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State of New Mexico  
**ENVIRONMENT DEPARTMENT**

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July 7, 2000

Dr. Ines R. Triay, Manager  
Department of Energy  
Carlsbad Area Office  
P.O. Box 3090  
Carlsbad, New Mexico 88221

**RE: NMED RESPONSE TO NOTICE OF VIOLATION  
NM4890139088**

Dear Dr. Triay:

On August 17, 1999 the New Mexico Environment Department (NMED) issued a Notice of Violation (NOV) as the result of an inspection conducted July 19 through 21, 1999. Based on a review of the information submitted on September 19, 1999, we have determined that violations one and two, cited in the above referenced NOV have been adequately addressed.

NMED is rescinding violation three which stated that WIPP failed to comply with the requirements for a hazardous waste tank located at the bottom of the Exhaust Shaft in the Underground Facility. (The regulatory citation quoted in the NOV was not correct. 20 NMAC 4.1.3000, which incorporates 40 CFR 262.34(a)(1)(i) was cited and is the requirement for containers. The correct citation to address tanks is either 40 CFR 262.34 (a)(1)(ii) for a Large Quantity Generator or 40 CFR 262.34(d)(3) for a Small Quantity Generator.)

NMED's decision to rescind the violation is based on a consideration and clarification of the WIPP unique situation. The WIPP uses a catch basin to capture the sporadic accumulation of mineshaft brine and then pumps the brine into 55-gallon drums. The 55-gallon containers are immediately transported to the 90-day storage area. Samples of the brine are obtained and analyzed for lead. If the sample results exceed regulatory limits, the contents of the containers are transported off site to a hazardous waste Treatment Storage Disposal Facility (TSDF). If the sample results are below the regulatory limits, the water is removed from the 90-day storage area and discharged to the facilitative lagoon system per the Discharge Plan DP-831 issued by NMED/GWQB. (This management practice is described in the Final SWMU Assessment Report January 10, 1997.)

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This catch basin is an integral part of the mine de-watering process. The catch basin is not used as a storage container. It is a collection device necessary to control the accumulation of mine water. The actual storage of the water is in the 90-day storage area. If this definition were accepted, the catch basin would not be classified as a hazardous waste tank and would not be subject to the Subpart-J requirements.

If, however, the catch basin is classified as a hazardous waste tank, the confined space in the shaft, the safety issues surrounding the entry of the shaft and the requirement to keep the basin open to capture the brine, makes management of the "hazardous waste tank" extremely unsafe and difficult. In a letter dated Nov 30, 1989 Sylvia K. Lowrance, Director, EPA Office of Solid Waste wrote the following:

*As you are aware, the primary intent of the hazardous waste tank system standards is to prevent the migration of hazardous waste or accumulated liquid into the environment.....*

*Although EPA has strong concerns about using operational controls, e.g., pumps, as a means of achieving complete secondary containment for hazardous waste tank systems, we believe that certain situations may warrant their use. In locations where, for example, space considerations restrict the area available for constructing an adequately sized secondary containment structure or make retrofitting infeasible, operational controls may be appropriate.....*

In unique situations where the Subpart-J requirements can not be met, the use of operational controls may be deemed acceptable. The current management practices meet the intent of preventing the migration of hazardous waste into the environment, protecting human health and assuring that the brine, when it exceeds the regulatory standards, is managed according to the hazardous waste regulations.

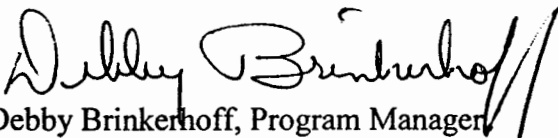
NMED conditionally approves the current management practice of capturing the brine in the catch basin and storing the brine in 55-gallon containers until the regulatory status of the liquid is known. This approval is conditional upon the following requirements:

- ◆ Monitor the accumulation volume and the regulatory status of the liquid.
- ◆ Provide an annual liquid accumulation report for the next three years.
- ◆ Project the expected accumulation of a twenty-five year, twenty-four hour rain event and provide to our office within thirty days.

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Thank you for your thorough and prompt response to this matter. If you have any questions, please contact me (505) 827-1508 or Connie Pasteris (505) 827-1514.

Sincerely,

  
Debby Brinkerhoff, Program Manager  
Compliance and Technical Assistance Program

Cc: Ken Smith, NMRD District III Office  
Connie Pasteris, Compliance and Technical Assistance Program  
WIPP 1999 File