

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

IN THE MATTER OF
U.S. DEPARTMENT OF ENERGY
AND WESTINGHOUSE TRU SOLUTIONS LLC,
CARLSBAD, NEW MEXICO, NM4890139088,
RESPONDENTS.

COMPLIANCE ORDER
HWB 01-08 (CO)

SETTLEMENT AGREEMENT

This Settlement Agreement is made between the Secretary of Environment, acting through the Director of the Water and Waste Management Division of the New Mexico Environment Department (NMED), the U.S. Department of Energy (DOE) and Westinghouse TRU Solutions LLC (WTS) (collectively referred to as Respondents) for the purpose of resolving Compliance Order No. HWB 01-08.

I. BACKGROUND

A. PARTIES

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 HWA, NMSA 1978 Section 74-4-1 *et seq.* (2000), and New Mexico Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC.

2. Respondents are the U.S. Department of Energy (DOE), owner and operator, and Westinghouse TRU Solutions LLC (WTS), co-operator, of the Waste Isolation Pilot Plant (WIPP) mixed waste storage and disposal facility for which a permit is required under the HWMR, 20.4.1.900 NMAC (incorporating 40 CFR §270.1(a)).

B. NATURE OF DISPUTE

3. On January 7, 2002, the NMED issued Compliance Order No. HWB 01-08 for alleged violations of the conditions of the Respondents' hazardous waste permit issued on October 27, 1999 (Permit Number NM4890139088-TSDF) for the operation of a hazardous waste storage and disposal facility at WIPP. (*Exhibit A*)

II. COMPROMISE AND SETTLEMENT

4. The parties have engaged in settlement discussions in an effort to resolve the compliance order without further administrative or judicial enforcement action. As a result of these discussions, the parties have entered into this Settlement Agreement.

5. The parties enter into this Agreement for the sole purpose of settling the claims of the NMED as stated in the compliance order and avoiding the time and expense of engaging in further legal proceedings regarding this matter. The Respondents admit to the allegation set forth in paragraph 26 A. of the compliance order and deny the remainder of the allegations in the compliance order. The Respondents do not admit liability by completing corrective actions or by entering into or complying with this agreement.

A. CORRECTIVE MEASURES

6. In accordance with the schedule of compliance in the compliance order, the Respondents provided the NMED with sufficient technical justification demonstrating that the headspace gas data for the containers in question have been analyzed in compliance with the waste analysis plan (WAP). (*Exhibit B*)

7. On January 23, 2002, the Respondent submitted to the NMED a revised management procedure document (Revision 6 of Carlsbad Field Office Management Procedure MP No. 3. 1, Entitled Corrective Action Report) that demonstrates the implementation of measures that will require audit findings to be addressed and resolved by the audited entity and the WIPP Audit Team within designated time periods. (*Exhibit C*) The Respondents believe that the lack of adherence to the procedures specified in the permit by the generator site (in this matter, Los Alamos National Laboratory), may have given rise to the alleged violations in the compliance order and adherence to the revised management procedures should prevent further violations of this nature.

8. The information provided to the NMED by the Respondents, as described in items 6 and 7 above, is sufficient such that no further corrective measures are required.

B. CIVIL PENALTY

9. The Respondents agree that the alleged violations in the compliance order, if proven at a hearing, could have resulted in the assessment of a civil penalty of two hundred ten thousand four hundred fifty dollars (\$210,450.00). In lieu of a hearing and further legal proceedings in this matter, the Respondents agree to pay twenty five thousand dollars (\$25,000.00) in a lump sum, payable to the State of New Mexico, by electronic transmittal, certified or corporate check or other guaranteed negotiable instrument within fifteen (15) days of the time this Agreement becomes effective.

10. If the Respondents fail to make timely and complete payment within fifteen (15) days of the time they execute this Agreement; the Respondents shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA §56-8-4 (1993).

11. All payments and other correspondence required by this Agreement shall be sent to the Division and Bureau at the following address:

New Mexico Environment Department
Office of General Counsel, c/o Paul R. Ritzma, Esq.
Post Office Box 26110
1190 St. Francis Drive
Santa Fe, NM 87502-6110

III. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

18. The NMED retains the right to enforce this Agreement and to pursue any relief authorized by the Act for any violation not addressed herein, up to and including enforcement in a court of competent jurisdiction.

B. BINDING EFFECT

19. This Agreement shall be binding on the parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

C. DURATION

20. This Agreement shall remain in effect until the Respondents comply with the terms and conditions of the Agreement or it is terminated by written agreement of the parties.

D. INTEGRATION

21. This Agreement merges all prior written and oral communications between the parties concerning the subject matter of this Agreement, and contains the entire Agreement between the parties. This Agreement shall not be modified without the express written consent of the parties.

E. RESERVATION OF RIGHTS AND DEFENSES

22. This Agreement shall not be construed to prohibit or limit in any way the NMED from requiring the Respondents to comply with any applicable state or federal requirement applicable to their facilities in the State of New Mexico. This Agreement shall not be construed to prohibit or limit in any way the Division from seeking any relief authorized by the Act for violation of any state or federal requirement applicable to their facilities in the State of New Mexico. This Agreement shall not be construed to prohibit or limit in any way the Respondents from raising any defense to a NMED action seeking such relief.

F. MUTUAL RELEASE

23. This Agreement addresses all claims that each party raised or could have raised against the other regarding the legal and factual allegations in the compliance orders and

notice of violation. Accordingly, the parties mutually release each other from any and all claims arising from or relating to the allegations in the compliance orders and notice of violation.

G. WAIVER OF STATE LIABILITY

24. The Respondents assume all costs and liabilities incurred in performing any obligation under this Agreement. The NMED, on its own behalf and on behalf of the Department and the State of New Mexico, shall not assume any liability for the performance of any obligation under this Agreement.

H. DISCLOSURE TO SUCCESSORS-IN-INTEREST

25. The Respondents shall disclose this Agreement to any successor-in-interest to the facilities cited in the compliance orders and notice of violation and shall advise such successor-in-interest that this Agreement is binding on the successor-in-interest until the Respondents comply with the terms and conditions of the Agreement or it is terminated by written agreement of the parties.

I. FORCE MAJEURE

26. The obligation of the Respondents to follow the revised procedures submitted as corrective measures shall be deferred to the extent and for the duration that the failure to follow the revised procedures is caused by *force majeure*. For purposes of this Agreement, *force majeure* is defined as an event or set of circumstances which are beyond the control of the Respondents and which could not have been prevented by their reasonable action or due diligence. *Force majeure* shall not apply to any failure to follow the revised procedures due to increased cost or financial inability. The Respondents shall submit notification to the NMED within fifteen (15) days after the date when either first obtains knowledge or should have known that a failure to follow the revised procedures is reasonably foreseeable. Such written notice shall include the nature, cause, and anticipated length of the delay associated with the failure of compliance and all steps that the Respondents have taken and will take to avoid or minimize the failure to follow the revised procedures, along with a schedule of implementation. Failure to provide this written notice within the required time period shall constitute a waiver of the right to invoke *force majeure* for the revised procedures. If the NMED agrees that the failure to follow the revised procedures is attributable to *force majeure*, the revised procedures shall be modified or the time for implementation shall be extended by written stipulation by the parties.

J. EFFECTIVE DATE

27. This Agreement shall become effective upon full execution by the duly authorized representatives of the parties.

K. AUTHORITY OF SIGNATORIES

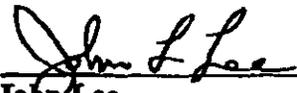
28. The persons executing this Agreement represent that they have the authority to bind their respective parties to this Agreement, and that their representation shall be legally

sufficient evidence of actual or apparent authority to bind their respective parties to this Agreement.

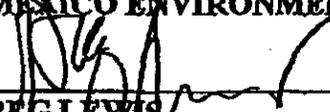

THE U.S. DEPARTMENT OF ENERGY (DOE)

By: _____ FOR _____ DATE: 02.12.02
Inés Triay, Manager
Carlsbad Field Office

WESTINGHOUSE TRU SOLUTIONS LLC (WTS)

By:  _____ DATE: 2/12/02
John Lee
General Manager, WTS

WATER AND WASTE MANAGEMENT DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT

By:  _____ DATE: 2/14/02
GREG LEWIS
DIVISION DIRECTOR