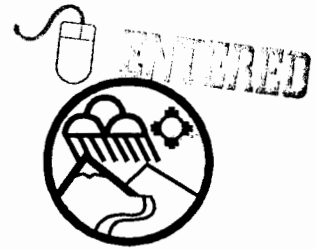




GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505
Telephone (505) 428-2500
Fax (505) 428-2567
www.nmenv.state.nm.us



PETER MAGGIORE
SECRETARY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

September 24, 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: NOTICE OF VIOLATION
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088

Dear Dr. Triay and Mr. Lee:

The New Mexico Environment Department (NMED) received information regarding several improperly classified Class 1 permit modifications submitted from July 20, 2000 to August 28, 2001 from the DOE and Westinghouse (the Permittees) for the Waste Isolation Pilot Plant (WIPP). NMED's rejection of these modifications is provided to the Permittees in Greg Lewis's September 24, 2001 letter to the Permittees. Based on the rejections and our review of the information obtained, NMED has determined that the Permittees have violated the New Mexico Hazardous Waste Management Regulations (20.4.1 NMAC) as specified below.

1. The Permittees submitted and put into effect permit modifications that failed to meet the requirements for Class 1 modifications listed in Appendix I of 40 §CFR 270.42. This is a violation of the Permit Condition I.B.1 Permit Modification, Suspension and Revocation and 20.4.1.900 NMAC (incorporating 40 CFR §270.42). The subject modifications are:
 - a. Use of composited headspace gas data and to allow up to 20 composited samples
 - Item 14, July 20, 2000 Notice of Class 1 Permit Modification,
 - Item 2, November 1, 2000 Notice of Class 1 Permit Modification,
 - b. Establishing safety conditions for visual examination
 - Item 4, November 1, 2000 Notice of Class 1 Permit Modification,
 - c. Requirements for sampling through the existing filter vent hole
 - Item 3, November 1, 2000 Notice of Class 1 Permit Modification,
 - Item 1, December 12, 2000 Notice of Class 1 Permit Modification.

010956



Dr. Inés Triay
Mr. John Lee
September 24, 2001
Page 2

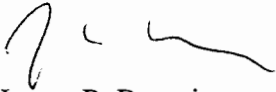
2. Due to the improper implementation of Class 1 modifications of the Permit, the Permittees failed to manage, store and dispose of waste as required. This is a violation of Permit Conditions II.C.1 Waste Analysis Plan and IV.B.2.b Prohibited Waste, and a violation of 20.4.1.500 NMAC (incorporating 40 CFR §264.13).

In accordance with 74-4-10 NMSA 1978 (Repl. Pamp. 2000), NMED may: 1) issue a compliance order that requires compliance immediately or within a specified time period, or assesses civil penalties for any past or current violation 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, that may include a temporary or permanent injunction. Any such order issued may include a suspension or revocation of any permit issued by NMED as well as a detailed plan of corrective action.

The Permittees must immediately comply with the "Schedule for Completion" as outlined in Mr. Lewis's letter of September 24, 2001. Failure to comply 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 they conduct, nor does it relieve the Permittees of their obligation to comply with any other applicable laws and regulations. If you have any questions regarding this letter, please contact me at (505) 428-2512. Please address any response to this Notice to Mr. Steve Zappe's attention at the address on the letterhead.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:db

cc: Paul Ritzma, NMED OGC
Greg Lewis, NMED WWMD
Darwin Pattengale, District IV
Debby Brinkerhoff, NMED HWB
Steve Zappe, NMED HWB
Susan McMichael, NMED OGC
David Neleigh, EPA Region 6
Connie Walker, TechLaw
File: Red WIPP '01