

ENTERED



BILL RICHARDSON
Governor

DIANE DENISH
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

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RON CURRY
Secretary

JON GOLDSTEIN
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

November 14, 2008

David Moody, Manager
Carlsbad Field Office
Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Farok Sharif, President
Washington TRU Solutions LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-5608

**RE: NOTICE OF VIOLATION
WASTE ISOLATION PILOT PLANT, EPA I.D. # NM4890139088**

Dear Dr. Moody and Mr. Sharif:

On November 16, 2007, the New Mexico Environment Department (NMED) Groundwater Quality Bureau and Hazardous Waste Bureau received verbal reports from Mr. Jody Plum of the Department of Energy's Carlsbad Field Office (CBFO) regarding a discharge on November 9, 2007 of approximately 150 gallons of brine from the Exhaust Shaft Intercept Borehole collection system into the H-19 Evaporation Pond at the Waste Isolation Pilot Plant (WIPP) that exceeded the regulatory limit of 5 mg/L for lead. NMED subsequently received a written notification of discharge dated November 20, 2007 and a written report on the incident dated November 30, 2007. On January 18, 2008, NMED requested information and supporting documentation associated with this discharge from CBFO and Washington TRU Solutions LLC (jointly, the Permittees). The response to this request (the Response) was received by NMED on February 25, 2008.

Upon review of the Response, NMED has determined that the Permittees have violated the New Mexico Hazardous Waste Management Regulations (20.4.1 NMAC), as well as the New Mexico Ground and Surface Water Protection Regulations (20.6.2 NMAC) and Condition 3 of the WIPP Ground Water Discharge Permit Renewal, dated April 29, 2003, as specified below:

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1. 20.4.1.900 NMAC (incorporating 40 CFR 270.1(c)) states: "RCRA requires a permit for the 'treatment,' 'storage,' and 'disposal' of any 'hazardous waste' as identified or listed in 40 CFR part 261. The terms 'treatment,' 'storage,' 'disposal,' and 'hazardous waste' are defined in §270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit."

20.4.1.900 NMAC (incorporating 40 CFR 270.10(a)) states: "Any person who is required to have a permit... shall complete, sign, and submit an application to the Director as described in this section and §§270.70 through 270.73."

The Permittees disposed of approximately 150 gallons of characteristic hazardous waste (D008) in the H-19 Evaporation Pond, an unpermitted disposal unit in violation of 20.4.1.900 NMAC (incorporating 40 CFR 270.1(c)).

2. 20.4.1.800 NMAC (incorporating 40 CFR 268.34(a)) states: "Effective August 24, 1998, the following wastes are prohibited from land disposal: the wastes specified in 40 CFR Part 261 as EPA Hazardous Waste numbers D004–D011 that are newly identified (i.e. wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure)..."

20.4.1.800 NMAC (incorporating 40 CFR 268.34(f)) states, "...If the waste contains constituents (including underlying hazardous constituents in characteristic waste) in excess of the applicable Universal Treatment Standard levels of §268.48 of this part, the waste is prohibited from land disposal, and all requirements of part 268 are applicable..."

The Permittees disposed of approximately 150 gallons of characteristic hazardous waste (D008) in the H-19 Evaporation Pond without treating the waste to meet appropriate treatment standards specified in 20.4.1.800 NMAC (incorporating 40 CFR part 268, subpart D) in violation of 20.4.1.800 NMAC (incorporating 40 CFR 268.34).

3. 20.6.2.3104 NMAC states: "Unless otherwise provided by this Part, no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary. When a discharge permit is issued, discharges must be consistent with the terms and conditions of the permit."

Condition 3 of the Ground Water Discharge Permit Renewal (DP-831), dated April 29, 2003 states: "The permittee is authorized to discharge up to 8,000 gallons per day of non-hazardous brine water generated from mine dewatering activities, pumping of ground water wells, and from other non-hazardous sources to the synthetically lined H-19 evaporation pond."

The Permittees disposed of approximately 150 gallons of characteristic hazardous waste D008 in the H-19 Evaporation Pond in violation of Ground Water Discharge Permit Renewal (DP-831) Condition 3.

In accordance with 74-4-10 NMSA 1978, NMED may: (1) issue a Compliance Order requiring compliance immediately or within a specified time period, or assess a civil penalty for any past or current violations of up to \$10,000 per day of non-compliance with each violation, or both; or (2) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction. Any such order may include a suspension or revocation of any permit issued by NMED.

In accordance with 74-6-10 NMSA 1978, NMED may: (1) issue a Compliance Order requiring compliance immediately or within a specified time period, or assess a civil penalty for any past or current violations of up to \$15,000 per day of non-compliance with each violation, or both; or (2) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction. Any such order may include a suspension or revocation of any permit issued by NMED.

Due to the nature and extent of the violations listed above, NMED will propose a civil penalty for these violations in its settlement offer, which we are sending you by separate letter.

NMED requires that the Permittees submit to NMED within fifteen (15) days of receipt of this letter evidence that all corrective actions associated with the two findings identified in Audit I08-03, *Hydrology and Water Management*, have been completed, and that all corrective actions recommended in the *WIPP Discharge to Evaporation Pond H-19 Root Cause Analysis Report* have been implemented. NMED also requests a written description of any actions that the Permittees have taken since the Response to address the violations described above, and a schedule for implementation for any actions not yet completed.

Any action taken in response to this letter does not relieve the Permittees of their obligation to comply with any other applicable laws and regulations.

If you have any questions regarding this letter, please contact Art Vollmer of at (505) 476-6004 regarding hazardous waste regulation violations, and Clint Marshall at (505) 827-0027 regarding the Ground Water Discharge Permit violation. Please address any written response to the attention of Art Vollmer and Clint Marshall at the addresses on the letterhead.

Dr. Moody and Mr. Sharif
November 14, 2008
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Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau



William C. Olson
Chief
Ground Water Quality Bureau

JPB:soz

cc: Art Vollmer, NMED HWB
Chuck Noble, NMED OGC
Mary Ann Menetrey, NMED GWQB
Clint Marshall, NMED GWQB
Steve Zappe, NMED HWB
File: Red WIPP '08 and HWB Library file #0549