January 23, 2006

Mr. James P. Bearzi
NMED Hazardous Waste Bureau
2905 Rodeo Park Drive East
Building 1
Santa Fe, NM 87505

Subject: Comments on the New Mexico Environment Department's November 23, 2005 Notice of Intent to Approve a Class 3 Modification to the Hazardous Waste Facility Permit No. NM4890139088

Dear Mr. Bearzi:

PECOS Management Services, Inc. is pleased to submit the attached comments on the subject Notice of Intent for consideration by the New Mexico Environment Department. We appreciate the opportunity to provide these comments during the public comment period.

Respectfully submitted,

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Project Director
PECOS Management Services, Inc.

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Comments on the New Mexico Environment Department's November 23, 2005 Notice of Intent to Approve a Class 3 Modification to the Hazardous Waste Facility Permit No. NM4890139088

PECOS Management Services, Inc., the WIPP Independent Oversight Contractor, submits the following comments on the proposed Class 3 Modification for the Hazardous Waste Facility Permit for WIPP. Our comments are presented in direct correlation with the summary headings provided in the Notice of Intent (NOI) in the section entitled "PROPOSED ACTION IN DRAFT PERMIT," which begins on page 6 of the NOI.

1. Proposed Approved Permit Modification Requests, With and Without changes

   a. *The management, storage, and disposal of RH TRU mixed wastes pursuant to the 1992 WIPP Land Withdrawal Act.*

We concur with the proposed action to approve this permit modification request, thereby bringing the Permit into accord with Public Law 102-579.

   b. *Significant changes to the TRU mixed waste characterization process.*

The proposal to use the same time-tested contact-handled waste characterization methods for characterization of the remote-handled waste is scientifically valid and justifiable. In addition, the proposed revised waste characterization methods are, for the most part, valid and justifiable, because they are based on the operational experience and data obtained from the current waste characterization programs conducted by DOE and its contractors. However, we are concerned that the Visual Examination (VE) step in the waste characterization program is not well defined or described in either the proposed permit modifications or the current Permit. Further, the descriptions of VE and VE techniques that had been available on the WIPP website, such as CAO-00-019 "Visual Examination," were all deleted in 2004 with no reference to where such descriptions are now presented. Without an available detailed description of the VE process, we are concerned that perhaps the interpretation may be made that only the waste container must be opened and the contents within inspected. We can find no written requirement to open and examine the contents of any opaque container within the waste container. This could potentially result in the failure to identify and remove prohibited items from the waste container. Therefore, we recommend that a definition of VE be included in Module I.D., "Definitions," and a detailed description of the VE process be included in Attachment B-1, "Waste [Characterization] Sampling Methods."

   c. *The creation of a new Section 311 waste confirmation process.*

As noted by the New Mexico Environment Department (NMED) on page 6 of this NOI, within the "*Significant changes to the TRU mixed waste characterization process*"

discussion, it is prudent to require real-time radiography (RTR) and/or VE when acceptable knowledge is deemed insufficient to ensure that no prohibited items are in the subject waste container. Presently these examinations are carried out at the waste generator/storage site prior to shipment to WIPP. However, it must be recognized that in spite of all precautions, errors will probably occur, and TRU waste containing prohibited items will possibly be sent to WIPP. The impact of these errors must be minimized or preferably eliminated. Therefore, we suggest that additional waste confirmation testing (RTR and/or VE) be performed at the WIPP site to reduce further the risk of disposing of any prohibited items. This second inspection will minimize the chance of disposal of any nonconforming waste, which should be the goal of both the NMED and the Permittees. Additionally, if this on-site waste confirmation step is added to the current operations practice, it would also be necessary to increase the allowed storage capacity in the WIPP Parking Area Unit.

Further, NMED points out on page 7 of the NOI that the Nuclear Regulatory Commission (NRC) certificates of compliance for the TRUPACT-II and HalfPACT shipping containers do not allow for the transportation of prohibited items in the waste. Thus if any waste is sent to the WIPP site and is subsequently discovered to contain prohibited items (by whatever means), there does not appear to be any means of removing the nonconforming waste from the WIPP site and returning it to the source site. It is unreasonable to assume that such an NRC-certified shipping container could not be obtained by the Permittees prior to dealing with such a case of noncompliant waste. Also it seems appropriate that the NMED and the Permittees should work together to insure that there is a mechanism for sending back to the generator/storage site or otherwise removing any nonconforming waste. In the worst case scenario, NMED should support the development of a variance procedure by DOE and NRC that allows nonconforming waste to be returned to the source site as needed.

d. Amend Module III –Container storage to accommodate RH TRU mixed wastes.

We concur with the proposed action to approve this permit modification request with the caveat that shipping containers should be stored in both the Waste Handling Building (WHB) Unit and the Parking Area Unit at a sufficient distance apart to minimize personnel radiation exposure. In addition, the potential for damaging climatic conditions such as tornadoes should be evaluated to see if a reinforced covered screening area or additional protective measures such as trailer tie-downs are warranted in the Parking Area Unit.

e. Amend Module III –Container storage to increase CH TRU mixed waste storage capacity.

We concur with the proposed action to approve this permit modification request with the caveat that the potential for damaging climatic conditions such as tornadoes should be evaluated to see if a reinforced covered screening area or additional protective measures such as trailer tie-downs are warranted in the Parking Area Unit.

f. Increase the volume of TRU wastes that may be emplaced in each panel.

We concur with the proposed action to approve this permit modification request and the additional requirement of reporting in writing to the NMED Secretary the actual final volume of waste emplaced.

g. Change the method for demonstrating that the WIPP underground disposal rooms comply with the environmental performance standards for volatile organic compounds, pursuant to Section 311.

We concur with the proposed action to approve this permit modification request.

2. Items Unapproved by the New Mexico Environment Department

No further comment. See our comments in section 1.*c*. above.

3. Proposed Dispute Resolution Process

The NMED has proposed a dispute resolution mechanism that appears to be potentially biased in that a final resolution of any disputed issue not resolved within 30 days through informal negotiations between the two parties lies solely within the NMED. The Decision of the Secretary of NMED would be final and enforceable under the Permit, but there is no assurance that the Secretary would be well versed on the technical issues or that his request for input would involve any persons other than his department's own employees. Therefore there is a finite possibility that the final resolution would not be based on sound, unbiased technical information.

We recommend that the proposed dispute resolution mechanism be modified in the second tier to allow for third party evaluation of the scientific or technical issues of any unresolved disputes. This would be accomplished by allowing both the Permittees and the NMED to choose one scientific/technical expert each, and then the two scientific/technical experts would choose a third scientific/technical expert. The scientific experts should not be employees of either the Permittees or the State of New Mexico or any of its political subdivisions. The three, outside, scientific/technical experts would then hear both parties' presentation of the disputed issue, before meeting in private and rendering their decision or solution to the issue at hand. Their decision would be final and enforceable under the Permit.

The above mechanism has the distinct advantage that the resolution is based strictly on an unbiased, sound, scientific/technical basis and is independent of either party to the dispute. The cost associated with the resolution process should be split equally between the two parties.

One Additional Comment:

We suggest consideration of an additional modification to the current Permit relating to Panel Closure [refer to Attachment I, “Closure Plan,” Section I-1e, “Closure Activities”]. We recommend that both the Permittees and the NMED consider the advantages of continued monitoring of the ambient atmospheric conditions in the filled panels after closure to gather experiential data that will facilitate a better scientific understanding of the changes, if any, that occur after panel closure. The data obtained should be used to validate the effectiveness of the panel closure requirements and to allow more accurate extrapolation to longer time periods for better repository performance assessments.