

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

HH: James
1544

IN THE MATTER OF U.S. DEPARTMENT
OF ENERGY & WESTINGHOUSE WASTE
ISOLATION DIVISION, CARLSBAD, NM
NM 4890139088

HRM 99-05(CO)

STIPULATED FINAL ORDER

Pursuant to Section 74-4-10 of the New Mexico Hazardous Waste Act (HWA), NMSA 1978 §74-4-10 (Repl. Pamph. 1993), and the Adjudicatory Procedures of the New Mexico Environment Department (NMED), 20 NMAC §1.5.601, the NMED and the Respondents, United States Department of Energy (DOE) and the Westinghouse Waste Isolation Division (WID), collectively referred to as the Parties, hereby enter into this Stipulated Final Order concerning Administrative Compliance Order HRM 99-05 (Compliance Order), issued by the NMED on November 30, 1999. The Parties hereby agree to the facts and conclusions of this Stipulated Final Order, as follows:

I. FACTS

1. On November 30, 1999, the NMED issued Administrative Compliance Order, HRM 99-05 (CO) to the Respondents, including findings of fact and conclusions of law under the HWA and Hazardous Waste Management Regulations (20 NMAC 4.1). Those findings of fact and conclusions of law are incorporated by reference into this Stipulated Final Order.

2. On December 16, 1999, the Respondents filed their Answer and Request for a Hearing, and Emergency Request for a Stay of Corrective Action Requirements. The Respondents Answer and Requests are incorporated by reference into this Stipulated Final Order.



3. On December 22, 1999, the NMED issued an Order Granting the Respondents Emergency Request for a Stay of Corrective Action Requirements.

4. The Respondents submitted supplemental information to the NMED, concerning the waste at issue in the Compliance Order, as follows:

(a) On December 16, 1999, the Respondents transmitted "Chronology of Previous Designations of Certain IDC's in Waste Stream RF005.01 as Mixed Waste," "RFETS Characterization and Shipping Approval Chronology," "Settlement Agreement and Compliance Order on Consent No. 93-04-23-01," "Compliance Order on Consent No. 99-09-24-01," and "Crosswalk of Certain IDC's Previously Identified as Mixed Residues that Became Waste Stream RF005.01 IDC's;" and

(b) On January 7, 2000, the Respondents transmitted "Response to NMED Comments on the Review of 'Non-Mixed Waste Determination for TRU Stabilized Pyrochemical Salts-Profile No. RF005.01, Revision 2.1.'"

5. On February 11, 2000, the Parties engaged in a Settlement Conference to seek resolution of the Compliance Order.

II. CONCLUSIONS

1. The Respondents, DOE and WID, have provided supplemental information to NMED concerning the waste at issue in Administrative Compliance Order HRM 99-05 (CO) and assert that those submissions resolve any outstanding questions as to whether or not the waste at issue is non-hazardous.

2. The Respondents neither admit nor deny the specific factual and legal allegations contained in the Compliance Order other than as otherwise admitted or denied in their Answer, Requests and/or responses.

III COMPROMISE AND SETTLEMENT OF COMPLIANCE ORDER

In compromise and settlement of all alleged violations and penalties set forth in the Compliance Order, and upon consideration of the nature of the alleged violations, and good faith efforts to comply and other matters as justice may require, the Parties hereby agree to the following:

1. Respondents agree that for future mixed and non-mixed transuranic waste shipments destined for storage and/or disposal at the Waste Isolation Pilot Plant (WIPP) they shall comply with the characterization requirements of Permit Condition II.C and IV.B.2.b of WIPP's hazardous waste facility permit (WIPP Permit).

2. The Parties understand that adherence to the WIPP Permit Conditions II.C and IV.B.2.b will eliminate the necessity for Respondents to engage in hazardous waste determinations and, further, will prevent the reoccurrence of the events that gave rise to the issuance of this Compliance Order.

3. NMED is satisfied, in view of the foregoing, that no further responses are required by the Respondents.

4. The alleged violations that gave rise to this Compliance Order, if established at a hearing, could have resulted in the assessment and imposition of penalties under the HWA. In lieu of a hearing that could have led to the assessment and imposition of any penalties for the alleged violations, DOE agrees to pay NMED's costs associated

with review of the information DOE provided and this Compliance Order in the amount of \$75,000.00.

5. NMED agrees with DOE that the payment of the costs will be made pursuant to the June 16, 1999, Memorandum of Agreement between DOE and NMED in which DOE agreed to pay for the review of all information DOE provided to NMED concerning the shipment of Waste Stream RF005.01. DOE agrees to pay \$75,000.00 to NMED within 20 days of the execution of this agreement

6. Given these facts, the conclusions of the Parties and the agreement to compromise and settle this matter, Administrative Compliance Order HRM 99-05 (CO) is hereby dismissed as to all claims.

APPROVALS

The undersigned represent that they are authorized to approve this Stipulated Final Order on behalf of their respective organizations, as listed below. This Stipulated Final Order will become effective on the date last recorded below.

SIGNATURE Inés R. Triay Date 2/22/00
 PRINT NAME Inés R. Triay, CAO Manager
 U.S. Department of Energy
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SIGNATURE Joseph L. Epstein Date 2/22/00
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SIGNATURE Paul R. Ritzma Date 2/21/00
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