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RON CURRY  
Secretary

JON GOLDSTEIN  
Deputy Secretary

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

August 4, 2009

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: MAY 26, 2009 DISPUTE RESOLUTION – TERMS OF AGREEMENT  
WASTE ISOLATION PILOT PLANT  
EPA I.D. NUMBER NM4890139088**

Dear Dr. Moody and Mr. Sharif:

On May 18, 2009, the New Mexico Environment Department (**NMED**) issued comments on the Final Audit Report of the Idaho National Laboratory/Central Characterization Project (**INL/CCP**) Audit A-09-08 (**Audit Report**). In the letter, NMED notified the U.S. Department of Energy (**DOE**) Carlsbad Field Office and Washington TRU Solutions LLC (collectively, the **Permittees**) that “[b]ased on review of the objective evidence provided during the audit, NMED concludes that the video/audio records generated at [the Nevada Test Site] and accepted by INL/CCP generally do not meet the minimum requirements for VE of records using video/audio media. NMED also concludes that CCP-TP-113 does not meet the permit requirements for VE of records and must be revised... to address these issues.” Because of this incompleteness, NMED withheld approval of the Audit Report until the Permittees submitted additional information that demonstrated full implementation of all relevant permit requirements.

The Permittees received the comment letter informally via e-mail on May 18, 2009, and formally by registered mail on May 21, 2009. In a letter dated May 26, 2009, the Permittees notified NMED that they were invoking dispute resolution in accordance with the provisions of Permit Condition I.L. The Permittees specifically disagreed “with the NMED conclusion that the INL/CCP failed to demonstrate compliance with the Waste Analysis Plan (**WAP**) requirements for visual examination of records.” The Permittees further stated, “... we believe the nature of

NMED's comments is that the video/audio media must show all waste items that were **not** placed into the container."

On or before June 15, 2009, NMED and the Permittees conferred by teleconference to commence Tier I negotiations under Permit Condition I.L.3 to resolve the dispute, but were unable to reach agreement. Due to mutual scheduling conflicts, NMED and the Permittees agreed on July 2, 2009 to extend the date for Tier I resolution until August 28, 2009.

NMED and the Permittees resumed Tier I negotiations on July 22, 2009. During negotiations, the Permittees presented the context for seeking approval for VE of records for INL/CCP, stating that DOE was using INL as a central location or "hub" to characterize waste from numerous generator/storage sites that were not certified under the WIPP WAP, and that some of the waste as packaged was not amenable to radiography. The Permittees also noted that CCP was responsible for assisting these non-certified sites in establishing waste packaging programs that could later be used for VE of records, and that they had briefed waste workers at these sites on what was expected in the records they would produce. The Permittees subsequently conceded that CCP's review of records for VE purposes had thus been affected by their understanding of the context in which the data were collected, and that they had not relied solely on the records being reviewed, which in this case were the video/audio media. As a result of negotiations, NMED and the Permittees agreed to the following terms:

1. The Permittees will ensure that procedure changes, operator aids, or another appropriate mechanism will be incorporated into the process used to document the packaging of waste for shipment to INL on video/audio records and waste packaging records, when such records will serve as the basis for VE of records in order to certify waste for shipment to WIPP. This will include, but not be limited to, having waste packaging operators identify on the record that the container used to package the waste is identified and verified as empty prior to loading waste. The operators will identify on the record beginning and ending times, including periods for breaks, lunch, and end of work day. The operators will verify on the record all waste items placed into a container and that no waste was added to a container during any period of inactivity. For any items of waste segregated from a waste stream for disposition other than to WIPP, the operators will identify on the record the disposition of those items.
2. The Permittees will ensure that the *Contact-handled Transuranic Waste Packaging Instruction, Rev. 0, final 9/30/08* is revised consistent with the terms in the above paragraph.
3. The Permittees will ensure procedure CCP-TP-113 is revised as specified in NMED's May 18, 2009 letter.
4. Within seven calendar days of the date of this letter, the Permittees will provide to NMED a letter withdrawing INL/CCP Audit Report A-09-08. Future efforts to certify

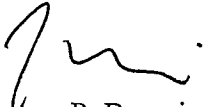
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VE of records by INL/CCP will be subject to a new audit under Permit Condition II.C.2.

NMED acknowledges receipt of the letter dated July 30, 2009 from Dr. Moody regarding the status of the subject audit report and associated dispute resolution request. Although NMED found Dr. Moody's letter useful in documenting for the record the ultimate outcome of the waste containers evaluated in the Audit Report, it did not withdraw the Audit Report, as was agreed, nor did it accurately reflect the other agreements reached during negotiations.

The terms outlined in this letter shall serve as documentation of the agreement reached, pursuant to Permit Condition I.L.3. 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  
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Joni Arends, CCNS  
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