**

**July 2007**

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## Overview of the Permit Modification Notification

This document contains a modification to the Hazardous Waste Facility Permit (**HWFP**) at the Waste Isolation Pilot Plant (**WIPP**), Permit Number NM4890139088-TSDF hereinafter referred to as the WIPP HWFP.

This modification is not explicitly listed in 20.4.1.900 New Mexico Administrative Code (**NMAC**) incorporating Title 40 of the Code of Federal Regulations (40 **CFR**) §270.42, Appendix I. In accordance with 20.4.1.900 NMAC (incorporating 40 CFR §270.42(d)) the U.S. Department of Energy (**DOE**), Carlsbad Field Office (**CBFO**) and Washington TRU Solutions LLC (**WTS**), collectively referred to as the Permittees, are requesting a determination of class by the New Mexico Environment Department (**NMED**).

This modification corrects an inconsistency between two portions of the HWFP. The Permittees believe that this change qualifies as a Class 1 modification in that it is similar to an administrative change to correct an inconsistency.

The Permittees request that the NMED Secretary concur with this interpretation and act upon this request as a Class 1 modification.

These changes do not reduce the ability of the Permittees to provide continued protection to human health and the environment.

The requested modifications to the WIPP HWFP and related supporting documents are provided in this PMN. The proposed modifications to the text of the WIPP HWFP has been identified using a double underline and revision bar in the right hand margin for added information, and a ~~strikeout~~ font for deleted information. All direct quotations are indicated by italicized text.

**Attachment A**

**Description of the Permit Modification**

**Table 1. Class 1 Hazardous Waste Facility Permit Modification Notification**

<b>No.</b>	<b>Affected Permit Section</b>	<b>Item</b>	<b>Category</b>	<b>Attachment A Page #</b>
1	a. Module VII	Delete "forty-five (45) calendar day" from the comment period requirement.		A-3

## Item 1

### Description:

This modification will delete the requirement that there be a 45 day comment period for a Class 3 permit modification to remove solid waste management units and areas of concern from the permit as a result of a no further action determination by the NMED.

### Basis:

The Permittees are requesting a determination of class from the NMED as this change is not explicitly listed in 20.4.1.900 NMAC (incorporating 40 CFR §270.42, Appendix I). The comment period for Class 3 modifications listed in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(c)), is specifically indicated as 60 days. The Permittees believe that this change qualifies as a Class 1 modification in that it is similar to an administrative change to corrects an inconsistency within HWFP.

### Discussion:

At a recent stakeholder meeting it was mentioned by one of the stakeholders that they anticipated a 60 day comment period for the Class 3 PMR to remove solid waste management units and areas of concern from the permit as a result of a no further action determination by the NMED rather than the 45 day comment period specified in Module VII. In response to that request the Permittees have decided to correct the inconsistency with this change.

The Permittees would request that the NMED act upon this determination of Class in an expeditious manner as the Permittees intend to submit the Class 3 PMR to remove solid waste management units and areas of concern from the permit as a result of a no further action determination by the NMED upon determination that the subject modification is a Class 1.

### Revised Permit Text:

**a. DETERMINATION OF NO FURTHER ACTION**

- a. Based on the results of the RFI and/or other relevant information, the Permittees may petition the Secretary for a Class III Permit modification under 20.4.1.900 NMAC (incorporating 40 CFR §270.42(c)) to terminate the RFI/CMS process for a specific SWMU. This petition shall contain information demonstrating that there are no releases of hazardous waste or hazardous constituents to the soil from a particular SWMU

at the facility that pose threats to human health and/or the environment, as well as additional information required in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(c)).

If, based upon review of the Permittees' request for a Permit modification, the results of the RFI, and other information, including comments received during the ~~forty-five (45) calendar day~~ public comment period required for Class III Permit modifications, the Secretary determines that releases or suspected releases which were investigated either are non-existent or do not pose a threat to human health and/or the environment, the Secretary may grant the requested modification.