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

MAR 28 2013

Mr. Ryan Flynn
Office of General Counsel and Environmental Policy
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

Subject: Request to Terminate Compliance Order HWB 09-31

Dear Mr. Flynn:

The U.S. Department of Energy (DOE) Carlsbad Field Office (CBFO) and Nuclear Waste Partnership LLC (NWP), collectively referred to as the Co-Permittees under the Hazardous Waste Facility Permit (Permit) for the Waste Isolation Pilot Plant (WIPP), EPA I.D. Number NM4890139088-TSDF, request the New Mexico Environment Department (NMED) to determine that the Partial Stipulated Final Order, dated December 21, 2009, (Enclosure 1) and the Stipulated Final Order, dated May 12, 2010, (Enclosure 2) for Compliance Order HWB 09-31 have been fully complied with and are no longer in effect and that Compliance Order HWB 09-31 is, thereby, terminated. The Co-Permittees provide the following information in support of this request.

Partial Stipulated Final Order

The Co-Permittees have fully complied with the Schedule of Compliance and Other Terms and Conditions of the Partial Stipulated Final Order for Compliance Order HWB 09-31, dated December 21, 2009. The Co-Permittees provide the following information in support of this request for termination.

Background:

On July 24, 2009, the NMED issued Administrative Compliance Order HWB-09-31 stating that the Co-Permittees had failed to comply with the conditions of the Permit. The Co-Permittees requested a hearing on the Compliance Order. The Co-Permittees and the NMED entered into negotiations to settle the claims of the Compliance Order and to agree upon the corrective measures to be conducted by the Co-Permittees in the Partial Stipulated Final Order. The corrective measures listed below are set forth in Section III, Item B, Schedule of Compliance, of the Partial Stipulated Final Order.

Corrective Measures:

12. No later than January 8, 2010, Respondents shall submit a Class 2 Permit Modification Request (PMR) which includes, but is not limited to, the following:
- A. Language in Module II and Permit Attachment B that:
 - 1) Clarifies the liquid waste prohibition.



- 2) *States that overpacking waste containers with prohibited amounts of liquid into larger containers (e.g., SWBs, Ten Drum Overpacks) does not constitute remediation of the liquid.*
- 3) *Prohibits the redistribution of untreated liquid into a waste container as a form of remediation.*
- B. *Clarifying language in Permit Attachments B and B3 that explicitly prohibits the certification and shipment of waste containers with WAP-related nonconformances that have not been dispositioned; and*
- C. *Adding language to Permit Attachment B7 that requires the Permittees' confirmation personnel to determine that all WAP-related nonconformances on each container selected for confirmation are dispositioned prior to approval for shipment to WIPP.*

Status: Completed

13. *Within 60 calendar days from NMED approval of the above Class 2 PMR, Respondents shall submit to NMED all guidance and training material developed regarding implementation of the revised liquid prohibition in Module II and Permit Attachment B. This guidance and training material shall direct radiography and visual examination operators to determine if liquid in a container meets the criteria established by the approved Class 2 PMR.*

Status: Completed

14. *Within 90 calendar days from NMED approval of the Class 2 PMR, Respondents shall provide the following to NMED:*
- A. *Evidence of staff training and implementation of new procedures based on the above guidance at all generator/storage sites incorporating the revised liquid prohibition;*
 - B. *Evidence of Permittees' confirmation personnel training and implementation of new procedures based on the above guidance incorporating the revised liquid prohibition and the determination that WAP-related nonconformances for containers selected for confirmation have been dispositioned.*

Status: Completed

15. *Shipment of containers from waste stream LA-MIN03-NC.001 to WIPP shall remain suspended unless they have been remediated in accordance with LANL procedures.*

Status: Completed.

16. *Prior to shipment of any remediated container from waste stream LA-MIN03-NC.001, Respondents shall submit to NMED the following information for each container:*
- A. *Evidence that the container has been remediated in accordance with approved LANL procedures.*
 - B. *Data sheets and video/audio media for radiography conducted subsequent to remediation; and*
 - C. *Evidence that NCRs written for prohibited liquid have been dispositioned appropriately by CCP.*

Status: Completed.

Stipulated Final Order

The Co-Permittees have fully complied with the Schedule of Compliance and Other Terms and Conditions of the Stipulated Final Order for Compliance Order HWB 09-31, dated May 12, 2010. The Co-Permittees provide the following information in support of this request for termination.

Background:

On July 24, 2009, the NMED issued Administrative Compliance Order HWB-09-31 stating that the Co-Permittees had failed to comply with the conditions of the Permit. Co-Permittees requested a hearing on the Compliance Order. The Co-Permittees and the NMED entered into negotiations to settle the claims of the Compliance Order and to agree upon corrective measures to be conducted by the Co-Permittees in the Partial Stipulated Final Order and, subsequently, in the Stipulated Final Order. The corrective measures listed below are set forth in Section III, Item B, Schedule of Compliance, of the Stipulated Final Order.

Corrective Measures:

9. *The Schedule of Compliance is addressed in the Partial Stipulated Final Order issued on December 21, 2009, except for items 10 through 12 below:*

Status: Completed

10. *Shipments of containers from waste stream LA-MIN03-NC.001 are no longer suspended. All remaining containers from waste stream LA-MIN-03-NC.001 shall be remediated in accordance with approved LANL procedures prior to shipment to WIPP.*

Status: Completed.

11. *Paragraph 16 of the Partial Stipulated Final Order issued on December 21, 2009 is modified as follows: Prior to shipment of remediated containers from waste stream LA-MIN03-NC.001, Respondents shall submit to NMED the following information for each container:*
- A. *A list of remediated containers being shipped;*
 - B. *Evidence that each container has been remediated in accordance with approved LANL procedures, and ;*
 - C. *Evidence that NCRs written for prohibited liquid have been dispositioned appropriately by CCP."*

Status: Request Closure.

The Co-Permittees have submitted the required information since the first shipment of containers from waste stream LA-MIN03-NC.001, pursuant to the Partial Stipulated Final Order and the Stipulated Final Order. The NMED was provided this information by letter on the dates shown in the table below.

Container Information Submittals for Waste Stream LA-MIN03-NC.001

Letter date	Number of containers submitted	Letter number
January 7, 2010	80	10-0701
February 3, 2010	92	10-0736
February 12, 2010	60	10-0751
February 18, 2010	11	10-0755
March 15, 2010	33	10-0776
March 16, 2010	24	10-0778
March 31, 2010	17	10-0791
October 8, 2010	22	10-1562
October 8, 2010	14	10-1563
November 12, 2010	77	10-1595
January 13, 2011	25	11-0104
March 16, 2011	47	11-0200
May 4, 2011	49	11-0285
May 17, 2011	65	11-0298
May 17, 2011	34	11-0311
May 26, 2011	72	11-0319
June 16, 2011	23	11-0350
July 11, 2011	10	11-0388
August 11, 2011	11	11-1708
September 12, 2012	9	12-0611
December 19, 2012	3	12-0702
Total	778	

Since 2010, every container from waste stream LA-MIN03-NC.001 has been remediated at the Los Alamos National Laboratory (LANL) prior to certification of containers for acceptance at the WIPP facility. The Co-Permittees have concluded that there is no longer a need for the LANL staff to manage this waste stream differently than other waste streams being characterized in accordance with the WIPP Permit. The WIPP Permit was revised and has been fully implemented as required by Item 12 of the Partial Stipulated Final Order. The Permit was revised as described below to specifically address NMED concerns relative to liquids:

- Clarified the liquid waste prohibition
- Stated that overpacking waste containers with prohibited amounts of liquid into larger containers (e.g., SWBs, Ten Drum Overpacks) does not constitute remediation of the liquid
- Prohibited the redistribution of untreated liquid into a waste container as a form of remediation.
- Clarified language that explicitly prohibits the certification and shipment of waste containers with WAP-related nonconformances that have not been dispositioned
- Added language to the Permit Attachment B7 (now Permit Attachment C7) that requires the Co-Permittees' confirmation personnel to determine that all WAP-related nonconformances on each container selected for confirmation are dispositioned prior to approval for shipment to the WIPP facility.

These changes addressed NMED's concerns stated in the Compliance Order and authorize the Co-Permittees to accept only containers with observable liquid less than one percent by volume of the outermost container at the time of radiography or visual examination. Any containers not meeting this criterion are remediated as required by the Permit, and any nonconformances are dispositioned as required by the Permit. The Co-Permittees will manage this waste stream in accordance with the current Permit and terminate the special procedures in place for this waste stream.

The above described Permit changes became effective on April 1, 2010. Therefore, the Co-Permittees and generator/storage sites have significant experience in implementing these changes.

There are approximately 550 drums remaining in this waste stream at LANL. Eighty-six (86) of these are defined as above-ground Legacy TRU waste currently stored at Area G as of October 1, 2011, and are therefore part of the 3,706 cubic meter inventory that the DOE committed to remove by no later than June 30, 2014. Of the 550 drums, approximately 110 are expected to require remediation (i.e., are expected to have observable liquid greater than one percent by volume of the outermost container at the time of radiography or visual examination). The approximate cost for remediating all 550 drums, as currently required by the stipulated final order, is 3.5 million dollars. The approximate cost for remediating only those required to be remediated by the current Permit is 0.64 million dollars. The cost estimate is based on the time required to utilize the remediation/repackaging facilities at LANL.

Mr. Ryan Flynn

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12. Paragraph 68 of the Administrative Compliance Order is resolved by the following actions:
Within 30 days of the effective date on this Order, Respondents shall submit to NMED a list of known existing and future transuranic mixed waste streams from all generator/storage sites that have the potential to de-water similar to waste stream LA-MIN03-NC.001.

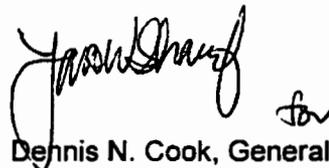
Status: Completed.

Therefore, the Co-Permittees request that the NMED declare that the Partial Stipulated Final Order, dated December 21, 2009, and the Stipulated Final Order, dated May 12, 2010, for Compliance Order HWB 09-31 have been fully complied with and are no longer in effect and that Compliance Order HWB 09-31 is, thereby, terminated.

Sincerely,



George W. Hellstrom, Legal Counsel
U.S. Department of Energy
Carlsbad Field Office
P.O. Box 3090
Carlsbad, NM 88221



Dennis N. Cook, General Counsel
Nuclear Waste Partnership LLC
P.O. Box 2078
Carlsbad, NM 88221

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT



NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
v.)
UNITED STATES DEPARTMENT)
OF ENERGY and WASHINGTON)
TRU SOLUTIONS LLC,)
Respondents.)

No. HWB 09-31 (CO)
(LANL)

PARTIAL STIPULATED FINAL ORDER

The New Mexico Environment Department ("NMED" or "Department") and Respondents the United States Department of Energy ("DOE") and Washington TRU Solutions LLC ("WTS"), pursuant to 20.1.5.600.B(2) NMAC, stipulate to partially resolve the Administrative Compliance Order issued to Respondents on July 24, 2009 ("Administrative Compliance Order") on the terms and conditions specified in this Partial Stipulated Final Order ("Stipulated Order"). Provisions of the Administrative Compliance Order as specified in Paragraph 17, below, are not resolved by this Stipulated Order.

I. BACKGROUND

1. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act, ("HWA") NMSA 1978, §§74-4-14, and the Hazardous Waste Management Regulations ("HWMR"), 20.4.1 NMAC, including assessing civil penalties for violations thereof.
2. Respondents are DOE, who is a department of the United States government and the owner and operator of the Waste Isolation Pilot Plant ("WIPP") and WTS, who is a co-operator of WIPP, a mixed waste storage and disposal facility located 26 miles

east of Carlsbad in Eddy County, New Mexico 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, the Department issued a hazardous waste facility permit, No. NM4890139088-TSDF ("Permit"), for the storage and disposal of mixed transuranic waste at WIPP, pursuant to section 74-4-4.2(C) of the HWA.

H. ALLEGED VIOLATIONS

4. On July 24, 2009, the Department issued an Administrative Compliance Order to the Respondents alleging the following violations:
 5. Respondents violated the requirement in Permit Condition I.E.13.c., which states, "Written notice - as required by 20.4.1.900 NMAC (incorporating 40 CFR §270.30(l)(6)(iii)), the Permittees shall submit a written notice within five (5) calendar days of the time the Permittees become aware of the circumstances." Respondents became aware of the noncompliance on June 5, 2008. NMED received written notification from Respondents on June 11, 2008. Respondents submitted a written notice of the noncompliance one (1) day late.
 6. Respondents violated Permit Condition II.C.1, Waste Analysis Plan, which states, "The Permittees shall not manage, store, or dispose TRU mixed waste at WIPP which fails to meet the characterization requirements of 20.4.1.500 NMAC (incorporating 40 CFR §264.13), as specified by this Permit," and Permit Condition II.C.1.a.i, Implementation of requirements, which states, "The Permittees shall require that generator/storage sites implement applicable waste characterization requirements of the WAP, specified in Permit Attachment B [Waste Analysis Plan], prior to the Permittees' receipt of TRU mixed waste at WIPP." Respondents stored and disposed

of container LAS817174 without following the written WAP. Respondents failed to comply with the requirements of Permit Attachment B3, Section B3-13, as follows:

- A. "The Permittees shall require the status of work and the WAP activities at participating generator/storage sites to be monitored and controlled by the Site Project Manager. This monitoring and control shall include nonconformance identification, documentation, and reporting." Respondents, while acting as the generator/storage site's SPM, did not adequately monitor and control the status of work and WAP activities, including the NCR process, performed by CCP with respect to container LAS817174.
 - B. "The Site Project Manager is also responsible for notifying project personnel of the nonconformance and verifying completion of the corrective action for nonconformances." Respondents, while acting as the generator/storage site's SPM, did not verify completion of the corrective action for container LAS817174 prior to the container being selected and certified for shipment to WIPP and subsequently accepted and disposed of at WIPP.
 - C. "The Permittees shall require participating sites reconcile and correct nonconforming items as appropriate in accordance with the Permittees' Quality Assurance Program Description (QAPD)." Respondents, while acting as the generator/storage site's SPM, did not reconcile and correct the nonconformance for container LAS817174 prior to shipment to WIPP.
7. Respondents violated the requirement in Permit Condition II.C.3. Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC), which states, "The Permittees shall not accept TRU mixed wastes at WIPP for storage, management, or

disposal which fail to meet the treatment, storage, and disposal facility waste acceptance criteria as presented in Permit Conditions II.C.3.a through II.C.3.j of this Permit," because container LAS817174, and by extension SWB LASB00411, contained liquid that did not satisfy the liquid waste prohibition as specified in Permit Condition II.C.3.a and Permit Attachment B, Section B-1c, which state in part, "...[w]aste shall contain as little residual liquid as is reasonably achievable by pouring, pumping and/or aspirating..." Respondents accepted SWB LASB00411 for storage, management, and disposal at WIPP, which included container LAS817174, that did not meet the criterion that residual liquid be as little as reasonably achievable.

III. COMPROMISE AND SETTLEMENT

A. PENALTIES

8. The parties enter into this Stipulated Order to settle and completely resolve the violations alleged in the Administrative Compliance Order, and to avoid further litigation and expense.
9. The parties agree that alleged Violation 1: *Failure to Notify the Secretary in Writing in a Timely Manner* of the Administrative Compliance Order is dismissed and no further resolution is required.
10. The Respondents admit the jurisdictional allegations of this Stipulated Order and consent to the relief specified herein, including the civil penalty. This Stipulated Order shall not be construed as an admission by Respondents of the violations alleged in the Administrative Compliance Order.

11. In compromise and settlement of the violations alleged in the Administrative

Compliance Order, the parties agree that the Respondents shall pay a civil penalty as follows:

- A. Respondents agree to pay a civil penalty of \$68,100.00 to resolve violations of the Hazardous Waste Act and the Permit alleged in the Administrative Compliance Order. Respondents shall pay the civil penalty to the State of New Mexico within 30 days after the effective date of this Order. Payment shall be by certified check or other guaranteed negotiable instrument, payable to the *State of New Mexico*, and shall be sent to the Department at the following address:**

**James P. Bearzi
Chief, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303**

- B. Respondents shall provide written notification of the payments to the following address:**

**Charles F. Noble, Assistant General Counsel
Office of General Counsel
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87502
Facsimile: (505) 827-1628**

If Respondents fail to make timely and complete payment, Respondents shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, §56-8-4.

B. SCHEDULE OF COMPLIANCE

12. No later than January 8, 2010, Respondents shall submit a Class 2 Permit

Modification Request (PMR) that includes, but is not limited to, the following:

- A. Language in Module II and Permit Attachment B that:
 - 1) Clarifies the liquid waste prohibition.
 - 2) States that overpacking waste containers with prohibited amounts of liquid into larger containers (e.g., SWBs, Ten Drum Overpacks) does not constitute remediation of the liquid.
 - 3) Prohibits the redistribution of untreated liquid into the waste container as a form of remediation.
- B. Clarifying language in Permit Attachments B and B3 that explicitly prohibits the certification and shipment of waste containers with WAP-related nonconformances that have not been dispositioned; and
- C. Adding language to Permit Attachment B7 that requires the Permittees' confirmation personnel to determine that all WAP-related nonconformances on each container selected for confirmation are dispositioned prior to approval for shipment to WIPP.

- 13. Within 60 calendar days from NMED approval of the above Class 2 PMR, Respondents shall submit to NMED the guidance and training material developed regarding implementation of the revised liquid prohibition in Module II and Permit Attachment B. This guidance and training material shall direct radiography and visual examination operators to determine if liquid in a container meets the criteria established by the approved Class 2 PMR.
- 14. Within 90 calendar days from NMED approval of the Class 2 PMR, Respondents shall provide the following to NMED:

- A. Evidence of staff training and implementation of new procedures based on the above guidance at all generator/storage sites incorporating the revised liquid prohibition;
 - B. Evidence of Permittees' confirmation personnel training and implementation of new procedures based on the above guidance incorporating the revised liquid prohibition and the determination that WAP-related nonconformances for containers selected for confirmation have been dispositioned.
15. Shipment of containers from waste stream LA-MIN03-NC.001 to WIPP shall remain suspended unless they have been remediated in accordance with approved LANL procedures.
16. Prior to shipment of any remediated container from waste stream LA-MIN03-NC.001, Respondents shall submit to NMED the following information for each container:
- A. Evidence that the container has been remediated in accordance with approved LANL procedures.
 - B. Data sheets and video/audio media for radiography conducted subsequent to remediation; and
 - C. Evidence that NCRs written for prohibited liquid have been dispositioned appropriately by CCP.
17. This Stipulated Order does not resolve Paragraph 68 of the Administrative Compliance Order.

IV. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

18. The Department retains the right to pursue any relief authorized by the HWA and the HWMR for any violation not raised in the Administrative Compliance Order.

B. COVENANTS NOT TO SUE

19. The Department covenants not to sue or take any administrative or civil action against Respondents for the violations of the HWA, HWMR and the Permit alleged in the Administrative Compliance Order.

20. Respondents covenant not to sue the State of New Mexico for any claims arising from the Administrative Compliance Order.

C. EFFECTIVE DATE

21. This Order shall become effective on the date it is approved and signed by the Department Secretary.

D. INTEGRATION

22. This Order merges all prior written and oral communications between the Department and the Respondents concerning the subject matter of this Order and contains the entire agreement between the Department and the Respondents.

E. BINDING EFFECT

23. This Order shall be binding upon the Department and its successor agencies and shall be binding upon the Respondents and any employees, agents, subsidiaries, successors, assigns, trustees, heirs, or receivers of the Respondents.

F. AUTHORITY OF SIGNATORIES

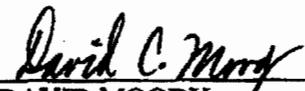
24. The persons executing this Order represent that they have the requisite authority to bind either the Department or the Respondents, as appropriate, to this Order, and that

their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondents to this Order.

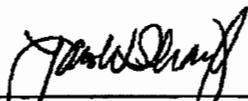
For the NEW MEXICO ENVIRONMENT DEPARTMENT

By:  Date: 12/21/09
MARCY LEAVITT
DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

For the UNITED STATES DEPARTMENT OF ENERGY

By:  Date: 12/16/09
DAVID MOODY
MANAGER
CARLSBAD FIELD OFFICE
DEPARTMENT OF ENERGY
P.O. BOX 3090
CARLSBAD, NEW MEXICO 88221-3090

For WASHINGTON TRU SOLUTIONS, LLC

By:  Date: 12-10-09
FAROK SHARIF
PRESIDENT
WASHINGTON TRU SOLUTIONS LLC
P.O. BOX 2078
CARLSBAD, NEW MEXICO 88221-2078

FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Stipulated Final Order, agreed to by the Department and by Respondents, DOE and WTS, is hereby APPROVED as a FINAL ORDER.



RON CURRY
SECRETARY OF ENVIRONMENT

Date: _____

12/21/09

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT



NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
v.) No. HWB 09-31 (CO)
UNITED STATES DEPARTMENT) (LANL)
OF ENERGY and WASHINGTON)
TRU SOLUTIONS LLC,)
Respondents.)

STIPULATED FINAL ORDER

The New Mexico Environment Department ("NMED" or "Department") and Respondents the United States Department of Energy ("DOE") and Washington TRU Solutions LLC ("WTS"), pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the Administrative Compliance Order issued to Respondents on July 24, 2009 ("Administrative Compliance Order") on the terms and conditions specified in the Partial Stipulated Final Order issued on December 21, 2009 and in this Stipulated Final Order ("Order"). Paragraph 68 of the Administrative Compliance Order, which was unresolved in the Partial Stipulated Final Order is hereby resolved by this Order.

I. BACKGROUND

1. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act, ("HWA") NMSA 1978, §§74-4-14, and the Hazardous Waste Management Regulations ("HWMR"), 20.4.1 NMAC, including assessing civil penalties for violations thereof.
2. Respondents are DOE, who is a department of the United States government and the owner and operator of the Waste Isolation Pilot Plant ("WIPP") and WTS, who is a co-operator of WIPP, a mixed waste storage and disposal facility located 26 miles

east of Carlsbad in Eddy County, New Mexico 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, the Department issued a hazardous waste facility permit, No. NM4890139088-TSDF ("Permit"), for the storage and disposal of mixed transuranic waste at WIPP, pursuant to section 74-4-4.2(C) of the HWA.

II. ALLEGED VIOLATIONS

4. On July 24, 2009, the Department issued an Administrative Compliance Order to the Respondents alleging the following violations:
5. Respondents violated the requirement in Permit Condition I.E.13.c., which states, "Written notice - as required by 20.4.1.900 NMAC (incorporating 40 CFR §270.30(l)(6)(iii)), the Permittees shall submit a written notice within five (5) calendar days of the time the Permittees become aware of the circumstances." Respondents became aware of the noncompliance on June 5, 2008. NMED received written notification from Respondents on June 11, 2008. Respondents submitted a written notice of the noncompliance one (1) day late.
6. Respondents violated Permit Condition II.C.1, Waste Analysis Plan, which states, "The Permittees shall not manage, store, or dispose TRU mixed waste at WIPP which fails to meet the characterization requirements of 20.4.1.500 NMAC (incorporating 40 CFR §264.13), as specified by this Permit," and Permit Condition II.C.1.a.i, Implementation of requirements, which states, "The Permittees shall require that generator/storage sites implement applicable waste characterization requirements of the WAP, specified in Permit Attachment B [Waste Analysis Plan], prior to the Permittees' receipt of TRU mixed waste at WIPP." Respondents stored and disposed

of container LAS817174 without following the written WAP. Respondents failed to comply with the requirements of Permit Attachment B3, Section B3-13, as follows:

- A. “The Permittees shall require the status of work and the WAP activities at participating generator/storage sites to be monitored and controlled by the Site Project Manager. This monitoring and control shall include nonconformance identification, documentation, and reporting.” Respondents, while acting as the generator/storage site’s SPM, did not adequately monitor and control the status of work and WAP activities, including the NCR process, performed by CCP with respect to container LAS817174.
 - B. “The Site Project Manager is also responsible for notifying project personnel of the nonconformance and verifying completion of the corrective action for nonconformances.” Respondents, while acting as the generator/storage site’s SPM, did not verify completion of the corrective action for container LAS817174 prior to the container being selected and certified for shipment to WIPP and subsequently accepted and disposed of at WIPP.
 - C. “The Permittees shall require participating sites reconcile and correct nonconforming items as appropriate in accordance with the Permittees' Quality Assurance Program Description (QAPD).” Respondents, while acting as the generator/storage site’s SPM, did not reconcile and correct the nonconformance for container LAS817174 prior to shipment to WIPP.
7. Respondents violated the requirement in Permit Condition II.C.3. Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC), which states, “The Permittees shall not accept TRU mixed wastes at WIPP for storage, management, or

disposal which fail to meet the treatment, storage, and disposal facility waste acceptance criteria as presented in Permit Conditions II.C.3.a through II.C.3.j of this Permit,” because container LAS817174, and by extension SWB LASB00411, contained liquid that did not satisfy the liquid waste prohibition as specified in Permit Condition II.C.3.a and Permit Attachment B, Section B-1c, which state in part, “[w]aste shall contain as little residual liquid as is reasonably achievable by pouring, pumping and/or aspirating...” Respondents accepted SWB LASB00411 for storage, management, and disposal at WIPP, which included container LAS817174, that did not meet the criterion that residual liquid be as little as reasonably achievable.

III. COMPROMISE AND SETTLEMENT

A. PENALTIES

8. Penalties are addressed in the Partial Stipulated Final Order issued on December 21, 2009.

B. SCHEDULE OF COMPLIANCE

9. The Schedule of Compliance is addressed in the Partial Stipulated Final Order issued on December 21, 2009, except for items 10 through 12 below:
10. Shipments of containers from waste stream LA-MIN03-NC.001 are no longer suspended. All remaining containers from waste stream LA-MIN03-NC.001 shall be remediated in accordance with approved LANL procedures prior to shipment to WIPP.
11. Paragraph 16 of the Partial Stipulated Final Order issued on December 21, 2009 is modified as follows: Prior to shipment of remediated containers from waste stream

LA-MIN03-NC.001, Respondents shall submit to NMED the following information for each container:

- A. A list of remediated containers being shipped;
- B. Evidence that each container has been remediated in accordance with approved LANL procedures; and
- C. Evidence that NCRs written for prohibited liquid have been dispositioned appropriately by CCP.

12. Paragraph 68 of the Administrative Compliance Order is resolved by the following actions:

Within 30 days of the effective date of this Order, Respondents shall submit to NMED a list of known existing and future transuranic mixed waste streams from all generator/storage sites that have the potential to de-water similar to waste stream LA-MIN03-NC.001.

IV. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

13. The Department retains the right to pursue any relief authorized by the HWA and the HWMR for any violation not raised in the Administrative Compliance Order.

B. COVENANTS NOT TO SUE

14. The Department covenants not to sue or take any administrative or civil action against Respondents for the violations of the HWA, HWMR and the Permit alleged in the Administrative Compliance Order.

15. Respondents covenant not to sue the State of New Mexico for any claims arising from the Administrative Compliance Order.

C. EFFECTIVE DATE

16. This Order shall become effective on the date it is approved and signed by the Department Secretary.

D. INTEGRATION

17. This Order merges all prior written and oral communications between the Department and the Respondents concerning the subject matter of this Order and contains the entire agreement between the Department and the Respondents.

E. BINDING EFFECT

18. This Order shall be binding upon the Department and its successor agencies and shall be binding upon the Respondents and any employees, agents, subsidiaries, successors, assigns, trustees, heirs, or receivers of the Respondents.

F. AUTHORITY OF SIGNATORIES

19. The persons executing this Order represent that they have the requisite authority to bind either the Department or the Respondents, as appropriate, to this Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondents to this Order.

For the NEW MEXICO ENVIRONMENT DEPARTMENT

By:  _____ Date: 8/12/10
MARCY LEAVITT
DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

For the UNITED STATES DEPARTMENT OF ENERGY

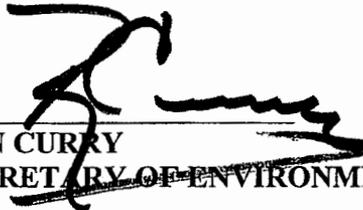
By: David C. Moody Date: 5/3/10
DAVID MOODY
MANAGER
CARLSBAD FIELD OFFICE
DEPARTMENT OF ENERGY
P.O. BOX 3090
CARLSBAD, NEW MEXICO 88221-3090

For WASHINGTON TRU SOLUTIONS, LLC

By: Farok Sharif Date: 5/3/10
FAROK SHARIF
PRESIDENT
WASHINGTON TRU SOLUTIONS LLC
P.O. BOX 2078
CARLSBAD, NEW MEXICO 88221-2078

FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Stipulated Final Order, agreed to by the Department and by Respondents, DOE and WTS, is hereby APPROVED as a FINAL ORDER.



RON CURRY
SECRETARY OF ENVIRONMENT

Date: 5/12/10