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ENVIRONMENT DEPARTMENT

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DAVE MARTIN
Secretary

BUTCH TONGAGE
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 22, 2011

Edward Ziemianski, Acting Manager
Carlsbad Field Office
Department of Energy
P. O. Box 3090
Carlsbad, New Mexico 88221-3090

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

**RE: PERMIT MODIFICATION REQUESTS TO UPDATE VENTILATION LANGUAGE, ADD A SHIELDED CONTAINER, AND REVISE THE WIPP GROUNDWATER DETECTION MONITORING PROGRAM PLAN
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088
WIPP-11-010**

Dear Messrs. Ziemianski and Sharif:

The New Mexico Environment Department (Department) has received a Permit Modification Request (PMR) to Update Ventilation Language, Add a Shielded Container, and Revise the Waste Isolation Pilot Plant (WIPP) Groundwater Detection Monitoring Program Plan, dated September 29, 2011, from the U.S. Department of Energy Carlsbad Field Office and Washington TRU Solutions LLC (the Permittees). The Permittees seek to modify the Hazardous Waste Facility Permit for the WIPP and request that the Department process the PMR as a Class 2 permit modification under the regulations at 40 CFR § 270.42(b). For the reasons explained below, I have determined that it is appropriate for the Department to process the modification request as a Class 3 permit modification under 40 CFR § 270.42(c).

Under 40 CFR § 270.42(b)(6)(i)(C)(1), the Department Secretary may determine that the modification request must be processed as a Class 3 modification because there is substantial public concern about the requested modification. There is a long history of substantial public concern regarding the storage and disposal of remote handled (RH) waste at WIPP. Substantial public concern has also been demonstrated with respect to the current PMR proposing the



addition of shielded containers. More than 80 people have submitted written comments for the record regarding this PRM. Many of those comments specifically addressed the proposed modification for remote handled waste. There is also a long history of substantial public concern about groundwater monitoring at WIPP. At least one of the commenters on this PRM addressed groundwater monitoring.

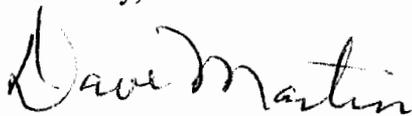
Further, under 40 CFR § 270.42(b)(6)(i)(C)(2), the Department Secretary may determine that the modification request must be processed as a Class 3 modification because the complex nature of the changes require the more extensive Class 3 procedures. The requested modification would require complex changes to the operation of the facility. For example, the PMR likely will necessitate additional procedures and equipment for unloading, transporting, and overpacking remote handled transuranic waste in shielded containers. As another example, the Department will need to evaluate whether the proposed modification complies with 40 CFR § 264.601(c)(6), which addresses the potential for health risks caused by human exposure to waste constituents. These issues are more properly addressed as a Class 3 modification.

Additionally, the regulations provide that a permit modification for a container unit that will "require additional or different management practices from those authorized in the permit" must be treated as a Class 3 modification. 40 CFR § 270.42, Appendix I, Item F.3.a. The Department has concluded that the requested modification will likely necessitate changes to the permit to authorize additional or different management practices for containers with remote handled waste.

In conclusion and for the reasons stated above, I have determined that the modification request must be processed as a Class 3 modification. Please be assured that the Environment Department will process the modification promptly and with as little delay as possible. Even assuming that the Department holds a public hearing on the modification, the Department will take final action on the modification request as soon as possible.

If you have any questions about this decision, please address them to John Kieling, Acting Chief of the Environment Department Hazardous Waste Bureau, at 476-6000 or john.kieling@state.nm.us.

Sincerely,



Dave Martin
Cabinet Secretary

Enclosures

cc: J. Davis, NMED RPD
J. Kieling, NMED HWB
T. Kliphuis, NMED HWB
T. Hall, NMED HWB

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