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GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau
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PETER MAGGIORE
SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 25, 2002

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: REQUEST FOR EXTENDED PUBLIC COMMENT PERIOD FOR REMOTE-HANDLED TRU WASTE MODIFICATION REQUEST WIPP HAZARDOUS WASTE FACILITY PERMIT EPA I.D. NUMBER NM4890139088

Dear Dr. Triay and Mr. Lee:

On June 21, 2002, NMED received a letter from Dr. Clayton Gist of the Department of Energy's Carlsbad Field Office (CBFO) requesting approval of an extended public comment period for the upcoming remote-handled (RH) transuranic waste modification request to be submitted by CBFO and Westinghouse TRU Solutions LLC (the Permittees). As noted in the letter, the New Mexico Hazardous Waste Management Regulation specify in 20.4.1.900 (incorporating 40 CFR 270.42(c)) that Class 3 modifications are subject to a 60-day comment period, and that the public meeting must be held no earlier than 15 days after the publication of the required public notice and no later than 15 days before the close of the 60-day comment period. The letter requested NMED concurrence with establishment of a 120-day comment period for the RH modification and a time window for public meetings between day 75 and day 105 following publication of the notice of the 120-day comment period.

NMED believes the CBFO request reflects a reasonable interpretation of the regulations in these circumstances, as suggested in 20.4.1.900 (incorporating 40 CFR 270.42(c)(5))

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which states, "The public shall be provided *at least* 60 days to comment on the modification request." An extended public comment period on the RH modification request is both prudent and necessary to afford the public sufficient time to review the details and develop cogent written comment on the request. Therefore, NMED approves a 120-day public comment period for the RH Class 3 permit modification request, and stipulates that the public meetings shall be held between 75 and 105 days following publication of the public notice.

NMED reminds the Permittees that the regulations at 20.4.1.900 (incorporating 40 CFR 270.42(c)(2)-(5)) identify required elements of the public notice, such as clearly announcing the beginning and duration of the public comment period. Although the draft public notice announces the public information meetings, there is nothing in the notice under the "WHAT" heading to clearly indicate that a public comment period starts on the date of publication and that a primary function of the public meetings is to provide information so the public can submit constructive comment to NMED. The "HOW" heading should state Ms. Scott's affiliation, and should indicate that a copy of the proposed permit modification is also available at the New Mexico Environment Department (NMED) office at the address listed below. The "COMMENTS" section should state, "Written comments must be sent to the NMED contact person at the address below" and include the Bureau's fax number as (505) 428-2567. Finally, the last paragraph should have its own heading of "QUESTIONS" and state, "If you have *questions* relative to this permit modification request..." in order to avoid confusion concerning where the public should submit written comment.

If you have any questions regarding this matter, please contact Steve Zappe of my staff at (505) 428-2517.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: Greg Lewis, NMED WWMD
John Kieling, NMED HWB
Steve Zappe, NMED HWB
Chuck Noble, NMED OGC
Clayton Gist, CBFO
Laurie King, EPA Region 6
Connie Walker, TechLaw
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