

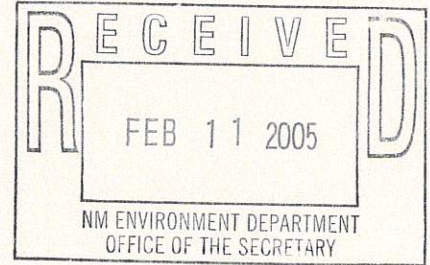
**SOUTHWEST RESEARCH AND INFORMATION CENTER**

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February 9, 2005

Secretary Ron Curry  
New Mexico Environment Department  
PO Box 26110  
Santa Fe, NM 87502-0110



RE: NMED Compliance Order 04-07 (CO)

Dear Secretary Curry:

Southwest Research and Information Center (SRIC) greatly appreciates NMED's concerns about protecting public health and safety and requiring compliance with the New Mexico Hazardous Waste Act and the WIPP permit. SRIC agrees that the violations of the permit and regulations documented in Compliance Order 04-07 are important and that they should be pursued to a successful conclusion.

SRIC has reviewed information provided by the permittees in response to the Compliance Order, including their December 16, 2004 information response. SRIC continues to have major concerns about the specific violations of the permit from the disposal of more than 100 waste containers from the Idaho National Laboratory (its new name) that had not met the requirements for storage or disposal at WIPP. While the permittees have provided some important information in their responses, SRIC urges NMED to finalize the Compliance Order, including imposing appropriate financial and other penalties.

Since SRIC's letters to you of August 12, 2004 and August 30, 2004 expressed a number of our concerns, several of which are not resolved, this letter focuses on two major problems that the permittees have not adequately addressed in their responses. SRIC believes that your final Compliance Order can and should impose actions that would substantially alleviate recurrence of those and similar problems in the future.

1. NMED should prohibit shipments of the remaining more than 1,800 containers in waste streams BNINW216 and BNINW218 until the requirements of the WIPP permit have been met. The permittees still have not provided adequate, consistent information regarding the 6,751 (or 6,752, as the discrepancy still has not been explained) containers in Lot 1 of First/Second Stage Sludge Waste Streams or the 6,083 containers from Lot 1 of Building 374 sludge waste stream.

Contrary to the requirements of Permit Attachment B, Section B-4b(1)(i), the permittees have not demonstrated that they have adequately reviewed the data for those remaining containers, so they cannot be allowed to ship those containers until the permit requirements are met. Inconsistencies



that SRIC pointed out in its August 2004 letters still have not been adequately addressed. For example, Mr. Detwiler's August 10, 2004 letter stated that at the end of the 3,100 m3 project, 847 drums from INEEL 216.001 remained at INEEL. That number was based on the same documents used in the December 16, 2004 CO response, but Table 80C-1 of that response does not provide corresponding data. That table shows the original container count to be 6,751 and 5,818 were emplaced during 3,100 m3 project, leaving 933 containers. The 37 containers "removed from inventory" (was that during the 3,100 m3 project or by AMWTP or both?) do not bring the count to 847 containers. Moreover, the same table shows that 110 containers were emplaced from AMWTP from the 3,100 m3 project and 263 containers were emplaced from AMWTP and 523 containers remain; a total of at least 896 containers turned over to AMWTP – not 847 containers.

Thus, NMED still cannot have confidence in the permittees' review of data related to the remaining containers and they cannot be permitted to be shipped to WIPP, as additional violations of the permit could occur.

As a related matter, SRIC is very troubled by major inconsistencies in acceptable knowledge (AK) documentation for these waste streams. In September 1995, the then-named Idaho National Engineering Laboratory (INEL) published INEL-95/0397, Summary of Transuranic Waste Characterization Programs at the INEL (1979-Present), that "summarizes past and current Idaho National Engineering Laboratory (INEL) transuranic waste characterization programs." (Abstract). Appendix B of that report is "Summary of Gas Headspace Analysis Results" and includes analyses of IDC 001, First Stage Sludge waste stream (now BNIN216). Many headspace gas sampling results were much higher than stated in Waste Stream Profile Form (WSPF) INW216.001. For example, carbon tetrachloride maximum was 48000 ppmv, whereas in the WSPF it was 300 ppmv. Similar huge variations were present for 1,1,1-Trichloroethane, 1,1,2-Trichloro-1,2,2-Trifluoroethane. Clearly, later headspace gas sampling could produce different results, though such large discrepancies must be explained in the AK and they were not. But according to WSPF, chloroform was added as a toxicity code based on headspace results even though AK did not show it to be present. However, the earlier headspace gas sampling results included in Appendix B of the September 1995 did show chloroform present. (P. B-3). Thus, the permittees must explain why they apparently ignored that September 1995 document and its references in both its AK collection and in its headspace gas sampling programs.

2. The permittees' response to CO Paragraph 80.D. is totally inadequate. NMED should require the WWIS to be publicly available on a much quicker timeframe.

On January 15, 2004, the National Academy of Sciences Committee on Optimizing the Characterization and Transportation of Transuranic Waste Destined for the Waste Isolation Pilot Plant issued its report. Among its recommendations was that "DOE should also provide public access to information about WIPP and its operations, including the WIPP Waste Information System" (Recommendation 6, page 6). At the WIPP Quarterly Meeting on that date, Roger Nelson stated that DOE would comply with the committee's recommendations, except related to Finding 1, which DOE rejected.

If DOE were serious about complying with the NAS Committee recommendation, even using the schedule provided in its CO response, the WWIS would now be publicly available. Instead, more than a year after the NAS Committee recommendation and more than four months after issuance of the Compliance Order, DOE is stating that the WWIS cannot be publicly available for at least another year! That schedule is neither acceptable nor reasonable. As SRIC has previously stated, it is clear that public access to the WWIS is an essential element to ensure compliance with WIPP permit requirements.

SRIC provided the Paragraph 80.D. response to a federal government official responsible for secure databases and websites and to an independent contractor who establishes such databases and websites for federal agencies. They both stated that the plan and schedule were unreasonably long and that the information could be made available to the public in a few months regardless of whether the (inadequate) Oracle platform is currently being used or has been replaced. (From the response, it is not clear when the necessary changeover to the Web-centric paradigm occurred or will occur.) They stated that if the Web-centric paradigm already exists, the WWIS could be available under Option 2 in a few weeks.

As NMED knows, the WIPP home page already exists, so using option 2 could provide the public access quickly, even if DOE ultimately wants to use option 3. Thus, hardware and software procurement, contract award, and web based development for option 2 should be either unnecessary or should be able to be done under existing procurement and contract procedures for the WIPP home page.

If DOE prefers to use Option 3, it should either implement it on a much shorter timeframe, or if it will take a year, it should implement Option 2 as an interim measure, until it can complete implementation of Option 3.

Thus, SRIC believes that NMED's final Compliance Order should mandate implementation of public access to the WWIS database by no later than June 30, 2005 and that in the meantime no additional BNINW216 or BNINW218 wastes can come to WIPP.

Thank you very much for your careful attention to these important matters. I would be pleased to further discuss these and other related issues with you or your staff. In addition, please keep me informed as to your actions regarding this important matter.

Sincerely,



Don Hancock

cc: James Bearzi  
Steve Zappe