

**FW: NMED Compliance Order (CO) 01-08**

Maestas, Ricardo, NMENV

Sent: Tuesday, March 26, 2013 9:27 AM**To:** Allen, Pam, NMENV**Attachments:** CO HWB 01-08.pdf (3 MB) ; CBFO Response to CO HWB 01~1.pdf (5 MB) ; February 12, 2002 Settlement~1.pdf (273 KB) ; NMED Press Release CO HWB ~1.pdf (342 KB)

January WIPP file

From: Maestas, Ricardo, NMENV**Sent:** Thursday, January 03, 2013 11:43 AM**To:** Pace, Berry (Berry.Pace@wipp.ws)**Cc:** Kliphuis, Trais, NMENV; Holmes, Steve, NMENV; Maestas, Ricardo, NMENV**Subject:** FW: NMED Compliance Order (CO) 01-08

Hello Berry,

Attached are PDFs of what I could find in regards to the subject CO (HWB 01-08).
The NMED Press release summarizes that the Order was settled in February 2002.

I could not find any correspondence here at the Haz. Waste Bureau requesting termination.
Is it your understanding that terminations need to be requested for COs?

Another option is to have the WIPP Lawyers get in touch with the State's Lawyers and find out if this has been terminated.

Let me know if you need anything else.

From: Pace, Berry [mailto:Berry.Pace@wipp.ws]**Sent:** Friday, December 28, 2012 7:25 AM**To:** Holmes, Steve, NMENV; Maestas, Ricardo, NMENV**Subject:** RE: NMED Compliance Order (CO) 01-08

Here tis....

From: Holmes, Steve, NMENV [mailto:steve.holmes@state.nm.us]**Sent:** Friday, December 28, 2012 7:21 AM**To:** Pace, Berry**Subject:** RE: NMED Compliance Order (CO) 01-08

Berry,

Send it to us so that we know what it is.

Thank you,

From: Pace, Berry [mailto:Berry.Pace@wipp.ws]**Sent:** Friday, December 28, 2012 6:37 AM**To:** Holmes, Steve, NMENV; Maestas, Ricardo, NMENV**Subject:** NMED Compliance Order (CO) 01-08

Gentlemen,

Do either of you know whether the WIPP Permittees have requested a termination of the subject CO?

Thanks

Berry D. Pace

CBFO Technical Assistance Contractor – Portage, Inc.

Contractor to the Department of Energy

4021 National Parks Hwy

Carlsbad, NM 88220

575-234-7146

130101



4/10/2013 9:51 AM



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Water and Waste Management Division

Harold Runnels Building

1190 St. Francis Drive, P.O. Box 26110

Santa Fe, New Mexico 87502-6110

Telephone (505) 827-1758

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PETER MAGGIORE
SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

January 7, 2002

Dr. Inés Triay, Manager
Carlsbad Field Office
Department of Energy
P. O. Box 3090
Carlsbad, New Mexico 88221-3090

Mr. John Lee, General Manager
Westinghouse TRU Solutions, LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-5608

RE: COMPLIANCE ORDER HWB 01-08 (CO)
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088

Dear Dr. Triay and Mr. Lee:

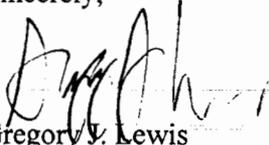
The New Mexico Environment Department (NMED) issues the enclosed Compliance Order to the Department of Energy Carlsbad Field Office and Westinghouse TRU Solutions LLC (**the Permittees**), pursuant to the New Mexico Hazardous Waste Act, NMSA 1978-74-4-10 (Repl. Pamp. 2000). The Compliance Order is issued because the Permittees failed to comply with the New Mexico Hazardous Waste Management Regulations (20.4.1 et. seq. NMAC) and the Waste Isolation Pilot Plant (WIPP) Hazardous Waste Facility Permit. The violations are specifically set out in the Compliance Order, which includes a schedule of compliance. The Permittees may be subject to civil penalties of up to \$25,000 for each day of noncompliance with the Compliance Order, as set forth in 74-4-10.

020103

Dr. Inés Triay
Mr. John Lee
January 7, 2002
Page 2

Any inquiries concerning this Compliance Order should be directed to James Bearzi, Chief,
Hazardous Waste Bureau, New Mexico Environment Department, at (505) 428-2512.

Sincerely,



Gregory V. Lewis
Director
Water and Waste Management Division

cc: James Bearzi, NMED HWB
John Kieling, NMED HWB
~~Steve Zappe, NMED HWB~~
Debby Brinkerhoff, NMED HWB
Paul Ritzma, NMED OGC
David Neleigh, EPA Region 6
Betsy Forinash, EPA ORIA
Connie Walker, TechLaw
File: Red WIPP '01

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**IN THE MATTER OF
U.S. DEPARTMENT OF ENERGY
AND WESTINGHOUSE TRU
SOLUTIONS LLC, CARLSBAD,
NEW MEXICO, NM4890139088,
RESPONDENTS.**

**COMPLIANCE ORDER
HWB 01-08 (CO)**

ADMINISTRATIVE COMPLIANCE ORDER

The Secretary of Environment, acting through the Director of the Water and Waste Management Division of the New Mexico Environment Department (NMED), issues this Administrative Compliance Order (Order) to the U.S. Department of Energy (DOE) and Westinghouse TRU Solutions LLC (WTS) (collectively referred to as Respondents), pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978 Section 74-4-10 (2000).

FINDINGS OF FACT

1. NMED is the agency within the executive branch of the government of the State of New Mexico charged with the administration and enforcement of the HWA, NMSA 1978 Section 74-4-1 et seq. (2000), and New Mexico Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC.
2. Respondents are DOE and WTS, who own and operate the Waste Isolation Pilot Plant (WIPP), a mixed waste storage and disposal facility for which a permit is required under the HWMR, 20.4.1.900 NMAC (incorporating 40 CFR §270.1(a)).
3. On October 27, 1999, NMED issued a Permit (Permit Number NM4890139088-TSDF) to the Respondents to operate a hazardous waste storage and disposal facility at WIPP.

4. DOE is an agency of the federal government and the owner and co-operator of WIPP.

5. WTS is a private corporation under contract with DOE and the co-operator of WIPP.

6. WIPP is located approximately twenty-six (26) miles east of Carlsbad in Eddy County, New Mexico.

7. From 1998 through 2001, NMED issued numerous enforcement letters against Respondents pursuant to the HWA and the HWMR. In 1998 and 1999, NMED inspected WIPP, discovered violations of the HWMR, 20.4.1 NAC, and issued letters of violation. In 1999, NMED issued a compliance order against Respondents (CO 99-05), which sought compliance and assessed civil penalties. In 2001, NMED discovered violations of the HWMR, 20.4.1 NMAC, and issued a notice of violation (NOV 2001).

8. The violations cited in the enforcement actions set forth above included, but were not limited to the following: inadequate hazardous waste determination (CO 99-05), failure to obtain a general waste analysis that complies with 40 CFR §265.13(a) (CO 99-05), storing and disposing hazardous waste without following the written waste analysis plan (CO 99-05), submitting and putting into effect permit modifications that failed to meet the requirements for Class 1 modifications listed in Appendix I of 40 §CFR 270.42 (NOV 2001), and failure to manage, store and dispose of waste as required by Permit Conditions II.C.1 Waste Analysis Plan, IV.B.2.b Prohibited Waste, and 40 CFR §264.13 (NOV 2001).

9. As a result of the compliance order described above, Respondents entered into a stipulated final order to compromise and settle the matter.

PERMIT CONDITIONS NOT MET

10. 20.4.1.900 - .901 NMAC (incorporating 40 CFR §270.30(a)) requires the Permittees to comply with all conditions of their permit.
11. Permit Condition II.B.1 stipulates that the Respondents may only receive TRU mixed waste from those sites which comply with the applicable requirements of the Waste Analysis Plan (WAP) specified in Permit Condition II.C.1 and as verified through the Respondents' Audit and Surveillance Program specified in Permit Condition II.C.2.
12. On September 28, 2000 and prior to shipping waste to WIPP, the Respondents concluded Audit A-00-16 to evaluate LANL's retrievably stored debris waste characterization program and to verify compliance with the Permit WAP requirements.
13. On or about November 2, 2000, DOE submitted the first Final Audit Report for LANL (Audit A-00-16).
14. On January 8, 2001, NMED withheld approval of the Final Audit Report for LANL (Audit A-00-16) until the Respondents submitted additional information demonstrating full implementation of WAP requirements.
15. On or about February 1, 2001, DOE submitted a revised Final Audit Report for LANL, including a response to comments and additional objective evidence in support of LANL's compliance with WAP requirements.
16. On or about February 23, 2001, DOE submitted a retraction of erroneous statements made in the previous response to comments. This submittal consisted of a revised response to comments and replacement pages for the B6 checklist.

17. On or about March 5, 2001, DOE submitted a revised response concerning the calculation and reporting of Acceptable Knowledge (AK) percent accuracy, including a revised procedure and example AK accuracy report.

18. On March 16, 2001, NMED approved the Respondents' Final Audit Report for LANL (Audit A-00-16).

19. On or about April 5, 2001, DOE submitted an Approved Waste Stream Profile Form for LANL, Waste Stream Profile Number LA-TA-55-19.01.

20. On April 19, 2001, DOE commenced the shipment of Waste Stream LA-TA-55-19.01 from LANL.

21. On April 20, 2001, Respondents received and stored the initial shipment of Waste Stream LA-TA-55-19.01 at WIPP, and subsequently disposed of the initial shipment in Room 7 of Panel 1.

22. On October 26, 2001, the Respondents, accompanied by NMED staff, concluded Audit A-02-04 as the first annual recertification audit to evaluate LANL's retrievably stored debris waste characterization program and to verify continued compliance with the Permit WAP requirements.

23. During the Audit A-02-04, the Respondents' audit team determined, in the presence of NMED staff, that the headspace gas sampling and analysis procedures at LANL were inadequate and ineffective.

24. During Audit A-02-04, the Respondents' audit team identified Concern #9, which stated, "Methanol in a standard was searched against both the Appendix VIII [to 40 CFR §261] and MBS75K libraries – Appendix VIII library identified [methanol] as hydrazine, MBS75K as acetic acid, hydroxyl. Program does not have a reliable method to identify [methanol]."

25. During Audit A-02-04, the Respondents' audit team identified Concern #24, which stated, "MDLs [*Method Detection Limits*] – used incorrect student-T (used 3.143 for 7 MDL runs). Need to recalculate MDLs and generate a new spreadsheet with correct student-T." This statement indicated that the required statistical analysis was improperly performed. Concern #24 further stated, "MDL 3/8/01 – individual recovery for some compounds were outside acceptance criteria (>130%R)," where %R is percent recovery.

26. On or about November 5, 2001, the Respondents' audit team issued Corrective Action Report (CAR) No. 02-009 associated with Audit A-02-04, identifying the following five Conditions Adverse to Quality in the headspace gas sampling and analysis activities observed during the audit.

A. Block 9, Condition Adverse to Quality #1A stated, "The current MDLs, and those dated 3/8/01, were calculated using an incorrect Student-t factor. The factor used was for 7 samples (3.14); only four samples were analyzed and hence 4.54 should have used as the Student-t factor."

B. Block 9, Condition Adverse to Quality #1B stated, "Some % recoveries for individual data points used to calculate the MDLs, dated 3/8/01, were above the upper accuracy limit of 130%."

C. Block 9, Condition Adverse to Quality #6 stated, "During the audit the target analyte, Methanol, contained in a standard, was searched against two available libraries (Appendix VIII and MBS75K). Neither library identified the compound as Methanol (the Appendix VIII library identified Methanol as Hydrazine, and the MBS75K library identified it as acetic acid, hydroxyl)."

D. CAR No. 02-009 was classified as a significant condition adverse to quality (Block 11a).

E. CAR No. 02-009 was classified as a RCRA-related CAR (Block 11d).

27. Respondents accepted Waste Stream LA-TA-55-19.01 for storage and disposal at WIPP without ensuring that the waste met the appropriate characterization requirements of the WAP specified in Permit Condition II.C.1.

28. Waste Stream LA-TA-55-19.01 poses a significant risk to human health and the environment for several reasons, including but not limited to the release of volatile organic compounds from waste containers.

CONCLUSIONS OF LAW

29. Paragraphs 1 through 28 are hereby incorporated by reference.

30. Each Respondent is a “person” as defined in the HWA, Section 74-4.3.K, and HWMR, 20.4.1.101 NMAC (incorporating 40 CFR §260.10).

31. Respondents manage, store, and dispose hazardous waste as defined in the HWA, Section 74-4-3.I, and HWMR, 20.4.1.101 NMAC (incorporating relevant portions of 40 CFR §260.10).

32. DOE is the owner and co-operator of a permitted storage and disposal facility as defined in the HWMR, 20.4.1.101 NMAC (incorporating relevant portions of 40 CFR §260.10).

33. WTS is the co-operator of a permitted storage and disposal facility as defined in the HWMR, 20.4.1.101 NMAC (incorporating relevant portions of 40 CFR §260.10).

STORING AND DISPOSING HAZARDOUS WASTE WITHOUT FOLLOWING THE WRITTEN WASTE ANALYSIS PLAN

34. Paragraphs 1 through 33 are hereby incorporated by reference.

35. Respondents violated the HWMR, 20.4.1.500 NMAC (incorporating 40 CFR §264.13(b)), and Permit Condition II.C.1 (Waste Analysis Plan) by storing and disposing of Waste Stream LA-TA-55-19.01 without following the written WAP, including the requirement to perform adequate and effective headspace gas sampling of all containers prior to receipt and disposal at WIPP.

36. Miscalculation of the MDLs has resulted in underreporting of concentrations of volatile organic compounds in the headspace of waste containers in Waste Stream LA-TA-55-19.01, in violation of Permit Attachment B3, Section B3-1 (Method Detection Limit), Section B3-5 (Method Detection Limit), and Table B3-2 (Gas Volatile Organic Compounds Target Analyte List and Quality Assurance Objectives: Accuracy and MDL requirements).

37. Misidentification of known compounds (e.g., methanol) has resulted in potential misidentification of tentatively identified compounds (TICs) in the headspace of waste containers in Waste Stream LA-TA-55-19.01, in violation of Permit Attachment B3, Section B3-1 (Identification of Tentatively Identified Compounds) and Table B3-2 (Gas Volatile Organic Compounds Target Analyte List and Quality Assurance Objectives).

SCHEDULE OF COMPLIANCE

38. Based upon the foregoing Findings and Conclusions, Respondents are ordered to take the following corrective actions.

A. Within thirty (30) calendar days from receipt of this Order, Respondents shall provide NMED with a plan for removing from Panel 1 all disposed containers of waste stream LA-TA-55-19.01 for which headspace gas analysis was performed on or after March 8, 2001, unless the Respondents provide technical justification demonstrating that the headspace gas data for these containers has

been analyzed in compliance with the WAP. This plan shall establish a deadline for removing such disposed containers no later than one hundred eighty (180) calendar days from receipt of this order.

CIVIL PENALTY

39. The HWA, Section 74-4-10(C)(1), authorizes the Secretary to assess a civil penalty of not more than twenty five thousand dollars (\$25,000) for each day of continued noncompliance with the HWA, HWMR, and this Order. As set forth in the attached civil penalty calculation, the Secretary assesses a civil penalty of two hundred ten thousand four hundred fifty dollars (\$210,450) for the violations described above. The Secretary reserves the right to recalculate this civil penalty based on evidence of additional violations and continued noncompliance with the HWA and HWMR.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

40. Respondents may request a hearing pursuant to the HWA, Section 74-4-10.H, and NMED's Adjudicatory Procedures, 20.1.5.200 NMAC, by filing a written request for hearing with the hearing clerk no later than thirty (30) calendar days from receipt of this Order. The request for hearing shall include an answer which:

- A. admits or denies each alleged finding of fact. Any alleged finding of fact that is not specifically denied shall be deemed to be admitted. Respondents may assert that they have no knowledge of any alleged finding of fact, and such finding shall be deemed to be denied;
- B. asserts any affirmative defenses upon which Respondents intend to rely. Any affirmative defense not asserted in the answer, except an affirmative defense asserting lack of subject matter jurisdiction, shall be deemed to be waived;

C. has been signed under oath or affirmation that the information contained therein is true and correct to the best of the signatory's knowledge; and

D. has attached a copy of this Order.

Respondents shall send their Answer and Request for Hearing, if any, to the hearing clerk at the following address:

Hearing Clerk
New Mexico Environment Department
P.O. Box 26110
1190 St Francis Drive
Santa Fe, New Mexico 87502-6110

Upon Respondents' request, the NMED Secretary shall hold a hearing. The hearing shall be governed by NMED's Adjudicatory Procedures, 20.1.5 NMAC (copy attached).

FINALITY OF ORDER

41. This Order shall become final unless Respondents file an Answer and Request for Hearing as specified above. Respondents' failure to file an Answer and Request for Hearing shall constitute an admission of the alleged findings of fact in this Order and a waiver of Respondents' right to a hearing under the HWA, Section 74-4-10.

SETTLEMENT CONFERENCE

42. Respondents may confer with NMED concerning settlement at any time, but such conference or request for a conference shall not extend or waive the deadline for filing an Answer and Request for Hearing as specified above. Respondents may confer regarding settlement as an alternative to, or simultaneously with, a hearing on this Order. Respondents may appear pro se or through counsel at any settlement conference.

The Secretary shall approve any settlement through a stipulated final order pursuant to the conditions set forth in NMED's Adjudicatory Procedures, 20.1.5.601 NMAC. A stipulated final

order shall be final, shall resolve all issues raised in this Order, shall bind all parties to this Order, and shall not be appealable.

To confer regarding settlement, contact:

James Bearzi
Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
(505) 428-2500

TERMINATION

43. Compliance with this Order does not relieve Respondents of their obligation to comply with all applicable laws and regulations. This Order shall terminate upon Respondents' certification of compliance with this Order and NMED's approval of such certification, or upon the NMED Secretary's approval of a stipulated final order.



GREGORY J. LEWIS, DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

DATE: 1/7/02

CERTIFICATE OF SERVICE

I certify that on January 7, 2002, I caused this Order to be sent by facsimile and first class mail, certified mail-return receipt requested, to:

Inés Triay
Carlsbad Field Office
U.S. Department of Energy
P.O. Box 3090
Carlsbad, NM 88221
Facsimile: (505) 234-7027

John Lee
Westinghouse TRU Solutions LLC
P.O. Box 2078
Carlsbad, NM 88220
Facsimile: (505) 234-8988

Tannis Fox
Tannis Fox

PENALTY CALCULATION WORKSHEET

Facility: Waste Isolation Pilot Plant

Citation/Violation: HWMR, 20.4.1.500 NMAC (incorporating 40 CFR 264.13(b)) - failure to follow a written waste analysis plan for Waste Stream LA-TA-55-19.01 from LANL prior to storage and disposal at WIPP

Location: WIPP

PENALTY AMOUNT:

- 1. Gravity based penalty from matrix\$6,000
 - (a). Potential for harmMajor
 - (b). Extent of deviationMinor
- 2. Amount selected from multiday matrix cell\$3,000
- 3. Multiply line 2 by number of days of noncompliance (or other appropriate number) minus 1
Number of Days: 59\$177,000
- 4. Add line 1 and line 3\$183,000
- 5. Percent increase/decrease for good faith.....0%
- 6. Percent increase for history of willfulness/negligence.....0%
- 7. Percent increase for history of noncompliance15%
- 8. Total percentage from lines 5 through 715%
- 9. Multiply line 4 by line 8.....\$27,450
- 10. Calculate economic benefit.....\$0
- 11. Add lines 4, 9, and 10 for penalty amount for this violation\$210,450

NARRATIVE EXPLANATION OF FIGURES SELECTED

1. Gravity Based Penalty

(a). Potential for harm:

While the violation poses a potentially significant risk of exposure to humans or other environmental receptors due to the underreporting of headspace gas concentrations in waste containers received for storage and disposal and the potential misidentification of tentatively identified compounds, the failure to follow a written waste analysis plan (WAP) may have a substantial adverse effect on statutory or regulatory purposes for implementing the RCRA program. Therefore a major potential for harm is deemed appropriate.

(b) Extent of Deviation:

The Respondents deviated somewhat from the requirements of the written WAP by failing to perform certain elements of the headspace gas sampling and analysis requirements as specified in the WAP. Therefore, because most of the regulatory requirements were met, a minor extent of deviation from the regulatory requirements is deemed appropriate.

2. Multiday Penalty:

A multiday penalty is presumptively appropriate for a major/minor category. The initial miscalculation of the analytical instrument method detection limit (MDL) occurred on or about March 8, 2001, and the Respondents persisted in failing to correct this error and continued to perform headspace gas sampling on at least thirty-seven (37) containers of waste stream LA-TA-55-19.01 subsequently stored at and disposed of at WIPP until at least the most recent receipt on October 26, 2001. Therefore, the allowable maximum of 59 days of noncompliance is deemed appropriate.

3. Good Faith:

The Respondents have made no effort to correct the violation. Therefore, no adjustment for good faith is deemed appropriate.

4. Negligence:

The Respondents neglected the requirement to comply with all requirements of the written WAP by failing to exercise appropriate oversight of waste characterization activities at generator sites through the surveillance process. However, because the Respondents identified the deficiency during an audit, no adjustment for negligence is deemed appropriate.

5. History of Noncompliance:

The Respondents have prior history of noncompliance regarding compliance with a written WAP through the Letter of Violation issued September 24, 2001, Item 2. The subject violation is a repeat violation, but resulted from noncompliance at a different generator storage site. Therefore, an increased penalty for history of noncompliance of 15% is considered appropriate.

6. Economic Benefit (considered negligible if less than \$2500):

The delayed cost and the amount of interest on the unspent cost of performing an adequate hazardous waste characterization is unknown at this time, but may be calculated later upon discovery of sufficient information.



Department of Energy
Carlsbad Field Office
P. O. Box 3090
Carlsbad, New Mexico 88221
January 23, 2002



Mr. Paul Ritzma
New Mexico Environment Department
Office of Chief Counsel
1190 St. Francis Drive
Santa Fe, NM 87505

SUBJECT: CBFO's Response to Technical Issues in Compliance Order HWB 01-08 (CO)

Dear Mr. Ritzma:

On January 7, 2002 the New Mexico Environment Department (NMED) issued a Compliance Order to the Carlsbad Field Office (CBFO) and Westinghouse TRU Solutions, LLC describing three audit findings identified by CBFO during the October recertification audit at the Los Alamos National Laboratory (LANL). NMED contends these findings are related to conditions that are not in compliance with the Waste Isolation Pilot Plant (WIPP) Hazardous Waste Facility Permit (HWFP). While NMED acknowledges that these concerns were identified by the CBFO, they state that the concerns have resulted in the disposal of TRU mixed waste that was not characterized in accordance with the HWFP Waste Analysis Plan (WAP). At the time the Compliance Order was issued, the audit findings at issue were continuing to be addressed at WIPP consistent with processes required by the WIPP HWFP.

The findings at issue are: (1) an error in calculation of the method detection limits (MDLs) for headspace gas analysis; (2) use of analytical data that exceeded the accuracy criteria when performing the MDL calculations; and (3) use of equipment that did not identify methanol when using automated identification software with the headspace gas analysis equipment. Specifically, the MDL values were recalculated by LANL in response to the audit findings of the October audit. The results demonstrate that the error does not change the hazardous waste determinations as shown on Attachment A, columns labeled "New UCL₉₀" and "PRQL". The condition has not resulted in under-reporting headspace gas concentrations. Please, also see the emissions data graphed in Attachment B, which shows that the LANL waste has not resulted in a risk to human health and the environment from volatile organic compound (VOC) emissions. The use of accuracy criteria, as stated in the compliance order, is not consistent with the process for calculating MDLs as defined by both the HWFP and the Environmental Protection Agency's (EPA) SW-846 analytical methods. CBFO does not agree that the accuracy criteria are appropriate restrictions when calculating MDLs. CBFO agrees that the automated identification software did not identify methanol. However, rather than relying solely on the use of automated identification software, the standard laboratory practice for the positive identification of target analytes is performed using calibration standards and analyst expertise. This is consistent with NMED observations from a previous audit. The arguments that substantiate the CBFO position for each of these items is presented and is accompanied by tables which show the recalculation of the MDLs and graphs of emission data that show there has been no increase in emissions from the WIPP site.

Based on the discussions attached and the recalculation of the MDLs, the CBFO believes that the headspace gas analysis data are in compliance with the WAP.

DISCUSSION

Technical issues addressed include items 26-A, 26-B, 26-C, 28, 36, and 37 in the compliance order, which questions specific analytical practices used at the LANL for the determination of Headspace Gas (HGas) concentrations in TRU waste.

Item 26-A.

The NMED compliance order states that the current LANL MDLs, and those dated 3/8/01, were calculated using an incorrect Student's-t factor. The factor of 3.14, which is for seven samples, was used. However, only four samples were analyzed in the MDL studies, therefore, 4.54 should have been used as the Student's-t factor. This assertion by the NMED is correct. LANL inadvertently used the wrong Student's-t factor. The CBFO has verified that the procedure used for this calculation is compliant with the WAP.

The CBFO believes that this error has had no effect on the quality of the data collected from the analyses of headspace gas samples for containers of TRU waste disposed at the WIPP. The CBFO rationale for this belief is as follows:

The WIPP WAP requires that the individual MDLs determined for each of the analytes be below the MDL value in Table B3-2 of the WAP. LANL recalculated the MDLs using the correct Student's-t factor. The recalculated MDL values are shown in Attachment A in the four columns labeled "MDL". In each case, the recalculated MDL is less than the WAP established values which are in Table B3-2. Therefore, the CBFO believes that the MDLs in each study are compliant with the WAP.

The MDL value affects the calculation of the UCL_{90} value for instances when an analyte is not detected in the headspace gas sample (the sample value is below the MDL). In such cases, standard laboratory practice is to assign the MDL as the value and use one-half that value in calculating the UCL_{90} . The only time the recalculated MDLs are significant is when a sample value that was believed to be greater than the MDL (J-flagged) is now less than the recalculated MDL. In this case the value is flagged as a "non-detect" and the recalculated MDL value is assigned.

With regard to the waste disposed at WIPP, there were only 26 containers (24 standard waste boxes and two drums) for which a sample value was reassigned as a "non-detect" based on the revised MDL calculation. The revised UCL_{90} values for waste stream LA-TA-55-19, based on the revised MDLs, are shown in Attachment A in the column entitled "New UCL_{90} ". These revised UCL_{90} values do not result in a change to the hazardous waste determination for waste stream LA-TA-55-19. This can be seen by comparing the columns in Attachment A entitled "Old UCL_{90} " and "New UCL_{90} ".

Item 26-B.

The NMED compliance order states that some percent recoveries for individual data points used to calculate the MDLs, dated 3/8/01, were above the upper accuracy limit of 130 percent. The NMED assertion is correct that some of the values were above 130 percent. However, there are

no accuracy limits specified in either the WIPP HWFP WAP or EPA methods SW-846 for MDL studies. MDL studies are required to determine the capability of the instrument being used and standard practice is to make this determination based upon actual values. Restricting the calculation to samples with some specified recovery will artificially lower the MDL by decreasing the standard deviation. Therefore, standard laboratory practice is to use all of the sample results in the MDL calculation.

Item 26-C.

The NMED compliance order states that during the audit the target analyte methanol, contained in a standard, was searched against two available libraries (Appendix VIII and MBS75K). Neither library identified the compound as methanol. The NMED assertion that the libraries failed to identify methanol is correct, however, this does not affect the final identification of the compound as methanol. LANL does not rely solely on the HGas libraries to do target identification because this approach has limited accuracy and effectiveness. The analytical method requires trained operators who can correctly identify the target analytes by comparing to the spectra and retention times of known standards. In the WIPP WAP (Table B3-10) operators are specifically required to have one year independent spectral interpretation expertise. On a previous audit NMED observers raised the issue that a qualified staff chemist must review the spectral analyses and not rely solely on the software comparison. This was documented and addressed in Rocky Flats Environmental Technology Site Certification Audit, A-00-08, Observation #2. Audits have shown that LANL operators satisfy the training, experience, and educational requirements of the WAP. As a result of Audit A-02-04 (10/11/01) CBFO is requiring LANL to clarify its procedure to reflect the actual laboratory practices.

Specifically, the positive identification of compounds is accomplished through the use of calibration standards which contain known quantities of the target analytes. A set of reference retention times and mass spectra are obtained from the analyses of these calibration standards. The operator uses this information to interpret the retention times and mass spectra from analysis of a sample to determine the compound. Therefore, if a compound in the sample provides the same response as methanol in the calibration standard the operator knows methanol is present in the sample. This analytical approach is described in EPA's SW-846 methods. Therefore, the use of computerized mass spectral search library systems is not the sole basis for positive identification of target analytes.

Likewise, the computerized mass spectral search systems are not used as the sole basis for identification of non-target analytes. Qualitative analysis of tentatively identified compounds (TICs) detected with an ion abundance greater than ten percent of the nearest internal standard is performed using a search of the NIST library as a tool to aid in identifying TICs. The search algorithm compares the relative abundance of ions of the TIC to reference spectra in the data base. As noted in the introduction of the EPA/NIH Mass Spectral Database, "... the relative intensities of the peaks are sensitive to instrumental conditions and can only be taken as a rough guide." This means an analyst, trained in mass spectral interpretation as specified in the WAP, must review these initial assignments, exercise judgment, and report appropriately. Completion of this process leads to the tentative identification and hence the reporting as TICS. CBFO believes that LANL is in compliance with the TIC evaluation and reporting requirements specified in the WAP.

Item 28.

The NMED compliance order states that waste stream LA-TA-55-19 poses a significant risk to human health and the environment. Based on a comparison of the columns entitled "New UCL₉₀" and "PRQL" in Attachment A, CBFO believes the VOC concentrations in the subject drums were not under-reported and no additional hazardous constituents have been identified. Therefore, the VOCs in the waste stream do not lead to an exceedence of established HWFP VOC limits.

In addition, Attachment B provides the VOC emissions data from the WIPP facility collected since the emplacement of the subject drums. There has been no increase of emissions noted.

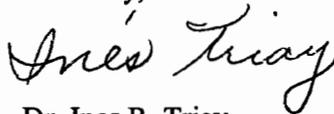
Item 36.

The NMED compliance order states that miscalculation of the MDLs has resulted in under-reporting of the concentrations of VOCs. As demonstrated in the response to Item 26-A, the CBFO believes the miscalculation of the MDLs did not result in an under-reporting of concentrations. MDLs provide a convenient method to include an undetected target analyte in the calculation of the UCL₉₀ value. When used in this manner, MDLs constitute administrative values instead of actual concentrations.

Item 37.

The NMED compliance order states that misidentification of known compounds has resulted in potential misidentification of TICs. As stated above in the response to Item 26-C, the identification of both target and non-target compounds is accomplished by the combination of using calibration standards, computerized searches, and trained operator interpretation. CBFO believes that LANL is in compliance with the TIC evaluation and reporting requirements specified in the WAP.

Sincerely,



Dr. Ines R. Triay
Manager

Enclosure(s)

cc w/enclosure(s):
Steve Zappe, NMED
James Bearzi, NMED

bcc:

Kerry Watson, CBFO	*ED
R.F. Kehrman, WTS	*ED
John Lee, WTS	*ED
Gloria Johnson, WTS	*ED

*Electronic Distribution

CBFO:OOM:IRT:JDR:02-0008:UFC 5486.00

ATTACHMENT A

Attachment A

ANALYTE	# of Samples	MDL 4/18/00	MDL 6/19/00	MDL 1/4/01	MDL 3/8/01	Old UCL ₉₀	New UCL ₉₀ ^a	PRQL ^a	EPA HWN ^b
Methanol	165	38.75	16.50	24.61	33.96	27.64	23.51	100	F003(AK)
Ethyl Ether	165	4.14	1.87	5.96	2.79	2.07	1.42	10	F003(AK)
1,1-Dichloroethylene	165	3.53	3.96	5.01	2.74	2.09	2.03	10	
1,1,2-Trichloro1,2,2-trifluoroethane	165	3.63	2.59	3.32	3.18	9.27	8.65	10	F002(AK)
Acetone	165	38.04	23.28	32.92	48.48	82.41	83.09	100	F003(AK)
Methylene Chloride	165	3.82	2.84	3.65	1.70	7.81	7.51	10	F002(AK)
1,1-Dichloroethane	165	3.64	2.56	4.09	3.69	18.02	32.99	10	
cis-1,2-Dichloroethene	165	3.59	2.97	3.49	4.64	1.80	1.95	10	
Methyl ethyl ketone	165	37.80	26.61	46.24	54.05	19.21	21.48	100	F005(AK)
Chloroform	165	3.42	2.67	3.96	3.65	2.00	2.11	10	
1,1,1-Trichloroethane	165	3.52	2.63	3.76	3.84	88.98	97.05	10	F002
Cyclohexane	165	3.27	2.71	4.27	4.47	1.64	1.89	NR	
Carbon Tetrachloride	165	3.66	2.89	2.83	3.58	1.87	1.64	10	F001(AK)
Benzene	165	3.33	2.82	2.97	2.40	2.25	2.06	10	F005(AK)
1,2-Dichloroethane	165	3.33	3.46	2.82	3.22	1.67	1.64	10	
Trichloroethene	165	3.35	1.90	4.76	3.40	7.23	7.09	10	F002(AK)
Butanol	165	46.43	12.69	20.85	36.19	23.22	13.83	100	F003(AK)
Methyl isobutyl ketone	165	34.40	23.18	31.59	35.76	17.25	15.52	100	F005(AK)
Toluene	165	2.78	2.41	3.94	4.37	7.04	7.24	10	F005(AK)
Tetrachloroethene	165	3.29	2.08	3.55	4.53	2.13	1.76	10	F002(AK)
Chlorobenzene	165	3.13	2.79	2.77	5.82	1.57	2.17	10	F002(AK)
Ethylbenzene	165	2.98	2.49	2.56	5.78	1.51	2.09	10	F003(AK)
m-xylene	165	6.81	5.22	7.15	8.98	5.83	6.70	10	F003(AK)
p-xylene	165	6.81	5.22	7.15	8.98	5.83	6.70	10	F003(AK)
o-xylene	165	3.02	2.75	3.89	5.43	1.51	2.11	10	F003(AK)
Bromoform	165	3.49	3.28	4.50	4.22	1.75	1.94	10	
1,1,2,2-Tetrachloroethane	165	3.09	2.35	3.37	6.14	1.54	2.20	10	
1,3,5-Trimethylbenzene	165	3.16	3.27	2.85	3.92	1.58	1.78	NR	
1,2,4-Trimethylbenzene	165	3.25	2.94	3.67	3.88	1.63	1.75	NR	
Hydrogen	165	0.02	0.02	0.00	0.00	0.06	0.06	NR	
Methane	165	0.02	0.02	0.02	0.02	0.02	0.02	NR	
Did the data verify the acceptable knowledge? Yes No									
If not, describe the basis for assigning the EPA Hazardous Waste Numbers:									
NOTES:									
a The concentration for every analyte is in ppmv except for that of Hydrogen and Methane which is in vol%. ND = Not Detected, NR = Not Reported									
b No entry indicates no associated EPA HWN assigned to the waste stream. Only F001, F002, F003, and F005 are applicable to headspace gase analysis data. If UCL(90) is below the PRQL, the EPA HWN is assigned from AK only [e.g. entry would read F003(AK)].									

MDL Study 1/4/01

Compound Name	Actual Conc. (ppmv)	ppmv	ppmv	ppmv	ppmv	N	avg % Rec.	max % Rec	min % Rec.	Standard Deviation	% RSD	MDL ppmv	Moles analyte	MW	MDL (ng)
Benzene	9.49	9.77	8.84	8.81	10.1	4	98.84	106.43	92.83	0.65	6.98	2.97	2.36E-11	78	1.84
Bromoform	9.49	9.63	8.76	7.83	10.07	4	95.60	106.11	82.51	0.99	10.93	4.50	3.57E-11	253	9.03
Carbon Tetrachloride	9.49	10.11	9.34	9.28	10.57	4	103.53	111.38	97.79	0.62	6.35	2.83	2.25E-11	154	3.46
Chloroform	9.49	10.37	9.02	8.96	10.61	4	102.63	111.80	94.42	0.87	8.95	3.96	3.14E-11	119.5	3.75
Chlorobenzene	9.49	9.81	8.86	8.45	9.48	4	96.42	103.37	89.04	0.61	6.67	2.77	2.20E-11	113	2.49
Cyclohexane	9.49	9.96	8.54	8.21	10.01	4	96.73	105.48	86.51	0.94	10.23	4.27	3.38E-11	84	2.84
1,1-Dichloroethane	9.49	10.72	9.33	8.81	10.42	4	103.48	112.96	92.83	0.90	9.17	4.09	3.24E-11	99	3.21
1,2-Dichloroethane	9.49	9.82	9.15	9.29	10.52	4	102.16	110.85	96.42	0.62	6.41	2.82	2.24E-11	99	2.21
1,1-Dichloroethylene	9.49	11.17	9.1	8.96	10.63	4	105.01	117.70	94.42	1.10	11.07	5.01	3.97E-11	97	3.85
cis-1,2-Dichloroethene	9.49	10.16	8.74	9.06	10.26	4	100.68	108.11	92.10	0.77	8.04	3.49	2.77E-11	97	2.69
Ethylbenzene	9.49	9.52	8.87	8.2	9.2	4	94.28	100.32	86.41	0.56	6.31	2.56	2.03E-11	106	2.16
Ethyl Ether	9.49	11.01	9.01	8.18	10.52	4	102.00	116.02	86.20	1.31	13.57	5.96	4.73E-11	74	3.50
Methylene chloride	9.49	10.24	8.8	8.58	9.85	4	98.71	107.90	90.41	0.80	8.58	3.65	2.89E-11	85	2.46
1,1,2,2-Tetrachloroethane	9.49	10.08	9.24	8.44	9.89	4	99.18	106.22	88.94	0.74	7.88	3.37	2.67E-11	168	4.49
Tetrachloroethene	9.49	9.86	9.07	8.23	9.87	4	97.55	104.00	86.72	0.78	8.43	3.55	2.81E-11	166	4.67
Toluene	9.49	10.44	9.49	8.32	9.5	4	99.45	110.01	87.67	0.87	9.20	3.94	3.13E-11	92	2.88
1,1,1-Trichloroethane	9.49	10.2	9.31	9.05	10.85	4	103.82	114.33	95.36	0.83	8.40	3.76	2.98E-11	133	3.96
Trichloroethene	9.49	10.34	8.46	8.53	10.28	4	99.08	108.96	89.15	1.05	11.15	4.76	3.78E-11	131	4.95
1,1,2-Trichloro-1,2,2-Trifluoroethane	9.49	10.8	9.78	9.28	10.69	4	106.82	113.80	97.79	0.73	7.22	3.32	2.64E-11	187	4.93
1,3,5-Trimethylbenzene	9.49	8.35	7.12	7.33	8.25	4	81.80	87.99	75.03	0.63	8.09	2.85	2.26E-11	120	2.71
1,2,4-Trimethylbenzene	9.49	8.9	7.4	7.05	7.96	4	82.48	93.78	74.29	0.81	10.31	3.67	2.91E-11	120	3.49
m and p Xylene	18.98	18.96	17.63	15.64	18.98	4	93.80	100.00	82.40	1.57	8.84	7.15	5.67E-11	106	6.01
o-Xylene	9.49	9.38	8.57	7.5	9.23	4	91.36	98.84	79.03	0.86	9.87	3.89	3.08E-11	106	3.27
Acetone	94.9	108.46	98.47	93.04	106.85	4	107.17	114.29	98.04	7.25	7.13	32.92	2.61E-10	58	15.14
Butanol	94.9	138.16	129.87	130.25	137.85	4	141.24	145.58	136.85	4.59	3.43	20.85	1.65E-10	74	12.24
Methyl ethyl Ketone	94.9	106.92	89.07	92.65	109.52	4	104.89	115.41	93.86	10.18	10.23	46.24	3.67E-10	72	26.41
Methanol	94.9	110.09	101.11	106.73	113.89	4	113.76	120.01	106.54	5.42	5.02	24.61	1.95E-10	32	6.25
Methyl isobutyl ketone	94.9	107.51	95.73	90.97	97.53	4	103.20	113.29	95.86	6.96	7.10	31.59	2.51E-10	100	25.06
		File ID:													
		Sample ID:													
	True Value								Average	Maximum	Minimum	STD	% RSD	MDL	
	Actual Conc. (ppmv)	vol%	vol%	vol%	vol%	vol%	vol%	N	avg % Rec.	max % Rec	min % Rec.	Standard Deviation	% RSD	vol %	
Hydrogen	0.075	0.08	0.08	0.08	0.08			4	106.67	106.67	106.67	0.00	0.00	0.00	
Methane	0.075	0.09	0.08	0.09	0.09			4	116.67	120.00	106.67	0.01	5.71	0.02	

ATTACHMENT B

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**IN THE MATTER OF
U.S. DEPARTMENT OF ENERGY
AND WESTINGHOUSE TRU SOLUTIONS LLC,
CARLSBAD, NEW MEXICO, NM4890139088,
RESPONDENTS.**

**COMPLIANCE ORDER
HWB 01-08 (CO)**

SETTLEMENT AGREEMENT

This Settlement Agreement is made between the Secretary of Environment, acting through the Director of the Water and Waste Management Division of the New Mexico Environment Department (NMED), the U.S. Department of Energy (DOE) and Westinghouse TRU Solutions LLC (WTS) (collectively referred to as Respondents) for the purpose of resolving Compliance Order No. HWB 01-08.

I. BACKGROUND

A. PARTIES

1. NMED is the agency within the executive branch of the government of the State of New Mexico charged with the administration and enforcement of the HWA, NMSA 1978 Section 74-4-1 *et seq.* (2000), and New Mexico Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC.

2. Respondents are the U.S. Department of Energy (DOE), owner and operator, and Westinghouse TRU Solutions LLC (WTS), co-operator, of the Waste Isolation Pilot Plant (WIPP) mixed waste storage and disposal facility for which a permit is required under the HWMR, 20.4.1.900 NMAC (incorporating 40 CFR §270.1(a)).

B. NATURE OF DISPUTE

3. On January 7, 2002, the NMED issued Compliance Order No. HWB 01-08 for alleged violations of the conditions of the Respondents' hazardous waste permit issued on October 27, 1999 (Permit Number NM4890139088-TSDF) for the operation of a hazardous waste storage and disposal facility at WIPP. (*Exhibit A*)

II. COMPROMISE AND SETTLEMENT

4. The parties have engaged in settlement discussions in an effort to resolve the compliance order without further administrative or judicial enforcement action. As a result of these discussions, the parties have entered into this Settlement Agreement.

5. The parties enter into this Agreement for the sole purpose of settling the claims of the NMED as stated in the compliance order and avoiding the time and expense of engaging in further legal proceedings regarding this matter. The Respondents admit to the allegation set forth in paragraph 26 A. of the compliance order and deny the remainder of the allegations in the compliance order. The Respondents do not admit liability by completing corrective actions or by entering into or complying with this agreement.

A. CORRECTIVE MEASURES

6. In accordance with the schedule of compliance in the compliance order, the Respondents provided the NMED with sufficient technical justification demonstrating that the headspace gas data for the containers in question have been analyzed in compliance with the waste analysis plan (WAP). (*Exhibit B*)

7. On January 23, 2002, the Respondent submitted to the NMED a revised management procedure document (Revision 6 of Carlsbad Field Office Management Procedure MP No. 3. 1, Entitled Corrective Action Report) that demonstrates the implementation of measures that will require audit findings to be addressed and resolved by the audited entity and the WIPP Audit Team within designated time periods. (*Exhibit C*) The Respondents believe that the lack of adherence to the procedures specified in the permit by the generator site (in this matter, Los Alamos National Laboratory), may have given rise to the alleged violations in the compliance order and adherence to the revised management procedures should prevent further violations of this nature.

8. The information provided to the NMED by the Respondents, as described in items 6 and 7 above, is sufficient such that no further corrective measures are required.

B. CIVIL PENALTY

9. The Respondents agree that the alleged violations in the compliance order, if proven at a hearing, could have resulted in the assessment of a civil penalty of two hundred ten thousand four hundred fifty dollars (\$210,450.00). In lieu of a hearing and further legal proceedings in this matter, the Respondents agree to pay twenty five thousand dollars (\$25,000.00) in a lump sum, payable to the State of New Mexico, by electronic transmittal, certified or corporate check or other guaranteed negotiable instrument within fifteen (15) days of the time this Agreement becomes effective.

10. If the Respondents fail to make timely and complete payment within fifteen (15) days of the time they execute this Agreement; the Respondents shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA §56-8-4 (1993).

11. All payments and other correspondence required by this Agreement shall be sent to the Division and Bureau at the following address:

New Mexico Environment Department
Office of General Counsel, c/o Paul R. Ritzma, Esq.
Post Office Box 26110
1190 St. Francis Drive
Santa Fe, NM 87502-6110

III. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

18. The NMED retains the right to enforce this Agreement and to pursue any relief authorized by the Act for any violation not addressed herein, up to and including enforcement in a court of competent jurisdiction.

B. BINDING EFFECT

19. This Agreement shall be binding on the parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

C. DURATION

20. This Agreement shall remain in effect until the Respondents comply with the terms and conditions of the Agreement or it is terminated by written agreement of the parties.

D. INTEGRATION

21. This Agreement merges all prior written and oral communications between the parties concerning the subject matter of this Agreement, and contains the entire Agreement between the parties. This Agreement shall not be modified without the express written consent of the parties.

E. RESERVATION OF RIGHTS AND DEFENSES

22. This Agreement shall not be construed to prohibit or limit in any way the NMED from requiring the Respondents to comply with any applicable state or federal requirement applicable to their facilities in the State of New Mexico. This Agreement shall not be construed to prohibit or limit in any way the Division from seeking any relief authorized by the Act for violation of any state or federal requirement applicable to their facilities in the State of New Mexico. This Agreement shall not be construed to prohibit or limit in any way the Respondents from raising any defense to a NMED action seeking such relief.

F. MUTUAL RELEASE

23. This Agreement addresses all claims that each party raised or could have raised against the other regarding the legal and factual allegations in the compliance orders and

notice of violation. Accordingly, the parties mutually release each other from any and all claims arising from or relating to the allegations in the compliance orders and notice of violation.

G. WAIVER OF STATE LIABILITY

24. The Respondents assume all costs and liabilities incurred in performing any obligation under this Agreement. The NMED, on its own behalf and on behalf of the Department and the State of New Mexico, shall not assume any liability for the performance of any obligation under this Agreement.

H. DISCLOSURE TO SUCCESSORS-IN-INTEREST

25. The Respondents shall disclose this Agreement to any successor-in-interest to the facilities cited in the compliance orders and notice of violation and shall advise such successor-in-interest that this Agreement is binding on the successor-in-interest until the Respondents comply with the terms and conditions of the Agreement or it is terminated by written agreement of the parties.

I. FORCE MAJEURE

26. The obligation of the Respondents to follow the revised procedures submitted as corrective measures shall be deferred to the extent and for the duration that the failure to follow the revised procedures is caused by *force majeure*. For purposes of this Agreement, *force majeure* is defined as an event or set of circumstances which are beyond the control of the Respondents and which could not have been prevented by their reasonable action or due diligence. *Force majeure* shall not apply to any failure to follow the revised procedures due to increased cost or financial inability. The Respondents shall submit notification to the NMED within fifteen (15) days after the date when either first obtains knowledge or should have known that a failure to follow the revised procedures is reasonably foreseeable. Such written notice shall include the nature, cause, and anticipated length of the delay associated with the failure of compliance and all steps that the Respondents have taken and will take to avoid or minimize the failure to follow the revised procedures, along with a schedule of implementation. Failure to provide this written notice within the required time period shall constitute a waiver of the right to invoke *force majeure* for the revised procedures. If the NMED agrees that the failure to follow the revised procedures is attributable to *force majeure*, the revised procedures shall be modified or the time for implementation shall be extended by written stipulation by the parties.

J. EFFECTIVE DATE

27. This Agreement shall become effective upon full execution by the duly authorized representatives of the parties.

K. AUTHORITY OF SIGNATORIES

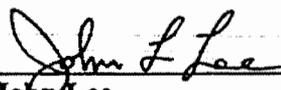
28. The persons executing this Agreement represent that they have the authority to bind their respective parties to this Agreement, and that their representation shall be legally

sufficient evidence of actual or apparent authority to bind their respective parties to this Agreement.

THE U.S. DEPARTMENT OF ENERGY (DOE)

By:  FOR DATE: 02.17.02
Inés Triay, Manager
Carlsbad Field Office

WESTINGHOUSE TRU SOLUTIONS LLC (WTS)

By:  DATE: 2/12/02
John Lee
General Manager, WTS

**WATER AND WASTE MANAGEMENT DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: _____ DATE: _____
GREG LEWIS
DIVISION DIRECTOR



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Office of the Secretary
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Telephone (505) 827-2855
Fax (505) 827-2836
www.nmenv.state.nm.us



PETER MAGGIORE
SECRETARY

February 19, 2002
For Immediate Release

Contact: Paul Ritzma, General Counsel, NMED
Phone: (505) 827-2855
Contact: James Bearzi, Chief, HWB, NMED
Phone: (505) 428-2512

WIPP Settles Compliance Order Issued by State Environment Department

(Santa Fe, NM) -- The New Mexico Environment Department (NMED) yesterday settled a compliance order issued to the Waste Isolation Pilot Plant near Carlsbad on January 7, 2002 for permit violations dealing with the categorization and certification of waste that had already been shipped and disposed of at WIPP.

The Department of Energy (DOE) (owner of WIPP) and Westinghouse TRU Solutions (the operator of WIPP) admitted that the waste shipped from Los Alamos National Laboratory had not been categorized following the proper permit procedures. However, the DOE and Westinghouse were able to demonstrate to the NMED's satisfaction that the waste met WIPP's permit requirements for shipment and disposal at WIPP.

As part of the settlement of the compliance order, DOE and Westinghouse have put into place procedure that NMED expects to eliminate the violations that gave rise to this compliance order. In addition, DOE and Westinghouse have agreed to pay a total of \$25,000 in penalties to the NMED.

- more -

020228

WIPP is the nation's only underground repository licensed to permanently dispose of transuranic radioactive waste left from the research and production of nuclear weapons. WIPP began operations on March 26, 1999.

For additional information, contact Paul Ritzma, General Counsel, NMED at (505) 827-2855, or James Bearzi, Chief, Hazardous Waste Bureau, NMED, at (505) 428-2512.

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