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ENVIRONMENT DEPARTMENT

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ENTERED



PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 27, 2001

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

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

**RE: ANTICIPATED NON-COMPLIANCE
EPA I.D. NUMBER NM4890139088**

Dear Dr. Triay and Mr. Lee:

The New Mexico Environment Department (**NMED**) is in receipt of DOE's July 18, 2001 letter requesting a storage time extension associated with a suspension of emplacement activities for regulatory reasons. This letter described actions that the Department of Energy Carlsbad Field Office and Westinghouse TRU Solutions LLC (**the Permittees**) had taken with regard to waste received from the Idaho National Engineering and Environmental Laboratory (**INEEL**) that had been radioassayed by the Waste Analysis Gamma Spectrometer (**WAGS**). In a July 9, 2001 letter from EPA's Office of Radiation and Indoor Air to DOE, EPA stated, "Waste from INEEL that is located at the WIPP surface facility may be placed in the mine if it was characterized using processes previously approved by EPA; otherwise, it should be held on the surface until we issue our determination on the WAGS system."

The WIPP Hazardous Waste Facility Permit specifies the manner in which waste is managed and stored in the Waste Handling Building and the Parking Area Units. Permit Attachment M1 (Container Storage), Section M1-1d (Container Management Practices), identifies off-normal events and specifies the required action by the Permittees:

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Off-normal events could interrupt normal operations in the waste management process line. These off normal events fall into the following categories:

- *Waste management system equipment malfunctions*
- *Waste shipments with unacceptable levels of surface contamination*
- *Hazardous Waste Manifest discrepancies that are not immediately resolved*
- *A suspension of emplacement activities for regulatory reasons*

Shipments of waste from the generator sites will be stopped in any event which results in an interruption to normal waste handling operations that exceeds three days.

Permit Attachment F (Contingency Plan), Section F-1 (General Information, Off-Normal Events) specifies substantially the same required action:

Off-normal events could interrupt normal operations in the waste management process line. Shipments of waste from the generator sites will be stopped in any event which results in an interruption to normal waste handling operations that exceeds three days.

The Permittees have continued receiving shipments of waste from the generator sites during EPA's suspension of emplacement activities. Based upon a review of the WIPP Waste Information System on July 24, 2001, NMED has determined that the Permittees have received approximately twenty-five (25) shipments from generator/storage sites since July 9, 2001, including eleven shipments from INEEL, twelve shipments from Rocky Flats, and one shipment each from Hanford and Los Alamos. NMED is concerned that the continued shipment of waste during the off-normal event may result in the future violation of the storage time limit requirements of the Permit, Module III.A.1.e. Further, and in response to your July 18, 2001 letter, Module III.A.1 of the Permit does not authorize Permittees to store TRU mixed waste on facility pallets at the TRUDOCKs, as requested. The parking area and TRUDOCK provide no secondary containment, and under the Permit, only TRUPACKs may be stored at the TRUDOCK. See Permit Attachment M1-25, line 25. Therefore, a permit modification is necessary in order to allow Permittees to store TRU mixed waste on facility pallets at the TRUDOCKs.

For these reasons, NMED has determined that the Permittees shall suspend waste shipments from INEEL and any other necessary generator site unless the Permittees can demonstrate that continued waste shipments will not violate storage time limits or any other container storage requirements of the Permit. Under Section 74-4-10 of the New Mexico Hazardous Waste Act, a permit violation may result in: (1) the issuance of a

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compliance order requiring immediate compliance and the assessment of a civil penalty of up to \$10,000 per day of non-compliance with each violation, or both; or (2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

NMED hereby requests the Permittees to provide the Department, within five (5) working days of the date of this letter, a detailed description of how its anticipated non-compliance will be resolved under the Permit. The failure to comply with the Permit may result in initiation of formal enforcement actions as outlined above.

Any action taken in response to this letter does not relieve the Permittees of their obligation to comply with 20.4.1. NMAC in other activities that it conducts, nor does it relieve the Permittees of their obligation to comply with the Permit or any other applicable laws and regulations.

If you have any questions regarding this matter, please contact me at (505) 428-2512. Please address your response to my attention at the address on the letterhead.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: Paul Ritzma, NMED
Greg Lewis, NMED WWMD
John Kieling, NMED HWB
Debby Brinkerhoff, NMED HWB
Steve Zappe, NMED HWB
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