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NEW MEXICO
ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau

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RON CURRY
Secretary

JON GOLDSTEIN
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 27, 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: REQUEST FOR INFORMATION
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Dr. Moody and Mr. Sharif:

Pursuant to Section 74-4-4.3.A of the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, section 74-4-1 *et seq.*, and Section 3007(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, NMED hereby requests that the U.S. Department of Energy Carlsbad Field Office (CBFO) and Washington TRU Solutions LLC (WTS) provide NMED the below-listed information concerning activities associated with the Waste Isolation Pilot Plant (WIPP) within thirty (30) days of receipt of this letter.

Section 74-4-4.3.A of HWA provides that "[f]or the purposes of developing or assisting in the development of any rules, conducting any study, taking any corrective action or enforcing the provisions of the Hazardous Waste Act, upon request of the secretary or his authorized representative, any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall furnish information relating to such hazardous wastes. . . ." Likewise, section 3007(a) of RCRA provides that "[f]or purposes of developing or assisting in the development of any regulation or enforcing the provisions of [RCRA], any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any . . . duly designated officer, employee, or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes. . . ." 42 U.S.C. § 6927(a).

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On June 6, 2008, NMED received a verbal report from David Moody, CBFO Manager, regarding the emplacement on May 28, 2008 of a standard waste box (SWB LASB00411) that overpacked Los Alamos National Laboratory (LANL) container LAS817174 with an open nonconformance report (NCR). NMED subsequently received a written notification of this disposal on June 11, 2008, as well as a copy of the Permittees' letter to Mr. Juan Reyes of EPA dated June 13, 2008. NMED staff also observed two EPA inspections at LANL on June 25, 2008 and July 29, 2008, and witnessed the opening of SWB LASB00411 on July 2, 2008, after WIPP returned it to LANL. In order to better understand and document the facts surrounding the certification, shipment, emplacement, and retrieval of container LAS817174, NMED requests the following information:

1. The Permittees' Confirmation Package for shipment LA080037.
2. Procedures, documentation, narrative, including any and all documents demonstrating how the "routine QA surveillance" activities by CCP identified the open NCR on LAS817174 on or about June 5, 2008.
3. Documentation of CCP notification to WTS and/or CBFO on or about June 5, 2008 that an open NCR was identified for LAS817174.
4. The Permittees informed EPA that "Upon notification CBFO decided to retrieve the SWB and return it to LANL for remediation." The letter continues, "[t]he decision [to retrieve the container] was based on the fact that it was emplaced at WIPP with an unresolved NCR, in an active disposal room." However, CCP closed the NCR on the same day (June 6, 2008) that the Permittees decided to retrieve the SWB and return it to LANL (see CCP Corrective Action Plan dated June 23, 2008), even though the Permittees stated in the June 11, 2008 letter to NMED that closing the NCR would resolve the matter. NMED requests any additional documentation that clarifies or justifies the basis for the decision to retrieve SWB LASB00411 from the WIPP underground and return it to LANL.
5. A copy of the CBFO Memorandum CBFO:NTP:DCG:GS:08-0788:UFC:2300.00 from Mr. D. C. Gadbury to Mr. D. C. Moody, dated June 20, 2008, subject: Impact Evaluation of Accelerated Corrective Action Report 08-025. This memo is referenced in the June 23, 2008, WTS letter to CBFO.
6. Photographs, procedures used, and all other documentation associated with the July 2, 2008 opening of SWB LASB00411 and examination of container LAS 817174; overpacking LAS817174 into an 85 gallon drum; and the July 9, 2008 remediation of container LAS817174.
7. Video/audio media and batch data reports (BDRs) (LA-RTR2-08-0106 and LA-RTR2-08-0110) for the July 7 and July 10, 2008, radiography events of container LAS817174. Also provide BDRs (LA-RTR2-06-0368, LA-RTR2-07-0309, and LA-RTR2-07-0018) and video/audio media for radiography events of containers LAS794304, LAS804763, and LAS850388.

Your compliance with this information request is mandatory. Failure to respond fully and truthfully within the time specified herein, or adequately justify such failure to respond, may result in an enforcement action by NMED pursuant to Section 74-4-10 of HWA, or Section 7002(a)(1)(A) of RCRA (42 U.S.C. § 6972(a)(1)(A)) or both. Both HWA and

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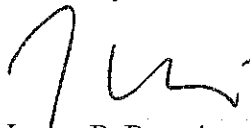
RCRA provide for the imposition of civil penalties for noncompliance. Section 74-4-12 of HWA provides that any person who violates any provision of HWA "may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs." See also NMSA 1978, § 74-4-10.A and B. Section 3008(g) of RCRA provides that any person who violates any requirement of RCRA shall be liable for a civil penalty not to exceed \$27,500¹ for each such violation. 42 U.S.C. § 6928(g). Both HWA and RCRA also provide for criminal fines and imprisonment for knowingly omitting material information or making a false statement or representation in any document used for compliance with HWA or RCRA. NMSA 1978, § 74-4-11.A(3); 42 U.S.C. § 6928(d)(3).

CBFO and/or WTS may claim confidentiality for any information required by this information request pursuant to the requirements of Section 74-4-4.3(D) and (F) of HWA, 42 U.S.C. § 6927(b), and 20.4.1.100 NMAC (incorporating 40 CFR 260.2).

Please submit your response to me at the address on the letterhead within 30 days of receipt of this letter.

Thank you for your cooperation in this matter. If you have any questions regarding the information request, please contact Steve Zappe of my staff at (505) 476-6051.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:soz

cc: Art Vollmer, Manager, Compliance and Technical Assistance Program, HWB
Steve Zappe, NMED HWB
Chuck Noble, NMED OGC
Thomas Kesterson, NMED DOEOB
Laurie King, EPA Region 6
Tom Peake, EPA ORIA
Connie Walker, Trinity Engineering
Susan Stiger, LANS

¹ Although this provision of RCRA on its face provides for a civil penalty not to exceed \$25,000, the maximum penalty has been increased to \$27,500 to account for inflation pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3107 note. 40 C.F.R. § 19.4, Table 1.

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George Rael, NNSA LASO
WIPP File - Red '08