



BILL RICHARDSON
Governor

DIANE DENISH
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

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ENTERED



RON CURRY
Secretary

JON GOLDSTEIN
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

November 14, 2008

CONFIDENTIAL - FOR SETTLEMENT PURPOSES ONLY

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: NOTICE OF PROPOSED PENALTIES
WASTE ISOLATION PILOT PLANT, EPA I.D. # NM4890139088**

Dear Dr. Moody and Mr. Sharif:

On November 16, 2007, staff members of the New Mexico Environment Department (NMED) Groundwater Quality Bureau and Hazardous Waste Bureau received a verbal report from the Department of Energy's Carlsbad Field Office regarding a discharge on November 9, 2007 of approximately 150 gallons of brine from the Exhaust Shaft Intercept Borehole collection system into the H-19 Evaporation Pond at the Waste Isolation Pilot Plant (WIPP) that exceeded the regulatory limit of 5 mg/L for lead. Based on that incident and review of the information obtained, NMED issued a Notice of Violation (NOV) dated November 14, 2008 to the Department of Energy's Carlsbad Field Office and Washington TRU Solutions LLC, Permittees of the WIPP facility.

Pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 to 74-4-14, NMED is proposing to assess a civil penalty of \$4,368.00 to settle the violations of the HWA and the Hazardous Waste Management Regulations alleged in the NOV. The civil penalty is assessed as follows:

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- | | |
|---|---------|
| 1. Disposal of hazardous waste without a permit. | \$4,368 |
| 2. Land disposal of hazardous waste without treating the waste to meet appropriate treatment standards. | \$0 |

For the purposes of this settlement offer, NMED is exercising its discretion and choosing not to propose a civil penalty for the land disposal restriction violation at this time.

Pursuant to the New Mexico Water Quality Act (WQA), NMSA 1978, §§ 74-6-1 to 74-6-17, NMED is proposing to assess a civil penalty of \$7,875.00 to settle the violation of the WQA and the Water Quality Control Commission Regulations alleged in the NOV. The civil penalty is assessed as follows:

- | | |
|----------------------------|---------|
| 3. Unauthorized discharge. | \$7,875 |
|----------------------------|---------|

NMED requests a meeting with appropriate representatives of the Permittees for the purposes of negotiating a settlement relating to the NOV. To explore the possibility of settlement in this manner, contact us directly at 505-476-6016 (James Bearzi) and 505-827-2919 (William Olson).

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau



William C. Olson
Chief
Ground Water Quality Bureau

JPB:soz

cc: Art Vollmer, NMED HWB
Chuck Noble, NMED OGC
Mary Ann Menetrey, NMED GWQB
Clint Marshall, NMED GWQB
Steve Zappe, NMED HWB
File: Red WIPP '08 and HWB Library file #0549

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PENALTY CALCULATION WORKSHEET

Facility: Waste Isolation Pilot Plant

Citation/Violation: 20.4.1.900 NMAC (incorporating 40 CFR 270.1(c) and 270.10(a)) - disposal of hazardous waste without a permit

Location: WIPP

PENALTY AMOUNT:

1.	Gravity based penalty from matrix	\$ 1,300
	(a) Potential for harm	Minor
	(b) Extent of deviation	Moderate
	(c) Number of counts	1
2.	Multiple count adjustment (multiply line 1 by number of counts)	\$ 1,300
3.	Multiday penalty from matrix	\$ 390
4.	Days of noncompliance (or other appropriate number)	7
5.	Multiday adjustment (multiply line 4 minus 1 by line 3)	\$ 2,340
6.	Add line 2 and line 5	\$ 3,640
7.	Percent increase/decrease for good faith	-10%
8.	Percent increase for willfulness/negligence	15%
9.	Percent increase for history of noncompliance	15%
10.	Total percentage (add lines 7 through 9)	20%
11.	Multiply line 6 by line 10	\$ 728
12.	Economic benefit penalty	\$ -
13.	Add lines 6, 11, and 12 for total penalty amount for this violation	\$ 4,368

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PENALTY CALCULATION WORKSHEET

Facility: Waste Isolation Pilot Plant

Citation/Violation: 20.4.1.800 NMAC (incorporating 40 CFR 268.34(a) and (f)) - land disposal of hazardous waste without treating the waste to meet appropriate treatment standards

Location: WIPP

PENALTY AMOUNT:

1. Gravity based penalty from matrix
- (a) Potential for harm
- (b) Extent of deviation
- (c) Number of counts
2. Multiple count adjustment (multiply line 1 by number of counts)
3. Multiday penalty from matrix
4. Days of noncompliance (or other appropriate number)
5. Multiday adjustment (multiply line 4 minus 1 by line 3)
6. Add line 2 and line 5
7. Percent increase/decrease for good faith
8. Percent increase for willfulness/negligence
9. Percent increase for history of noncompliance
10. Total percentage (add lines 7 through 9)
11. Multiply line 6 by line 10
12. Economic benefit penalty
13. Add lines 6, 11, and 12 for total penalty amount for this violation

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PENALTY CALCULATION WORKSHEET

Facility: Waste Isolation Pilot Plant

Citation/Violation: 20.6.2.3104 NMAC - Unauthorized discharge in violation of Condition 3 of the Ground Water Discharge Permit Renewal, DP-831

Location: WIPP

PENALTY AMOUNT:

1.	Gravity based penalty from matrix	\$	3,000
	(a) Potential for harm		Minor
	(b) Extent of deviation		Moderate
	(c) Number of counts		1
2.	Multiple count adjustment (multiply line 1 by number of counts)	\$	3,000
3.	Multiday penalty from matrix	\$	750
4.	Days of noncompliance (or other appropriate number)		7
5.	Multiday adjustment (multiply line 4 minus 1 by line 3)	\$	4,500
6.	Add line 2 and line 5	\$	7,500
7.	Percent increase/decrease for good faith		-10%
8.	Percent increase for willfulness/negligence		15%
9.	Percent increase for history of noncompliance		0%
10.	Total percentage (add lines 7 through 9)		5%
11.	Multiply line 6 by line 10	\$	375
12.	Economic benefit penalty		0
13.	Add lines 6, 11, and 12 for total penalty amount for this violation	\$	7,875