NEW MEXICO ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau

BILL RICHARDSON
Governor

DIANE DENISH
Lieutenant Governor

2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone (505) 476-6000 Fax (505) 476-6030
www.nmenv.state.nm.us

RON CURRY
Secretary

JON GOLDSTEIN
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 7, 2008

David Moody, Manager
Carlsbad Field Office
Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Farok Sharif, President
Washington TRU Solutions LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-5608

RE: JUNE 11, 2008 DISPUTE RESOLUTION – TERMS OF AGREEMENT
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088

Dear Dr. Moody and Mr. Sharif:

On June 2, 2008, the New Mexico Environment Department (**NMED**) granted partial approval of the Final Audit Report of the Los Alamos National Laboratory/Central Characterization Project (**LANL/CCP**) Audit A-07-12 (**Audit Report**). In the letter, NMED notified the U.S. Department of Energy Carlsbad Field Office and Washington TRU Solutions LLC (collectively, the **Permittees**) that "[t]he Permittees have not provided evidence that LANL/CCP can produce VE records that satisfy the requirements of both Section B1-4 and Section B7-1c. For this reason, NMED is withholding approval of the initial certification of the RH TRU waste characterization program at LANL/CCP." Specifically, NMED expressed the following concerns:

- While the information provided as objective evidence in the Audit Report presented adequate evidence of visual examination (**VE**) of the remote-handled (**RH**) waste going into waste cans, it did not provide adequate evidence of VE of the waste cans into drums, or the drums into the RH canisters (Permit Section B1-4).
- The VE Batch Data Reports (**BDRs**) are inadequate for use in the Permittees' waste confirmation program

These two concerns stemmed from the lack of evidence of dual signatures from generator site personnel who packaged the waste containers (i.e., cans into drums and drums into RH

canisters). NMED's letter also disputed the Permittees' assertion in their April 7, 2008 letter that "[t]he requirement for two signatures applies to the packaging logs for placing waste into waste containers and not to subsequent placement of cans into larger cans, into drums and into canisters."

On June 10, 2008, NMED met informally with the Permittees to discuss these issues in an attempt to resolve them. NMED and the Permittees were unable to resolve these issues at the conclusion of this meeting, and on June 11, 2008, the Permittees notified NMED that they were invoking dispute resolution in accordance with the provisions of Permit Condition I.L.

NMED and the Permittees initiated "Tier I" negotiations under Permit Condition I.L.3 on June 18, 2008. During negotiations, the Permittees presented additional evidence explaining the LANL/CCP process for documenting the packaging of the waste, including logbooks and LANL TRU waste storage records. Although in some cases dual signatures are missing for placement of waste cans into drums and drums into RH canisters, NMED will amend the previous LANL/CCP Audit Report letter of June 2, 2008 to approve the VE of records process for waste stream LA-MHD03.002 evaluated during Audit A-07-12, based on information provided during these negotiations and formally documented in the Permittees' letter of July 3, 2008. NMED further recognizes that some VE BDRs for RH waste at other generator/storage sites were missing either video or dual signatures for portions of the process documented on the VE BDR, but because these audit reports had already been approved, NMED will not require further documentation for VE on those wastes. However, as discussed during negotiations, NMED will strictly enforce the dual signature requirements specified in Permit Section B1-4 for all future waste containers when generator sites document their VE and packaging activities in VE BDRs.

NMED remains concerned that the LANL/CCP BDRs for VE of records are inadequate for use in the Permittees' waste confirmation program. During waste confirmation, the Permittees are required to perform "actual radiography/visual examination on the waste container(s) or by a review of radiography/visual examination media and records." The Permittees may "also use their own trained VE operators to perform VE for waste confirmation by reviewing VE data forms or packaging logs prepared by the generator during their packaging of the waste." The information reviewed "must be signed by two generator/storage site personnel who witnessed the packaging of the waste and must provide sufficient information for the Permittees to determine that the waste container contents match the waste stream description on the WSPF and the waste contains no liquids in excess of TSDF-WAC limits or compressed gases." Because the current VE BDRs for waste stream LA-MHD03.002 lack the signatures of "two generator/storage site personnel who witnessed the packaging of the waste" (i.e., for waste cans into drums and drums into RH canisters), NMED still believes the Permittees cannot use these BDRs in their current state to comply with Permit Attachment B7, Section B7-1c. Therefore, NMED recommends that the Permittees direct LANL/CCP to revise these BDRs to include the additional information presented during negotiations and provided in their formal transmittal letter. This should provide the Permittees with sufficient information to perform waste confirmation in accordance with Section B7-1c.

If you have any questions regarding this matter, please contact me at (505) 476-6016 or Steve Zappe at (505) 476-6051.

Sincerely,

James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:soz

cc: Marcy Leavitt, NMED WWMD
Steve Zappe, NMED HWB
Chuck Noble, NMED OGC
Laurie King, EPA Region 6
Tom Peake, EPA ORIA
Connie Walker, Trinity Engineering
Susan Stiger, LANS
George Rael, NNSA LASO
Don Hancock, SRIC
Joni Arends, CCNS
File: Red WIPP '08