

I. MODULE I - GENERAL PERMIT CONDITIONS

I.A. EFFECT OF PERMIT

The Secretary of the New Mexico Environment Department (**Secretary**) issues this Permit to the United States Department of Energy (**DOE**), the owner and co-operator of the Waste Isolation Pilot Plant (**WIPP**) (EPA I.D. Number NM4890139088), and Washington TRU Solutions LLC, Management and Operating Contractor (**MOC**), the co-operator of WIPP. This Permit authorizes DOE and MOC (**the Permittees**) to manage, store, and dispose contact-handled (**CH**) and remote-handled (**RH**) transuranic (**TRU**) mixed waste at WIPP, and establishes the general and specific standards for these activities, pursuant to the New Mexico Hazardous Waste Act (**HWA**), NMSA 1978, §§74-4-1 et. seq. (Repl. Pamp. 1993) and the New Mexico Hazardous Waste Regulations, 20.4.1.100 NMAC et. seq.

Compliance with this Permit during its term shall constitute compliance, for purposes of enforcement, with Subtitle C of the Resource Conservation and Recovery Act (**RCRA**), 42 U.S.C. §6901 et. seq., and/or the HWA, and/or their implementing regulations. Compliance with this Permit shall not constitute a defense to any order issued or any action brought under Sections 74-4-10.E or 74-4-13 of the HWA; Sections 3008(a), 3008(h), 3013, or 7003 of RCRA; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 et seq., commonly known as CERCLA) Sections 106(a), 104, or 107; or any other law providing for protection of public health or the environment. This Permit does not convey any property rights of any sort or any exclusive privilege, nor authorize any injury to persons or property, any invasion of other private rights, or any infringement of State or local laws or regulations. [20.4.1.900 NMAC (incorporating 40 CFR §§270.4 and 270.30(g))]

I.B. PERMIT ACTIONS

I.B.1. Permit Modification, Suspension, and Revocation

This Permit may be modified, suspended, and/or revoked for cause as specified in Section 74-4-4.2 of the HWA and 20.4.1.900 NMAC (incorporating 40 CFR §§270.41, 270.42, and 270.43). The filing of a request by the Permittees for a permit modification, suspension, or revocation, or the notification of planned changes or anticipated noncompliance, shall not stay any permit condition. [20.4.1.900 NMAC (incorporating 40 CFR §270.30(f))]

I.B.2. Permit Renewal

The Permittees may renew this Permit by submitting an application for a new Permit at least one hundred eighty (180) calendar days before the expiration date of this Permit. In reviewing any application for a Permit renewal, the Secretary shall consider improvements in the state of control and measurement technology and changes in applicable

regulations. [20.4.1.900 NMAC (incorporating 40 CFR §§270.10(h) and 270.30(b))]

I.B.3. Permit Review

The Secretary shall review this Permit no later than five (5) years after the effective date of this Permit, and shall modify this Permit as necessary pursuant to Section 74-4-4.2 of the HWA and 20.4.1.900 NMAC (incorporating 40 CFR §270.41). Such modification(s) shall not extend the effective term of this Permit specified in Permit Condition I.E.2. [20.4.1.900 NMAC (incorporating 40 CFR §§270.41 and 270.50(b) and (d))]

I.C. SEVERABILITY

The provisions of this Permit are severable, and if any provision of this Permit, or the application of any provision of this Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Permit shall not be affected thereby. [40 CFR §124.16(a)(1) and (2)]

I.D. DEFINITIONS

Unless otherwise expressly provided herein, the terms used in this Permit shall have the meaning set forth in RCRA, HWA, and/or their implementing regulations.

I.D.1. Contact-handled Transuranic Mixed Waste

"Contact-handled transuranic mixed waste" means transuranic mixed waste with a surface dose rate not greater than 200 millirem per hour. [Pub. L. 102-579 (1992)]

I.D.2. Remote-handled Transuranic Mixed Waste

"Remote-handled transuranic mixed waste" means transuranic mixed waste with a surface dose rate of 200 millirem per hour or greater. [Pub. L. 102-579 (1992)] ~~(LWA), as amended by the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201).~~

I.D.3. Facility

"Facility" or "permitted facility" means the Waste Isolation Pilot Plant (**WIPP**) owned by the DOE and located approximately twenty six (26) miles east of Carlsbad, New Mexico, EPA I.D. Number NM4890139088. The WIPP facility comprises the entire complex within the WIPP Site Boundary as specified in the WIPP Land Withdrawal Act of 1992, Pub. L. 102-579 (1992), including all contiguous land, and structures, other appurtenances, and improvements on the Permittees' land, used for management, storage, or disposal of TRU mixed waste.

I.D.4. Permittees

"Permittees" means the United States Department of Energy (**DOE**), an agency of the Federal government, and the owner and co-operator of the WIPP facility; and Washington TRU Solutions LLC, Management and Operating Contractor (**MOC**), the co-operator of the WIPP facility.

I.D.5. Secretary

"Secretary" means the Secretary of the New Mexico Environment Department (**NMED**), or designee.

I.D.6. TRU Waste

"TRU Waste" means waste containing more than 100 nanocuries of alpha-emitting transuranic isotopes per gram of waste, with half-lives greater than 20 years, except for (A) high-level radioactive waste; (B) waste that the DOE Secretary has determined, with the concurrence of the EPA Administrator, does not need the degree of isolation required by the disposal regulations; or (C) waste that the Nuclear Regulatory Commission has approved for disposal on a case-by-case basis in accordance with part 61 of title 10, Code of Federal Regulations. [Pub. L. 102-579 (1992)]

I.D.7. TRU Mixed Waste

"TRU Mixed Waste" means TRU waste that is also a hazardous waste as defined by the HWA and 20.4.1.200 NMAC (incorporating 40 CFR §261.3).

I.D.8. Contact Handled Packages

"Contact Handled Packages" means both TRUPACT-II and HalfPACT shipping containers and their contents.

I.D.9. Remote-Handled Packages

"Remote-Handled Packages" means both CNS 10-160B and RH-TRU 72-B shipping containers and their contents. ~~They are also known as casks.~~

I.D.10. Containment Pallet

"Containment pallet" means ~~is defined as~~ a device capable of ~~staging~~ holding a minimum of one 55-gallon drum, or 85-gallon drum, or 100-gallon drum or a standard waste box, or a ten-drum overpack and that has internal containment for up to ten percent of the volume of the containers on the containment pallet. ~~A containment pallet may also be referred to as a container handling pallet.~~

I.D.11. Waste Characterization

"Waste characterization" or "characterization" means the activities performed by the waste generator to satisfy the general waste analysis requirements of 20.4.1.500 NMAC (incorporating 40 CFR §264.13(a)), which can be met by applying acceptable knowledge, conducting sampling and analysis, or a combination of both. Characterization occurs before waste containers have been certified for disposal at WIPP.

I.D.12. Waste Confirmation

"Waste confirmation" or "confirmation" means the activities performed by the Permittees to satisfy the requirements specified in Section 311 of Pub. L. 108-137. Confirmation occurs after waste containers have been certified for disposal at WIPP.

I.D.13. Acceptable Knowledge

"Acceptable knowledge" or "AK" means the use of 1) process knowledge, 2) waste analysis data, and/or 3) records of analyses performed before the effective date of RCRA regulations to satisfy all or part of the waste characterization requirements of 40 CFR §264.13.

I.E. DUTIES AND REQUIREMENTS

I.E.1. Duty to Comply

The Permittees shall comply with all conditions of this Permit, except to the extent and for the duration such noncompliance is authorized in an emergency permit specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.61). Any Permit noncompliance, except under the terms of an emergency permit, constitutes a violation of RCRA and/or HWA and is grounds for enforcement action; for Permit modification, suspension, or revocation; or for denial of a Permit modification or renewal application. [20.4.1.900 NMAC (incorporating 40 CFR §270.30(a))]

I.E.2. Permit Term

This Permit shall be effective for a fixed term not to exceed ten (10) years from the date of issuance as specified in the Permit certificate. [20.4.1.900 NMAC (incorporating 40 CFR §270.50(a))]

I.E.3. Duty to Reapply

If the Permittees wish to continue an activity regulated by this Permit after the expiration date of this Permit, the Permittees shall apply for and obtain a new Permit. The Permittees shall submit an application for a new Permit at least one hundred eighty (180) calendar days before the expiration date of this Permit. [20.4.1.900 NMAC (incorporating 40 CFR §§270.10(h), 270.30(b))]

I.E.4. Continuation of Expiring Permits

If the Permittees have submitted a timely and complete application for renewal of this Permit as specified in 20.4.1.900 NMAC (incorporating 40 CFR §§270.10, 270.13 through 270.29), this Permit shall remain in effect until the effective date of the new Permit if, through no fault of the Permittees, the Secretary has not issued a new Permit on or before the expiration date of this Permit. [20.4.1.900 NMAC (incorporating 40 CFR §270.51)]

I.E.5. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the Permittees in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Permit. [20.4.1.900 NMAC (incorporating 40 CFR §270.30(c))]

I.E.6. Duty to Mitigate

In the event of noncompliance with this Permit, the Permittees shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment. [20.4.1.900 NMAC (incorporating 40 CFR §270.30(d))]

I.E.7. Proper Operation and Maintenance

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittees to achieve compliance with the conditions of this Permit. Proper operation and maintenance shall include effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance/quality control procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of this Permit. [20.4.1.900 NMAC (incorporating 40 CFR §270.30(e))]

I.E.8. Duty to Provide Information

The Permittees shall furnish to the Secretary, within a reasonable time frame as specified by the Secretary, any relevant information which the Secretary may request to determine whether cause exists for modifying, suspending, or revoking this Permit, or to determine compliance with this Permit. The Permittees shall also furnish to the Secretary, upon request, copies of records required to be kept by this Permit. [20.4.1.500 and .900 NMAC (incorporating 40 CFR §§264.74(a) and 270.30(h))]

I.E.9. Inspection and Entry

The Permittees shall allow the Secretary, or authorized representatives, upon the presentation of credentials and other documents as may be required by law, the following inspection and entry privileges specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.30(i)):

- I.E.9.a. Entrance to premises - to enter at reasonable times upon the Permittees' premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit;
- I.E.9.b. Access to records - to have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;
- I.E.9.c. Inspection - to inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and
- I.E.9.d. Sampling - to sample or monitor at reasonable times, for the purposes of assuring Permit compliance or as otherwise authorized by RCRA and/or HWA, any substances or parameters at any location. If the Secretary obtains any sample, prior to leaving the premises the Secretary shall give the Permittees a receipt describing the sample obtained and, if requested, a portion of each sample of equal weight or volume to the portion retained. If any analysis is made of the sample, the Secretary shall promptly furnish a copy of the results of the analysis to the Permittees.

Permit Condition I.E.9 shall not be construed to limit, in any manner, the Secretary's authority under Section 74-4-4.3 of the HWA.

I.E.10. Monitoring and Records

- I.E.10.a. Representative sampling - for the purposes of monitoring, the Permittees shall take samples and measurements representative of the monitored activity. [20.4.1.900 NMAC (incorporating 40 CFR §270.30(j)(1))]
- I.E.10.b. Record retention - the Permittees shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports and records

required by this Permit, the waste minimization certification required by 20.4.1.500 NMAC (incorporating 40 CFR §264.73(b)(9)), and records of all data used to complete the application for this Permit for a period of at least 3 years from the date of the sample, measurement, report, record, certification, or application. The Secretary may extend these periods at any time, and these periods shall be automatically extended during the course of any unresolved enforcement action regarding this facility. The Permittees shall maintain records from all ground-water monitoring wells and associated ground-water surface elevations, during the active life of the facility and the post-closure period. [20.4.1.500 and .900 NMAC (incorporating 40 CFR §§264.74(b) and 270.30(j)(2))]

I.E.10.c. Monitoring records contents - as specified by 20.4.1.900 NMAC (incorporating 40 CFR §270.30(j)(3)), records of monitoring information shall include:

- i. The dates, exact place, and times of sampling or measurements;
- ii. The individuals who performed the sampling or measurements;
- iii. The dates analyses were performed;
- iv. The individuals who performed the analyses;
- v. The analytical techniques or methods used; and
- vi. The results of such analyses.

I.E.11. Reporting Requirements

I.E.11.a. Reporting Planned Changes - the Permittees shall give notice to the Secretary, as soon as possible, of any planned physical alterations or additions to the permitted facility. [20.4.1.900 NMAC (incorporating 40 CFR §270.30(1)(1))]

I.E.11.b. Reporting Anticipated Noncompliance - the Permittees shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. The Permittees shall not store or dispose TRU mixed waste in any modified portion of the facility (except as provided in 20.4.1.900 NMAC (incorporating 40 CFR §270.42)) until the following

conditions specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.30(1)(2)) are satisfied:

- i. the Permittees have submitted to the Secretary, by certified mail or hand delivery, a letter signed by the Permittees and a New Mexico registered professional engineer stating that the facility has been constructed or modified in compliance with this Permit, and:
- ii. the Secretary has either inspected the modified portion of the facility and finds it is in compliance with the conditions of this Permit; or waived the inspection or, within fifteen (15) calendar days of the date of submission of the letter required above, has not notified the Permittees of his intent to inspect.

I.E.12. Transfer of Permits

The Permittees shall not transfer this Permit to any person, except after notice to the Secretary. The Secretary shall require modification or revocation and reissuance of this Permit as specified by 20.4.1.900 NMAC (incorporating 40 CFR §270.40). Before transferring ownership or operation of the facility during its active life or post-closure care period, the Permittees shall notify the new owner or operator in writing as required by 20.4.1.500 and .900 NMAC (incorporating 40 CFR §§264.12(c) and 270.30(1)(3)).

I.E.13. Twenty-Four Hour and Subsequent Reporting

I.E.13.a. Oral report - as required by 20.4.1.900 NMAC (incorporating 40 CFR §270.30(1)(6)(i)), within twenty four (24) hours from the time the Permittees become aware of the circumstances, the Permittees shall report orally to the Secretary any noncompliance which may endanger human health or the environment, including:

- i. Information concerning release of any TRU mixed or hazardous waste that may cause an endangerment to public drinking water supplies; and
- ii. Any information of a release or discharge of TRU mixed or hazardous waste, or of a fire or explosion from the facility, which could threaten the environment or human health outside the facility.

I.E.13.b. Description of occurrence - the description of the occurrence and its cause shall include:

- i. Name, address, and telephone number of the Permittees;

- ii. Name, address, and telephone number of the facility;
- iii. Date, time, and type of incident;
- iv. Name and quantity of materials involved;
- v. The extent of injuries, if any;
- vi. An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and
- vii. Estimated quantity and disposition of recovered material that resulted from the incident.

I.E.13.c. Written notice - as required by 20.4.1.900 NMAC (incorporating 40 CFR §270.30(l)(6)(iii)), the Permittees shall submit a written notice within five (5) calendar days of the time the Permittees become aware of the circumstances. The written notice shall contain the following information:

- i. a description of the noncompliance and its cause;
- ii. the period(s) of the noncompliance including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- iii. steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

The Secretary may waive the five-day written notice requirement in favor of a written report within fifteen (15) calendar days.

I.E.13.d. Contingency Plan implementation - if the Contingency Plan is implemented, the Permittees shall comply with the reporting requirements specified in Permit Attachment F (RCRA Contingency Plan). [20.4.1.500 NMAC (incorporating 40 CFR §264.56(j))]

I.E.14. Other Noncompliance

The Permittees shall report to the Secretary all other instances of noncompliance not otherwise required to be reported above, in Permit Conditions [I.E.10](#) through [I.E.13](#), at the time monitoring reports are submitted. The reports shall contain the information specified in Permit Condition [I.E.13](#). and 20.4.1.900 NMAC (incorporating 40 CFR §270.30(l)(10)).

I.E.15. Other Information

Whenever the Permittees become aware that they failed to submit any relevant facts in the Permit application, or submitted incorrect information in the Permit application or in any report to the Secretary, the Permittees shall promptly submit such facts or information in writing to the Secretary. [20.4.1.900 NMAC (incorporating 40 CFR §270.30(1)(11))]

I.F. SIGNATORY REQUIREMENT

The Permittees shall sign and certify, as specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.11) all applications, reports required by this Permit, or information submitted to or requested by the Secretary. [20.4.1.900 NMAC (incorporating 40 CFR §270.30(k))]

I.G. REPORTS, NOTIFICATIONS, AND SUBMISSIONS TO THE SECRETARY

The Permittees shall submit, by certified mail or hand delivery, all reports, notifications, or other submissions which are submitted to or requested by the Secretary or required by this Permit, to:

Hazardous Waste Permits Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

Telephone Number: (505) 428-2500
Facsimile Number: (505) 428-2567

I.H. CONFIDENTIAL INFORMATION

The Permittees may claim confidentiality for any information submitted to or requested by the Secretary or required by this Permit, to the extent authorized by Section 74-4-4.3(D) of the HWA and 20.4.1.900 NMAC (incorporating 40 CFR §270.12).

I.I. DOCUMENTS TO BE MAINTAINED AT THE FACILITY

The Permittees shall maintain at the facility, until closed as specified in Module II, the following documents and all amendments, revisions and modifications to these documents:

1. Waste Analysis Plan, as required by 20.4.1.500 NMAC (incorporating 40 CFR §264.13(b)) and this Permit, and records and results of waste analyses performed as specified in 20.4.1.500 NMAC (incorporating 40 CFR §264.13).
2. Inspection schedules, as required by 20.4.1.500 NMAC (incorporating 40 CFR §264.15(b)(2)) and this Permit, and records and results of

inspections as required by 20.4.1.500 NMAC (incorporating 40 CFR §264.15(d)).

3. Personnel training documents and records, as required by 20.4.1.500 NMAC (incorporating 40 CFR §264.16(d)) and this Permit.
4. Contingency Plan, as required by 20.4.1.500 NMAC (incorporating 40 CFR §264.53(a)) and this Permit, including summary reports and details of all incidents that require implementation of the contingency plan as specified in 20.4.1.500 NMAC (incorporating 40 CFR §264.56(j)).
5. Operating record, as required by 20.4.1.500 NMAC (incorporating 40 CFR §264.73) and this Permit.
6. Closure Plan, as required by 20.4.1.500 NMAC (incorporating 40 CFR §264.112(a)) and this Permit.
7. Post-Closure Plan as required by 20.4.1.500 NMAC (incorporating 40 CFR §264.118(a)) and this Permit.
8. Procedures for limiting air emissions, as required by 20.4.1.500 and .900 NMAC (incorporating 40 CFR §§264.601(c) and 270.23(a)(2)) and this Permit.
9. All other documents required by Module I, Permit Condition [I.E.10](#), and Module II.

I.J. DOCUMENTS TO BE SUBMITTED TO THE SECRETARY

The Permittees shall submit the Mine Ventilation Rate Monitoring Plan to the Secretary in accordance with the compliance schedule specified in Permit Condition IV.J.

I.K. DISPUTE RESOLUTION

I.K.1. Applicability

In the event the Permittees disagree, in whole or in part, with either an audit determination by NMED (as specified in Permit Condition II.C.2.d) or an evaluation by NMED of the Permittees' provisional approval of an AK Sufficiency Determination Request for a particular waste stream (as specified in Permit Attachment B), the Permittees may seek dispute resolution. The dispute resolution procedure in this Permit Condition shall be the exclusive mechanism for resolving disputes related to NMED's audit determination or a determination that the Permittees' provisional approval for a particular waste stream is inadequate.

I.K.2. Notice to NMED

To invoke dispute resolution, the Permittees shall notify NMED in writing within seven (7) calendar days of receipt of the determination in dispute. Such notice shall be sent to the Hazardous Waste Bureau Chief and must set forth the specific matters in dispute, the position the Permittees assert should be adopted, a detailed explanation for the Permittees' position, and any other matters considered necessary for the dispute resolution. For AK Sufficiency Determination disputes, the Permittees shall submit all factual data, analysis, opinion, and other documentation upon which they relied for their provisional approval, and any other information that supports their position. NMED shall acknowledge receipt of notification by e-mail sent to the Permittees' representative as designated in their written notification.

I.K.3. Tier I - Informal Negotiations

The Permittees and NMED shall make all reasonable, good faith efforts to informally resolve disputes related to NMED's determination. The Permittees and NMED shall meet or teleconference within fifteen (15) calendar days from NMED's receipt of notification to commence negotiations to resolve the dispute. The Permittees and NMED shall have thirty (30) calendar days from NMED's receipt of notification to resolve the dispute. In the event agreement is reached, the Permittees shall comply with the terms of such agreement or, if appropriate, submit a revised submittal and implement the same in accordance with, and within the time frame specified in, such agreement.

I.K.4. Tier II - Final Decision of the Secretary

In the event agreement is not reached within the thirty (30) calendar day period, the Permittees may submit a written Request for Final Decision to the Secretary. The Request must be submitted within five (5) calendar days of the end of Tier I Informal Negotiation period. The Secretary will notify the Permittees in writing of the decision on the dispute, and the Permittees shall comply with the terms and conditions of the decision. Such decision shall be the final resolution of the dispute and shall be an enforceable Order under this Permit. The Permittees shall implement the decision in accordance with, and within the time frame specified in, such decision.

I.K.5. Actions Not Affected by Dispute

With the exception of those matters under dispute, the Permittees shall proceed to take any action required by those portions of the submission and of this Permit that NMED determines are not affected by the dispute.

PERMIT ATTACHMENTS

Permit Attachment F (as modified from WIPP RCRA Part B Permit Application,
"RCRA Contingency Plan" - Chapter G).