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State of New Mexico
ENVIRONMENT DEPARTMENT

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PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 6, 2001

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

Mr. Hank Herrera, General Manager
Westinghouse TRU Solutions, LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-5608

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

Dear Dr. Triay and Mr. Herrera:

On March 8, 2001, the New Mexico Environment Department (NMED) Hazardous Waste Bureau received your Class 1* permit modification request to eliminate the use of magnesium oxide (MgO) mini-sacks in the WIPP underground. This request was submitted as a Class 1 modification requiring NMED approval prior to implementation, based upon an analysis of 20.4.1.900 NMAC (incorporating 40 CFR §270.42 Appendix I, Item A.8). This category of modification addresses “[c]hanges to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility).”

NMED has reviewed this document and determined that it is administratively complete. The New Mexico Hazardous Waste Fee Regulations require assessment of fees when administrative review of a document is complete, as specified in 20.4.2.301 NMAC. NMED will issue an invoice to you under a separate letter. Payment is due within sixty (60) calendar days from the date that you receive the invoice.

NMED has also reviewed this document for technical adequacy. The Permittees supported the removal of the permit requirement for MgO mini-sacks with documentation submitted to the US EPA justifying the elimination of the same under EPA’s certification decision. In a January 11,



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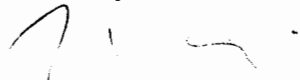
2001, letter to Inés Triay, Mr. Frank Marcinowski, Acting Director of EPA's Radiation Protection Division, stated the following:

"We have reviewed your request [for approval to eliminate MgO mini-sacks] and agree that this change, which you have proposed to improve operational safety, will not significantly impact the WIPP's long-term performance (see the enclosed report). The quantity of MgO that the Department of Energy (DOE) is required to place in the WIPP is expected to prevent or delay substantially the movement of radionuclides to the accessible environment. Therefore, we approve your proposal."

Based upon the fact that NMED required the use of MgO mini-sacks in the permit solely because of EPA's requirements, and that EPA has now removed that requirement, NMED hereby approves this modification to the permit to eliminate the use of MgO mini-sacks. Please submit clean copies of all figures that have been modified to NMED for incorporation into the permit.

If you have any questions regarding this matter, please contact Steve Zappe at (505) 827-1560, x1013.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: Paul Ritzma, NMED
Greg Lewis, NMED
John Kieling, NMED HWB
Steve Zappe, NMED HWB
Cindy Abeyta, NMED HWB
Susan McMichael, NMED OGC
David Neleigh, EPA Region 6
Connie Walker, TechLaw
✓ File: Red WIPP '01