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Lieutenant Governor

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**

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DAVE MARTIN  
Secretary

BUTCH TONGAGE  
Deputy Secretary

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

January 31, 2012

Edward Ziemianski, Acting Manager  
Carlsbad Field Office  
Department of Energy  
P. O. Box 3090  
Carlsbad, New Mexico 88221-3090

M. Farok Sharif  
Washington TRU Solutions LLC  
P. O. Box 2078  
Carlsbad, New Mexico 88221-5608

**RE: APPROVAL AND PARTIAL DENIAL OF PERMIT MODIFICATION REQUESTS TO UPDATE VENTILATION LANGUAGE, ADD A SHIELDED CONTAINER, AND REVISE THE WIPP GROUNDWATER DETECTION MONITORING PROGRAM PLAN WIPP HAZARDOUS WASTE FACILITY PERMIT EPA I.D. NUMBER NM4890139088 WIPP-11-010**

Dear Messrs. Ziemianski and Sharif:

The New Mexico Environment Department (Department) has received a Permit Modification Request to Update Ventilation Language, Add a Shielded Container, and Revise the Waste Isolation Pilot Plant (WIPP) Groundwater Detection Monitoring Program Plan, dated September 29, 2011, from the U.S. Department of Energy Carlsbad Field Office and Washington TRU Solutions LLC (the Permittees). The Permittees seek to modify the Hazardous Waste Facility Permit for the WIPP and request that the Department process the request as a Class 2 permit modification under the regulations at 40 CFR § 270.42(b). For the reasons explained below, I approve with changes two items of the modification request and deny one item.

All items in the permit modification request were subject to a sixty (60) day public comment period, which ran from October 5, 2011 through December 5, 2011. The Department received written comments on the request from eighty individuals and organizations. A large majority (77) of public comments addressed item 2, the request to add provisions to the permit for shielded containers for remotely-handled radioactive waste. The Department received only a few minor public comments regarding item 1, the request to modify the ventilation requirements

at the facility, and item 3, the request to modify the facility groundwater monitoring plan. The Department approves these modifications in accordance with 20.4.1.900 NMAC (incorporating 40 CFR § 270.42(b)). The Department has made some changes to the permit modification request. Changes include revision of the ventilation language so that the requirement for ventilation in an active remote handled waste room with workers present is not removed. This revision to the proposed language is made several section of the permit so that the requirement is consistent throughout the permit.

Under 20.4.1.900 NMAC (incorporating 40 CFR § 270.42(b)(7)), the Department may deny a Class 2 permit modification request if the modification request is incomplete; it does not comply with applicable requirements; or it fails to protect human health and the environment. During its technical review of the modification request for shielded containers, the Department noted that numerous sections in Part 3, Attachment A1, A2, C1, D, E and G must be revised to conform to the permit modification. In addition, 40 CFR 270.42(b), Appendix I, item F.3.a states changes of storage of different wastes in containers that do not require additional or different management practices from those authorized in the permit are Class 2 changes. The use of shielded containers does not fit this category as the facility will not be using different waste but will be using different containers.

Numerous public commenters identified similar issues with the modification request. Furthermore, the Department does not have sufficient information to correct the technical inadequacies in the application and approve the modifications “with changes” under 20.4.1.900 (incorporating 40 CFR § 270.42(b)(6)(i)(A)). Consequently, the Department is denying the permit modification request to add provisions for shielded containers.

Enclosed are the revised pages of the modified permit in redline-strikeout to help the reader rapidly identify each modification. Also enclosed is an electronic version of the modified permit, dated January 31, 2012. An electronic version of the modified permit has been posted for the public on the Department’s WIPP Information Page at <http://www.nmenv.state.nm.us/wipp/download.html>

The enclosed revised permit also includes the two Class 1 permit modifications submitted since November 2011. A separate letter sent January 18, 2012 addressed the specifics of those changes.

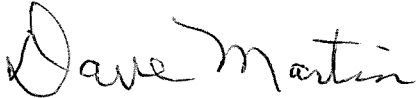
The permit modification shall become effective thirty days after notice of the decision has been served on the Permittees pursuant to 20.4.1.901.A(10) NMAC. Thus, the effective date is March 1, 2012.

The Department will provide full response to all public comments under separate cover.

Messrs. Ziemianski and Sharif  
January 31, 2012  
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If you have any questions regarding this matter, please call Trais Kliphuis at (505) 476-6051.

Sincerely,

A handwritten signature in cursive script that reads "Dave Martin". The signature is written in black ink and is positioned above the printed name and title.

Dave Martin  
Cabinet Secretary

Enclosures:

Redline/strikeout pages showing modifications

Electronic version of modified permit dated January 31, 2012

cc: J. Davis, NMED RPD  
J. Kieling, NMED HWB  
T. Kliphuis, NMED HWB  
R. Flynn, NMED OGC  
C. de Saillan, NMED OGC  
L. King, EPA Region 6  
T. Peake, EPA ORIA  
C. Walker, Trinity Engineering  
File: WIPP 2012 and Reading

