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NEW MEXICO ENVIRONMENT DEPARTMENT

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

September 2, 2008

David Moody, Manager
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Farok Sharif, President
Washington TRU Solutions LLC
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RE: NMED APPROVAL OF THE LOS ALAMOS NATIONAL LABORATORY/CENTRAL CHARACTERIZATION PROJECT FINAL AUDIT REPORT, AUDIT A-08-16 WASTE ISOLATION PILOT PLANT EPA I.D. NUMBER NM4890139088

Dear Dr. Moody and Mr. Sharif:

On July 18, 2008, the New Mexico Environment Department (NMED) received the Final Audit Report of the Los Alamos National/Central Characterization Project (LANL/CCP) Audit A-08-16 (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 as specified in Permit Condition II.C.2.c. The intended scope of this recertification audit was to ensure the continued adequacy, implementation, and effectiveness of the LANL/CCP waste characterization processes for Summary Category Groups S3000 homogeneous solids and S5000 debris contact-handled (CH) wastes and S5000 debris remote-handled (RH) waste (waste stream LA-MHD03.002, consisting of 16 RH-72B canisters) 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

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- Objective evidence examined during the audit
 - General information
 - Acceptable knowledge
 - Headspace gas
 - Real time radiography (**RTR**)
 - Visual examination (**VE**)

NMED representatives observed the LANL/CCP audit on April 15-17, 2008. 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 were:

- One WAP-related condition adverse to quality requiring the issuance of a CBFO corrective action report (**CAR**) that was corrected prior to submittal of the Audit Report;
- One deficiency requiring only remedial action that was corrected during the audit; and
- Three recommendations identifying opportunities for improvement.

Attached are NMED's general comments based upon observation of the LANL/CCP audit and review of the Audit Report. These are provided to guide future audit report preparation and to assist the Permittees in understanding NMED's concerns. NMED requests that the Permittees correct the items listed in the attachment and return them, indicating revisions to any text in the Audit Report and checklists with redline/strikeout annotation. This will ensure the administrative record contains a complete and accurate Audit Report.

On April 23, 2008 (after the conclusion of the audit), NMED submitted an Observer Inquiry Form regarding the Permit requirement to obtain video/audio records of VE in lieu of RTR. This issue arose after the audit team identified that LANL/CCP no longer had video recording capabilities at TA-50 in the Waste Characterization, Reduction, and Repackaging Facility (**WCRRF**) glovebox. The audit team issued CAR 08-021 upon identifying numerous VE batch data reports that identified the VE process in the WCRRF as VE in lieu of RTR without having produced a video/audio record. NMED noted that the Permit requires video/audio records of VE in lieu of RTR, but also allows the alternate method of employing the signatures of two trained operators for the initial packaging of newly generated waste and the repackaging of retrievably stored waste. NMED sought clarification from the Permittees on what constituted (and differentiated) VE in lieu of RTR, VE for newly generated waste, and VE for retrievably stored waste; NMED asked the Permittees to comment on when video/audio records are required and when they are optional.

On May 28, 2008, the Permittees responded to NMED's Observer Inquiry, but did not directly address the question of what constituted VE in lieu of RTR or VE for newly generated or retrievably stored waste. Instead, the Permittees stated that the Permit "*provides* two methods for performing [VE] and the Permit *requires* that each method be performed in a specific manner." The Permittees also stated that the Permit allows generators to use either method for newly generated or retrievably stored waste. The Permittees proposed revising CCP procedures to define these two methods as the following:

Method 1: Requires one operator and the visual examination is documented (recorded) on audio/video media.

Method 2: Requires two operators who are equally trained to the requirements stipulated in the Permit. In this method, no audio/video recording is necessary.

In this framework, the generator/storage sites are free to choose between either of the two VE "methods." The Permittees "believe that a permit modification replacing the term 'VE in lieu of radiography' with 'Method 1' and referring to visual examination performed using two generator site personnel as 'Method 2' would clarify the language and eliminate the potential for confusion."

The Permit, however, specifies a single method for *conducting* VE with two methods for *documenting* VE: using one operator with audio/video media, or using two operators equally trained to the requirements of the Permit. The Permit requirements for conducting VE on newly generated waste and retrievably stored waste are identical. Permit Attachment B1, Section B1-4, Visual Examination, states the following as the requirements for *conducting* VE: "Visual examination shall be conducted to describe all contents of a waste container, clearly identifying all discernible waste items, residual materials, packaging materials, or waste material parameters." Likewise, Section B1-4 does not provide two methods for *performing* VE, as the Permittees' response states, but provides two methods for *documenting* VE: "All visual examination activities shall be documented on video/audio media, or alternatively, by using a second operator to provide additional verification by reviewing the contents of the waste container to ensure correct reporting. The results of all visual examination shall be documented on visual examination data forms."

Further, regardless of the method of documentation, the data quality objective (DQO) for *conducting* VE (whether on retrievably stored or newly generated waste) remains the same. Permit Attachment B, Section B-4a(1), Data Quality Objectives, states the following DQO for VE: "To determine the physical waste form, the absence of prohibited items, and additional waste characterization techniques that may be used based on the Summary Category Groups (i.e., S3000, S4000, S5000)." In order to meet these DQOs, all items must either be removed from the container and examined (in the case of retrievably stored waste) or identified and examined as they are placed into the container (in the case of newly generated waste). This interpretation is consistent with Permittees' testimony during previous WIPP Permit hearings (see Ledford testimony, May 31, 2006, 311/RH Permit Hearing, Vol. I, pp. 87-88; Hunter testimony, February 24, 1999, WIPP Permit Hearing, Vol. III, pp. 447-448).

To address NMED's concern, the Permittees should consider developing a permit modification request to create more detailed and consistent requirements for VE, regardless of whether it is *conducted* on newly generated or retrievably stored waste, and regardless of whether it is *documented* with audio/video or two generator site personnel. These requirements for VE should be consistent with the Permittees' testimony cited above and include the following elements:

- All items in the waste container must be examined, regardless of Summary Category Group

- For retrievably stored waste, *all* items must be removed from the waste container for examination
- For newly generated waste, *all* items must be examined as they are packaged into the waste container unless the items were documented by previous VE activities (e.g., the previous VE documentation for a smaller, sealed can that is being loaded into a larger waste container may be used to document the contents of that can)
- If all items cannot be examined using VE, radiography must be used to meet its DQO
- If radiography and VE are both incapable of meeting their respective DQOs, the Permittees must notify NMED and conduct a surveillance demonstrating a method capable of meeting the DQO before the waste can be characterized and certified

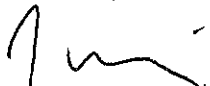
NMED's concern is that if generator/storage sites choose to conduct VE without video/audio recording, it may be difficult during audits to determine if the VE activities actually meet the DQO in the absence of these more explicit requirements for VE. For example, without the videotapes of the VE conducted by LANL/CCP on the containers of dewatered sludge, NMED would have been unable to document allegations in Compliance Order HWB 07-043 that all the waste had not been examined, and that these activities therefore did not meet the DQO for VE.

NMED concludes that this Audit Report demonstrates that LANL/CCP has adequately implemented the applicable characterization requirements of the WAP. Therefore, NMED approves the Permittees' Final Audit Report for LANL/CCP Audit A-08-16 for the recertification of S3000 homogeneous solids and S5000 debris CH wastes and S5000 debris RH waste, and amends the previous Audit report approval for Audit A-07-12 issued by NMED on August 20, 2008 to include all waste forms and processes evaluated by this recertification audit. NMED retains the limitation from the previous Audit Report approval, 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.

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

Dr. Moody and Mr. Sharif
September 2, 2008
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JPB:soz

Attachment

cc: Marcy Leavitt, NMED WWMD
Steve Zappe, NMED HWB
Chuck Noble, NMED OGC
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NMED COMMENTS ON THE
LOS ALAMOS NATIONAL LABORATORY/CENTRAL CHARACTERIZATION
PROJECT (LANL/CCP) FINAL AUDIT REPORT A-08-16

NMED's review indicated that the body of the Audit Report and the B6 checklists generally appear to address the applicable elements. NMED provides the following comments for the Permittees consideration:

1. In question 149b of the B6 checklist, the comment field for item G states, "Newly generated waste is not in the scope of the audit." NMED notes that waste stream LA-MHD01.001 is currently being generated at TA-55, which is inconsistent with this comment. See objective evidence VE1, BDR LAVE5500001.
2. In questions 237 and 245 of the B6 checklist, the citation CCP-TP-053, S. 4.4.3[I] should be CCP-TP-053, S. 4.4.3[H].