

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

COPY



IN THE MATTER OF
U.S. DEPARTMENT OF ENERGY
CARLSBAD, NEW MEXICO,
NM4890139088,
RESPONDENT.

COMPLIANCE ORDER
HWB 07-42 (CO)
(AMWTP)

ADMINISTRATIVE COMPLIANCE ORDER

The Secretary of Environment, acting through the Director of the Water and Waste Management Division of the New Mexico Environment Department (NMED), issues this Administrative Compliance Order (**Order**) to the U.S. Department of Energy (**DOE**) (referred to as Respondent), pursuant to the New Mexico Hazardous Waste Act (**HWA**), NMSA 1978 Section 74-4-10 (2001).

FINDINGS OF FACT

1. NMED is the agency within the executive branch of the government of the State of New Mexico charged with the administration and enforcement of the HWA, NMSA 1978 Section 74-4-1 et seq. (2001), and New Mexico Hazardous Waste Management Regulations (**HWMR**), 20.4.1 NMAC.
2. Respondent is DOE, who owns and co-operates the Waste Isolation Pilot Plant (**WIPP**), a mixed waste storage and disposal facility for which a permit is required under the HWMR, 20.4.1.900 NMAC (incorporating 40 CFR §270.1(a)).
3. DOE is an agency of the federal government and the owner and co-operator of WIPP.
4. Washington TRU Solutions LLC (**WTS**) is a private limited liability company under contract with DOE and the co-operator of WIPP.

5. DOE and WTS are collectively referred to as the Permittees.
6. WIPP is located approximately twenty-six (26) miles east of Carlsbad in Eddy County, New Mexico.
7. Bechtel BWXT Idaho (**BBWI**) is the contractor at the Advanced Mixed Waste Treatment Project (**AMWTP**) located at the Idaho National Laboratory (**INL**). AMWTP is a generator/storage site that characterizes, offers for certification, and ships to WIPP contact-handled (**CH**) transuranic (**TRU**) waste.
8. On October 27, 1999, NMED issued a Permit (Permit Number NM4890139088-TSDF) to the Permittees to operate a hazardous waste storage and disposal facility at WIPP.
9. From 1998 through 2006, NMED issued the following Notices of Violation (**NOV**) or Compliance Orders (**CO**) against the Permittees pursuant to the HWA and the HWMR (with summary descriptions that include some, but not all violations).

A. NOV 1998 - Failure to meet training requirements for one individual.

B. NOV 1999 - Failure to provide adequate aisle space in less than 90-day storage area; failure to label container at satellite accumulation point.

C. CO 99-04 - Failure to make hazardous waste determination.

D. CO 99-05 - Inadequate hazardous waste determination; failure to obtain a general waste analysis that complies with 40 CFR §265.13(a); storing and disposing hazardous waste without following the written waste analysis plan.

E. NOV 2001 - Submitting and putting into effect permit modifications that failed to meet the requirements for Class 1 modifications listed in Appendix I of 40 §CFR 270.42; failure to manage, store and dispose of waste as required by Permit Conditions II.C.1 Waste Analysis Plan, IV.B.2.b Prohibited Waste, and 40 CFR §264.13.

F. CO 01-08 - Storing and disposing hazardous waste without following the written waste analysis plan.

G. CO 04-07 - Storing and disposing hazardous waste without following the written waste analysis plan; failure to submit a timely written notice of noncompliance.

H. NOV 2006 - Failure to provide copies of the current Contingency Plan and all revisions to the NMED Secretary.

10. As a result of the compliance orders described above, the Permittees submitted a certification of compliance (CO 99-04), or entered into either a stipulated final order (CO 99-05, CO-01-08) or a settlement agreement (CO 04-07) to compromise and settle the matter.

11. 20.4.1.900 NMAC incorporates 40 CFR §270.30(a) which states in part, “The permittee must comply with all conditions of [its] permit[.]”

12. Permit Condition II.B.1 states in part, “The Permittees may only receive TRU mixed waste from those sites which comply with the applicable requirements of the Waste Analysis Plan (WAP) specified in Permit Condition II.C.1 and Permit Attachment B, as required by 20.4.1.500 NMAC (incorporating 40 CFR 264.13(a)) and as verified through the Permittees' Audit and Surveillance Program specified in Permit Condition II.C.2.”

13. Permit Condition II.C.3.a states, “Liquids - liquid waste is not acceptable at WIPP. Waste shall contain as little residual liquid as is reasonably achievable by pouring, pumping and/or aspirating, and internal containers shall contain less than 1 inch or 2.5 centimeters of liquid in the bottom of the container. Total residual liquid in any payload container (e.g., 55-gallon drum, standard waste box, etc.) may not exceed 1 percent volume of that container.”

14. Permit Condition II.C.3.g states, “Ignitable, corrosive, and reactive wastes – wastes exhibiting the characteristic of ignitability, corrosivity, or reactivity (EPA Hazardous Waste Numbers of D001, D002, or D003) are not acceptable at WIPP.”

15. Permit Condition II.C.3.i states, “Unconfirmed waste - any waste container that has not been subject to confirmation as specified in Permit Attachment B7 is not acceptable at WIPP. This prohibition shall not apply to waste containers accepted before confirmation activities were required by this Permit.”

16. Permit Attachment B, Section B-1c, Waste Prohibited at the WIPP Facility, states, “The following TRU mixed waste[s] are prohibited at the WIPP facility: ...liquid waste (waste shall contain as little residual liquid as is reasonably achievable by pouring, pumping and/or aspirating, and internal containers shall contain less than 1 inch or 2.5 centimeters of liquid in the bottom of the container. Total residual liquid in any payload container (e.g., 55 gallon drum or standard waste box) may not exceed 1 percent volume of that container...)...wastes exhibiting the characteristic of ignitability, corrosivity, or reactivity (EPA Hazardous Waste Numbers of D001, D002, or D003)”

17. Permit Attachment B, Section B-1c, Waste Prohibited at the WIPP Facility, also states, “Before accepting a container holding TRU mixed waste, the Permittees will perform waste confirmation activities on each waste stream shipment to confirm that the waste does not contain ignitable, corrosive, or reactive waste and the assigned EPA hazardous waste numbers are allowed for storage and disposal by this Permit.”

18. Permit Attachment B, Section B-1d Control of Waste Acceptance, states, “The Permittees will also be responsible for the review of shipping records (Section B-5) to confirm that each waste container has been prepared and characterized in accordance with applicable

provisions of this WAP. Waste characterization data shall confirm the absence of prohibited items specified in Section B-1c.”

19. Permit Attachment B, Section B-3c Radiography and Visual Examination, states, “Generator/storage sites shall perform radiography or VE of 100 percent of CH TRU mixed waste containers in waste streams except for those waste streams for which the Permittees approve a Scenario 1 or Scenario 2 Determination Request...Radiography and/or visual examination will be used, when necessary, to examine a waste container to verify its physical form. These techniques can detect liquid wastes and containerized gases, which are prohibited for WIPP disposal. The prohibition of liquids and containerized gases prevents the shipment of corrosive, ignitable, or reactive wastes.” The Permittees have not approved a Scenario 1 or Scenario 2 AK Sufficiency Determination for waste stream ID-RF-S5300-A.

20. Permit Attachment B7, Section B7-1a Permittees’ Confirmation of a Representative Subpopulation of the Waste, states, “Prior to shipment to WIPP, waste confirmation will be performed on randomly selected containers from each CH and RH TRU mixed waste stream shipment.”

21. On November 10, 1972, drum number BN10161094 was generated at RFETS (Rocky Flats Plant) Building 771, and assigned item description code (IDC) 336, Wet Combustibles. In Building 771, acid was used to dissolve solid materials containing plutonium.

22. On November 28, 2005, NMED received Waste Stream Profile Form (WSPF) ID-RF-S5300-A, RFETS combustibles and plastics stored at INL, approved by the Permittees. The IDC’s included in ID-RF-S5300-A are 330, Dry Combustibles; 336, Wet Combustibles; and 337, Plastics. The Central Characterization Project (CCP) assigned Drum BN10161094 to this waste stream.

23. On May 1, 2007, CCP performed “fast scan” real-time radiography (RTR) characterization on drum number BN10161094 and determined that the drum contained liquids in excess of WAP limits in two internal containers: two tablespoons of liquid in a plastic container and one half cup of liquid in a glass container. BN10161094 was sent back into storage to undergo remediation at a future date.

24. On June 6, 2007, the Permittees certified drum number BN10106194, from waste stream BNINW216 (first/second stage sludge), for acceptance at WIPP.

25. On or about June 6, 2007, the BBWI Transportation Certification Official (TCO) at AMWTP selected drum numbers BN10106194, BN10147752, BN10147868, and BN10149070 from waste stream BNINW216 to be overpacked in Standard Waste Box (SWB) BN10166592.

26. On or about June 10, 2007, BBWI personnel at AMWTP retrieved drum number BN10161094 instead of BN10106194 and overpacked it with the other three drums in SWB BN10166592. The Permittees certified SWB BN10166592 for acceptance at WIPP in the WIPP Waste Information System (WWIS) on June 11, 2007.

27. On June 21, 2007, the Permittees approved shipment IN070356 in the WWIS and subsequently certified it on June 23, 2007.

28. On June 23, 2007, AMWTP shipped SWB BN10166592 containing drum number BN10161094 as part of shipment number IN070356, which was tracked on manifest number 000078376GBF.

29. On June 25, 2007, the Permittees accepted shipment IN070356 at WIPP.

30. On June 27, 2007, the Permittees emplaced SWB BN10166592 in Panel 4, Room 6, Row 70.

31. The WWIS waste container report for emplaced SWB BN10166592 identified drum number BN10106194 in the list of overpacked containers. SWB BN10166592 in fact contained drum number BN10161094, rather than BN10106194.

32. On July 17, 2007, AMWTP notified the Permittees of the potential non-compliance. Also on July 17, 2007, the Permittees orally notified NMED of the potential non-compliance.

33. On July 17, 2007, the Permittees ceased emplacing all CH waste in Panel 4. At this time CH waste emplacement had reached Row 106 in Room 6.

34. On July 20, 2007, the Permittees transmitted written notification of the non-compliance to NMED. Enclosed with the letter was AMWTP-initiated Corrective Action Report (CAR) #28920, dated July 18, 2007. The CAR stated that on July 16, 2007, during a routine inventory of drums in storage, BBWI personnel at AMWTP found drum number BN10106194, contrary to records showing it had been overpacked in SWB BN10166592 and shipped to WIPP in shipment IN070356. Subsequent investigations found that drum BN10161094 had instead been overpacked in SWB BN10166592. The CAR's Corrective Action Plan (CAP) specified the following:

“Immediate Actions:

1. Suspended all payload assembly activities involving overpacks.
2. Suspended all shipments to WIPP.
3. Identified all shipments enroute to WIPP, and received at WIPP but not yet emplaced, that contained overpack payload containers. Eight shipments were identified containing a total of 21 overpack payloads, with 128 inner containers.
4. Performed a 100% verification of the eight shipments to confirm that all inner containers for all overpack payloads certified in the WWIS are accurately

identified in the AMWTP Waste Tracking System (WTS) and were traceable to each of the overpacks.

5. Evaluated the WTS container movement history and confirmed movement of all 128 containers to WMF-635 staging location for overpack.
6. All previously assembled overpack payloads remaining at AMWTP will be reverified to confirm that all inner containers for all overpack payloads are accurately identified in the AMWTP Waste Tracking System against the WWIS approved payload configuration, under the oversight of CBFO designated personnel.
7. Modify INST-OI-21, Payload Assembly and MP-TRUW-8.5, TRU Waste Certification, to incorporate DOE-CBFO directed changes.”

35. The July 20, 2007 letter also included the Root Cause Analysis Report, dated July 19, 2007, which stated that operators manually entered the wrong barcode number into the Waste Tracking System to get the location of the drum in storage, and did not ensure that the barcode labels matched the drum numbers listed in the WWIS to be overpacked. The report also states that the barcode labels on the drum were not verified against the WWIS by the Operation Technician to ensure the correct drums were overpacked in the SWB.

36. On July 25, 2007, the Permittees transmitted to NMED their “Assessment of the Potential Impacts to Human Health and the Environment from Leaving the SWB Containing Drum BN10161094 Emplaced in the WIPP.” This letter included an updated CAR #28920 which added the following to Immediate Actions for resumption of shipments:

- “8. Provide training to Operations, Transportation Certification, and Shipping personnel on INST-OI-21, Payload Assembly, MP-TRUW-8.5, Waste Certification, and an overview of TRU Program requirements for certification.”

37. The Permittees' July 25, 2007 letter concluded that "drum BN10161094 poses no risk to human health and the environment, and if allowed to remain in WIPP, WIPP will continue to be protective of human health and the environment." The letter continued, "The work associated with retrieval of the subject SWB, if required, poses additional risks of industrial accidents and radiological exposure, which increase with time as the subject SWB in Room 6 has more waste placed in front of it." This letter did not include a plan for retrieving the SWB or drum BN10161094.

38. Enclosure 1 of the Permittees' July 25, 2007 letter, "Characterization Summary for AMWTP Container Number BN10161094," stated in Section 5.2, "The materials in BN10161094 are not expected to meet the definition of corrosivity as defined in 40 CFR 261.22. According to Rocky Flats packaging procedures, absorbents (e.g., Oil-Dri or Portland cement) were added to waste having the potential of generating residual liquids (i.e., wet combustibles or plastic bottles containing liquid)."

39. On July 31, 2007, the Permittees transmitted to NMED an email entitled, "Summary of Information from Source Documentation Related to pH Analysis of Liquids," which included some of the tables in AK source document P015. The email stated that the range of pH for liquid in internal containers is 5-12 for drums belonging IDCs 330, 336, and 337, while the range of pH for drums belonging only to IDC 336 was 5-7.

40. Document CCP-AK-INL-004, "Central Characterization Project Acceptable Knowledge Summary Report for Rocky Flats Combustibles and Plastic Stored at the Idaho National Laboratory, Waste Stream ID-RF-S5300-A, Revision 0," was released May 13, 2005. The current version, Revision 2, released November 16, 2006, states, "Although residual liquids were identified in drums of combustibles and plastic (IDCs 330, 336, and 337) wastes, analyses

of the liquids indicated pH values from 5 to 12, which are not corrosive by definition (References P015, U060).”

41. AK source document P015 for waste stream ID-RF-S5300-A entitled, “TRU Waste Sampling Program: Volume 1—Waste Characterization,” includes Table 48, presenting information about four IDC 336 drums for which pH analyses were conducted on free liquids in the drums. One drum on this table is incorrectly identified as being in IDC 336, and analytical data is available for only one of the remaining IDC 336 drums, with a pH of 7. The data sheet for this drum indicated it originated in Building 776, which is not the building in which waste container BN10161094 was generated. Therefore, no pH analyses were conducted on any drums with IDC 336 generated in Building 771.

42. AK source document P061 for waste stream ID-RF-S5300-A entitled, “Waste Stream and Residue Identification and Characterization, Building 771,” identifies 33 processes in Building 771 that generated IDC 336 TRU waste streams. Of those, 24 processes used either acids or caustics that became contaminants in or on the output. Waste container BN10161094 was generated in Building 771.

43. AK source document P078 for waste stream ID-RF-S5300-A entitled, “Waste Stream and Residue Identification and Characterization, Building 776,” identifies six processes in Building 776 that generated IDC 336 TRU waste streams. Of those, none of the processes used either acids or caustics that became contaminants in or on the output. Waste container BN10161094 was not generated in Building 776.

44. AK source document U060 for waste stream ID-RF-S5300-A entitled, “Chemical Constituents in Transuranic Storage Area (TSA) Waste, Rev. 5,” states on page 30, in Table A under the column “CONSTITUENT IDENTIFIED” for IDC 336, “potential corrosives if liquids exceed the WIPP-WAC limit in waste packaged prior to 1974.” The table assigns D002 under

the column "INEEL POTENTIAL HWN." Page 18 of Rev. 1 of this document states that "any free liquid in this IDC [336] **prior to 1974** should be considered corrosive" (Emphasis in original). Finally, page 13 states, "For informational purposes during storage and potential future treatment, WIPP-noncertifiable TRU wastes that contain corrosive liquids in excess of the WIPP WAC for free liquids will be assigned the D002 designation for corrosives."

45. AK source document P024 for waste stream ID-RF-S5300-A entitled, "Content Code Assessments for INEL Contact-Handled Stored Transuranic Wastes," section 3.42 Content Code 336, states, "The type of moisture present is generally water, although decontamination solution (generally soap and water), nitric acid, or caustic solutions (unspecified) may also be present" (page 157). Page 161 continues, "Wastes generated prior to 1975 might contain residual nitric acid."

46. AK source document P024 states on page 161, "Absorbents such as Oil-Dri or Portland cement were not always added to the waste during packaging. Depending on the waste-generating area, some free liquid might be present in this waste."

47. On July 26, 2007, the Permittees resumed emplacement of CH waste in Panel 4, beginning in Room 5, and emplaced no further waste in Room 6.

48. On July 31, 2007, the Permittees transmitted to NMED *Retrieval Plan for Advanced Mixed Waste Treatment Plant Standard Waste Box BN10166592 (containing drum BN10161094) from the WIPP Repository*. The plan states that retrieval operations would pose additional risk to WIPP operating personnel. The risks include additional radiological exposure; industrial safety risks due to de-stacking of waste containers; and slipsheet failures that may occur while attempting to remove the MgO supersacks.

49. In an August 3, 2007 letter, NMED ordered the Permittees to remove SWB BN10166592 from the WIPP repository.

50. On August 13, 2007, NMED inspected retrieval progress to date in Panel 4, Rooms 5 and 6.

51. On August 16, 2007, the Permittees transmitted to NMED an e-mail containing a summary of the detailed work instruction to retrieve SWB BN10166592, which was a more detailed description than provided in the July 31, 2007 retrieval plan.

52. On August 17, 2007, the Permittees removed SWB BN10166592 from Panel 4, Room 6 and placed it in storage in the Waste Handling Building Container Storage Unit.

53. On August 18, 2007, the Permittees shipped SWB BN10166592 containing drum number BN10161094 back to INL/AMWTP.

CONCLUSIONS OF LAW

54. All preceding paragraphs are hereby incorporated by reference.

55. The Respondent is a "person" as defined in the HWA, Section 74-4.3.K, and HWMR, 20.4.1.101 NMAC (incorporating 40 CFR §260.10).

56. The Permittees manage, store, and dispose of hazardous waste as defined in the HWA, Section 74-4-3.I, and HWMR, 20.4.1.101 NMAC (incorporating relevant portions of 40 CFR §260.10).

57. DOE is the owner and co-operator of a permitted storage and disposal facility as defined in the HWMR, 20.4.1.101 NMAC (incorporating relevant portions of 40 CFR §260.10).

58. WTS is the co-operator of a permitted storage and disposal facility as defined in the HWMR, 20.4.1.101 NMAC (incorporating relevant portions of 40 CFR §260.10).

VIOLATION 1: STORING AND DISPOSING OF HAZARDOUS WASTE WITHOUT FOLLOWING THE WRITTEN WASTE ANALYSIS PLAN

59. Respondent violated the HWMR, 20.4.1.500 NMAC (incorporating 40 CFR §264.13(b)), and Permit Condition II.C.1 Waste Analysis Plan, which states, "The Permittees

shall not manage, store, or dispose TRU mixed waste at WIPP which fails to meet the characterization requirements of 20.4.1.500 NMAC (incorporating 40 CFR §264.13), as specified by this Permit.” Respondent stored and disposed container BN10161094 without following the written WAP. Respondent failed to follow the written WAP in the following manner:

- A. Respondent failed to follow the requirement of Permit Attachment B, Section B-3c, Radiography and Visual Examination, which states: “Generator/storage sites shall perform radiography or VE of 100 percent of CH TRU mixed waste containers in waste streams except for those waste streams for which the Permittees approve a Scenario 1 or Scenario 2 Determination Request. These techniques can detect liquid wastes and containerized gases, which are prohibited for WIPP disposal. The prohibition of liquids and containerized gases prevents the shipment of corrosive, ignitable, or reactive wastes.” Respondent did not ensure that AMWTP conducted radiography or VE characterization of container BN10161094 for certification purposes prior to acceptance and disposal at WIPP.
- B. Respondent failed to follow the requirement in Permit Attachment B, Section B-1d, Control of Waste Acceptance, which states: “The Permittees will also be responsible for the review of shipping records (Section B-5) to confirm that each waste container has been prepared and characterized in accordance with applicable provisions of this WAP. Waste characterization data shall ensure the absence of prohibited items specified in Section B-1c.” Container BN10161094 was not fully characterized and certified for disposal at WIPP and it contained a prohibited item, liquid.

**VIOLATION 2:
STORING AND DISPOSING OF HAZARDOUS WASTE THAT WAS NOT SUBJECT
TO CONFIRMATION**

60. Respondent violated Permit Condition II.C.3, Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC), by storing and disposing container BN10161094 which was not subject to Permittee Level TRU Waste Confirmation Processes in Permit Attachment B7. Respondent failed to comply with the confirmation processes in the following manner:

A. Respondent failed to comply with the requirement in Permit Condition II.C.3.i., Unconfirmed waste, which states, “any waste container that has not been subject to confirmation as specified in Permit Attachment B7 is not acceptable at WIPP.” Respondent accepted and emplaced container BN10161094 even though it had not been subject to confirmation. Container BN10161094 was not subject to confirmation because it was not identified as being included in any approved shipment to WIPP.

**VIOLATION 3:
STORING AND DISPOSING OF HAZARDOUS WASTE THAT FAILS TO MEET
WASTE ACCEPTANCE CRITERIA**

61. Respondent violated Permit Condition II.C.3, Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC), by storing and disposing container BN10161094 which failed to meet WAC requirements. Respondent failed to comply with the WAC in the following manners:

A. Respondent failed to comply with the requirement in Permit Attachment B, Section B-1c, Waste Prohibited at the WIPP Facility, and Permit Condition II.C.3.A., Liquids, which both state: “...waste shall contain as little residual liquid as is reasonably achievable by pouring, pumping and/or aspirating, and internal

containers shall contain less than 1 inch or 2.5 centimeters of liquid in the bottom of the container. Total residual liquid in any payload container (e.g., 55 gallon drum or standard waste box) may not exceed 1 percent volume of that container...” Respondent received and disposed container BN10161094 which contained prohibited amounts of non-residual liquid.

B. Respondent failed to comply with the requirement in Permit Condition II.C.3.g., Ignitable, corrosive, and reactive wastes, which states, “wastes exhibiting the characteristic of ignitability, corrosivity, or reactivity (EPA Hazardous Waste Numbers of D001, D002, or D003) are not acceptable at WIPP.” Based on information presented in AK source documents and lacking relevant sampling and analytical or other data to the contrary, container BN10161094 was generated by a process that requires the assignment of Hazardous Waste Number D002 for corrosivity when liquid is present in the container.

SCHEDULE OF COMPLIANCE

62. Based upon the foregoing Findings and Conclusions, Respondent is ordered to take the following corrective actions.

A. Within 30 calendar days of receipt of this Order, Respondent shall provide NMED with all correspondence, documents, and objective evidence associated with any corrective or investigative actions taken by AMWTP or the Permittees related to the packaging, loading, transportation, receipt, and/or emplacement of container BN10161094 and/or SWB BN10166592.

B. Within 30 calendar days of receipt of this Order, Respondent shall provide NMED with a plan to confirm that all certified overpack containers from any

generator/storage site contain the certified inner containers specified in the WWIS prior to approval of shipment of such overpack containers.

C. Within 30 calendar days of receipt of this Order, Respondent shall provide NMED with revised AK procedures from all generator/storage sites that require a fair and accurate assessment of potential for prohibited items (e.g., non-residual liquids, ignitables, corrosives, reactives, etc.) in waste containers prior to characterization, remediation, treatment, or certification.

CIVIL PENALTY

63. The HWA, Section 74-4-10(C)(1), authorizes the Secretary to assess a civil penalty of not more than twenty five thousand dollars (\$25,000) for each day of continued noncompliance with the HWA, HWMR, and this Order. As set forth in the attached civil penalty calculation, the Secretary assesses a civil penalty of one hundred ten thousand seven hundred dollars (\$110,700) for the violations described above. The Secretary reserves the right to recalculate this civil penalty based on evidence of additional violations and continued noncompliance with the HWA and HWMR.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

64. Respondent may request a hearing pursuant to the HWA, Section 74-4-10.H, and NMED's Adjudicatory Procedures, 20.1.5.200 NMAC, by filing a written request for hearing with the hearing clerk no later than 30 calendar days from receipt of this Order. The request for hearing shall include an answer which:

A. admits or denies each alleged finding of fact. Any alleged finding of fact that is not specifically denied shall be deemed to be admitted. Respondent may assert that they have no knowledge of any alleged finding of fact, and such finding shall be deemed to be denied;

- B. asserts any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the answer, except an affirmative defense asserting lack of subject matter jurisdiction, shall be deemed to be waived;
- C. has been signed under oath or affirmation that the information contained therein is true and correct to the best of the signatory's knowledge; and
- D. has attached a copy of this Order.

Respondent shall send their Answer and Request for Hearing, if any, to the hearing clerk at the following address:

Hearing Clerk
New Mexico Environment Department
P.O. Box 26110
1190 St Francis Drive
Santa Fe, New Mexico 87502-6110

Upon Respondent's request, the NMED Secretary shall hold a hearing. The hearing shall be governed by NMED's Adjudicatory Procedures, 20.1.5 NMAC (copy attached).

FINALITY OF ORDER

65. This Order shall become final unless Respondent files an Answer and Request for Hearing as specified above. Respondent's failure to file an Answer and Request for Hearing shall constitute an admission of the alleged findings of fact in this Order and a waiver of Respondent's right to a hearing under the HWA, Section 74-4-10.

SETTLEMENT CONFERENCE

66. Respondent may confer with NMED concerning settlement at any time, but such conference or request for a conference shall not extend or waive the deadline for filing an Answer and Request for Hearing as specified above. Respondent may confer regarding

settlement as an alternative to, or simultaneously with, a hearing on this Order. Respondent may appear pro se or through counsel at any settlement conference.

The Secretary shall approve any settlement through a stipulated final order pursuant to the conditions set forth in NMED's Adjudicatory Procedures, 20.1.5.601 NMAC. A stipulated final order shall be final, shall resolve all issues raised in this Order, shall bind all parties to this Order, and shall not be appealable.

To confer regarding settlement, contact:

James Bearzi
Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
(505) 476-6000

TERMINATION

67. Compliance with this Order does not relieve Respondent of their obligation to comply with all applicable laws and regulations. This Order shall terminate upon Respondent's certification of compliance with this Order and NMED's approval of such certification, or upon the NMED Secretary's approval of a stipulated final order.



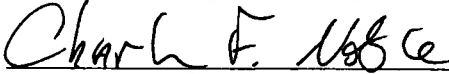
JON GOLDSTEIN, DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

DATE: 11-26-07

CERTIFICATE OF SERVICE

I certify that on November 26, 2007, I caused this Order to be sent by facsimile and first class mail, certified mail-return receipt requested, to:

David Moody, Manager
Carlsbad Field Office
U.S. Department of Energy
P.O. Box 3090
Carlsbad, NM 88221
Facsimile: (575) 234-7027



Charles F. Noble

NARRATIVE EXPLANATION OF AMOUNTS SELECTED

#1 **Storing and Disposing of Hazardous Waste without Following the Written Waste Analysis Plan**

1. Gravity Based Penalty

(a) Potential for harm: Moderate

Although the violation poses a relatively low risk of exposure, the act of certifying a container that significantly failed to follow a written waste analysis plan (WAP) and subsequently disposing of it significantly undermines the statutory and/or regulatory purposes for implementing the permitted RCRA program.

(b) Extent of Deviation: Moderate

Because the waste drum was certified without being subject to some of the important elements of the WAP (e.g., real time radiography, data generation level verification/validation, project level verification/validation, etc.), the extent of deviation from the Permit WAP is moderate.

(c) Multiple Counts: 1

Waste container BN10161094, overpacked in SWB BN10166592, was disposed of at the WIPP facility without following the written WAP.

2. Multiday Penalty: 1 day

From the multi-day penalties matrix, a multi-day penalty is presumed appropriate for the moderate/moderate category. Waste container BN10161094, overpacked in SWB BN10166592, was received for storage on June 25, 2007, and was subsequently retrieved and shipped offsite on August 18, 2007. However, the failure to fully characterize is not considered a multi-day event in this instance.

3. Good Faith/Effort to Comply: -35%

Respondent provided verbal notification of noncompliance on the day of discovery and written notification within four days of discovery, took immediate steps to prevent emplacement of additional waste that would impede retrieval, and voluntarily provided additional information regarding the nature of the waste in the noncompliant container. A decrease of 35% is deemed appropriate.

4. Negligence: None

There is no increase or decrease in the penalty due to negligence. Although Respondent may have taken inadequate precautions to preclude the acceptance of uncertified drums, they took decisive action to prevent recurrence after the violation was identified.

5. History of Noncompliance: 25%

The Respondent has a substantial history of violations with the regulations. The enforcement actions are CO 99-04, CO 99-05, CO 01-08, CO 04-07, and RCRA violations noted during NMED WIPP inspections during 1998, 1999, and 2006, resulting in notices of violation. The policy indicates an increase of 25% if there is a substantial history of noncompliance with any regulation(s).

6. Economic Benefit (considered negligible if less than \$2500):

NMED is not aware that the Respondent gained any economic benefit from storing and disposing the noncertified container.

NARRATIVE EXPLANATION OF AMOUNTS SELECTED

#2 Storing and Disposing of Hazardous Waste that Was Not Subject to Confirmation

1. Gravity Based Penalty

(a) Potential for harm: Moderate

Although the violation poses a relatively low risk of exposure, the act of certifying a container that failed to meet multiple components of the Permit's waste acceptance criteria (WAC) and subsequently disposing of it significantly undermines the statutory and/or regulatory purposes for implementing the permitted RCRA program.

(b) Extent of Deviation: Moderate

Because a single waste drum was certified but failed to be subject to confirmation, the extent of deviation from the requirement is moderate.

(c) Multiple Counts: 1

Waste container BN10161094, overpacked in SWB BN10166592, was disposed of at the WIPP facility without being subject to confirmation.

2. Multiday Penalty: 1 day

From the multi-day penalties matrix, a multi-day penalty is appropriate for the moderate/moderate category. Waste container BN10161094, overpacked in SWB BN10166592, was received for storage on June 25, 2007, and was subsequently retrieved and shipped offsite on August 18, 2007. However, the failure to be subject to confirmation is not considered a multi-day event in this instance.

3. Good Faith/Effort to Comply: -35%

Respondent provided verbal notification of noncompliance on the day of discovery and written notification within four days of discovery, took immediate steps to prevent emplacement of additional waste that would impede retrieval, and voluntarily provided additional information regarding the nature of the waste in the noncompliant container. A decrease of 35% is deemed appropriate.

4. Negligence:None

There is no increase or decrease in the penalty due to negligence. Although Respondent may have taken inadequate precautions to preclude the acceptance of containers that were not subject to confirmation, they took decisive action to prevent recurrence after the violation was identified.

5. History of Noncompliance: 25%

The Respondent has a substantial history of violations with the regulations. The enforcement actions are CO 99-04, CO 99-05, CO 01-08, CO 04-07, and RCRA violations noted during NMED WIPP inspections during 1998, 1999, and 2006, resulting in notices of violation. The policy indicates an increase of 25% if there is a substantial history of noncompliance with any regulation(s).

6. Economic Benefit (considered negligible if less than \$2500):

NMED is not aware that the Respondent gained any economic benefit from storing and disposing the noncompliant container.

NARRATIVE EXPLANATION OF AMOUNTS SELECTED

#3 **Storing and Disposing of Hazardous Waste that Fails to Meet Waste Acceptance Criteria**

1. Gravity Based Penalty

(a). Potential for harm: Moderate

Although the violation poses a relatively low risk of exposure, the act of certifying a container that failed to meet multiple components of the Permit's waste acceptance criteria (WAC) and subsequently disposing of it significantly undermines the statutory and/or regulatory purposes for implementing the permitted RCRA program.

(b) Extent of Deviation: Moderate

Because the waste drum was certified while failing to meet numerous elements of the WAC (e.g., prohibited liquids, corrosive waste, waste not subject to confirmation), the extent of deviation from the WAC is moderate.

(d) Multiple Counts: 1

Waste container BN10161094, overpacked in SWB BN10166592, was disposed of at the WIPP facility without meeting the WAC.

2. Multiday Penalty: 55 days

From the multi-day penalties matrix, a multi-day penalty is appropriate for the moderate/moderate category. Waste container BN10161094, overpacked in SWB BN10166592, was received for storage on June 25, 2007, and was subsequently retrieved and shipped offsite on August 18, 2007, for a total of 55 days.

3. Good Faith/Effort to Comply: -35%

Respondent provided verbal notification of noncompliance on the day of discovery and written notification within four days of discovery, took immediate steps to prevent emplacement of additional waste that would impede retrieval, and voluntarily provided additional information regarding the nature of the waste in the noncompliant container. A decrease of 35% is deemed appropriate.

4. Negligence: None

There is no increase or decrease in the penalty due to negligence. Although Respondent may have taken inadequate precautions to preclude the acceptance of containers that failed to meet the WAC, they took decisive action to prevent recurrence after the violation was identified.

5. History of Noncompliance: 25%

The Respondent has a substantial history of violations with the regulations. The enforcement actions are CO 99-04, CO 99-05, CO 01-08, CO 04-07, and RCRA violations noted during NMED WIPP inspections during 1998, 1999, and 2006, resulting in notices of violation. The policy indicates an increase of 25% if there is a substantial history of noncompliance with any regulation(s).

6. Economic Benefit (considered negligible if less than \$2500):

NMED is not aware that the Respondent gained any economic benefit from storing and disposing the noncompliant container.