



NEW MEXICO
ENVIRONMENT DEPARTMENT



Hazardous Waste Bureau

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 3, 2010

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.*, the New Mexico Environment Department (**NMED**) hereby requests that 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**).

Section 74-4-4.3(A) of the 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. . . .”

The Applicants’ May 25, 2010 Preliminary Topical Comments on the WIPP Draft Permit stated the following:

“NMED, in the Draft Permit, has divided the responsibilities of the Permittees by designating certain actions and responsibilities as DOE action only rather than Permittee actions. The

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applicants note that the NMED Fact Sheet indicates that this change is based on the perception of a conflict of interest. The applicants do not understand the necessity for this change. The Permittees have traditionally taken measures to assure such conflicts do not arise and to make the processes used for characterizing, approving and disposing of waste transparent to regulatory agencies and stakeholders. For example:

- There is extensive, formal oversight (including regulatory and QA organizations) by five different groups of personnel consisting of WTS Internal oversight, Generator Site oversight, CBFO oversight, NMED oversight, EPA oversight
- After eleven plus years of operating experience there have been no instances that would indicate that regulatory compliance is being compromised due to the organization structure
- The Permittees both encourage as a matter of policy and implement as a matter of practice self reporting of instances where permit conditions have not been met
- Characterization and Confirmation activities modeled in accordance with standard industrial practices whereby those who perform these activities certify as to the accuracy of their determinations with full understanding of the consequences of purposeful violation of the regulations”

To substantiate the statements above, NMED requests the following documentation:

1. Organizational charts for WTS, CCP, WRES, and, as necessary, URS that depict the lines of authority for or between the individual(s) overseeing WTS/CCP waste characterization and certification at generator/storage sites and the individual(s) overseeing WRES waste confirmation activities on behalf of the Permittees. In particular, clearly identify the position(s) within these organizations to which the WRES manager reports, both formally and informally.
2. A copy of the affiliate agreement between WTS and URS for the services of WRES.
3. A copy of any delegation of authority or other approval document by CBFO authorizing WRES to act on behalf of or otherwise present themselves as agents of the Permittees, and any limitations on such delegation of authority.
4. Documented evidence (e.g., audits or assessments) created by WTS QA, generator/storage sites, CBFO, NMED, and EPA that the Permittees have measures in place to ensure that conflicts of interest do not arise for WTS/CCP personnel overseeing and implementing waste characterization and certification at the generator/storage sites or for WRES personnel overseeing and implementing waste confirmation activities on behalf of the Permittees.
5. Policies and procedures that WTS, WRES, and CBFO must follow, if available, regarding conflict of interest, including:
 - a. The WIPP Management and Operating Contract requirements for avoidance of conflicts of interest
 - b. DOE code of ethics requirements for its contractors, including, but not limited to CTAC, WRES, and WTS.

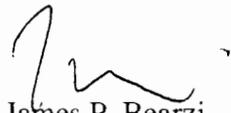
- c. WTS, WRES, and URS Codes of Ethics.
6. Policies and procedures that encourage and/or require self-reporting of instances where Permit conditions are not met.
 7. Policies and procedures outlining "standard industrial practices" requiring individuals to "certify as to the accuracy of their determinations with full understanding of the consequences of purposeful violation of the regulations."
 8. Policies or other documentation stating that DOE is solely responsible for conducting waste characterization audits and surveillances at generator/storage sites.
 9. Any other relevant existing documents that substantiate the Permittees' argument that no conflict of interest exists for the organizations or individuals actively engaged in characterizing and certifying waste at generator/storage sites or the organizations or individuals generally responsible for ensuring implementation of applicable requirements of the WAP by generator/storage sites.

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 the HWA. The HWA provides 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). The HWA also provides 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 (NMSA 1978, § 74-4-11.A (3)).

Please submit your response to me at the address on the letterhead no later than June 18, 2010.

If you have any questions regarding the information request, please contact Steve Zappe of my staff at (505) 476-6051, or me directly at (505) 476-6016.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:soz

Dr. Moody and Mr. Sharif
June 3, 2010
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cc: Art Vollmer, NMED HWB
John Kieling, NMED HWB
Steve Zappe, NMED HWB
Chuck Noble, NMED OGC
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Connie Walker, Trinity Engineering
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