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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 7, 2003

Dr. Inés Triay, 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: REQUEST FOR INFORMATION REGARDING OVERPACKING OF NON-TRANSURANIC MIXED WASTE – CORRECTED COPY WASTE ISOLATION PILOT PLANT EPA I.D. NUMBER NM4890139088

Dear Drs. Triay and Warren:

On January 24, 2003, the US Department of Energy (DOE) and Washington TRU Solutions LLC (WTS) (the Permittees) disposed of six standard waste boxes (SWBs) from the Savannah River Site (SRS) in Panel 1 of the Waste Isolation Pilot Plant (WIPP), as reported in the WIPP Waste Information System (WWIS) database. These SWBs were used to overpack four 55-gallon drums each. On February 19, 2003, the Permittees disposed of three ten-drum overpacks (TDOPs) from SRS, also in Panel 1, representing the first emplacement of TDOPs in the WIPP repository.

Between January 24 and October 6, 2003, the Permittees disposed of 547 overpack containers (112 SWBs and 435 TDOPs), representing a total population of 4791 overpacked 55-gallon drums from six mixed waste streams from three generator/storage sites: SRS, Argonne National Laboratory-East (ANL-E), and Los Alamos National Laboratory (LANL). Of these 4791 overpacked 55-gallon drums, 3350 drums (approximately 70% of the total) were radioassayed and reported having a transuranic (TRU) alpha activity concentration less than or equal to 100 nCi/g, which is below the threshold defining TRU waste in the WIPP Land Withdrawal Act (LWA), P.L. 102-579, as amended by P.L. 104-201 (non-TRU mixed waste).

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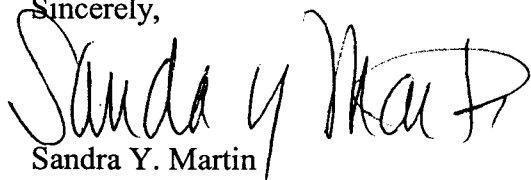


The New Mexico Environment Department (NMED) understands that DOE engaged the US Environmental Protection Agency Office of Radiation and Indoor Air (EPA) in discussions beginning in June 2003 regarding DOE policies and practices in determining whether waste meets the definition of TRU waste and is therefore eligible for disposal at WIPP. NMED received a copy of a letter dated August 8, 2003 from EPA in which they concluded, among other things, that "making a TRU waste determination on the basis of payload containers is not precluded by the WIPP LWA, EPA's regulations, or DOE's policies and procedures." However, it appeared that EPA did not consider the WIPP Hazardous Waste Facility Permit (Permit) issued by NMED in reaching this conclusion.

NMED is hereby requesting information supporting the Permittees' interpretation of Permit requirements regarding overpacking of non-TRU mixed waste. Please submit a timeline and all relevant correspondence, internal memos, position papers, etc., documenting the justification, history, and development of the "waste stream payload management" or similar concept associated with the practice of placing containers of non-TRU mixed waste in overpack containers along with containers of TRU mixed waste for the purpose of aggregating measurements to meet the waste acceptance criteria established under the Permit. This information should fully document the apparent departure from the DOE policy that was in effect complex-wide between March 2000 and December 2002, where individual containers that assayed at or below 100 nCi/g were designated as unacceptable for disposal at WIPP. Also, please ensure such submitted information addresses the requirements found in Permit Conditions II.C.3.c and III.C.1.c.

Upon receipt and review of this information, NMED will schedule a meeting to discuss your position on this matter. If you have any questions, please contact me at (505) 428-2512.

Sincerely,



Sandra Y. Martin
Acting Chief
Hazardous Waste Bureau

SYM:soz

cc: Charles Lundstrom, NMED WWMD
Steve Zappe, NMED HWB
Tracy Hughes, NMED OGC
Chuck Noble, NMED OGC
Laurie King, EPA Region 6
Betsy Forinash, EPA ORIA
Connie Walker, Trinity Engineering
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