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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

September 30, 2003

Mr. Jody Plum
Carlsbad Field Office
Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

**RE: NMED COMMENTS ON LANL SEALED SOURCES PERMIT MODIFICATION REQUEST
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088**

Dear Mr. Plum:

New Mexico Environment Department (NMED) staff participated in a conference call with you and other representatives of the US Department of Energy Carlsbad Field Office and Washington TRU Solutions LLC (**the Permittees**) on September 25, 2003 regarding NMED's September 11, 2003 denial of the recent Class 2 permit modification request (PMR) for eliminating headspace sampling and analysis for sealed sources from Los Alamos National Laboratory (LANL). As discussed during that conference call, the following are additional data and information needs pertaining to sealed sources that would help improve our understanding of the specific need for relief from the headspace gas sampling and analysis requirements for LANL sealed sources:

1. The Permittees took issue with NMED's statement that additional information would be needed to address acceptable knowledge (AK) questions posed by the public. To clarify, the public's comments addressed numerous aspects of the AK record, not just the identification of hazardous waste codes. Public comment and NMED's review of the PMR identified the following concerns that should also be part of the AK record:

- Defense determination for individual sources
- Container packaging material examination/considerations

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- Transuranic status of sources (note that the permit explicitly specifies transuranic)
- Process information regarding how the sealed sources were generated, especially the contents of sealed sources with respect to hazardous constituents. This could include but not necessarily be limited to any of the AK records listed in Attachment C of the PMR, but should specifically identify (as available) the control process used to generate the source demonstrating that the source contains no hazardous constituents, nor is the source capable of being hazardous waste (i.e., corrosivity, etc).
- Estimated volume of the waste stream (assuming it is all retrievably stored)
- Information pertaining to the outer casing not being of VOC-bearing materials, which would be compared with VE information at the time of packaging

To address the above, the Permittees should examine the AK information available to satisfy and answer the above listing, and prepare a list (either of containers that would contain sources, or of individual sources if not yet packaged) for which the above information is available. NMED could then select at least one specific source/container from the list for which the required information would be provided in a revised PMR. It is not necessary for all AK information for all sources to be submitted for review; NMED understands the complete AK record for all sources is massive. However, a randomly selected source/container for which strategic information is provided should suffice to demonstrate the Permittees' assertion that the AK information available supports the non-hazardous claim. NMED could then combine this information with our experience obtained during audits (i.e., that a rigorous AK process is in place which is audited, etc.), to support the Permittees' assertion and to address the concerns raised in public comment.

The Permittees argued that, as an alternative to providing this AK information in the administrative record for the PMR, NMED could audit LANL at any time to independently verify the conclusions stated in the PMR. While this could be an option to obtain the information for this specific PMR (because LANL is a facility regulated by NMED), this could not be carried out in general for other PMRs that are missing information necessary to support the conclusions stated in the PMR. Also, it is unclear whether this would be an acceptable process/action with regard to PMRs, as it raises the fundamental question of the completeness and technical adequacy of the request itself.

2. During the conference call, the Permittees indicated that there is a technical impracticability associated with sampling sealed sources through the pipe overpack as specified in Permit Attachment B1, Section B1-1a(6)(iii). This was not obvious from the PMR denied on September 11, 2003, as the Permittees had already shipped several containers with sealed sources that had undergone headspace gas sampling. Information pertaining to this impracticability should be provided in the revised PMR.

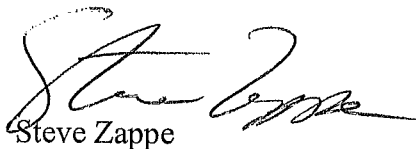
3. During the conference call, the Permittees also indicated that there is a throughput issue associated with storing sealed sources on-site, where external congressional or other pressures mandate the timely acceptance of sealed sources at LANL. LANL apparently

has only a relatively small space to store such sources, as they require extensive security measures, etc., while in storage. Because external pressures are mandating the timely acceptance of these sources, LANL must ship existing sources out and continually move sources through the limited storage area while on their way to WIPP. However, the need to hold containers for the appropriate drum age criteria (DAC) hinders this throughput mandate, so the PMR was apparently sought in part to remove the DAC limitations and to facilitate sealed source throughput. This "national security" basis for the PMR should be fully clarified because this argument appears to be a fundamental reason for this PMR, and in and of itself must be better explained to include information revealed during the conference call and apparently shared at public meetings held for the PMR on June 3 and 5, 2003.

4. Finally, the Permittees stressed that the issue at hand was *not* the fact that hazardous waste might be present in the sealed sources, but that regardless of the nature of material in the sealed sources themselves, there will be no generation (i.e., no release) of any VOCs from the sealed sources. NMED recommends exercising caution in accepting this premise. RCRA regulation requires the identification of hazardous wastes (regardless of the containers they might be in), and it is more regulatorily defensible to obtain information demonstrating that the actual sources are non-hazardous, rather than to accept the premise that it doesn't matter what's inside the sources because nothing will ever be released.

NMED appreciates this opportunity to provide guidance to the Permittees in developing a revised PMR for LANL sealed sources, and would be happy to review any documentation you might wish to submit prior to formal submittal of a revised PMR or to answer any questions you may have regarding this matter. However, NMED also stresses that the ultimate criteria for approval or denial of a future PMR is based solely on the administrative record, including the revised PMR and consideration of all public comment. If I can be of further assistance, please contact me at (505) 428-2517.

Sincerely,



Steve Zappe
WIPP Project Leader
Permits Management Program

cc: Sandra Martin, NMED HWB
John Kieling, NMED HWB
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