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April 26, 1999

Greg Lewis, Director
Water and Waste Management Division
New Mexico Environment Department
PO Box 26110
Santa Fe, NM 87502-6110

VIA FAX AND U.S. MAIL

Dear Mr. Lewis:

Southwest Research and Information Center (SRIC) submits the following initial comments on the April 21 submission by the Department of Energy (DOE) in response to your Compliance Order HRM-99-04 (CO) of April 20.

First, it is clear that the DOE submission is not an adequate response to the Compliance Order. The Order states: "Upon information and belief, Waste Stream Profile INW276 is hazardous waste" and supports that finding with information from DOE's Baseline Inventory Reports (BIR). Finding of Fact #15. DOE's submission provides no direct response regarding the BIR. The DOE submission also does not explain how waste that has been classified as hazardous waste in Colorado and Idaho can now be classified as non-hazardous waste.

Second, from preliminary review of the DOE submission, it is clear that:

1. DOE has not provided "all characterization information for Waste Stream Profile INW276," as required by Corrective Action #1 of the Compliance Order.
2. DOE has not submitted "an adequate hazardous waste determination for Waste Stream Profile INW276," as required by Corrective Action #2 of the Compliance Order.
3. DOE has not submitted "a detailed chemical and physical analysis of a representative sample of Waste Stream Profile INW276," as required by Corrective Action #3 of the Compliance Order.

Thus, SRIC believes that NMED must conclude that the DOE response to the Compliance Order is incomplete and inadequate. Thus, NMED must take further action to enforce its Compliance Order. SRIC urges NMED to immediately do so.

SRIC also urges NMED to inform DOE that shipment of drums from Waste Stream INW276 to WIPP before providing the requested information would be a violation of the New Mexico Hazardous Waste



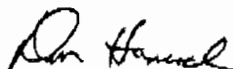
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Act (HWA) which would subject DOE to further penalties, in addition to those already noted in the Compliance Order.

Attached are more detailed comments from SRIC on the DOE submission.

Thank you very much for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Hancock".

Don Hancock

COMMENTS ON DOE SUBMISSION ON WASTE STREAM INW276

1. DOE has not provided "all characterization information for Waste Stream Profile INW276," as required by Corrective Action #1 of the Compliance Order.

Among the missing documentation is:

a. In the drum Waste Stream Profile, one item referenced regarding each drum is "INEEL Acceptable Knowledge Waste Stream Summary (Graphite), 4/27/98." That document is not listed in Section 6 References in the "Nonmixed Waste Determination for IDC 300 Waste (Graphite Molds)," which was the Acceptable Knowledge documentation provided to NMED. Such a key document must be provided.

b. According to the Special Characterization Sampling and Analysis of Graphite Mold Waste (Ref. 13 in the Determination Report), INEEL's general characterization sampling plan is entitled Transuranic Sampling Plan for the INEEL, EDF-909. That general sampling plan has not been provided to NMED even though the Special Characterization plan "does not replace or supersede" EDF-909 (at 3). EDF-909 should be provided to NMED.

c. Although the Compliance Order cited the DOE Baseline Inventory Report (BIR), Rev. 1 and 2 (Findings of Fact #15), the DOE submission does not include nor discuss that document. BIR, Rev. 2 states that it is based on "generator supplied process knowledge and/or headspace gas sampling" (P-IN-342 and 344). DOE submission does not explain the discrepancy. Further, DOE did not supply the AK documentation for the 1995 determination, nor did it supply actual AK documentation from Rocky Flats in its submission.

d. Variances, nonconformances, and Corrective Action Reports are not clearly discussed in DOE's submission. In the drum Waste Stream Profile documents there is a checklist item for variances and nonconformances. For some drums, the checklist is "N/A," for others there is a checkoff. But detailed information about variances, nonconformances, or Corrective Action Reports are not included.

e. The characterization information provided includes discussion of drum liners which states: "[u]se of the 90-mil rigid polyethylene liner began in 1972." Acceptable Knowledge Document for INEEL Stored Transuranic Waste - Rocky Flats Plant Waste, INEEL-96-0280, Rev. 2 at 12-6. The drum Waste Profile documentation provided for drum Barcode #27405 (IDFRD1209654) shows it to have such a 90-mil liner. However, the WIPP Waste Information System (WWIS) Waste Container Data Report states that it is a 55-gallon drum with "No Liner." This discrepancy must be explained and corrected.

f. The characterization information does not identify which drums are to be shipped to WIPP. The WWIS includes information on 42 drums as Shipment Number KN990401. DOE should clearly submit information as to which drums are being shipped and why those drums were selected.

2. DOE has not submitted "an adequate hazardous waste determination for Waste Stream Profile INW276," as required by Corrective Action #2 of the Compliance Order.

DOE did submit a waste determination document, "Nonmixed Waste Determination for IDC 300 Waste (Graphite Molds)." The document states "that the 50 drums of IDC-300 waste (graphite molds) ... are not hazardous waste." However, the document does not specifically identify the 50 drums by number. The document does not specifically identify the Waste Stream that the 50 drums are part of. Thus, NMED cannot know to what specific drums the determination report refers.

Even if the report does refer to 50 drums that are designated INW276.001 by the WWIS Waste Container Data Report, the document does not conclusively demonstrate that the drums contain no hazardous waste. For example,

a. The report does not document whether corrosion is present in the 55-gallon drums. The document states: "During visual inspection of the drum, the contents were removed, inspected, documented, and returned to a new drum" (at 8). The document does not provide, nor do other documents submitted, describe whether drums showed evidence of corrosion. It is unclear whether the videotapes provide any information on that matter, since the videotapes are not currently available to SRIC.

b. The composite TCLP samples selected were from graphite molds (at 11). However, the Acceptable Knowledge Document (INEL-96-0280) states that waste containers are allowed "to contain up to 10 percent of another IDC other than that assigned to the container" (at 12-6). Those other materials should also be sampled.

c. In addition to AK documentation, the determination is significantly based on radiography results. However, the drums may have been subjected to radiography on various occasions, since INEEL has been using radiography on drums destined for WIPP for almost a decade. DOE should provide results of all such radiography and explain any discrepancies in results. In addition, the actual results of radiography are not clearly described in the determination report. During RTR, "several unregulated extraneous items" were observed (at 8). The report also identifies that visual inspection found "extraneous material" in 13 drums of the 50 drums (at 10), but there is no information as to whether there are differences in the items found when comparing RTR to visual inspection. Thus, the error rate of RTR cannot be determined, based on the information provided.

3. DOE has not submitted "a detailed chemical and physical analysis of a representative sample of Waste Stream Profile INW276," as required by Corrective Action #3 of the Compliance Order.

DOE's description of the sampling and analysis was that "five drums were randomly chosen for TCLP extraction and analysis sampling from the 50 drums" (at 10). There is no statement in the

document that such random sampling provides the requested representative sample.

As noted in 2.b. above, it is also not demonstrated that representative sampling of all materials in the drums was done. Other issues:

1. The documentation provided does not clearly indicate how the drums were stored at Rocky Flats, when they were shipped to INEEL, how they were stored at INEEL. This information is important to determining whether any of the waste could have been contaminated by hazardous waste during storage at Rocky Flats, transportation to INEEL, or storage or handling at INEEL.

2. The Compliance Order refers to the fact that Waste Stream Profile INW276 was classified as hazardous waste in Colorado (Conclusion of Law 4). The DOE submission does not discuss or respond to that conclusion.

3. SRIC also believes that the waste stream was managed as mixed waste, under the Idaho RCRA permit. The DOE submission provides no information on that matter.