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**ENVIRONMENT DEPARTMENT**

Hazardous Waste Bureau

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RON CURRY  
SECRETARY

DERRITH WATCHMAN-MOORE  
DEPUTY SECRETARY

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

March 17, 2005

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

Richard Raaz, President  
Washington TRU Solutions LLC  
P.O. Box 2078  
Carlsbad, New Mexico 88221-5608

**RE: SUPPLEMENTAL RCRA PERMIT FEES  
WASTE ISOLATION PILOT PLANT  
EPA I.D. NUMBER NM4890139088**

Dear Dr. Triay and Mr. Raaz:

I am in receipt of the Department of Energy's (DOE's) July 8, 2004, letter in which the New Mexico Environment Department's assessment of supplemental RCRA permit fees (Fees) is questioned. DOE made specific mention of several issues in the letter. I address each here, in the order mentioned in DOE's letter.

1. .... An accounting of the expenditures for this period, in particular the actual amounts expended on audits and operating expenses, will expedite our consideration of NMED's request for 2004.

An accounting for each of the last three state fiscal years is attached.

2. The request includes funds for seven (7) full-time professional staff and administrative support. Please identify these positions and describe their duties.

NMED's March 1, 2004 letter requesting supplemental RCRA permit fees, and its backup documentation, clearly show NMED's request for five positions, not seven. NMED does not plan to increase staffing for its WIPP Group. The five positions and their duties are:

Staff Manager – Technical and administrative oversight of all WIPP-related work; lead on permitting issues.

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Environmental Scientist & Specialist – Technical review of permit modification requests (PMRs); development of draft permits.

Environmental Scientist & Specialist – Technical review of corrective action documents, groundwater monitoring plans, and 5-year permit review.

Environmental Scientist & Specialist – Audit review team lead.

Environmental Scientist & Specialist – Audit review team support.

3. **The request also includes funds for legal assistance. What legal services would be procured with these funds?**

At the time NMED issued its March 1, 2004, request, it anticipated the need for outside legal counsel. Since then, NMED's Office of General Counsel has improved its staffing circumstances, obviating the need for contact counsel. The revise request (attached) reflects this. Nevertheless, DOE should be aware of the considerable legal resources required to effectively regulate the WIPP facility. Processing of permit modification requests, audit review, and enforcement efforts are not merely technical issues, and require a robust legal basis and framework. Moreover, of late DOE has insisted that not only staff counsel, but also NMED's General Counsel, participate in most ongoing WIPP issues, including resolution of the 2004 compliance order and the permit modification requests for "Section 311", remote-handled waste, and container management improvements. While NMED does not object to accommodating DOE's request, NMED believes DOE should fund it.

4. **Does the invoice need to be revised in light of the recent agreement to re-establish the NMED WIPP Office pursuant to the Agreement in Principle?**

No. In fact, NMED believes it would be wholly improper to tie RCRA fees to the Agreement in Principle (AIP). The AIP governs non-regulatory oversight of the WIPP facility through NMED's DOE Oversight Bureau. Supplemental RCRA permit fees support NMED's regulatory oversight through the Hazardous Waste Bureau.

DOE also included in its letter comments directed toward a "backlog" of audit report and permitting efforts. Currently, NMED has the following audit reports under review:

- SRS (A-05-01) (received 1/10/05, comments provided by NMED 2/25/05, 46 days from receipt);
- NTS (A-05-02) (received 2/10/05, under review);
- AMWTP (A-04-22) (received 2/25/05, under review).

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In state fiscal year 05, NMED has acted upon ten audit reports as follows. The dates shown below do not include time elapsed between conclusion of audit and submittal of initial audit report, or time for NMED review to provide Permittees with comments to correct deficiencies in initial audit report to submit final (approvable) audit report.

<u>Site/Audit number</u>	<u>Subject</u>	<u>Final Report</u>	<u>Approval</u>	<u>Elapsed days</u>
Hanford (A-04-06)	Solids Follow-up	21-Jun-2004	2-Jul-2004	11
INEEL (A-04-17)	Lab Recertification	2-Jul-2004	27-Aug-2004	56
LANL (A-03-27)	Recertification	14-Jul-2004	27-Aug-2004	44
RFETS (A-04-10)	Recertification	16-Jul-2004	27-Aug-2004	42
LANL (A-04-05)	CCP Accelerated Line	19-Jul-2004	27-Aug-2004	39
LLNL (A-04-25)	CCP Certification	20-Jul-2004	27-Aug-2004	38
SRS (A-04-01)	Recertification	21-Jul-2004	27-Aug-2004	37
ANL-E (A-04-03)	CCP Recertification	28-Jul-2004	27-Aug-2004	30
NTS (A-04-04)	CCP Recertification	28-Jul-2004	27-Aug-2004	30
Hanford (A-04-19)	Recertification	17-Aug-2004	7-Sep-2004	21

Also in state fiscal year 05, NMED provided notice to DOE that it was withholding approval of the Hanford audit (A-03-25; CCP Accelerated Line) pending resolution of a variety of issue identified in the comment letter. NMED is proud of its turnaround of DOE's audit reports, but encourages DOE to communicate the reasons for its dissatisfaction to us.

With respect to the permitting issues identified in DOE's July 8, 2004 letter, NMED offers the following:

Construction and Use of Hazardous Waste Disposal Units -- NMED has finalized relevant permit language based upon an October 28, 2004 meeting with Permittees and interested citizens, and has shared that language with the Permittees. Final agency action is awaiting development of response to comments on both the original PMR and NMED's draft permit.

Remote-Handled (RH) Waste -- NMED will provide notice to the Permittees by March 30, 2005, of the deficiencies identified in the Permittees' response to the first Notice of Deficiency (NOD). NMED expects the Permittees to incorporate their response to this second NOD into their response to the "Section 311" NOD.

Section 311 -- NMED issued a NOD to the Permittees concerning their PMR submitted pursuant to "Section 311". The Permittees were granted an extension of time to respond to the NOD until March 30, 2005. As discussed above, NMED expects the Permittees to combine their responses to the 311 and RH NODs into one submittal, resulting in one draft permit.

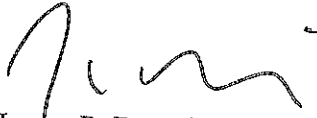
I hope that you will find the preceding information responsive to your letter of July 8, 2004. Attached please find a revised invoice for supplemental RCRA permit fees, reflecting NMED's needs, expenses incurred in state fiscal year 04, estimated expenses in state fiscal year 05, and

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"credits" for DOE's submittal of fees pursuant to 20.4.2 NMAC and any unexpended balance carried over from state fiscal year 03.

If you have any questions regarding this matter, please contact me at (505) 428-2512.

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

cc: Ron Curry, NMED Cabinet Secretary  
Ric Martinez, NMED ASD  
Marcy Leavitt, NMED WWMD  
Tracy Hughes, NMED OGC  
Steve Zappe, NMED HWB  
Bryon Pippin, NMED HWB

**NMED HAZARDOUS WASTE BUREAU**  
Financial Accounting of the Supplemental RCRA Permit Fees for DOE-WIPP

Revenue Balance @ close of FY03		\$ 291,713.00
Less FY04 Expenditures		
	Personnel & Benefits (PS&EB)	\$ (214,373.78)
	Contracts	\$ (208,776.58)
	Other Costs	\$ (89,283.18)
	In-direct (23.12% of PS&EB)	\$ (49,563.22)
		<u>\$ (561,996.76)</u>
Credit for Permit Fees during FY04		\$ 102,750.00
Revenue Balance at close of FY04 (June 30, 2004)		\$ (167,533.76)
FY05 Estimated Expenditures		
	Personnel & Benefits (PS&EB)	\$ (301,066)
	Contracts	\$ (202,500)
	Other Costs	\$ (76,491)
	In-direct (21.85% of PS&EB)	\$ (65,783)
		<u>\$ (645,840)</u>
Estimated Revenue Balance at close of FY05 (June 30, 2005)		<u>\$ (813,373.68)</u>

**NEW MEXICO ENVIRONMENT DEPARTMENT  
Hazardous Waste Bureau**

DOE-Waste Isolation Pilot Plant  
Supplemental RCRA Permit Fees  
FY2005  
(July 1, 2004 - June 30, 2005)

Personnel & Benefits		Hourly Rate	Annual Cost	
	Project Manager (1)	\$ 28.000	\$ 58,240.00	
	Senior Staff (2)	\$ 21.000	\$ 87,360.00	
	Project Staff (2)	\$ 20.000	\$ 83,200.00	\$ 228,800
	Benefits @ 32%			\$ 73,216
			<b>Total Salary &amp; Benefits</b>	<u>\$ 302,016</u>
Contracts	Trinity Engineering Assoc		<b>Total Contracts</b>	<u>\$ 202,500</u>
	a) Permit mod reviews			
	b) Technical doc reviews			
	c) Attend WIPP site audits			
	d) Public meetings			
	e) Expert Testimony			
	f) Evaluation of RCRA-C			
Other	I/S Travel (Per Diem)	\$	2,500	
	Vehicle/Fuel	\$	2,300	
	Insurance	\$	250	
	Copying	\$	1,700	
	Rent	\$	50,000	
	Rent of Equipment	\$	400	
	Subscriptions & Dues	\$	1,200	
	Employee Training	\$	2,000	
	Telecommunications	\$	2,000	
	Advertising	\$	200	
	Data Processing Equip.	\$	1,200	
	O/S Travel for Site Audits	\$	12,000	
			<b>Total Other Costs</b>	<u>\$ 75,750</u>
In-Direct @ 21.85% based on Salary & Benefits			<b>Total In-Direct</b>	<u>\$ 65,990</u>
<b>FY05 Estimated Budget Requirements</b>				<u><u>\$ 646,256</u></u>