



BILL RICHARDSON
Governor

DIANE DENISH
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau

2905 Rodeo Park Drive East, Building 1

Santa Fe, New Mexico 87505-6303

Phone (505) 476-6000 Fax (505) 476-6030

www.nmenv.state.nm.us



RON CURRY
Secretary

JON GOLDSTEIN
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 20, 2008

David Moody, Manager
Carlsbad Field Office
Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

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

RE: NMED APPROVAL OF THE LOS ALAMOS NATIONAL LABORATORY/CENTRAL CHARACTERIZATION PROJECT FINAL AUDIT REPORT, AUDIT A-07-12 WASTE ISOLATION PILOT PLANT EPA I.D. NUMBER NM4890139088

Dear Dr. Moody and Mr. Sharif:

On July 26, 2007, the New Mexico Environment Department (**NMED**) received the initial Final Audit Report of the Los Alamos National Laboratory/Central Characterization Project (**LANL/CCP**) Audit A-07-12 (**Audit Report**), from the Department of Energy's Carlsbad Field Office (**CBFO**). CBFO and Washington TRU Solutions LLC (**the Permittees**) were required to submit this Audit Report under the Waste Isolation Pilot Plant (**WIPP**) Hazardous Waste Facility Permit (**Permit**) as specified in Permit Condition II.C.2.c. The intended scope of this audit was two-fold: to recertify the continued adequacy, implementation, and effectiveness of the LANL/CCP TRU waste characterization and certification activities for Summary Category Groups S3000 homogeneous solid and S5000 debris contact-handled (**CH**) wastes; and to initially certify the adequacy, implementation, and effectiveness of the LANL/CCP TRU waste characterization and certification activities for Summary Category Group S5000 debris remote-handled (**RH**) waste. The Audit Report consisted of the following items:

- A narrative report (hardcopy and electronic)
- Completed copies of relevant Permit Attachment B6 checklists (hardcopy and electronic)
- Final LANL/CCP standard operating procedures (hardcopy and electronic)
- Corrective action report and item corrected during the audit

080824



- Objective evidence examined during the audit
 - General information
 - Acceptable knowledge
 - Headspace gas
 - Real time radiography
 - Visual examination

NMED representatives observed the LANL/CCP audit on May 22-24, 2007. NMED has examined the Audit Report for evidence of compliance with the requirements of Permit Conditions II.C.2 (Audit and Surveillance Program) and II.C.1 (Waste Analysis Plan [WAP]). The Audit Report indicates that there was

- One WAP-related condition adverse to quality requiring the issuance of a CBFO corrective action report that was corrected prior to submittal of the Audit Report;
- One deficiency requiring only remedial action that was corrected during the audit;
- Three observations identifying conditions that, if not controlled, could result in conditions adverse to quality; and
- Four recommendations identifying opportunities for improvement.

NMED provided comments on the Audit Report to the Permittees on March 7, 2008, and the Permittees responded to these comments in their transmittal dated April 7, 2008. On June 2, 2008, NMED issued a partial approval of the Audit Report for the recertification of retrievably stored, newly generated, and repackaged S5000 debris and retrievably stored S3000 homogeneous solids CH waste, but withheld approval with respect to the initial certification of RH TRU waste. Following receipt of NMED's June 2, 2008 letter, the Permittees met informally with NMED on June 10, 2008 to discuss issues related to RH TRU waste certification in an attempt to resolve them. NMED and the Permittees were unable to resolve these issues at the conclusion of this meeting, and on June 11, 2008, the Permittees notified NMED that they were invoking dispute resolution in accordance with the provisions of Permit Condition I.L. Following additional meetings that were later summarized in the Permittees' letter of July 3, 2008, NMED issued a letter pursuant to Permit Condition I.L.3 on July 7, 2008 notifying the Permittees of the terms of agreement concluding dispute resolution negotiations, which included a commitment to amend the previous LANL/CCP Audit Report letter of June 2, 2008 to approve the VE of records process for waste stream LA-MHD03.002 evaluated during Audit A-07-12, based on the information provided during these negotiations.

NMED reiterates one of the two "lingering concerns" identified in the June 2, 2008 letter regarding the CH TRU waste characterization program, and seeks a timely response from the Permittees.

1. NMED's comment 15 in the March 7, 2008 letter required the Permittees to clearly document and justify LANL/CCP's failure to perform any VE as a QC check of radiography during the time frame when the prior version of the Permit was in effect. The Permittees responded, "... the fact that LANL/CCP did not perform VE as a QC check on

radiography... did not constitute a condition adverse to quality... Because the requirement to perform VE as a QC check was removed from the Permit effective November 16, 2006, the [miscertification rate] data generated by performing [it] in the May 2006 through May 2007 time period would not have been used." The Permittees did, however, provide the LANL/CCP container selection memo for the May 2006 through May 2007 time period.

This response sidesteps the core issue. The record shows that the primary purpose of VE as a QC check of radiography was to *verify the results of radiographic examination*, not simply calculate a miscertification rate. For example, see the pre-October 16, 2006 versions of Permit Attachment B1, Section B1-3b(3) ["Visual examination shall be performed on a statistically determined portion of waste containers to verify the results of radiography."] and Permit Attachment B2, Section B2-1 ["As a Quality Control check on the radiographic examination of waste containers, a statistically selected portion of the certified waste containers must be opened and visually examined."]. The miscertification rate was simply a means to determine how many containers needed to be examined. To conclude that the primary purpose of VE as a QC check of radiography was to calculate the miscertification rate diminishes the *real* purpose – to provide feedback to the generator/storage site on the quality of their radiographic examination program. NMED reiterates its request for the Permittees to clearly document and justify LANL/CCP's failure to fulfill the requirement regarding VE as a QC check during the time frame in question.

NMED nevertheless concludes that the previously revised Audit Report, as augmented with the information provided by the Permittees during the dispute resolution negotiations, demonstrates that LANL/CCP has implemented the applicable characterization requirements of the WAP with respect to both CH and RH TRU waste. NMED therefore approves the Permittees' revised Final Audit Report for LANL/CCP Audit A-07-12 for the recertification of retrievably stored, newly generated, and repackaged S5000 debris and retrievably stored S3000 homogeneous solids CH waste, as well as for the initial certification retrievably stored S5000 debris RH waste, and amends the previous Audit Report approval for Audit A-06-11 issued by NMED on August 31, 2006 to include all CH and RH waste forms and processes evaluated by this recertification audit, with the limitation that the Permittees must perform a surveillance, following adequate notice to NMED, of LANL/CCP VE procedures applied to S3000 CH waste prior to LANL/CCP using VE to characterize, certify, and subsequently ship any S3000 CH waste to WIPP.

This Audit Report approval is of the broad programmatic implementation of waste characterization requirements at the generator/storage site, and does not constitute approval of individual waste characterization procedures, nor condone inappropriate applications of those procedures. This approval does not relieve the Permittees of their obligation to comply with the requirements of the permit or other applicable laws and regulations.

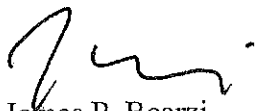
Dr. Moody and Mr. Sharif

August 20, 2008

Page 4

If you have any questions regarding this matter, please contact me at (505) 476-6016 or Steve Zappe at (505) 476-6051.

Sincerely,



James P. Bearzi

Chief

Hazardous Waste Bureau

JPB:soz

cc: Marcy Leavitt, NMED WWMD
Steve Zappe, NMED HWB
Chuck Noble, NMED OGC
Laurie King, EPA Region 6
Tom Peake, EPA ORIA
Connie Walker, Trinity Engineering
Susan Stiger, LANS
George Rael, NNSA LASO
Don Hancock, SRIC
Joni Arends, CCNS
File: Red WIPP '08