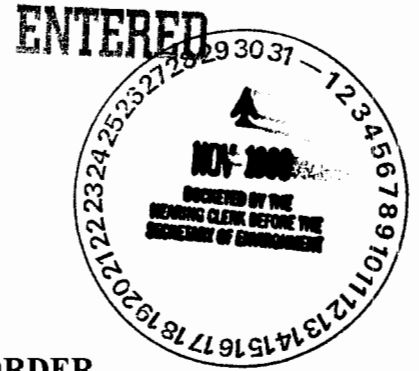


STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT



IN THE MATTER OF
U.S. DEPARTMENT OF ENERGY
AND WESTINGHOUSE WASTE
ISOLATION DIVISION, CARLSBAD,
NEW MEXICO, NM4890139088,

COMPLIANCE ORDER
HRM 99-05 (CO)

RESPONDENTS.

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 Waste Isolation Division (WID) (collectively referred to as Respondents), pursuant to the New Mexico Hazardous Waste Act, NMSA 1978 Section 74-4-10 (1993).

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 New Mexico Hazardous Waste Act (HWA), NMSA 1978 Section 74-4-1 et seq. (1993), and New Mexico Hazardous Waste Management Regulations (HWMR), 20 NMAC 4.1.
2. Respondents are DOE and WID, who own and operate the Waste Isolation Pilot Plant (WIPP), a mixed waste storage and disposal facility for which interim status or a permit is required under the HWMR, 20 NMAC 4.1.900 (incorporating 40 CFR §270.1(a)).
3. DOE is an agency of the federal government and the owner and co-operator of WIPP.



4. WID is a private corporation under contract with DOE and the co-operator of WIPP.
5. WIPP is located approximately twenty-six (26) miles east of Carlsbad in Eddy County, New Mexico.
6. DOE is charged with the management of transuranic waste at the Rocky Flats Environmental Technology Site (RFETS).
7. Transuranic waste contains solid waste as defined in the HWA, Section 74-4-3.M.
8. The HWMR, 20 NMAC 4.1.200 (incorporating 40 CFR §261.20), provide that a solid waste is a hazardous waste if it exhibits any of the hazardous characteristics identified in 40 CFR §261 Subpart C.
9. The HWMR, 20 NMAC 4.1.300 (incorporating 40 CFR §262.11), require any person generating a solid waste to perform a hazardous waste determination using the methods specified in 40 CFR §262.11(a), (b), and (c).
10. The HWMR, 20 NMAC 4.1.600 (incorporating 40 CFR §265.13(a)), require any owner or operator of an interim status hazardous waste facility to obtain a detailed chemical and physical analysis of a representative sample of a hazardous waste before storing or disposing such waste.
11. The HWMR, 20 NMAC 4.1.600 (incorporating 40 CFR §265.13(b)), require the owner or operator of an interim status hazardous waste facility to develop and follow a written waste analysis plan which describes the procedures necessary to comply with 40 CFR §265.13(a) and other specified minimum requirements.

12. The HWMR, 20 NMAC 4.1.600 (incorporating 40 CFR §265 Subpart H), generally require the owner and operator of an interim status hazardous waste facility to provide financial assurance and liability coverage.

13. The HWMR, 20 NMAC 4.1.600 (incorporating 40 CFR §265.140(c)), exempt only states and the Federal government from 40 CFR §265 Subpart H.

14. The HWA, Section 74-4-3.3, provides that "hazardous waste" may include any material imported into the State of New Mexico for the purpose of disposal which is defined or classified as hazardous waste in the state of origin.

15. On or about June 22, 1999, DOE provided NMED with documentation related to Transuranic Stabilized Pyrochemical Salts Profile No. RF005.01 (Waste Stream RF005.01) which summarized the effort performed at RFETS to characterize the waste and make a hazardous waste determination.

16. On July 1, 1999, NMED wrote a letter to DOE regarding Waste Stream RF005.01. The letter identified relevant information not provided by DOE and questioned the basis for the non-mixed waste determination.

17. On July 1, 1999, DOE commenced the shipment of Waste Stream RF005.01 from RFETS.

18. On July 2, 1999, Respondents received and stored the initial shipment of Waste Stream RF005.01 at WIPP, and subsequently disposed the initial shipment in Room 7 of Panel 1.

19. On or about July 30, 1999, DOE provided NMED with revisions to the documentation regarding Waste Stream RF005.01.

20. On or about August 20, 1999, DOE provided NMED with a written response to the NMED's July 1, 1999 letter.

21. On or about September 9, 1999, DOE provided NMED with additional revisions to the documentation regarding Waste Stream RF005.01.

22. On November 10, 1999, NMED informed DOE that the accumulated documentation regarding Waste Stream RF005.01 was not adequate to demonstrate the absence of hazardous constituents.

23. As of the date of this Order, Respondents have disposed of five hundred seventy four (574) containers of Waste Stream RF005.01 in Room 7 of Panel 1.

24. Waste Stream RF005.01 consists of several Item Description Codes (IDCs) including but not limited to IDCs 365, 411, 412, 413, 414, and 434.

25. DOE identified the IDCs in Waste Stream RF005.01 as “mixed waste” in numerous published documents.

26. DOE managed Waste Stream RF005.01 and the IDCs contained in Waste Stream RF005.01 as “mixed waste” in the State of Colorado.

27. DOE identified Waste Stream RF-W058 and the IDCs contained in Waste Stream RF-W058, including IDCs 409, 411, 412, and 414, as “mixed waste” in the RFETS Site Treatment Plan.

28. Waste Stream RF005.01 contains hazardous constituents, such as chromium, in concentrations exceeding regulatory limits.

29. Respondents failed to provide a detailed chemical and physical analysis of a representative sample of Waste Stream RF005.01.

30. Respondents failed to follow their written waste analysis plan, including the requirement to conduct headspace gas sampling of all containers prior to receipt and disposal at WIPP.

31. Waste Stream RF005.01 poses a significant risk to human health and the environment for several reasons, including but not limited to uncertainty regarding the presence of prohibited items and the release of volatile organic compounds from waste containers.

32. WID stored and disposed Waste Stream RF005.01 without providing financial assurance and liability coverage required under the HWMR, 20 NMAC 4.1.600 (incorporating 40 CFR §265 Subpart H). During NMED's inspection of WIPP in July 1999, WID failed to provide evidence of compliance with the requirements for financial assurance and liability coverage.

CONCLUSIONS OF LAW

33. Each Respondent is a "person" as defined in the HWA, Section 74-4.3.K, and HWMR, 20 NMAC 4.1.101 (incorporating 40 CFR §260.10).

34. Respondents manage, store, and dispose hazardous waste as defined in the HWA, Section 74-4-3.I, and HWMR, 20 NMAC 4.1.101 (incorporating relevant portions of 40 CFR §260.10).

35. DOE is the owner and co-operator of an "existing hazardous waste management facility" as defined in the HWMR, 20 NMAC 4.1.101 (incorporating relevant portions of 40 CFR §260.10).

36. WID is the co-operator of an "existing hazardous waste management facility" as defined in the HWMR, 20 NMAC 4.1.101 (incorporating relevant portions of 40 CFR §260.10).

COUNT I: INADEQUATE HAZARDOUS WASTE DETERMINATION

37. Paragraphs 1 through 36 are incorporated by reference.

38. Respondents violated the HWMR, 20 NMAC 4.1.300 (incorporating 40 CFR §262.11), by failing to adequately perform a hazardous waste determination using the methods specified in 40 CFR §262.11(a), (b), and (c).

**COUNT II: FAILURE TO OBTAIN A GENERAL WASTE ANALYSIS THAT
COMPLIES WITH 40 CFR §265.13(a).**

39. Paragraphs 1 through 38 are incorporated by reference.

40. Waste Stream RF005.01 and the IDCs in Waste Stream RF005.01 originated in the State of Colorado.

41. Waste Stream RF005.01 and the IDCs in Waste Stream RF005.01 were classified as hazardous waste in the State of Colorado.

42. Waste Stream RF005.01 and the IDCs in Waste Stream RF005.01 are hazardous waste because they contain hazardous constituents identified in the HWMR, 20 NMAC 4.1.200 (incorporating 40 CFR §261 Subparts C and D).

43. Respondents violated the HWMR, 20 NMAC 4.1.600 (incorporating 40 CFR §265.13(a)), by storing and disposing Waste Stream RF005.01 without a detailed chemical and physical analysis of a representative sample of waste.

**COUNT III: STORING AND DISPOSING HAZARDOUS WASTE WITHOUT
FOLLOWING THE WRITTEN WASTE ANALYSIS PLAN**

44. Paragraphs 1 through 43 are hereby incorporated by reference.

45. Respondents violated the HWMR, 20 NMAC 4.1.600 (incorporating 40 CFR §265.13(b)), by storing and disposing Waste Stream RF005.01 without following the written waste analysis plan, including the requirement to conduct headspace gas sampling of all containers prior to receipt and disposal at WIPP. .

**COUNT IV: FAILURE TO PROVIDE FINANCIAL ASSURANCE AND
LIABILITY COVERAGE PRIOR TO STORING AND DISPOSING
WASTE**

46. Paragraphs 1 through 45 are hereby incorporated by reference.

47. Respondents violated the HWMR, 20 NMAC 4.1.600 (incorporating 40 CFR §265 Subpart H), by storing and disposing Waste Stream RF005.01 without complying with the requirements for financial assurance and liability coverage.

SCHEDULE OF COMPLIANCE

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

- A. Within thirty (30) days from receipt of this Order, Respondents shall perform an adequate hazardous waste determination for Waste Stream RF005.01.
- B. Within thirty (30) days from receipt of this Order, Respondents shall provide the Secretary with a detailed chemical and physical analysis of a representative sample of Waste Stream RF005.01.
- C. Within thirty (30) days from receipt of this Order, Respondents shall submit to the Secretary a schedule for completing headspace gas sampling and analysis for five hundred seventy four (574) containers of Waste Stream RF005.01. Respondents shall revise the WIPP WWIS database for each container of Waste Stream RF005.01 to reflect the highest concentration of each hazardous constituent measured in the five hundred seventy four (574) containers sampled according to the schedule.
- D. Within thirty (30) days from receipt of this Order, Respondents shall provide the Secretary with evidence of compliance with the requirements of financial assurance and liability coverage in 40 CFR §265 Subpart H.

CIVIL PENALTY

49. 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 One Million, Three Hundred Fifty Seven Thousand dollars (\$1,357,000) 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

50. Respondents may request a hearing pursuant to the HWA, Section 74-4-10.H, and NMED's Adjudicatory Procedures, 20 NMAC 1.5.200, 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 which 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 NMAC 1.5 (copy attached).

FINALITY OF ORDER

51. 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

52. 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 NMAC 1.5.601. 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:

Ms. Debby Brinkerhoff
Enforcement Manager
Hazardous and Radioactive Materials Bureau
New Mexico Environment Department
P.O. Box 26110
1190 St Francis Drive
Santa Fe, New Mexico 87502-6110
(505) 827-1508

TERMINATION

53. 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.



GREG LEWIS, DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

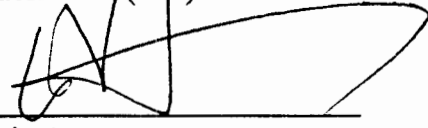
DATE: 11/30/99

CERTIFICATE OF SERVICE

I certify that on November 30, 1999, I caused this Order to be sent by facsimile and first class mail, certified mail-return receipt requested, to:

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

Joe Epstein
Westinghouse Waste Isolation Division
P.O. Box 2078
Carlsbad, NM 88220
Facsimile: (505) 234-8988



Eric Ames

PENALTY CALCULATION WORKSHEET

Facility: Waste Isolation Pilot Plant

Date of Inspection:

Citation/Violation: §262.11 - failure to perform an adequate hazardous waste determination on RF005.01 from Rocky Flats prior to shipment to WIPP

Location: WIPP

PENALTY AMOUNT:

- 1. Gravity based penalty from matrix \$8,000
 - (a). Potential for harm Major
 - (b). Extent of deviation Moderate
- 2. Amount selected from multiday matrix cell \$4,000
- 3. Multiply line 2 by number of days of noncompliance (or other appropriate number) minus 1
Number of Days: 59 \$236,000
- 4. Add line 1 and line 3 \$244,000
- 5. Percent increase/decrease for good faith -10%
- 6. Percent increase for history of willfulness/negligence 0%
- 7. Percent increase for history of noncompliance 0%
- 8. Total percentage from lines 5 through 7 -10%
- 9. Multiply line 4 by line 8 (\$24,400)
- 10. Calculate economic benefit \$0
- 11. Add lines 4, 9, and 10 for penalty amount for this violation \$219,600

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 storage and disposal of this waste, the failure to perform an adequate hazardous waste determination 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 attempted to meet the regulatory requirements, but deviated significantly due to reliance upon process knowledge of the waste generation process instead of acknowledging that the waste was already regulated as a hazardous waste in the State of Colorado. Therefore, because some of the regulatory requirements were met, a moderate extent of deviation from the regulatory requirements is deemed appropriate.

2. Multiday Penalty:

A multiday penalty is mandatory for a major/moderate category. The submittal of the initial waste determination report occurred on or about June 22, 1999, and the Respondents continued to assert their contention that the waste was non-hazardous at least until on or about September 9, 1999. Therefore, the allowable maximum of 59 days of noncompliance is deemed appropriate.

3. Good Faith:

The Respondents demonstrated good faith by performing the initial hazardous waste determination, and by continuing to provide updated information as waste characterization activities proceeded. Therefore, a 10% decrease penalty for good faith is deemed appropriate.

4. Negligence:

The Respondents did not neglect the requirement to perform a hazardous waste determination. Therefore, no increased penalty for negligence is considered appropriate.

5. History of Noncompliance:

The Respondents have no prior history of noncompliance regarding hazardous waste determinations at WIPP. Therefore, no increased penalty for history of noncompliance 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 failing to perform an adequate hazardous waste determination is unknown at this time, but may be calculated later upon discovery of sufficient information.

PENALTY CALCULATION WORKSHEET

Facility: Waste Isolation Pilot Plant

Date of Inspection:

Citation/Violation: §265.13(a) - failure to obtain a detailed chemical and physical analysis of a representative sample of Waste Stream RF005.01 from Rocky Flats prior to storage and disposal at WIPP

Location: WIPP

PENALTY AMOUNT:

- 1. Gravity based penalty from matrix \$8,000
 - (a). Potential for harm Major
 - (b). Extent of deviation Moderate
- 2. Amount selected from multiday matrix cell \$4,000
- 3. Multiply line 2 by number of days of noncompliance (or other appropriate number) minus 1
 - Number of Days: 59 \$236,000
- 4. Add line 1 and line 3 \$244,000
- 5. Percent increase/decrease for good faith 0%
- 6. Percent increase for history of willfulness/negligence 0%
- 7. Percent increase for history of noncompliance 0%
- 8. Total percentage from lines 5 through 7 0%
- 9. Multiply line 4 by line 8 \$0
- 10. Calculate economic benefit \$0
- 11. Add lines 4, 9, and 10 for penalty amount for this violation \$244,000

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 storage and disposal of this waste, the failure to perform adequate waste characterization 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 significantly deviated from the requirements of representative sampling by biasing sampling from a single Item Description Code out of approximately 16 which comprise Waste Stream RF005.01. Therefore, because some of the regulatory requirements were met, a moderate extent of deviation from the regulatory requirements is deemed appropriate.

2. Multiday Penalty:

A multiday penalty is mandatory for a major/moderate category. The submittal of the initial waste determination report documenting waste characterization efforts occurred on or about June 22, 1999, and the Respondents continued to assert that the waste characterization was adequate at least until on or about September 9, 1999. 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 did not neglect the requirement to characterize hazardous waste. Therefore, no increased penalty for negligence is considered appropriate.

5. History of Noncompliance:

The Respondents have no prior history of noncompliance regarding hazardous waste characterization at WIPP. Therefore, no increased penalty for history of noncompliance 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.

PENALTY CALCULATION WORKSHEET

Facility: Waste Isolation Pilot Plant

Date of Inspection:

Citation/Violation: §265.13(b) - failure to follow a written waste analysis plan for Waste Stream RF005.01 from Rocky Flats prior to storage and disposal at WIPP

Location: WIPP

PENALTY AMOUNT:

- 1. Gravity based penalty from matrix \$8,000
 - (a). Potential for harm Major
 - (b). Extent of deviation Moderate
- 2. Amount selected from multiday matrix cell \$4,000
- 3. Multiply line 2 by number of days of noncompliance (or other appropriate number) minus 1
Number of Days: 59 \$236,000
- 4. Add line 1 and line 3 \$244,000
- 5. Percent increase/decrease for good faith 0%
- 6. Percent increase for history of willfulness/negligence 0%
- 7. Percent increase for history of noncompliance 0%
- 8. Total percentage from lines 5 through 7 0%
- 9. Multiply line 4 by line 8 \$0
- 10. Calculate economic benefit \$344,400
- 11. Add lines 4, 9, and 10 for penalty amount for this violation \$588,400

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 storage and disposal of this waste, 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 significantly deviated from the requirements of the written WAP by failing to perform headspace gas sampling on all containers, as specified in the WAP. Therefore, because some of the regulatory requirements were met, a moderate extent of deviation from the regulatory requirements is deemed appropriate.

2. Multiday Penalty:

A multiday penalty is mandatory for a major/moderate category. The submittal of the initial waste determination report documenting failure to follow the written WAP occurred on or about June 22, 1999, and the Respondents persisted in failing to perform headspace gas sampling on all drums stored at and disposed of at WIPP until at least the most recent receipt on November 9, 1999. 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:

Although the Respondents neglected the requirement to comply with all requirements of the written WAP, the neglect was based upon the incorrect assumption that the waste was non-mixed and therefore exempt from requirements of the WAP. Therefore, no increased penalty for negligence is considered appropriate.

5. History of Noncompliance:

The Respondents have no prior history of noncompliance regarding compliance with a written WAP at WIPP. Therefore, no increased penalty for history of noncompliance is considered appropriate.

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

The estimated delayed cost of failing to follow a written WAP is greater than \$2500, as shown below. This cost may be re-calculated later upon discovery of additional information.

Number of containers disposed of at WIPP without headspace gas sampling	. 574
Estimated cost of headspace gas sampling per container [†]	<u>\$600</u>
Multiply	\$344,400

[†] This estimate based upon waste characterization cost estimates contained in "Findings and Recommendations of the Transuranic Waste Characterization Task Force" of the DOE Carlsbad Area Office (Final Report, August 9, 1999). This report identified costs associated with headspace gas sampling and analysis for compliance with the CAO Quality Assurance Program Plan (QAPP), which for the most part mirror requirements in the written WAP. The report provided two costs: a weighted-average unit cost per container of \$395, and a unit cost used for modeling purposes of \$600. The penalty calculation assumed the unit cost used for modeling.

PENALTY CALCULATION WORKSHEET

Facility: Waste Isolation Pilot Plant

Date of Inspection:

Citation/Violation: §265 Subpart H - failure to satisfy financial requirements prior to storage and disposal of waste at WIPP

Location: WIPP

PENALTY AMOUNT:

- 1. Gravity based penalty from matrix \$10,000
 - (a). Potential for harm Major
 - (b). Extent of deviation Major
- 2. Amount selected from multiday matrix cell \$5,000
- 3. Multiply line 2 by number of days of noncompliance (or other appropriate number) minus 1
Number of Days: 59 \$295,000
- 4. Add line 1 and line 3 \$305,000
- 5. Percent increase/decrease for good faith 0%
- 6. Percent increase for history of willfulness/negligence 0%
- 7. Percent increase for history of noncompliance 0%
- 8. Total percentage from lines 5 through 7 0%
- 9. Multiply line 4 by line 8 \$0
- 10. Calculate economic benefit \$0
- 11. Add lines 4, 9, and 10 for penalty amount for this violation \$305,000

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 storage and disposal of this waste, the failure to provide financial assurance and liability coverage has 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 substantially deviated from the requirements in that WID failed completely to comply with the requirements of §265 Subpart H. Therefore, because none of the regulatory requirements were met, a major extent of deviation from the regulatory requirements is deemed appropriate.

2. Multiday Penalty:

A multiday penalty is mandatory for a major/major category. WID did not meet financial requirements for assurance or liability in §265 Subpart H on the first date that Waste Stream RF005.01 was received on July 2, 1999, nor did they meet the financial requirements by the date of the last shipment received on November 9, 1999. 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 under interim status. Therefore, no adjustment for good faith is deemed appropriate.

4. Negligence:

The Respondents are aware of the requirement for financial assurance and liability, but have contended that WID is exempt from the requirement. Therefore, no increased penalty for negligence is considered appropriate.

5. History of Noncompliance:

The Respondents have no prior history of noncompliance regarding financial requirements at WIPP. Therefore, no increased penalty for history of noncompliance 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 fulfilling financial requirements of §265 Subpart H is unknown at this time, but may be calculated later upon discovery of sufficient information.