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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 29, 2005

Dr. Inés Triay, Acting Manager
Carlsbad Field Office
Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Mr. Richard Raaz, President
Washington TRU Solutions LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-5608

**RE: SECOND NOTICE OF DEFICIENCY (NOD), CLASS 3 PERMIT MODIFICATION REQUEST
FOR REMOTE HANDLED WASTE
WIPP HAZARDOUS WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088**

Dear Dr. Triay and Mr. Raaz:

On March 5, 2003, the New Mexico Environment Department (**NMED**) issued a Notice of Deficiency (**NOD**) on the following document submitted by the U.S. Department of Energy (**DOE**) and Washington TRU Solutions LLC (collectively referred to as the **Permittees**):

- Request for Class 3 Permit Modification (Remote Handled Waste), Letter Dated June 27, 2002, Received June 28, 2002

The Permittees submitted a response to the NOD on May 5, 2003 that included a matrix indicating how each comment in the NOD was resolved, several informational attachments, and a revised permit modification request (**PMR**). NMED provided a partial response to issues raised in the May 5, 2003 transmittal letter on July 24, 2003, addressing the Permittees' concerns regarding the "legal standard" for characterization of remote handled (**RH**) waste.

The following chronology summarizes the activities related to the RH PMR that have transpired between the last submittal by the Permittees and the present day:

- Summer 2003 – NMED began to develop a second NOD based upon review of the May 5, 2003 response.
- December 1, 2003 – The President signed into law the Energy and Water Development Appropriations Act for Fiscal Year 2004, Public Law 108-137, which included language in Section 311 stipulating waste confirmation activities at WIPP. Section 311 introduced complexities into the evaluation of characterization requirements for RH waste due to potential applicability of this law to RH waste.
- January 9, 2004 – The Permittees submitted a Class 3 PMR pursuant to Section 311 that was limited to contact handled (**CH**) waste.
- December 30, 2004 – NMED issued an NOD on the Section 311 PMR, establishing a 60-day deadline for submitting a response to NMED.
- February 28, 2005 – NMED granted the Permittees' request for an extension of time to respond to the 311 NOD by March 30, 2005.
- January-March, 2005 – Starting in mid-January and continuing through March, NMED participated in numerous informal meetings with the Permittees to discuss the development of a response to the Section 311 NOD. In these discussions, the Permittees have agreed to develop a revised PMR intended both to implement the language of Section 311 and to address the characterization and disposal of RH waste at WIPP.

NMED is therefore directing the Permittees to continue development of an approach that would address both CH and RH waste characterization in a unified manner, through a consolidated response and a revised PMR. As a result, the attached NOD comments address only the non-characterization aspects of the current RH PMR, such as inspections, preparedness and prevention, contingency plan, and traffic patterns.

NMED understands that the Permittees may also wish to include other proposed changes not previously identified in the Section 311 or RH PMRs, such as a request for additional storage capacity in the Parking Area and Waste Handling Building Units and the designation of separate "holding areas" for waste containers pending Section 311 confirmation at the WIPP facility. To the extent any of these changes may supplant information in other PMRs currently before NMED, the Permittees will need to determine the appropriate course of action to ensure NMED does not consider inconsistent submittals.

NMED encourages the Permittees to continue informal discussions with NMED to seek clarification of any aspect of either this NOD or the Section 311 NOD during the development of the consolidated response and revised PMR. NMED strongly encourages the Permittees to involve interested members of the public in similar discussions and briefings during this time.

Because NMED is directing the Permittees to consolidate their responses to the Section 311 NOD and this NOD, we hereby extend the response timeframe for the Section 311 NOD, and therefore the consolidated response, until April 29, 2005. Please develop a response to all deficiencies identified in the attached NOD comments and the Section 311 NOD, and submit this consolidated response along with a revised PMR to NMED by this date. Be advised that the Permittees must include complete and robust justifications supporting the revised PMR in their response.

Dr. Triay and Mr. Raaz:

March 29, 2005

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Finally, because this revised PMR is expected to reflect a substantial departure from the original PMRs (i.e., Section 311; RH), NMED also directs the Permittees to issue a public notice for a sixty-day comment period on the revised PMR and to hold public meetings in Carlsbad and Santa Fe. Although there is no clear regulatory requirement for this public comment period, NMED expects public interest will be high in this revision. NMED notes that the Permittees have already indicated their willingness to comply with this request.

If you have any questions regarding this matter, please contact me, or have your staff contact Steve Zappe of my staff at (505) 428-2517.

Sincerely,

James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:soz

Attachment – NMED Notice of Deficiency Comments

cc: Marcy Leavitt, NMED WWMD
John Kieling, NMED HWB
Steve Zappe, NMED HWB
Bryon Pippin, NMED HWB
Tracy Hughes, NMED OGC
Chuck Noble, NMED OGC
Ashley Schannauer, NMED OGC
Tom Klein, NMED DOEOB
Laurie King, EPA Region 6
Sharon White, EPA ORIA
Connie Walker, Trinity Engineering Associates
File: Red WIPP '05

Attachment

NMED Notice of Deficiency Comments

Class 3 Permit Modification for Remote Handled Waste

NMED NOTICE OF DEFICIENCY COMMENTS
ON
CLASS 3 PERMIT MODIFICATION REQUEST
FOR REMOTE HANDLED WASTE

COMMENTS ON THE JUNE 28, 2002 PMR THAT WERE PARTIALLY OR INADEQUATELY ADDRESSED

Comment 7-2. The NOD response matrix maintenance schedule for the 41-Ton forklift specifies quarterly, semi-annual and annual maintenance. The PMR, page 7-10 indicates an hourly, quarterly, and annual maintenance schedule. Please resolve this inconsistency.

In addition, DOE in Table D-1a provides a list of procedure numbers associated with the inspection of each piece of the RH TRU equipment. However, these procedures are not included in the PMR, making it virtually impossible to evaluate the criteria the inspector uses to check the equipment. Most of these procedure numbers were associated with preoperational inspections or maintenance. Provide copies of the procedures specified in Table D-1a, or, alternatively, modify Table D-1a to include the relevant inspection criteria.

Comment 7-3. While there are several places in the text of the PMR where it would be appropriate to document the aisle space of 48 inches (e.g., page 7-7, Attachment E, E-1b, Aisle Space Requirement), the related wording indicated in the NOD response matrix to Comment 7-3 could not be located in the revised PMR. The Permittees must ensure the language specified above is included in appropriate attachments.

Comment 8-1. Inconsistencies in the descriptions of waste containers and the areas that the Permittees are proposing to use for the management of RH wastes prevent NMED from verifying the adequacy of the secondary containment volume calculations. These concerns are summarized below:

- On page 14a-7 (lines 6-12), the PMR describes an RH canister, referred to as RH-72B canister, in the text of the paragraph. On line 20-21 the PMR refers to an **RH-72B** and/or the CNS10-160B shipping cask. On page 14a-9 the PMR discusses an RH-72B shipping cask. This is very confusing. While it appears that an RH-72B canister and an RH-72B cask may not be the same, it is not clear. In addition, not all types of containers managing RH-waste are described in Section M1-1b, Description of Containers. Describe all containers, casks, canisters, and large canisters that may be used to manage RH waste.
- The terms CNS10-160B shipping cask and 10-160B shipping cask appear to be used interchangeably throughout Attachment M1, and in fact Figure M1-21 is entitled 10-160B shipping cask. The PMR should clarify if these

terms refer to the same shipping casks or are different casks. If they are different types of casks used for the management of RH waste then the PMR should address both.

In addition, the CNS10-160B and/or 10-160B are not described in Section M1-1b Description of Containers. Provide description of these containers in this section, or explain why their description is not needed here.

- Page 14a-7, line 10, indicates that “larger canisters” may be used to overpack other containers...”. These large RH canisters are not described in Section M1-1b, Description of Containers. In addition, and more importantly, these canisters were not taken into consideration when determining the secondary containment calculations for the Hot Cell and Transfer Cell. Provide both a description of the larger canisters, and include them in the secondary containment calculations.
- Page 14a-7, line 17 and elsewhere, discusses “drum carriage units” associated with the CNS10-160B shipping cask. These items are not adequately described in the PMR.
- The PMR did not address the request to provide container configuration diagrams that show the maximum amount of waste that can be managed in the rooms and cells. Provide the requested diagram configurations for all RH management units.

Comment 8-2. In response to the question to provide more detailed information on the backup systems in the RH Complex, the Permittees provided an incomplete reference to “Permit Section A-4” (which might be “Permit Attachment A, Section A-4” located in Section 4 of the response). The Permittees indicate that this section of the WHB facility description has to be modified. However, apparently no modifications were provided in Attachment E “Preparedness and Prevention” or Attachment F “Contingency Plan” as indicated in the response matrix.

Comment 8-4. Chapters D and F were not modified to contain airflow system descriptions as specified in the NOD response matrix. Revise accordingly.

Comment 9-1. 40 CFR §264.52(f) requires that the Contingency Plan include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. Since 40 CFR §264.50 (Applicability) indicates that the Subpart applies to owner and operator of all hazardous waste facilities, the PMR must provide evacuation routes and alternative evacuation routes for all regulated units. The PMR states that the WHB is not considered a normally occupied area, and evacuation routes are maintained and mapped for “normally occupied areas”.

The WHB (a regulated unit) has hazardous waste workers that are in the building and work in and around the RH-TRU handling areas (other areas of the PMR indicate that workers perform inspection and maintenance of the RH areas). Provide evacuation route and alternate evacuation route as previously requested.

Comment 10-3. The Permittees indicated that the original Part B permit application, Chapter B, Section B-4, provides substantiating data to support the use of NRC-certified shipping casks and is the basis for calculations provided in the matrix which provide calculations regarding on-site roads, new traffic conditions, and new traffic condition calculations. NMED used portions of Section B-4 to develop Permit Attachment G in the existing permit. The technical information provided in the matrix in response to traffic pattern comments is adequate, however the PMR must be revised to explicitly include this information.

Comment on Supplement 3. The Permittees need to determine whether prior NMED comments on Supplement 3, “Maximum VOC Emission Rates from RH Canisters”, are still relevant in light of the anticipated manner in which VOC emissions will be monitored under Section 311 requirements.