

February 22, 2006

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

RE: Public Notices No. 05-16 and 06-01  
Pending Class 3 WIPP Permit Modification

Dear Mr. Bearzi:

Southwest Research and Information Center (SRIC) presents the following comments on the draft Hazardous Waste Act permit for the Waste Isolation Pilot Plant, dated November 23, 2005. These comments are also submitted on behalf of Concerned Citizens for Nuclear Safety (CCNS).

SRIC and CCNS strongly oppose major portions of the draft permit related to the Department of Energy (DOE) and Washington TRU Solutions LLC (the Permittees) "monster" permit modification request for the Waste Isolation Pilot Plant (WIPP).

SRIC and CCNS appreciate the decision of Secretary Curry to extend the public comment period on the draft permit until February 22. But we also note that, as requested in SRIC's letter of January 11, 2006, a more appropriate comment period would be until March 14, 2006, or 60 days after NMED posted the administrative record (AR) index on its website. SRIC and CCNS remain concerned about our due process rights, established by the New Mexico Hazardous Waste Act (HWA) and regulations, and we expect NMED to fully comply with the letter and spirit of those requirements, as the Department has frequently stated it would do.

#### Request for Public Hearing and Negotiations

For the reasons that follow, SRIC and CCNS request a public hearing on the draft permit. Further, and prior to any notice of public hearing, pursuant to 20.4.1.901. A.4 NMAC, SRIC and CCNS request that NMED, the Permittees, SRIC, CCNS, and other parties conduct negotiations to attempt to resolve issues related to the draft permit. SRIC and CCNS believe that other parties and NMED would agree with some of the concerns and objections raised in the following comments and that a revised draft permit could be developed prior to the public hearing.

SRIC also incorporates its previous comments regarding similar permit modification requests. Such comments include: Comments on RH modification request, October 30, 2002, AR 021049; Comments on Section 311 Modification Request, March 22, 2004, AR 040345; Comments on

HWDU Modification Request, November 1, 2004, AR 041103; Comments on Consolidated PMR, August 12, 2005, AR 050821. SRIC also incorporates its Comments on Centralized Characterization Project and Storage Capacity Expansion Request, September 19, 2000 and Comments on Centralized Characterization Program, September 27, 2001, since those comments also involve some of the same provisions included in the draft permit. SRIC requests that those two comment letters, which are attached, be included in the administrative record.

SRIC and CCNS request that NMED fully consider the comments and issue a revised draft permit before proceeding to a public hearing.

Following are general overall concerns about the draft permit and specific comments regarding particular provisions thereof.

Incorrect legal justification for the draft permit

NMED's Fact Sheet of November 23, 2005 related to the draft permit (AR 051118), states that the action proposed is "to approve, subject to public review and comment...the Class 3 PMR submitted pursuant to Section 311 of the Energy and Water Development Appropriations Act for Fiscal Year 2004, Public Law 108-137." However, as a matter of law, Section 311 of Public Law 108-137 expired as of December 8, 2004, when Public Law 108-447 took effect. SRIC pointed out this fact in its comments of August 12, 2005 (AR 050821 at 4). Under most circumstances, appropriations acts are effective only for the year covered. When Congress successively reenacts language in an appropriations bill, such action shows that the previous act expires upon enactment of the successor bill. Seattle Audubon Society v. Evans, 952 F.2d 297 (CA9, 1991). Thus, Section 310 of Public Law 108-447 terminated Section 311 of Public Law 108-137. Consequently, neither the Permittees nor NMED can rely on Section 311 of Public Law 108-137 as the basis for the permit modification request, the draft permit, or any provisions thereof.

Waste Characterization requirements, including sampling and analysis, must be maintained to protect public health and the environment.

The draft permit includes many changes to the waste characterization requirements included in the WIPP permit, which was issued on October 27, 1999. The existing WIPP permit was issued after several years of public comments, nineteen days of testimony by technical witnesses, comments from more than 100 individuals, a transcript and exhibits exceeding 10,000 pages, and the full administrative record of hundreds of thousands of pages. Hearing Officer Report (HOR), September 9, 1999 at 2.

The existing permit process provides the legal and technical basis for the permit. The permit specifically includes requirements to comply with 20.4.1.500 NMAC (incorporating 40 CFR 264.13(a)(1)). That provision states:

Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous waste if applicable under § 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

The Environmental Protection Agency (EPA) 1994 Waste Analysis Guidance provides that "whenever feasible, the preferred method to meet the waste analysis requirements is to conduct

sampling and laboratory analysis because it is more accurate and defensible than other options.” More than seven years of experience have demonstrated that sampling and analysis of WIPP waste is feasible. Thus, SRIC and CCNS maintain that the sampling and analysis requirements must be maintained.

Moreover, provisions of the existing permit that were scrutinized in the permitting process should only be changed based on changes in law or a substantial technical basis. Statutory changes are the basis for permit modification. 20.4.1.900 NMAC (incorporating 40 CFR 270.41(a)(3)). Regarding waste characterization requirements, the law has not changed. Neither the Resource Conservation and Recovery Act, 42 USC 6901 et seq (RCRA), nor the HWA has been changed. As the draft permit states, “waste characterization” relates to waste analysis requirements. Module I.D.11. In contrast, Section 310 of Public Law 108-447 relates to “waste confirmation,” not waste characterization requirements. NMED has previously acknowledged that distinction. AR 041231, Attachment at 2, 14-15. And the draft permit separately defines waste characterization (Module I.D.11) and waste confirmation (Module I.D.12).

The modification request does not demonstrate that the technical bases of the waste characterization requirements of the existing permit are deficient. The National Academy of Sciences (NAS), at DOE’s request, conducted a study of DOE’s waste characterization program for contact-handled waste and issued its report in January 2004. The press release is AR 040122. SRIC and CCNS request that the entire report be included in the AR. After conducting its study, the NAS panel concluded that it could not support any changes in waste characterization requirements, because DOE had not provided adequate technical support for such changes. The Panel found:

**Finding 1:** DOE has stated that some characterization activities are too expensive and time consuming and can be modified without increasing risks while reducing characterization time and costs. However, DOE has not presented a systematic analysis to support this argument to the regulator or to the public. Although DOE has performed analyses of many aspects of operations related to WIPP performance, including transportation, the committee could find no studies that explicitly, systematically, and quantitatively link its waste characterization program to risks to the public, workers, or the environment. National Research Council, 2004. *Improving the Characterization Program for Contact-Handled Transuranic Waste Bound for the Waste Isolation Pilot Plant.*

The NAS Panel recommended:

**Recommendation 1:** DOE should use a systematic and quantitative approach to determine the value of the information currently obtained by its waste characterization activities and the impact of changes to them. This approach should also be used to support permit modification request and communicate with the public.

The Permittees have not included such an analysis in the permit modification request. Thus, the technical basis for many changes included in the draft permit have not been established. Such changes cannot be approved.

The evidence in the record from the permitting process and WIPP's operational history shows that the existing waste characterization requirements are required to protect public health and the environment.

During the past almost seven years of WIPP operations, more than 74,000 containers with a volume of more than 35,000 cubic meters of waste have been characterized and disposed of at WIPP. That amount is about twenty percent of WIPP's legal capacity of 175,564 cubic meters. Thus, hundreds of thousands of containers with perhaps 140,000 cubic meters of waste remain to be characterized and disposed at WIPP.

In its permit application, the Permittees stated that "radiography will be used on 100 percent of stored waste containers and most RH TRU waste containers to determine the physical composition of debris mixtures." Tr. 468, ll. 3-8. At the hearing on the permit, DOE testified that it did not propose to take representative samples of debris waste. Tr. 459, ll. 22-24. Because of the great heterogeneity of debris wastes, the Permittees have yet to establish that they can identify a representative sample of such waste. DOE also testified that the final and only waste characterization will be performed at the generator sites. Tr. 460, ll. 13-15; Tr. 494, ll. 14-20.

During the permit hearing, the Permittees' written documentation showed that LANL drum S816697 was solidified waste; in fact, the actual radiograph video of the drum showed that it was debris waste. Tr. 470, l. 22 – 474, l. 8.

DOE's waste analysis witness also testified that the Permittees did not at that time have all the information from all of the processes and wastes. Tr. 462, ll. 17-20. In the modification request, the Permittees have still not shown that they have all the information on all the processes and wastes that are planned for characterization and disposal at WIPP.

Since neither the Permittees nor NMED have made a technical showing as to why the existing waste characterization procedures should not continue to be used, nor as to why the proposed new procedures should be adopted, SRIC and CCNS oppose many changes proposed in the draft permit regarding the Waste Analysis Plan (Module II.C and Attachments B, B1, B2, B3, B4, B5, and B6).

The Permittees have not provided the technical basis to demonstrate that the AK Sufficiency Determination (AKSD) can be made.

The draft permit includes a new procedure that would allow characterization to be done by AK alone. B-0b and Attachment B4. NMED has expressly recognized that AK procedures and results vary from site to site and waste stream to waste stream at storage and generator sites. (NOD, Dec. 30, 2004, AR 041231, Attachment at 17). Among the reasons for the variations are the different missions and waste generation practices of the generator facilities; the fact that much of the TRU waste was generated more than two decades ago and records are often missing, incomplete, or inadequate; and the fact that debris waste containers are highly variable in terms

of their contents. NMED itself has consistently raised concerns about the reliability of AK accuracy reports. Further, “NMED expects that AK accuracy could be significantly reduced in the future as wastes with less documented information are brought on-line, thus reinforcing the need for a full characterization program as currently mandated in the Permit.” NMED also has pointed out that “the Permittees have provided no documentation that all of the generator/storage sites have extensive process-based descriptions of historical waste generation activities.” AR 041231, Attachment at 3-4.

NMED has also stated: “Because the reliability of the available historic record on these retrievably storage wastes is inconsistent, NMED does not believe it is possible to craft a ‘one-size-fits-all’ waste analysis program that relies exclusively on AK.” AR 041231, Attachment at 16.

NMED also “has identified AK issues during observations of numerous generator/storage site audits that highlight the potential for characterization error.” AR 041231, Attachment at 31-33.

Given the admitted unreliability of AK, there must be a robust demonstration that the AKSD process would overcome those problems. SRIC and CCNS believe that such an analysis must demonstrate that all prohibited items have been identified and that no waste container includes prohibited items.

SRIC and CCNS also do not believe that NMED has adequate staff, resources and information in order to adequately evaluate the AKSD requests, as provided in Attachment B4-3d. Certainly, NMED has not made a showing that it can adequately evaluate the dozens of AKSDs that could result if the draft permit’s requirements are approved.

Further, SRIC and CCNS are concerned that after an AKSD is approved by the Permittees and NMED, future information could show that full characterization of a waste stream is required. In such a situation, both the Permittees and NMED would have to admit flaws in their programs, could have to retrieve waste already disposed, and might have to transport such waste back to the generator/storage site. Such an eventuality would not protect public health and the environment.

SRIC and CCNS are not aware of a similar program at any other NMED permitted facility. Even nationally, it would seem to be an “experimental” program with no clear analog. Such a program needs to be much better justified legally and technically. Preferably, SRIC and CCNS advocate that AKSD be dropped and the existing waste characterization program be maintained.

The elimination of headspace gas sampling undermines the ability to accurately identify Hazardous Waste Codes or Numbers.

Permit Table B-10 (Table B-9 in the draft permit) identifies the Hazardous Waste Numbers that are acceptable at WIPP. The permit prohibits shipment of any waste that has a waste code number not included in that table; that prohibition remains in the draft permit. B-9, ll. 1-2. SRIC and CCNS continue to support that provision.

The draft permit continues to require use of headspace gas sampling to “resolve” assignment of hazardous waste numbers. B-25, ll. 13-16. Given that headspace gas sampling is a proven

means to identify analytes, elimination of such mandatory sampling of all containers at best undermines the ability to determine whether prohibited analytes are in a waste container and at worst would allow such shipment, storage, and disposal at WIPP of waste containing hazardous waste with prohibited numbers.

Thus, before headspace gas sampling of all debris wastes containers is eliminated, there must be a showing that there is an alternative method, at least as effective as headspace gas sampling, to accurately determine hazardous waste codes or numbers so that no waste with prohibited numbers is shipped.

The proposed waste characterization requirements could result in inaccurate Waste Stream Profile Forms (WSPF).

Before waste can be shipped to WIPP, it must have a completed WSPF. However, SRIC and CCNS are concerned that a WSPF will be completed before an entire waste stream is available for sampling. In contrast, the existing permit requires complete sampling and analysis of each container.

With the completion of a WSPF based on AK or AK with limited sampling, the WSPF could be inaccurate and not identify that prohibited items or waste code numbers are in the waste stream. SRIC opposes such an eventuality and any provisions in the draft permit that would allow that situation to arise.

The prohibition on storage and disposal of Remote-Handled (RH) waste should be maintained in order to protect public health and the environment.

In the permit hearing, the Hearing Officer concluded that the prohibition on RH TRU waste in Module II.C.3.h “is reasonable and supported by substantial evidence.” HOR at 68. The Hearing Officer specifically found that “Applicants have not provided sufficient information regarding procedures to characterize RH TRU waste in response to prior requests and notices of NMED.” HOR Finding of Fact 202. The Permittees have still failed to provide sufficient information about RH waste characterization procedures.

The Permittees should be required to comply with similar waste characterization procedures for RH waste as they have used for CH waste during the past seven years. Further, on various occasions, the Permittees have stated that much of the RH waste will be repackaged. SRIC and CCNS reiterate that any permit to allow RH wastes at WIPP must require repackaging and associated visual examination of the waste or equivalent procedures.

Such practices are especially important in light of the fact that the Permittees have not provided detailed information about all of the RH waste streams that they intend to store and dispose of at WIPP.

Moreover, SRIC and CCNS are concerned about storage and handling of RH waste at WIPP and its possible affects on human health and the environment. The concerns include storage of RH casks in the parking area unit, handling and transfer of RH waste in the Waste Handling Building, and underground disposal. An accident with radioactive or hazardous releases could pose extremely severe consequences. The Permittees have not included adequate information

about such occurrences, nor have they provided adequate preparedness and prevention and contingency procedures. The administrative record apparently does not include a final safety analysis report of RH operations. Thus, adequate procedures are not included in the draft permit.

The draft permit would allow 730 RH TRU canisters in Panel 3. Table IV.A.1. Since Panel 3 will be filled to capacity or nearly so before any revised permit can be issued, there should be no provision for any RH waste in Panel 3.

The dramatic increases in the capacity of the Parking Area Unit (PAU), Waste Handling Building (WHB), and Underground HWDUs are not justified and do not protect public health and the environment.

The WIPP Land Withdrawal Act establishes WIPP for “the safe disposal of radioactive waste materials generated by atomic energy defense activities.” Public Law 102-579 § 2(19). The increases included in the draft permit regarding the PAU and WHB are consistent with the requirements for a surface storage facility, not a disposal site. It is also noteworthy that the Permittees have not analyzed the impacts of the major changes in the surface storage capacity under the National Environmental Policy Act. 42 USC 4321.

SRIC and CCNS are unaware of any showing that existing storage capacity that has been used for the past seven years is inadequate, and such information was not included in the modification request. In the permit modification request, the asserted reason for such expanded storage capacity is to provide for the staging areas. AR 050615 at 14. Since the draft permit appropriately disallows waste confirmation and associated staging at WIPP, the need for expanded storage capacities has not been demonstrated and should not be incorporated into the permit.

Therefore, SRIC and CCNS oppose the changes in tables III.A.1 and III.A. 2 for CH waste, as well as the additions of RH waste storage. Regarding the Parking Area Unit (PAU), there is no basis for the huge expansion of capacity for CH waste packages. First, such a practice would allow large numbers of full and empty TRUPACT-IIs and HALFPacts, as well as RH shipping containers to be in the PAU, which is unnecessary and dangerous. There is also more risk to workers, especially from the RH containers that will have some external radiation exposure. Just as there has been public confusion as to whether WIPP trucks are full or empty, the PAU has not been operated for so many trucks. Also, the more vehicles in the PAU, the more likelihood that traffic and other accidents will occur. Second, DOE hasn’t expanded its TRUPACT-II fleet and has not shown that it intends to do so. Thus, the proposed expansion far exceeds the Permittees’ ability to use and is therefore unnecessary.

Regarding Table IV.A.1, the draft permit makes changes that are unexplained, not requested by the Permittees, are contrary to previous public comment and permit decisions, and are not protective of public health and the environment. On July 8, 2005, in direct response to public comment by SRIC, Table IV.A.1 was changed to show that the Maximum Capacity of Panel 1 is 371,000 cubic feet, 10,500 cubic meters, in 50,460 containers. AR 050709, Attachment 1. Since that Panel is closed, those limits are the actual and maximum design capacity for that Panel. To change that provision, as the draft permit does, is contrary to the administrative record in this proceeding.

Further, the draft permit changes footnote 1 with Table IV.A.1. That footnote states that the “Maximum Design Capacity is the maximum volume of TRU mixed waste that may be emplaced in each panel, so long as the maximum repository capacity specified in the WIPP Land Withdrawal Act...is not exceeded.” The WIPP Act establishes the maximum capacity of “6.2 million cubic feet of transuranic waste.” § 7(a)(3). The draft permit would violate that provision by allowing 6.2 million cubic feet of TRU *mixed* waste. Storage and disposal limits in the permit must be for transuranic waste, not TRU mixed waste.

The Permittees’ proposed revised Table IV.A.1 also includes panel limits for CH and RH *mixed* waste, which is not appropriate. The Permittees’ proposed revision does include a note that the total repository capacity includes both mixed and non-mixed TRU waste. But, like the draft permit, it inappropriately does not provide for panel disposal limits for TRU waste, rather than TRU mixed waste.

The proposed “staging areas” (permit modification request) or “holding areas” (January 17, 2006 Comments) are unacceptable and potentially dangerous. Allowing large amounts of waste – potentially including prohibited items – for at least 70 days should not be approved. SRIC and CCNS recognize that such areas are not included in the draft permit and urge that NMED continue to reject the suggestion. We would note, however, that the proposed expansion of the PAU could encourage permittees to continue to expect that NMED will eventually approve “holding areas” since that is a possible function of the expanded storage areas in the draft permit.

Waste confirmation must be done only at generator sites, not at WIPP.

SRIC and CCNS agree with the draft permit prohibition on waste confirmation occurring at WIPP and the elimination of the Holding Areas. But this should be unambiguous, and the draft permit does not consistently state such a prohibition. In some places, the draft permit clearly requires waste confirmation to occur at the generator/storage site. For example, “[w]aste confirmation will be performed by the Permittees at the generator/storage site.” Page B-9, l. 18. Again, the draft permit states, “The waste confirmation activities described herein occur at the generator/storage site.” Page B7-1, ll. 13-15. Unfortunately, the draft permit is ambiguous in other places, e.g., Module I.D.12 does not specify that waste confirmation occurs at the generator site, not at WIPP; Module II.C.1.a.ii states that waste confirmation must occur “prior to storage or disposal” at WIPP; and Permit Attachment B-0d provides that waste confirmation is performed “after certification and prior to shipment.” Page B-8, l. 14. Still worse, the draft permit directly contradicts itself in at least two places. Page B-37, ll. 9-10, 14-15, states that waste confirmation will be done at WIPP “after the waste shipment has arrived”; and Attachment B7, Waste Confirmation Processes, are “actions that the Permittees will take to approve and accept waste for storage and disposal at the Waste Isolation Pilot Plant.” Page B7-1, ll. 2-3. These ambiguities and contradictions should be corrected to reflect that waste confirmation shall occur only at generator/storage sites.

SRIC and CCNS disagree with the Permittees’ proposed revision of the draft permit Module I.D.12 to state that the new waste confirmation activities are done pursuant to 40 CFR 264.13. Permittees’ Comments of January 17, 2006 at 5. Rather, waste confirmation is included in the

permit as an additional requirement related to Section 310 of Public Law 108-447 and does not amend RCRA or the HWA.

SRIC and CCNS also strongly disagree with the Permittees' position that the arrival of waste containing prohibited items at WIPP would not be a major problem because the Nuclear Regulatory Commission (NRC) could amend the Certificates of Compliance (CofC) or grant specific exemptions. Permittees' January 17, 2006 Comments at 2. First, there is no requirement that NRC must amend the CofC or grant a specific exemption. Thus, one prospect, which the Permittees still have not addressed, is that the prohibited waste could not be shipped from WIPP. Second, explosive or flammable items, which are prohibited by the WAP, might arrive at WIPP, creating a continuing risk to public health and the environment. Third, shipment of prohibited items can be avoided by requiring characterization and confirmation to be done at the generator/storage sites. Fourth, the Permittees have made no showing that the prohibited items could be returned to the generator/storage site. At a minimum, the generator/storage site permits would have to require such a return. In some cases, it might be necessary to change state laws. For example, the State of Washington Initiative 297, passed in November 2004, prohibits "adding more waste that is not generated from the cleanup of the site until such waste on-site has been cleaned up and is stored, treated, or disposed of in compliance with all state and federal environment laws." § 1. It is certainly possible that State would consider wastes coming from WIPP to be prohibited by the ban.

SRIC and CCNS are also concerned about some aspects of the waste confirmation process. The permittees have not demonstrated that the random selection of seven percent of each waste stream shipment is sufficiently representative. Similarly, the determination of how many containers would be subject to radiography and visual examination is not technically supported.

Even if confirmation does identify noncompliant waste, the draft permit does not provide adequate remedial response. The draft permit requires "repeated nonconformances" (Page B7-18, ll. 31-34) before a site might lose the ability to ship waste to WIPP. SRIC and CCNS believe that any noncompliant waste should result in a suspension of shipments at least until corrective action measures, including root cause analysis and remedial action, are implemented.

The Dispute Resolution (Module I.K) is unnecessary and inappropriate.

The draft permit includes a new Module I.K that was not included in the permit modification request. To begin with, NMED should provide the basis and authority for such a provision. The provision would apply to an audit determination by NMED, even though NMED has approved dozens of audits during the past 6+ years without such a process. SRIC and CCNS know of no justification for such a dispute resolution process. The process apparently is not consistent with NMED's authority to determine whether an audit does or does not meet the permit requirements, whereas dispute resolution would be a process of negotiating the adequacy of audits or AKSDs without public oversight and review. Therefore, SRIC and CCNS oppose dispute resolution as to audit determinations.

The dispute resolution process would also apply to the new AK Sufficiency Determination. Such a determination has not been included in the existing permit and is unnecessary, if existing Waste Analysis Plan requirements are maintained, as SRIC and CCNS support.

If some basis for an AK Sufficiency Determination is developed during the public process, SRIC and CCNS would advocate the opportunity for public comment as part of such a determination.

SRIC and CCNS are unaware of any hazardous waste facility for which NMED uses a dispute resolution process. We know of no regulatory provision that provides for and details such a process. It further appears that such a process would require new NMED resources and has the potential to be very time consuming. SRIC and CCNS believe that additional NMED resources could be better used on other aspects of permitting and enforcement. The Permittees also have proposed having a meeting with the Secretary to discuss the dispute. Permittees' January 17, 2006 Comments at 7. Once again, the proposed process makes the process more resource intensive and time-consuming and does not include public participation.

The dispute resolution process would become even more time consuming and resource intensive if NMED adopts the Permittees' proposed changes that would allow a third-party mediator to be involved. Permittees' January 17, 2006 Comments at 6-7. Such third-party mediation is totally inappropriate, is not contemplated in HWA or RCRA regulations, and could dramatically increase the costs and time involved in the process.

Comments on specific provisions of the draft permit

Page B-6, ll. 32-36. The draft permit contains a new provision that allows for "waste stream groupings" to no longer require NMED evaluation. Such a provision should be eliminated as it is too vague. For instance, there is no definition of what such "groupings" are, and the draft provides no basis for NMED to approve or disapprove.

Page B-32, ll. 43 (and other places). The cited passages provide NMED with read-only access to the WWIS. This provision should be expanded to allow public read-only access to the WWIS. While the newly implemented requirement for some public access to the WWIS is a step forward, significant information that would be useful to the public is still not available in the truncated WWIS system. That deficiency could be remedied by allowing public read-only access that would have password and other protections.

Page B-38, l. 18. SRIC and CCNS oppose the acceptance of RH at WIPP based on the draft permit. The new provision in the draft permit is misworded. It should specify "the one payload container is bar-coded."

Page B-48, l. 45. There is a footnote f, but the table appears to not otherwise use footnote f.

Page B4, l. 1. The new language allows sampling and analysis "after waste packaging." Such terminology is unclear and could lead to confusion since some sampling cannot actually be done after waste is packaged. SRIC and CCNS suggest that those three words be deleted. Of course, SRIC and CCNS support maintaining the existing sampling and analysis requirements.

Page B5, ll. 18-19 and ll. 31-33. The draft permit adds new language to specify that the QAPjP shall be provided to NMED before waste is shipped to replace the permit requirement that the documents be provided to NMED "upon approval by the Permittees." SRIC and CCNS oppose

the change. The documents should continue to be provided upon approval so that NMED and the public can review them, as needed. The new provision could delay the documents being provided to NMED, which is not appropriate.

Page B6-4, ll. 1-8. The draft permit contains a new provision that would allow approval of mobile characterization at one site to apply to any other sites without additional audit. SRIC and CCNS object to that provision. The permit now requires audits at each site. Since each site is distinct, the actual mobile characterization processes need to be audited at each site, as they have been up to now. Moreover, the processes and effectiveness of the same mobile characterization vendor varies from site to site. For example, at Lawrence Livermore National Laboratory from April through August 2004, there were contamination incidents and numerous other violations of safety standards. DOE EA-2005-08 (copy attached). That same notice of violation pointed out deficiencies in mobile characterization operations at Argonne National Laboratory-East prior to the Livermore incident. While those violations were not of the WIPP HWA permit, they clearly demonstrate both that the actual mobile characterization procedures have varied from site to site. Thus, an audit of mobile characterization at each site should be maintained.

Page B7-13, ll. 26-28. The provision should provide for VE to be used for “waste streams proposed for disposal at the WIPP,” rather than “waste received.”

Page B7-18, l. 20. The provision refers to “nonconforming” waste in a section related to “noncompliant” waste. SRIC and CCNS are concerned about the vagueness of both terms, and suggest that they be specifically defined.

Page N-4, ll. 35-38. SRIC and CCNS support a more robust underground VOC sampling program, especially if headspace gas sampling is reduced, as proposed by the permittees and included in the draft permit. However, we are concerned about the adequacy of the program. For example, the draft permit provides that Tentatively Identified Compounds (TICs) could be detected in 24.9 percent of underground samples over a year-long period without being added to the target analyte list. SRIC and CCNS believe that if TICs are detected in any monthly period they should be added to the target analyte list because that would likely indicate that previously undetected compounds have been emplaced at WIPP.

Thank you for your careful consideration.

Sincerely,

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Attorney for SRIC and CCNS

Joni Arends  
CCNS

September 19, 2000

Steve Zappe  
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Dear Steve,

Southwest Research and Information Center (SRIC) provides these comments regarding the class 2 permit modifications requested on July 21, 2000 to the WIPP permit to expand waste storage, eliminate audit and surveillance programs, and provide new waste characterization activities at WIPP. SRIC strongly opposes the modifications and requests that NMED deny them because the activities proposed do not protect public health and the environment.

1. The requested permit modifications do not protect public health and the environment and should be denied.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(b)(7)), NMED may deny the class 2 modification request. SRIC believes that denial is required because the request is deficient under each of the three criteria -- the request is not complete, it does not meet the requirements of RCRA and the Hazardous Waste Act (HWA), and it fails to protect public health and the environment.

Very importantly, the request is a fundamental and total reversal of the operating safety principles for WIPP incorporated in the permit application and in the permit. DOE has stated for years that the fundamental operating safety principle for WIPP is to "start clean and stay clean," and it could do so by not opening drums of waste at WIPP. On the first day of the permit public hearing, the permittees witness stated this principle emphatically.

"We never open waste containers that are received from an offsite generator.... By not opening the waste, we can eliminate the possibility of spreading contamination throughout our facility. So not opening the containers, keeping the containers sealed, is a major -- a major strategy in our protection of human health and the environment."  
Testimony of Robert F. Kehrman, February 22, 1999, pp. 83-84.

Throughout the permit public hearing, it was frequently reiterated by the permittees, other witnesses, and other parties that WIPP was a disposal facility and that its essential purpose was to receive wastes from DOE facilities and to dispose of the containers underground at WIPP. Thus, opening drums of waste or characterizing waste at WIPP was not a purpose of the facility

and such activities would not take place.

WIPP has operated for less than a year under the HWA permit and during that time it has received well under 0.1 percent of its capacity, so there is not sufficient operating experience to conclude that currently permitted operations are being adequately implemented or that a major expansion of WIPP's operations is justified. Moreover, fundamentally changing the basic operating safety principle both endangers public health and the environment and calls into question a primary basis for the entire WIPP permit.

Another key element of the permit to protect public health and the environment is to keep prohibited materials from coming to WIPP. Module II.C.3 of the permit specifies that the "permittees shall not accept TRU mixed wastes at WIPP for storage, management, or disposal" certain prohibited materials including: liquids; pyrophoric materials; non-mixed hazardous wastes; chemically incompatible wastes; explosives and compressed gases; PCB concentrations greater than 50 parts per million; ignitable, corrosive, and reactive wastes; and remote-handled wastes. The modification would change Module II.C.3 so that the prohibition for management and storage of those prohibited items is eliminated. All of those prohibited items pose risks to public health and the environment and they should remain prohibited from WIPP.

Furthermore, waste characterization activities beyond acceptable knowledge are necessary to identify prohibited items to ensure that they are not shipped to WIPP. SRIC believes that to protect public health and the environment full waste characterization must be done at the storage/generator sites to ensure that prohibited items do not arrive at WIPP. The proposed modification would allow generator sites to rely on acceptable knowledge and not conduct headspace gas analysis, radiography, and visual examination activities that are required to prevent prohibited items from being shipped to WIPP. The modification request contemplates that increasing amounts of prohibited materials would come to WIPP -- see new allowance for prohibited items in Module III.A.1.a and in Attachment B-4b(2)(i). Thus, the modification request would not only allow prohibited items to arrive at WIPP, but it would allow long-term management and storage of those items, with attendant threats to public health and the environment. DOE has even suggested that a future modification could allow for disposal of those prohibited items.

An additional problem with waste characterization is the lack of adequate containment. The modification request variously mentions "bermed containment areas" (A-3), "bermed areas" (Module III.A.1.c and Attachment F-1), and "containment berms" (Attachment F-1 and M1-1c(1)). The modification request contains no detailed information and no drawings of what those containment features are, the volume or materials they will contain, what they are made of, and other needed information to ensure that there is full compliance with 40 CFR 264.175.

The proposed modification threatens public health and the environment by allowing indefinite storage of materials on the surface at WIPP, in direct contradiction to existing permit requirements and expanding the function of WIPP from a disposal facility to a long-term storage facility. SRIC strongly opposes allowing long-term storage at WIPP. Such surface storage

endangers workers and the public from the threats of leaking drums, releases of hazardous materials, including prohibited materials, and accidents.

The modification request at Item 2 would also terminate the audit and surveillance program. As specified in the permit, including in the Waste Analysis Plan (WAP) -- B-4b(1)(iii) -- the audit and surveillance program is an "important part" of the WAP. The same provision states that the audit and surveillance program "addresses all waste sampling and analysis activities, from wastes stream classification assignment through final loading of the TRUPACT-II, and ensures compliance with the SOPs and the WAP." Thus, eliminating the audit and surveillance program fundamentally changes the entire WAP. SRIC strongly opposes termination of the audit and surveillance program, which is necessary to ensure compliance with applicable provisions of the permit at generator/storage sites.

The modification request is grossly incomplete. NMED has already found the request to be complete in its denial letter for the requested Temporary Authorization, issued on September 5. Among the many incomplete aspects of the request are the following. The modification request does not provide adequate information about and justification for doing waste characterization, including opening drums, at WIPP, thus reversing the fundamental safety principle. The modification request does not identify why generator/storage sites cannot do waste characterization, as DOE has stated for years that those sites could and would do. The modification request does not provide any analysis of the risks and health effects of opening drums at WIPP, a revised contingency plan to address those risks, the much different training requirements for workers doing waste characterization, among many other deficiencies. The modification request does not provide an analysis of the health effects of bringing prohibited items to WIPP including the effects on workers, the public, and the environment from releases of prohibited items during characterization and storage activities. The modification request provides no drawings or other adequate description of the "containment berms" that would be used, and which were not included in the permit. The modification request does not provide any adequate justification for having indefinite storage at WIPP, a mission that is not contemplated in the WIPP Land Withdrawal Act (Public Law 102-579, as amended).

All of the above-described deficiencies clearly show that the requested modification does not meet HWA (and RCRA) requirements, as is necessary to approve the request.

2. The requested permit modifications are not class 2 modifications.

A. The requested modification is of a complex nature.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(b)(6)(i)(C)(2)), a modification must be treated as a class 3 modification if it is of a complex nature. The multiple aspects of the request require significant changes in virtually every part of the permit, in some cases eliminating requirements and in numerous cases causing significant changes. The complexity of the proposal includes major changes in the Waste Analysis Plan, major changes in the waste characterization processes at the generator/storage sites and new characterization activities at WIPP, changes in handling containers upon their arrival at WIPP, new storage and

characterization areas in the Waste Handling Building, new and prohibited materials coming to WIPP, among many others. The interconnectedness of the activities at WIPP require adjustments to activities at WIPP, including new training programs, new containment requirements, new traffic patterns, new contingency plans, among many others. The modification would create four new waste handling areas at WIPP -- Room 108, Room 112, West Central Storage Area, and Building 412. Exactly how those new management and storage areas will operate in relationship to other areas is not clear. The changes require a careful review of whether the modification captures all of the aspects and effects of the activities, something that can best be done with more time and a public hearing process of a class 3 modification.

B. The permittees are requesting more than a 25% increase in the WIPP Waste Handling Building (WHB) container storage capacity.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42 Appendix I, ¶F.1.a), modifications requested by the permittee "[r]esulting in greater than 25% increase in the facility's container storage capacity" are class 3 modifications. Although the permittees Table 1 classifies the storage capacity increase as less than 25%, and on page A-4 the permittees state that the increase is 1,077 cubic feet, "which is an increase of 25%," other parts of Attachment A do not support such a calculation.

For example, the modification would change Module III.A.1 to increase the WHB Unit from 33,175 square feet to 44,425 square feet. That calculates to a more than 33% increase. On page A-40, the same increase would be made to Attachment F1, and on page A-44, the same increase would be made to Attachment M1-1c(1).

The modification would change Table III.A.1 [p. A-7] to increase the maximum capacity of WHB Unit storage from 2,718 cubic feet to 3,795 cubic feet. That 1,077 cubic feet increase calculates to a 39.6% increase in that unit.

Therefore, it is clear that the permittees are requesting more than a 25% increase in the WHB container storage capacity, and NMED should find that the request does not meet the requirement for a class 2 modification.

C. There is "significant public concern" about the proposed modification.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(b)(6)(i)(C)(1)), a requested class 2 modification must follow procedures for class 3 modifications if there is "significant public concern about the proposed modification." There is very significant public concern about the modification request. In addition to SRIC, Citizens for Alternatives to Radioactive Dumping (CARD), Concerned Citizens for Nuclear Safety (CCNS), Nuclear Watch of New Mexico, and Peace Action New Mexico are all concerned about and oppose the modification. Those organizations have more than 10,000 members and supporters, which clearly demonstrate that there is significant public concern. In addition, many other New Mexicans, as individuals, are concerned about the modification request and have expressed those concerns to SRIC, and to NMED via mail or email.

Therefore, it is clear that there is significant public concern about the requested modification. If the permittees desire to make the major modifications to the permit like those in the modification request they must submit them, and NMED must treat them as a class 3 modification, including the full public hearing requirements of 20 NMAC 4.1.901.E, 20 NMAC 1.4, and NMSA, § 74-4-4.2.H.

Thank you for your careful consideration of these comments.

Sincerely,

Don Hancock

September 27, 2001

Steve Zappe  
New Mexico Environment Department  
2905 Rodeo Park Drive, Building 1  
Santa Fe, NM 87505

Dear Steve,

Southwest Research and Information Center (SRIC) provides these comments regarding the class 3 permit modification requested on June 7, 2001 to the WIPP permit to expand waste storage, increase storage time limits, manage prohibited items, and provide new waste characterization activities (so called "confirmation") at WIPP. SRIC strongly opposes the modification and requests that NMED deny it because the activities proposed do not protect public health and the environment.

1. The requested permit modification does not protect public health and the environment and should be denied.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(c)(6)), NMED may deny the class 3 modification request. SRIC believes that denial is required because the request is totally contrary to the requirements of the Resource Conservation and Recovery Act (RCRA) and the Hazardous Waste Act (HWA) to protect public health and the environment.

Very importantly, the request is a fundamental and total reversal of the operating safety principles for WIPP incorporated in the permit application and in the permit. DOE has stated for years that the fundamental operating safety principle for WIPP is to "start clean and stay clean," and it could do so by not opening drums of waste at WIPP. On the first day of the permit public hearing, the permittees' witness stated this principle emphatically.

"We never open waste containers that are received from an offsite generator.... By not opening the waste, we can eliminate the possibility of spreading contamination throughout our facility. So not opening the containers, keeping the containers sealed, is a major -- a major strategy in our protection of human health and the environment." Testimony of Robert F. Kehrman, February 22, 1999, pp. 83-84, emphasis added.

Throughout the permit public hearing, it was frequently reiterated by the permittees, other witnesses, and other parties that WIPP was a disposal facility and that its essential purpose was to receive wastes from DOE facilities and to dispose of the containers underground at WIPP. Thus, opening drums of waste or characterizing waste or "confirmation" at WIPP is not a

purpose of the facility and such activities should not take place. The associated activities in the permit modification request -- expanding the storage area, increasing the storage time limits, and managing prohibited items -- are specifically related to the "confirmation" activities and so must also be denied.

It is axiomatic that a modification request must demonstrate that a facility would continue to meet the general facility standards of 40 CFR 264. In issuing the requirements for permit modifications in 40 CFR 270.42, the Environmental Protection Agency (EPA) specifically stated: "any permit modification, whether a Class 1, 2, or 3 change, will be subject to the appropriate substantive Parts 264, 265, 268, and 269 requirements." 53 Federal Register 37914 (September 28, 1988).

Changing the basic operations of a hazardous waste facility in a manner that undermines the design and operation to the detriment of health and the environment, which the proposed modification would do, is incompatible with regulatory requirements. For example, 40 CFR 264.31 requires that

"Facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

One essential way that the permit minimizes the possibility of releases of hazardous waste constituents is by prohibiting waste characterization or confirmation activities, including opening of waste containers, at WIPP. Reversing that prohibition is directly contrary to the requirement to "minimize the possibility" of releases, and so the request must be denied.

The permittees do not, and cannot, demonstrate in their modification request that the changes minimize the possibility of releases at WIPP. In fact, they do not even suggest that is a basis for the request. Instead, the "primary purpose" of the modification "is to expedite the removal of waste from, and minimize expenditures at, sites with smaller inventories of CH-TRU waste." at 3.<sup>1</sup> The rationale for the modification contained on pages 10 and 11 of the request does not even mention, let alone demonstrate, that the modification minimizes the possibility of releases at WIPP. The rationale does not even pertain to activities at WIPP. Rather it relates to the operations and speculative economics of other DOE facilities. There is no basis in RCRA or the HWA to approve such a modification.

When the permittees' own statement does not even assert that the request minimizes the possibility of releases and protect public health and the environment, there is clearly no basis for NMED to propose a draft permit modification, and the request must be denied.

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<sup>1</sup>Page numbers are those that result from the WIPP website PDF version using our inkjet printer. They may not perfectly conform to the page numbers of the hard copy as submitted.

Furthermore, 40 CFR 264.601, also applicable to WIPP, states that protection of human health and the environment includes "[p]revention of any releases that may have adverse effects on human health or the environment" to the ground water or subsurface environment, surface water, wetlands or soil, or in the air. The permit seeks to prevent any releases by ensuring that waste characterization activities, including opening of drums, is prohibited at WIPP. Reversing that prohibition is directly contrary to the requirement to prevent any releases.

The permittees do not, and cannot, demonstrate in their modification request that the changes prevent any releases at WIPP. In fact, they do not even suggest that is a basis for the request. Instead, the "primary purpose" of the modification "is to expedite the removal of waste from, and minimize expenditures at, sites with smaller inventories of CH-TRU waste." at 3.

When the permittees' own rationale does not even assert that the request would result in prevention of any releases, there is clearly no basis for NMED to propose a draft permit modification, and it must deny the request.

Moreover, fundamentally changing the basic operating safety principle both endangers public health and the environment and calls into question a primary basis for the entire WIPP permit.

2. The requested permit modification would result in inadequate waste characterization at generator/storage sites that rely on WIPP to do waste "confirmation."

SRIC has repeatedly pointed out the inadequacy of acceptable knowledge (AK) at DOE sites. That AK is inadequate was clearly demonstrated during the WIPP permit hearing when DOE did not produce even one drum of waste for which the AK was accurate. The only drum of waste that permittees introduced into evidence at the permit hearing was shown to have grossly inadequate AK. The AK did not properly classify the drum by waste type, nor properly identify its contents. Hearing Transcript, p. 444 and pp. 471-472.

Because AK is inadequate, full characterization is required at the generator site, including radiography, headspace gas sampling, and visual examination, before waste is shipped to WIPP. This principle is clearly established in the permit.

But the modification would terminate that principle and practice by allowing a site that believes that it has adequate AK to use it as the basis to ship waste to WIPP for "confirmation." The modification request would clearly allow waste to be shipped to WIPP without undergoing radiography, headspace gas sampling, and visual examination. Modules II.C.3; II.C.3.j; II.C.3.k; Attachment B-3. The modification request provides for such a change without providing any evidence that AK is adequate for all debris waste at any site, let alone that it is adequate for all debris waste at any site that would ship its waste to WIPP for "confirmation." Based on the record of the permit hearing, NMED must deny the request, because the permittees have provided no evidence to refute the evidence provided at the permit hearing. Thus, the principles and practices incorporated into the permit must not be changed.

3. Response to comments on the initial submission is inaccurate.

In its modification request, the permittees include responses to comments on the earlier Class 2 modification request, submitted on July 21, 2000. at 16-18. Some of those responses are at best disingenuous and incomplete, and some should be considered inaccurate. Such misrepresentation itself is adequate basis to reject the permit modification, and could be the basis to terminate the permit. 40 CFR 270.43(a)(2).

For example, in addressing the concern that SRIC and other commentors had about "opening drums at WIPP," the permittees assert that not opening drums at WIPP was "because the need did not exist to open such containers." at 17. That is a totally false characterization of the sworn testimony of the permittees' witness at the permit hearing. The testimony on the first day of the permit hearing (Transcript, pp. 83-84) was correctly quoted by SRIC in its initial comments and on page 1 of these comments. As the testimony clearly states, the reason to not open drums at WIPP is "to eliminate the possibility of spreading contamination throughout our facility." That basis to not open drums is consistent with the requirements of 40 CFR 264.601. The newly stated rationale would not meet the RCRA requirements that have been discussed above.

4. The modification request should be denied because it is so incomplete and inadequate as to preclude thorough review.

Although the permittees filed a very similar request for a class 2 modification in 2000, the resubmitted request is similarly incomplete and inadequate. Continuing to submit incomplete, inaccurate modifications is a waste of the public's time and resources and NMED's time and expertise and diverts the agency from other important WIPP activities. NMED should inform the permittees that this request, like numerous others, is so incomplete that the request is denied and that either the permittees should not resubmit the request or that a much more complete request is required before NMED will undertake a full review and request extensive public comment. SRIC here will identify only a few of the many incomplete aspects of the modification.

While the modification is based on supposed economic advantages of confirmation at WIPP, the request provides no adequate economic data. The request asserts that "the economic assumptions that shaped an important part of the waste analysis framework in the existing HWFP have proven to be invalid." at 11. However, the permittees have not provided necessary data to support the claim. On the contrary, five sites (INEEL, RFETS, LANL, Hanford, and Savannah River) have been approved by NMED and have shipped wastes to WIPP. The permittees have provided no data, nor have they even asserted, that any other site has not been approved because of economic considerations. Further, as previously noted, there is no basis in RCRA or the HWA to approve a modification request based on economic benefits.

Adequate economic analysis, at a minimum, would provide full cost analysis of fixed and variable costs of each generator site, including the detailed budgets of each site, costs of handling any hazardous or mixed wastes, site overhead and contractor costs, regulatory requirements and costs, operation and maintenance costs of each facility used for waste management and storage, and wages and benefits of workers and management. Such data is

necessary to determine how costs vary from site to site, and to avoid irrelevant and unsubstantiated claims, such as the supposed comparative costs of managing a cubic meter of CH TRU waste at small quantity sites and LANL. at 11. The analysis should include comparisons of doing confirmation at each small quantity site, at existing "large quantity sites" which have infrastructure, workforce, and experience to conduct such activities, and at WIPP. Such detailed information would be voluminous and complex and would be most appropriate for a separate process, perhaps such as the Optimization Plan that DOE said would be issued in its National TRU Waste Management Plan, DOE/NTP-96-1204, Revision 2, December 2000 at xxiv. Such data and analysis should be provided to the public for review and comment prior to the submission of a permit modification request for waste confirmation at WIPP.

The request states that "DOE is working to implement digital radiography/computed tomography (DR/CT) in a manner that will reduce or eliminate the need for routinely opening drums as a part of the confirmation process." at 17. The permittees should explain why a request for modifying the permit to do confirmation at WIPP should not be delayed until NMED approves DR/CT.

WIPP's principal mission has long been primarily to dispose of TRU waste at Rocky Flats and INEEL. See, for example, the 1981 Record of Decision, which states that all waste at INEEL would be disposed at WIPP before waste is disposed from other sites. 46 Federal Register 9162 (January 28, 1981). The CBFO Manager continues to state that those two sites remain the priority for current operations. The permittees should explain how confirmation activities at WIPP further that mission, because the confirmation activity appears to divert attention and resources to other sites and away from the primary focus on those two sites.

WIPP has operated for less than two years under the HWA permit and during that time it has received only slightly more than one percent of its statutory capacity limit, so there is not sufficient operating experience to conclude that currently permitted operations are being adequately implemented or that a major expansion of WIPP's operations is justified. On the contrary, NMED's Notice of Violation, issued on September 24, 2001, indicates that CBFO and the generator sites are not adequately implementing some of the existing permit requirements. NMED should not approve expansions of activities at WIPP when the permittees are in violation of permit requirements. Indeed, "[n]oncompliance by the permittee with any condition of the permit," is grounds for terminating the permit. 40 CFR 270.43(a)(1), emphasis added.

One goal of the modification request and others to follow is to eliminate the audit and surveillance program. at 14. The permittees also state that they want to eliminate "redundant audits." at 16. SRIC strongly opposes elimination of the audit and surveillance program, unless it is replaced by a class 3 permit modification process to review each site's compliance with the permit. Under the permit, the audit and surveillance program is the principal means for NMED and the public to be assured that permit requirements are being met. Rather than reducing audits, the effect of the modification should be to increase audits, since they should be required at the generator sites with additional audits at WIPP. The modification request, on the other hand, would reduce the audits by providing that only the first Central Characterization Project (CCP) site be audited for AK process and that subsequent sites not be so audited. A-4; Attachment B6-

1. Such a reduction in audits is unjustified and unacceptable. In fact, audits so far conducted have resulted in NMED sometimes not approving site procedures that the site and CBFO have approved. Because each site has different wastes, produced by different facilities and processes, and with its own set of procedures and records, it is obvious that AK practices and procedures will differ from site to site. Thus, it remains necessary for NMED to audit each site for its AK procedures. This audit would be even more important if the additional characterization or confirmation requirements were eliminated, as proposed in the request.

A more logical and cost-effective approach in reducing audits, in addition to better protecting public health and the environment, if that is indeed the permittees' goal, would be to focus waste characterization activities and audits on INEEL and RFETS, while adequate waste characterization procedures are established at other sites. Then, those other sites could be the focus of characterization and shipping regimes so that all their wastes can be characterized and transported in a few months or years, rather than having shipments occur on a piecemeal basis over many years, with associated continuing audits.

The modification request proposes a totally new activity -- waste confirmation at WIPP. A new attachment B7 would be included in the permit. In addition to endangering public health and the environment at WIPP, the new activity complicates and confuses activities at other sites and at WIPP. The request is incomplete because it does not adequately recognize these complexities and does not adequately discuss them and provide specific language necessary to prevent such confusion. The differentiation between "characterization" and "confirmation" is not clearly and consistently described. For example, in Module I.D. several new and confusing definitions are introduced. Apparently, existing "generator/storage" sites can also be "confirmation" sites. Thus, there would be 22 "generator/storage" sites and 23 "confirmation" sites. Or would it be less than 23 "confirmation" sites because some sites would not do confirmation? Or would a site be a "confirmation" site for some of its waste and not a "confirmation" site for other of its wastes? Confusion about regulatory requirements will increase with associated problems and violations of the permit. As a result of the confusion, mistakes of the kind that happened with use of the WAGS system at INEEL months before it was approved by CBFO and EPA would become more frequent.

Another example of how the modification request creates confusion is how it variously changes the Attachment B6 checklists to try to accommodate "confirmation sites" even though such sites might not conduct all of the activities included in the checklists. A further example of the confusion is in Attachment B-3a, which is unchanged in the modification, and Attachment B-3d, which is changed to incorporate "confirmation" and specifically refers to Attachment B-3a.

The proposed confirmation activities at WIPP are not described in sufficient detail. As just one example, a new element of the modification request, compared with the request in 2000, is that a glovebox could be used for "confirmation" activities at WIPP. However, the specific glovebox attributes and requirements are not provided, nor its location specified. The glovebox size is not even provided so that it is unclear that it would be large enough to handle any container that required examination. The necessary detailed description for glovebox operation, the skills and

training requirements for workers, quality assurance/quality control requirements are not provided. Nor is there any discussion of the substantial environmental and health problems associated with the use of gloveboxes at other sites, especially including Rocky Flats.

Another example of the inadequate and incomplete description of "confirmation" activities is that the maximum amount of waste that would undergo confirmation analyses at WIPP is 1,250 cubic meters per year, or 6,000 55-gallon drums. at 3. However, the storage capacity increases are based on "time and motion considerations" (which are not provided or referenced in the request) of "approximately 2,000 drums per year for waste confirmation." at A-82 (Item 2 discussion). Thus, in their request, the permittees have provided no health and safety basis to approve any confirmation activities or any storage capacity increases.

An additional problem with waste characterization and confirmation at WIPP is the lack of adequate containment. The previous modification request variously mentioned "bermed containment areas," "bermed areas," and "containment berms," which were strongly criticized by SRIC and others. The current modification request now includes "containment pallets," but they are not pictured or otherwise adequately described as to how they will fully contain wastes, as required by 40 CFR 264.175.

Another key element of the permit to protect public health and the environment is to keep prohibited materials from coming to WIPP. Module II.C.3 of the permit specifies that the "permittees shall not accept TRU mixed wastes at WIPP for storage, management, or disposal" certain prohibited materials including: liquids; pyrophoric materials; non-mixed hazardous wastes; chemically incompatible wastes; explosives and compressed gases; PCB concentrations greater than 50 parts per million; ignitable, corrosive, and reactive wastes; and remote-handled wastes. The modification request (Item 4) would change Module II.C.3 to weaken that prohibition. All of those prohibited items pose risks to public health and the environment and they should remain prohibited from WIPP. SRIC opposes weakening the prohibition. If the prohibition is to be changed, consideration should be given to include a permanent ban on any further shipments from a site that ships any prohibited item to WIPP.

Furthermore, waste characterization activities beyond acceptable knowledge are necessary to identify prohibited items to ensure that they are not shipped to WIPP. SRIC believes that to protect public health and the environment full waste characterization and confirmation must be done at the storage/generator sites to ensure that prohibited items do not arrive at WIPP. The modification request contemplates that increasing amounts of prohibited materials would come to WIPP -- see new allowance for prohibited items in Attachment F-4d and Table F-10. The proposed modification in essence provides incentives for generator sites to send prohibited items to WIPP, since the modification request would, in some cases, allow those wastes to remain at WIPP without any consequence to the generator site. Exactly how those prohibited items would be handled at WIPP is not adequately described. Thus, the modification request would not only allow prohibited items to arrive at WIPP, but it would allow long-term management, storage, and disposal in some cases of those items, with attendant threats to public health and the environment. Such changes to the permit do not protect public health and the environment, and

they must be denied.

The permittees are requesting at least a 33% increase in the WIPP Waste Handling Building (WHB) container storage capacity (Item 2). The modification would change Module III.A.1 and other parts of the permit to increase the WHB Unit from 33,175 square feet to 44,275 square feet. Confusingly, Table III.A.1 states that the "design storage capacity" to be increased to 6,321.4 cubic feet or 178.98 cubic meters, but then states that the "permitted storage capacity" would be 3,795 cubic feet or 107.4 cubic meters. The permittees have provided no basis for the storage increase other than the need to expand WIPP to conduct the "confirmation" activities. Increasing the amount of waste that can be in the WHB increases the risks to workers and the public of releases of radioactive and hazardous materials, endangering public health and the environment, so the request should be denied.

The proposed modification threatens public health and the environment by allowing an increase in the surface storage time at WIPP from 60 days to one year (Item 3). That one-year timeframe was rejected by NMED in issuing the permit, based on public comment, because it is unnecessary to WIPP's purpose as a disposal facility. It is being again requested by the permittees to allow time to do the confirmation activities at WIPP. Since the confirmation activities should not be allowed at WIPP, there is no basis for the increased storage time. The longer wastes are stored on the surface, the greater the likelihood of accidents or releases of hazardous materials that would endanger workers and the public. Thus, the increase in timeframe for surface storage should be denied.

Again, SRIC requests that the Class 3 modification be denied. NMED should so notify the permittees and explain its reasons for the denial. Alternatively, the permittees could withdraw their request for the modification, as they have done with some previous modification requests.

Thank you for your careful consideration of these comments.

Sincerely,

Don Hancock



Department of Energy  
Washington, DC 20585

December 22, 2005

Mr. Richard D. Raaz  
President and General Manager  
Washington TRU Solutions, LLC  
P.O. Box 2078  
Carlsbad, NM 88221-2078

EA-2005-08

Subject: Preliminary Notice of Violation and Proposed Civil Penalty - \$192,500

Dear Mr. Raaz:

This letter refers to the Department of Energy's (DOE) Office of Price-Anderson Enforcement's (OE) investigation of the Mobile Visual Examination and Repackaging Facility (MOVER) radiological uptakes that occurred from April to August 2004 at the Lawrence Livermore National Laboratory (LLNL). An investigation summary report was issued to you on September 24, 2005. An Enforcement Conference was held on October 26, 2005, in Germantown, Maryland, with you and members of your staff to discuss the findings in the investigation report. An Enforcement Conference Summary is enclosed.

Based upon our evaluation of these issues and information presented by you and your staff during the Enforcement Conference, I have concluded that violations of DOE's nuclear safety rules, specifically Quality Assurance Requirements (10 CFR 830 Subpart A) and Safety Basis Requirements (10 CFR 830 Subpart B) have occurred. The violations are described in the enclosed Preliminary Notice of Violation (PNOV).

Section I of the PNOV describes a Severity Level II violation associated with the operation of the MOVER facility without a required safety basis and associated documentation. DOE considers the safety basis process to be an essential part of determining design adequacy and ensuring that adequate controls exist to safely operate nuclear facilities. OE concluded that the less than adequate level of understanding by Washington TRU Solutions (WTS) of the design and operational limitations of MOVER was a significant contributor to the uncontrolled radioactive releases and subsequent radiological uptakes that occurred.

Section II of the PNOV describes a Severity Level II violation associated with failures to follow existing WTS work processes intended to ensure the control of nonconforming items and appropriate responses to abnormal conditions, events, and alarm conditions. Section III of the PNOV describes a Severity Level II violation associated with failures

to maintain an adequate design record for MOVER. Section IV describes a Severity Level II quality improvement violation for failures to determine causes and correct deficiencies associated with abnormal conditions, failures to correct receipt inspection issues with glovebox port containment bags, and deficiencies with the initial WTS MOVER investigation and corrective actions.

While I recognize some of the fundamental changes you are attempting to make with the Central Characterization Project (CCP) operations, only limited mitigation was warranted. None of the violations received mitigation for self-identification since the underlying deficiencies were disclosed by the events. Partial mitigation of 25 percent was given for two of the four violations for causal determination and corrective actions; additional mitigation was unwarranted due to observed weaknesses concerning the WTS response to the MOVER event as well as the multiple missed opportunities to resolve abnormal conditions. The lack of proactive response by WTS towards identifying and correcting quality problems was particularly troublesome. DOE also found disconcerting WTS's deployment of a mobile facility without an adequate understanding of its design, performance, and operating limitations. This was coupled with an organizational safety culture and level of conduct of operations performance that tolerated or accepted the existence of abnormal conditions without adequate resolution.

At the Enforcement Conference, members of your staff described a number of corrective actions intended to prevent the work process, design basis, and quality improvement deficiencies from recurring. Your continued personal attention to the issues and corresponding corrective actions, including any additional adjustments based on effectiveness reviews, is essential to ensuring that WTS CCP achieves a positive step change in performance. Representatives from the DOE Carlsbad Field Office and my office were encouraged by the actions you outlined in the enforcement conference that are intended to improve operational awareness and more timely resolution of performance deficiencies, as indicated by your recent stand-down of glovebox activities at a nother host site until adequate resolution of deficiencies occurred.

During the enforcement conference, WTS representatives questioned the conclusion in our investigation summary report concerning the apparent MOVER safety basis violation. It was asserted that MOVER should not be considered a nuclear facility, but only a system within a facility. As a result, WTS concluded that a safety basis for MOVER was not required.

In reviewing this argument, DOE OE considered both the definition of a nuclear facility set forth in 10 CFR 830 as well as the physical attributes of MOVER. Nonreactor nuclear facilities, as stated in the rule, are "facilities, activities, or operations" that involve radioactive and/or fissionable materials in such form or quantity that a nuclear hazard potentially exists to workers. MOVER operations involved the processing of material above the hazard category 3 threshold while at Argonne National Laboratory-East (ANL-E) and LLNL. Thus, those operations involved a nuclear hazard to workers as defined by the rule. In addition, the MOVER is a self-contained process requiring

only an external power source for operation. It contains a glovebox for TRU waste processing, a control room, high efficiency particulate air filter ventilation, as well as fire protection and radioactive monitoring systems. OE consequently concluded that MOVER represented a nuclear facility with a specific process (TRU waste characterization) versus a system or component. We further note that MOVER also qualifies under the rule as a “nuclear activity or operation” in addition to being a nuclear facility. WTS as the managing and operating contractor for the MOVER facility clearly has the responsibility for meeting any applicable DOE safety basis rule requirements.

In reaching this decision, OE notes that DOE’s Office of Environmental Management (DOE EM) determined as well that a safety basis was needed for MOVER operations. Subsequent to the deployment and operation of MOVER at ANL-E, DOE EM approved a Basis for Interim Operations (BIO) in November 2003 for the CCP Mobile Characterization Units (MCU), which included the MOVER. The BIO MCU segments were characterized as a hazard category 2 nuclear facility and the BIO contains a unique set of technical safety requirements controls that cover specific design features, as well as administrative and programmatic controls for the MOVER and other MCUs. In its approval letter, DOE EM stated that the CCP MCU BIO represented the 10 CFR 830 required safety basis for the segmented units.

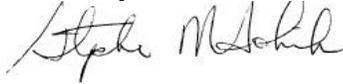
WTS also stated at the enforcement conference that ANL-E had included MOVER as an acceptable activity under the approved documented safety analysis (DSA) for the ANL-E facility in which MOVER was located while at ANL-E. This determination was made through implementation of the ANL-E unreviewed safety question process. However, this approach and any corresponding conclusion can only reasonably be used to determine the effect MOVER and other MCUs may have had on the safety of co-located ANL-E facilities and their operations. It did not resolve the need for or serve as a substitute for a DSA, including an adequate design review, as well as development of specific MOVER hazard controls. Furthermore, any determination as to whether MOVER is a nuclear facility is governed by the terms of 10 CFR 830 and not determinations made by ANL-E representatives.

The failure by WTS to perform an adequate design evaluation and to establish adequate operational controls for MOVER contributed to unplanned uptakes received by personal working in MOVER. DOE considers the safety basis process to be a necessary part of determining design adequacy and ensuring that adequate controls exist to safely operate nuclear facilities. WTS, as the contractor responsible for the design and operation of MOVER was required by 10 CFR 830 to develop a safety basis that was approved by DOE prior to the initial operation.

You are required to respond to this letter and to follow the instructions specified in the enclosed PNOV when preparing your response. Your response should document any additional specific actions taken to date. Corrective actions will be tracked in the reports filed in the Noncompliance Tracking System (NTS). You should enter into the NTS (1) any additional actions you plan to take to prevent recurrence and (2) the target completion dates of such actions.

After reviewing your response to the PNOV, including your proposed corrective actions entered into NTS, DOE will determine whether further enforcement action is necessary to ensure compliance with DOE nuclear safety requirements.

Sincerely,



Stephen M. Sohinki

Director

Office of Price-Anderson Enforcement

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Enclosures:  
Preliminary Notice of Violation  
Enforcement Conference Summary  
List of Attendees

cc: J. Shaw, EH-1  
R. Shearer, EH-1  
A. Patterson, EH-1  
M. Zacchero, EH-1  
L. Young, EH-1  
A. Rankin, EH-1  
P. Rodrik, EH-6  
Docket Clerk, EH-6  
B. Loesch, EH-31  
C. Lagdon, EH-31  
J. Rispoli, EM-1  
C. Anderson, EM-2  
L. Vaughan, EM-3.2  
L. Piper, DOE-CBFO  
R. Farrell, DOE-CBFO  
J. Hoff, WTS PAAA Coordinator  
R. Azzaro, DNFSB

**Preliminary Notice of Violation  
and  
Proposed Imposition of Civil Penalty**

Washington TRU Solutions  
WIPP Site

EA-2005-08

As a result of the Department of Energy's (DOE) Office of Price-Anderson Enforcement investigation of safety basis and quality deficiencies associated with the MOVER radiological uptakes that occurred from April to August 2004, multiple violations of DOE nuclear safety requirements were identified. In accordance with 10 CFR 820, Appendix A, "General Statement of Enforcement Policy," the violations are listed below. Citations specifically citing the quality assurance criteria of 10 CFR 830.122 represent a violation of 830.121(a), which requires compliance with those criteria.

**I. Safety Basis Violation**

10 CFR 830.202 requires that the contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility establish and maintain the safety basis for the facility. The contractor must prepare a documented safety analysis (DSA) for the facility, and establish hazard controls upon which the contractor will rely to ensure adequate protection of the workers.

10 CFR 830.207 requires that a contractor of a new DOE hazard category 1, 2, or 3 nuclear facility, or a major modification to a facility, receive DOE approval of the facility safety basis through the issuance of a Safety Evaluation Report prior to beginning operation of the facility. The effective date of this rule requirement was February 9, 2001.

Contrary to the above requirements, Washington TRU Solutions (WTS) failed to establish and maintain a DSA for the MOVER facility, which is a DOE category 3 nuclear facility, and failed to receive DOE safety basis approval prior to deploying and operating at Argonne National Laboratory-East (ANL-E) from January 2002 through August 2003. An unreviewed safety question (USQ) evaluation was performed by ANL-E to address any new hazards and potential changes to their facility and site safety basis. However, no MOVER-specific safety basis was developed, submitted, and approved by DOE.

This violation constitutes a Severity Level II problem.  
Civil penalty - \$55,000

## II. Work Process Violations

10 CFR 830.122 (e) (1) requires that contractors perform work consistent with technical standards, administrative controls, and other hazard controls adopted to meet regulatory or contract requirements, using approved instructions, procedures, or other appropriate means.

The following examples were identified involving failures by WTS to control or perform work consistent with their own work processes, procedures, and requirements.

### A. Control of Nonconforming Items

Control of Nonconforming Items Deficiencies Procedure WP 13-QA3004, Nonconformance Report Management Control Procedure, requires the following:

1. Control of nonconforming items must be established, tracked, and records maintained,
2. Hold tags are required to establish control of nonconforming items, and
3. Once a nonconformance report (NCR) is approved and issued, a formal revision of that NCR is required to change the information in Section B, Disposition of Nonconforming Item, or Section C, Identification of Nonconforming Item, and to remove the hold tag.

Contrary to the above work process, no record was found of an NCR FY2001-04 revision that formally approved and documented the change in MOVER status from training use only to approved for operations. Specifically, a nonconformance report, FY2001-04 was issued in October 2000 indicating that MOVER had indeterminate quality requirements, and designating the use of MOVER for training purposes only. Hold-tag 2000-34, was placed on MOVER as a control in October 2000. The status of MOVER was changed to an operational status by WTS. However, no record was found of an NCR FY2001-04 revision that formally approved and documented the change in MOVER status from training to being approved for operations. MOVER was used for inspection and sorting of TRU waste at ANL-E from January 2002 through August 2003.

### B. Abnormal Condition, Event and Alarm Response

WTS Procedure Abnormal Condition, Event, and Alarm Response Deficiencies CCP-PO-005 CCP Conduct of Operations, Revision 11, Section 4.1 requires that an investigation be conducted and appropriate action be taken when an unexpected event or series of events occurs for which the cause and consequences are not readily apparent. Section 4.5 requires that CCP personnel assume alarm conditions, gauge readings, meter readings, and analytical results are accurate until

proven otherwise, to take appropriate response actions, and to report the results of these actions to appropriate facility personnel.

Contrary to the above work process, WTS failed to stop, investigate and take appropriate actions in response to several abnormal conditions that occurred from April through August 2004 during MOVER operations at Lawrence Livermore National Laboratory. These abnormal events occurred frequently and the WTS investigation identified that workers inappropriately rationalized these events as normal conditions. Specific examples of these conditions are discussed below.

### 1. Abnormal Contamination Conditions

The WTS ALARA review for MOVER operations, WSMS-TR-02-0007, Section 3.6.2, identified that the glovebox was designed to prevent the release of radioactive material and that the operational procedures would minimize any potential for a release.

Contrary to the assumption in the ALARA review, abnormally high loose surface contamination conditions were frequently found on the glovebox seal area outside of the glovebox. In addition, PVC cutters that were used outside the glovebox by the operators to cut the bags during bag-out operations were found in the work area with high levels of contamination on several occasions. The WTS investigation report identified that the operators wiped the contaminated areas, which likely dispersed the radioactive contamination into the air. Although workers were in respirators when the airborne conditions occurred, the potential for creating airborne radiation conditions in the work area was not investigated, nor were appropriate actions taken to mitigate this concern. Workers were allowed to remove their respirators based upon an assumption that no airborne contamination existed in the work area. The bioassay results identified that workers without respirators had been exposed to airborne radioactivity on several occasions.

### 2. Abnormal Bag Seal Ring Conditions

On August 19, 2004, the bag seal ring failed to tighten properly and no replacement was located in the immediate area, although replacements were available at the LLNL site. Contrary to procedure CCP-PO-005 CCP, Conduct of Operations, the workers continued to perform work with a less than adequate bag seal ring and ultimately a bad seal on the glovebox bag. Subsequently, contamination was found on the bag-in port, indicating that the bag seal had leaked during operations.

### 3. Abnormal Ventilation System Conditions

The ventilation system was adjusted each day prior to radiological operations per instructions in CCP-TP-044, CCP Startup and Shutdown of the MOVER. The

pre-Operations Checklist identified specific limits for delta-pressure (DP) readings between the glovebox and the work area that were required to be established before operations could be performed. The checklists included a note stating that if any of the DP conditions were not in compliance, then work must be stopped and the technical supervisor notified. Contrary to this requirement, the MOVER control room alarm frequently sounded during operations, indicating that the minimum value of DP between the glovebox and work area was not met. However, the workers failed to stop work and take appropriate actions to investigate this recurring condition. The WTS investigation discovered that no inspections or preventive maintenance of the ventilation system had been performed, and the blower failed at least twice during the period between April and August 2004. When the ventilation system failed, the DP between the glovebox and work area was lost.

These violations constitute a Severity Level II problem.  
Civil penalty - \$41,250

### **III. Design and Design Basis Documentation Violations**

10 CFR 830.122 (f) requires that WTS incorporate applicable requirements and design basis in design work and design changes, identify and control design interfaces, verify or validate the adequacy of design products using individuals or groups other than those who performed the work, and verify or validate work before approval and implementation of the design.

10 CFR 830.122 (d) requires that WTS prepare, review, approve, issue, use, and revise documents to prescribe processes, specify requirements, or establish design, and to maintain those records.

Contrary to the above, WTS failed to incorporate MOVER design changes into the MOVER design documentation record. The WTS investigation identified that modifications to MOVER, after it was placed into service at ANL-E, were not incorporated into and maintained as quality records. Specifically, when MOVER was transferred to WTS, NCR 2001-04 was issued indicating that quality records were not adequate. This NCR identified that a WIPP approved design document had not been prepared, and design attributes, quality levels, and acceptance criteria had not been established. WTS, with help from Los Alamos National Laboratory, reconstituted some of the design basis and tested selective functions and systems of the MOVER. However, the WTS investigation identified that WTS failed to incorporate design changes to MOVER into the design documentation. The WTS investigation also concluded that modifications to MOVER were not incorporated into and maintained as quality records, after it was placed into service at ANL-E

This violation constitutes a Severity Level II problem.  
Civil penalty - \$41,250

#### IV. Quality Improvement Deficiencies

10 CFR 830.122 (c) requires that WTS (1) establish and implement processes to detect and prevent quality problems, (2) identify, control, and correct items, services, and processes that do not meet established requirements, and (3) identify the causes of problems and work to prevent recurrence as part of correcting the problem.

Contrary to the above, WTS failed to detect and prevent quality problems at MOVER, and after quality problems were identified by an event, failed to investigate the extent of items that did not meet established requirements and determine their causes. Specific examples are as follows:

- A. WTS operated MOVER from April 2004 through August 19, 2004. During this period several abnormal conditions occurred. However, no formal or documented investigation of these conditions was conducted, no formal causes were identified, and no preventative actions were taken. (See Section II. B. 2. of this PNOV).
- B. The August 19, 2004, continuous air monitor (CAM) alarm and discovery of unplanned exposures triggered an investigation by LLNL into the event. WTS was not an active participant in the LLNL investigation and did not initiate a separate investigation. The LLNL MOVER investigation report that was provided to WTS on September 30, 2004, raised questions about the adequacy of the MOVER design and operations. In response to these allegations, DOE Carlsbad Field Office (CBFO), by letter dated November 1, 2004, directed that WTS perform a review of the causes and contributing factors associated with the MOVER unplanned exposures. WTS submitted its response to DOE CBFO on November 24, 2004. OE evaluated the WTS causal analysis and corrective actions in this response and found that they did not represent a comprehensive investigation of this event. Several examples of problem areas that were not investigated by WTS include (1) the failure to have an inspection and replacement program for the glovebox seal clamps that were essential components to the containment function, (2) the failure to stop work when the seal clamp failed to tighten properly on August 19, 2004, prior to the CAM alarm, (3) the failure to investigate the cause of frequent contamination outside containment, and (4) the failure to stop work and investigate the frequent low DP alarms.

In addition, the LLNL investigation identified potential design concerns with the glovebox seal, bag, and clamping process. WTS took issue with this conclusion and provided comments to LLNL that resulted in minor changes to the LLNL report. Finally, on January 18, 2005, WTS initiated a more comprehensive investigation of this event. This investigation was not initiated until almost four months after the event. The untimely WTS investigation report, issued on March 30, 2005, found a number of conduct of operations deficiencies that had not been identified in the previous efforts by WTS and LLNL, and that had contributed to the unplanned exposure event.

C. WTS issued an NCR (LLNL-0062-04) on April 21, 2003, indicating that surplus bags procured (Purchase Order 107649) for MOVER operations at ANL-E had not been inspected and may have been used in operations at LLNL. These bags provide part of the containment function during glovebox operations and are required to be inspected for defects that could result in leaks. Initially these bags were not needed at ANL-E and had not been released for use due to the lack of the required receipt inspection. After completion of operations at ANL-E, the MOVER was sent to LLNL. WTS personnel released the bags and transported them to LLNL for use with MOVER based upon informal (undocumented) information from a quality assurance inspector that the necessary inspections had been performed. However, the inspections had in fact not been performed, and these bags should not have been released for use without the formal inspection approvals and documentation. WTS personnel began operations in April 2004 using the bags that had not been inspected. Subsequently, on April 21, 2004, WTS discovered they had not correctly controlled the bags and performed the required inspections. An NCR was issued and MOVER personnel were notified to stop using the bags.

These violations constitute a Severity Level II problem.  
Civil penalty - \$55,000

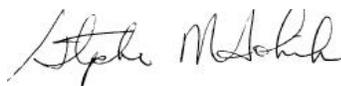
Pursuant to the provisions of 10 CFR 820.24, WTS is hereby required within 30 days of the date of this Preliminary Notice of Violation (PNOV), to submit a written reply by overnight carrier to:

Director Office of Price-Anderson Enforcement  
Attention: Office of the Docketing Clerk, EH-6, 270 Corporate Square Building,  
U.S. Department of Energy,  
19901 Germantown Road,  
Germantown, MD 20874-12190.

Copies should also be sent to the Manager of the DOE Carlsbad Field Office, and the Assistant Secretary for Environmental Management. This reply should be clearly marked as a "Reply to a Preliminary Notice of Violation" and should include the following for each violation: (1) admission or denial of the alleged violations; (2) any facts set forth which are not correct; and (3) the reasons for the violations if admitted, or if denied, the basis for the denial. Corrective actions that have been or will be taken to avoid further violations must be delineated with target and completion dates in DOE's Noncompliance Tracking System. In the event the violations set forth in this PNOV are admitted, this Notice will constitute a Final Order in compliance with the requirements of 10 CFR 820.24.

Any request for further remission or mitigation of civil penalty must be accompanied by a substantive justification demonstrating extenuating circumstances or other reasons why the assessed penalty should not be paid in full. Within 30 days after the issuance of the PNOV and proposed civil penalty, unless the violations are denied, or remission

or additional mitigation is requested, WTS shall pay the civil penalty of \$192,500 imposed under section 234a of the Atomic Energy Act by check, draft, or money order payable to the Treasurer of the United States (Account 891099) and mailed to the Director, Office of Price-Anderson Enforcement, Attention: Office of the Docketing Clerk, at the above address. If WTS should fail to answer within the time specified, the contractor will be issued an order imposing the civil penalty. Should mitigation of the proposed civil penalty be requested, WTS should address the adjustment factors described in section IX of 10 CFR 820, Appendix A.



Stephen M. Sohinki  
Director  
Office of Price-Anderson Enforcement

Dated at Washington, DC,  
this 22nd day of December

**Washington TRU Solutions  
MOVER Radiological Uptake Event  
Enforcement Conference Summary**

**October 26, 2005**

On October 26, 2005, the Department of Energy's Office of Price-Anderson Enforcement (OE) held an Enforcement Conference with Washington TRU Solutions (WTS) senior management in Germantown, Maryland. The conference was held to discuss apparent violations identified in the OE Investigation Summary Report that was provided to WTS on September 24, 2005. The scope of the OE investigation included the MOVER radiological uptake events that occurred from April to August 2004.

The conference was opened by Mr. Stephen Sohinki, Director, Office of Price-Anderson Enforcement, who provided introductions and an overview of the conference's purpose and objectives.

The WTS presentations were opened by Mr. Richard Raaz, President and General Manager WTS, who discussed his perspectives on the fundamental safety issues surrounding the problems identified in the investigation, including the unique operating framework for the Central Characterization Project (CCP) and his personal commitment to safety and improving nuclear safety performance. Mr. Raaz indicated that WTS was in general agreement with the fundamental safety deficiencies described in the OE investigation report with one exception concerning the apparent MOVER safety basis citation.

Subsequent presentations and discussions were facilitated by WTS representatives Mr. Farok Sharif, Vice President and Assistant Manager, Thomas Lex, Chief Engineer, Mr. David Haar, Manager CCP, Mr. Jon Hoff, QA Manager, Charles Conway, Manager External Programs, and Mr. William Poulson, Senior Vice President of WGI. Topics included (1) a summary of circumstances that led to the observed deficiencies, (2) WTS lessons learned, including deficiencies in translating design information into operational considerations and evaluating host site radiological controls, (3) an overview of vulnerabilities and corresponding corrective actions, and (4) extent-of-condition review results.

Mr. Raaz then concluded WTS discussions by emphasizing his commitment to ensuring completion of corrective actions, reinforcing management expectations, paying close attention to indicators and improving communication with host sites. WTS also made a request for mitigation based on their response and corrective actions to the event.

Mr. Sohinki concluded the conference by indicating that DOE would consider the information presented in its enforcement deliberations. The conference was then adjourned.

**Washington TRU Solutions  
MOVER Radiological Uptake Event**

**Enforcement Conference List of Attendees**

**October 26, 2005**

DOE – Office of Price-Anderson Enforcement

Stephen Sohinki, Director  
Howard Wilchins, Senior Litigator  
Peter Rodrik, Enforcement Specialist  
Ronald Collins, Enforcement Specialist  
Steve Hosford, Technical Advisor

DOE – Carlsbad Field Office

Lloyd Piper, Acting Manager  
Richard Farrell, PAAA Coordinator

Washington TRU Solutions

Richard Raaz, President and General Manager  
Farok Sharif, Vice President and Assistant Manager  
Thomas Lex, Chief Engineer  
David Haar, Manager CCP  
Mr. Jon Hoff, Manager QA and PAAA Coordinator  
Charles Conway, Manager External Programs

Washington Group International

William Poulson, Senior Vice President