

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT



NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
v.)
UNITED STATES DEPARTMENT)
OF ENERGY and)
WASHINGTON TRU SOLUTIONS, LLC,)
CARLSBAD,)
Respondents.)

NO. HWB 07-43 (CO)

STIPULATED FINAL COMPLIANCE ORDER

The New Mexico Environment Department (“Department”) and Respondents the United States Department of Energy (“DOE”) and Washington TRU Solutions, LLC (“WTS”) (collectively, “Respondents”), pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the Compliance Order issued by the Department to Respondents on November 26, 2007 (the “Compliance Order”) on the terms and conditions specified in this Stipulated Final Compliance Order (“Stipulated Order”).

I. BACKGROUND

A. PARTIES

1. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act, (“HWA”), NMSA 1978, §§ 74-4-1 to 74-4-14, and the Hazardous Waste Management Regulations, 20.4.1 NMAC, including assessing civil penalties for violations thereof.

2. Respondents are DOE and WTS, who own and/or operate the Waste Isolation Pilot Plant (“WIPP”), a mixed waste storage and disposal facility located approximately 26 miles

east of Carlsbad in Eddy County, New Mexico, for which a permit is required under the HWMR, 20.4.1.900 NMAC, incorporating 40 CFR §270.1(a).

3. Respondent DOE is a department of the United States government and is the owner and co-operator of WIPP.

4. Respondent WTS is a private limited liability company under contract with DOE and co-operator of WIPP.

B. HISTORY

5. On October 27, 1999, the Department issued a hazardous waste facility permit, No. NM4890139088-TSDF (the "Facility Permit"), for the storage and disposal of mixed transuranic waste at WIPP, pursuant to section 74-4-4.2(C) of the HWA. The Facility Permit has been modified several times since it was issued. As amended, the Facility Permit is still in effect.

6. On November 26, 2007, the Department issued a Compliance Order to Respondents alleging violations of the HWA, the HWMR, and the version of the Facility Permit that was in effect prior to October 16, 2006.

II. COMPROMISE AND SETTLEMENT

7. The parties enter into this Stipulated Order to settle and completely resolve the violations alleged in the Compliance Order, and to avoid further litigation and expense. This Stipulated Order shall not be construed as an admission by Respondents of the allegations.

8. In compromise and settlement of the violations alleged in the Compliance Order, the parties agree that the Respondents shall pay a civil penalty and implement a schedule of compliance as follows:

A. CIVIL PENALTY

9. Respondents agree to pay a civil penalty of \$110,000 to resolve all the violations alleged in the Compliance Order. Respondents shall pay the civil penalty to the State of New Mexico within 30 days after the effective date of this Stipulated Order. Payment shall be by certified check or other guaranteed negotiable instrument, payable to the *State of New Mexico*, and shall be sent to the Department at the following address:

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

A copy of the transmittal letter shall be sent to Charles F. Noble, counsel for the Department.

If Respondents fail to make timely and complete payment, Respondents shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

10. Respondents agree to fully fund the Carlsbad, New Mexico, office of the Department's DOE Oversight Bureau for the State of New Mexico fiscal year 2009 pursuant to the Agreement-in-Principle between the U.S. Department of Energy and the State of New Mexico.

B. SCHEDULE OF COMPLIANCE

11. Within 30 days from the effective date of this Stipulated Order, Respondents shall provide the Department for its review and approval technical justification demonstrating Respondent's position that the 121 waste containers from waste stream LA-MIN03-NC.001 that were characterized at Los Alamos National Laboratory using visual examination in lieu of real-time radiography between May 4 and June 23, 2005 and subsequently disposed at WIPP pose no

elevated risk to human health and the environment and, therefore, should remain emplaced at WIPP.

12. Respondent DOE shall revise its waste acceptance criteria (WAC) document, “Transuranic Waste Acceptance Criteria for the Waste Isolation Pilot Plant” (DOE/WIPP-02-3122), to remove all references to limited visual examination. DOE shall submit such revision to the U.S. Environmental Protection Agency at the time of its next WAC revision submittal or within six months of the effective date of this Stipulated Order, whichever is sooner.

IV. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

13. Except as expressly provided in Paragraph 14 of this Stipulated Order, the Department reserves the right to take any action, administrative or judicial, civil or criminal, to enforce the requirements of the HWA, the HWMR, the Facility Permit, or this Stipulated Order. In any such action, DOE and WTS reserve the right to assert any defenses that they may have.

B. COVENANTS NOT TO SUE

14. The Department covenants not to sue or take any administrative or civil action against DOE or WTS for the violations of the HWA, the HWMR, and the Facility Permit alleged in the Compliance Order.

15. DOE and WTS covenant not to sue the State of New Mexico for any claims arising from the Compliance Order.

C. EFFECTIVE DATE

16. This Stipulated Order shall become effective on the date it is approved and signed by the Department Secretary.

D. INTEGRATION

17. This Stipulated Order merges all prior written and oral communications between or among the parties concerning the subject matter of this Stipulated Order, contains the entire agreement among the parties, and shall not be modified without the express written agreement of the parties.

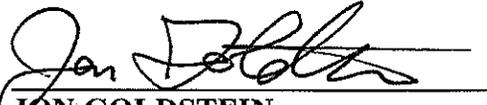
E. BINDING EFFECT

18. This Stipulated Order shall be binding on the Department and its successor agencies, on DOE and its successor agencies, and on WTS and its successors as WIPP operator.

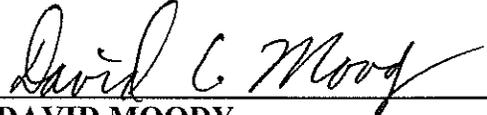
F. AUTHORITY OF SIGNATORIES

19. Each person executing this Stipulated Order represents that he or she has the authority to bind the party he or she represents to this Stipulated Order, and such representation shall be legally sufficient evidence of actual or apparent authority to bind such party to this Stipulated Order.

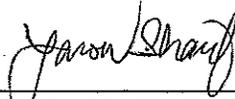
For the NEW MEXICO ENVIRONMENT DEPARTMENT:

By:  Date: 2.9.08
JON GOLDSTEIN
ACTING DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

For the UNITED STATES DEPARTMENT OF ENERGY:

By:  Date: 2/7/08
DAVID MOODY,
MANAGER
CARLSBAD FIELD OFFICE
DEPARTMENT OF ENERGY
P.O. BOX 3090
CARLSBAD, NEW MEXICO 88221-3090

For WASHINGTON TRU SOLUTIONS, LLC:

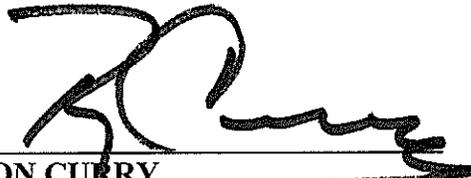
By  _____

Date: 2-7-2008

FAROK SHARIF,
PRESIDENT
WASHINGTON TRU SOLUTIONS, LLC
P.O. BOX 2078
CARLSBAD, NEW MEXICO 88221-5608

ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Stipulated Order, agreed to by the Department and by Respondents, the DOE and WTS, is hereby **APPROVED** as a **FINAL ORDER**.



RON CURRY
SECRETARY OF ENVIRONMENT

Date: 2/08/08