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May 21, 2004

Mr. R. Paul Detwiler, Acting Manager  
Carlsbad Field Office  
Department of Energy  
P.O. Box 3090  
Carlsbad, New Mexico 88221-3090

Dr. Steven Warren, President  
Washington TRU Solutions, LLC  
P.O. Box 2078  
Carlsbad, New Mexico 88221-5608

**RE: APPROVAL OF REQUEST TEMPORARY AUTHORIZATION OF PERMIT MODIFICATION ENTITLED "CONTAINER MANAGEMENT IMPROVEMENTS," (JANUARY 7, 2004) TO ALLOW THE RECEIPT AND STORAGE OF ADDITIONAL TRUPACT-IIS IN THE PARKING AREA UNIT  
WIPP HAZARDOUS WASTE FACILITY PERMIT  
EPA I.D. NUMBER NM4890139088**

Dear Mr. Detwiler and Dr. Warren:

The New Mexico Environment Department (NMED) received the aforementioned request for temporary authorization on May 21, 2004. Specifically, the U.S. Department of Energy Carlsbad Field Office and Washington TRU Solutions LLC (**the Permittees**) request temporary authorization to receive and store up to 28 TRUPACT-IIs containing transuranic mixed waste in the Parking Area Unit until 5:00 p.m. MDT on May 25, 2004. The Permittees state that this change is needed "because the waste hoist at the WIPP facility failed yesterday and the Permittees have been unable to repair it."

The regulations governing approval or denial of temporary authorization requests are specified in 20.4.1.900 NMAC (incorporating §270.42(e)(3)) and require that two independent criteria must be met:

- The authorized activities must be in compliance with the standards of 20.4.1.500 NMAC (incorporating 40 CFR §264); and
- The temporary authorization must be necessary to achieve one of five listed objectives before action is likely to be taken on the modification request.

With regard to the first criterion, NMED has reviewed the limited scope of the temporary authorization request in light of the proposed Class 3 permit modification and the existing permit. NMED believes that the proposal to increase the storage capacity of the Parking Area Unit from twelve (12) to twenty-eight (28) Contact Handled Packages is in compliance with the standards of 20.4.1.500 NMAC.

With regard to the second criterion, the justification for the objective identified in the temporary authorization request is summarized below:

- To prevent disruption of ongoing waste management activities [§270.42(e)(3)(ii)(C)] – The Permittees have already moved the maximum allowable amount of waste into storage in the Waste Handling Building. There are already 11 loaded TRUPACT-IIs in storage in the Parking Area Unit. Up to 6 trucks carrying 17 TRUPACT-IIs are expected to arrive at the WIPP facility on May 22 and 23. Because waste cannot be emplaced in the repository due to the failure of the hoist, additional storage space is required on a temporary basis to accommodate the waste in transit. The Permittees state that the hoist is likely to be back in service by May 24, 2004.

Based upon this information, NMED believes that failure to implement this temporary authorization will have a direct impact on ongoing waste management activities at WIPP.

Following review of this temporary authorization request and the relevant regulations specified in 20.4.1.900 NMAC (incorporating §270.42(e)), NMED hereby approves the request for temporary authorization allowing the maximum capacity for the Parking Area Unit to increase from 12 to 28 Contact Handled Packages and from 45 to 105 cubic meters, as specified in Permit Condition III.A.2; Permit Attachment A, Section A-4, "Facility Type"; Permit Attachment F, Section F-1, "Parking Area Container Storage Unit (Parking Area Unit)"; Permit Attachment M1, Section M1-1c(2), "Parking Area Container Storage Unit (Parking Area Unit)"; and Permit Attachment O, Section XII, "Process Codes and Design Capacities."

This temporary authorization is effective immediately and expires at 8:00 a.m., May 25, 2004. Please note that this approval of the temporary authorization request does not prejudice final NMED action on the actual modification request. Please note that the Permittees must comply with the public notice requirements of §270.42(e)(2)(iii) within seven days of submission of the temporary authorization request.

Mr. Detwiler and Dr. Warren

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If you have any questions regarding this matter, please contact James Bearzi at (505) 428-2512.

Sincerely,

*R. Curry*

Ron Curry

Cabinet Secretary

RC:brz (HWB)

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