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Department of Energy
Carlsbad Field Office
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May 25, 2010



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

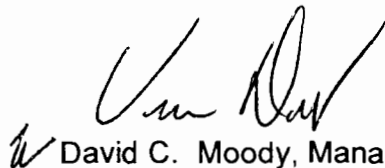
**Subject: Transmittal of Preliminary Comments on the Waste Isolation Pilot Plant
Hazardous Waste Facility Draft Renewal Permit**


Dear Mr. Bearzi:

The purpose of this letter is to transmit the Applicants' preliminary comments on the Waste Isolation Pilot Plant Hazardous Waste Facility Draft Renewal Permit. The Applicants are ready to discuss these comments with the New Mexico Environment Department and stakeholders in order to minimize the number of issues to be brought to a public hearing.

Please contact George T. Basabilvazo at (575) 234-7488 if you have any questions regarding this correspondence.

Sincerely,


David C. Moody, Manager
Carlsbad Field Office


M. F. Sharif, General Manager
Washington TRU Solutions LLC

Enclosure

cc: w/o enclosure	
S. Zappe, NMED	* ED
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Applicants' Preliminary Topical Comments on the Draft Permit

1. Clarification of the roles of DOE and WTS

Comment:

NMED, in the Draft Permit, has divided the responsibilities of the Permittees by designating certain actions and responsibilities as DOE action only rather than Permittee actions. The applicants note that the NMED Fact Sheet indicates that this change is based on the perception of a conflict of interest. The applicants do not understand the necessity for this change. The Permittees have traditionally taken measures to assure such conflicts do not arise and to make the processes used for characterizing, approving and disposing of waste transparent to regulatory agencies and stakeholders. For example:

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

The changes as proposed add unnecessary complexity, increasing the potential for mistakes and errors, and introduce additional administrative burden for no regulatory benefit. The Applicants consider resolution of this issue prior to the hearing their highest priority.

Complexity: High

Controversy: High

2. Waste Analysis Plan Requirements

Comment:

After eleven years of operation and numerous certification and recertification audits the WAP has been consistently implemented at generator/storage sites across the DOE complex. Specifically, for wastes received by WIPP, the following apply:

- Waste Characterization requirements are the same for all waste streams
- Waste Management requirements are the same for all waste streams
- Disposal Requirements are the same for all waste streams
- For WIPP, DOE manages TRU waste and TRU mixed waste streams the same

The changes as proposed appear to increase the complexity, and the potential for mistakes and errors, and introduce additional administrative burden for no regulatory benefit.

Complexity: Medium

Controversy: Medium

Examples:

- Added specificity to AK documentation and records
- Restricted definition of a Waste Stream
- Change in the application of Hazardous Waste Numbers
- New Observer Inquiry Process
- New Requirement to use non-certified data such as fast scans and preliminary information
- Changes in RTR training for identifying drum contents
- Criteria for revising Waste Stream Profile Forms
- Changes in the auditing process to separate CH and RH program approvals

3. Restructuring the Draft Permit

Comment:

The restructuring of the Draft Permit causes a significant administrative burden for the Permittees. This may cause errors in implementation. For example, changing Attachment B to Attachment C requires implementing all the reference changes to plans and procedures without significant changes to underlying requirements. At a minimum, change the alpha numeric title of the attachments that refer to the Waste Analysis Plan, attachments C thru C7, back to B through B7. Further, change the alpha numeric title of attachments dealing with surface and underground operations, attachments A through A3, back to M through M3. This will allow for the standardization of permits in New Mexico but avoid the administrative burden of making administrative changes to literally hundreds of WIPP documents that reference the Permit.

Complexity: Medium

Controversy: Low

4. Community Relations Plan

Comment:

After eleven years of operation DOE has established a model process for community relations in the state of New Mexico. Adding these requirements to the Draft Permit may create conflicts in implementation. For example, the DOE and New Mexico have the Consultation and Cooperation Agreement which is mandated by Section 213(b)(1) of Public Law 96-164 (December 29, 1979) and associated agreements which provides the statutory framework for intercommunication and defines the relationship between DOE, the community and the state. The requirements of the Community Relations Plan, as proposed, include enforceable measures for which there are no defined criteria for determining compliance.

Complexity: Medium

Controversy: Medium

5. Alternate Underground Waste Transport Route

Comment:

An additional underground waste transport route is required to prevent disruption of waste management activities due to maintenance in drift E-140. An alternate waste transport route (drift W-30) must be designated so that the Applicants can plan work in the drift E-140 without interrupting waste handling. This would provide the Applicants two options for waste transport routes and the strategic ability to accomplish both waste handling and underground maintenance simultaneously for many years to come. The Applicants will submit a written comment for an alternate underground waste transport route.

Complexity: Low

Controversy: Low

6. Volatile Organic Compounds Concentration of Concern Revisions

Comment:

The Applicants have filed a Class 2 Permit Modification to reapportion the VOC risk. The Applicants will submit a written comment to address NMED's final action in the Draft Permit.

Complexity: Low

Controversy: Low

7. Various Editorial and Minor Draft Permit Modifications

Comment:

Applicants have identified minor typographical, editorial changes, and minor changes to the Draft Permit. Applicants believe that these are of low complexity and low controversy and a matrix of recommended changes will be submitted to NMED and the parties in June.

Complexity: Low

Controversy: Low

8. Administrative Burden of Implementation of Changes to Draft Permit

Comment:

An unintended consequence of the Draft Permit, as proposed, is the amendment of the plans, procedures, and other operating documents to address the proposed changes. In particular, two of the proposed changes will drive these changes. They are the restructuring of the Draft Permit which will require all references to be updated. Second, the proposed changes regarding "Permittee" and "DOE" also will require extensive revisions to the documents. The Applicants have identified preliminary comments regarding each of these issues and the benefit of implementing these issues above. The Applicants, due to the regulatory burden identified, request that implementation of the Permit be extended for 180 days from the date of approval of the Permit.

Complexity: Low

Controversy: Low