

COPY



STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
v.)
UNITED STATES DEPARTMENT)
OF ENERGY,)
Respondent.)

NO. HWB 07-42 (CO)
(AMWTP)

STIPULATED FINAL COMPLIANCE ORDER

The New Mexico Environment Department ("Department") and Respondent the United States Department of Energy ("DOE"), pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the Compliance Order issued by the Department to Respondent on November 26, 2007 (the "Compliance Order") on the terms and conditions specified in this Stipulated Final Compliance Order ("Stipulated Order").

I. BACKGROUND

A. PARTIES

1. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act, ("HWA"), NMSA 1978, §§ 74-4-1 to 74-4-14, and the Hazardous Waste Management Regulations ("HWMR"), 20.4.1 NMAC, including assessing civil penalties for violations thereof.

2. Respondent is DOE, who is a department of the United States government and the owner and operator of the Waste Isolation Pilot Plant ("WIPP"), a mixed waste storage and disposal facility located approximately 26 miles east of Carlsbad in Eddy County, New Mexico,

for which a permit is required under the HWMR, 20.4.1.900 NMAC, incorporating 40 CFR §270.1(a).

B. HISTORY

3. On October 27, 1999, the Department issued a hazardous waste facility permit, No. NM4890139088-TSDF (the "Facility Permit"), for the storage and disposal of mixed transuranic waste at WIPP, pursuant to section 74-4-4.2(C) of the HWA.

4. On June 25, 2007, Respondent accepted shipment IN070356 from the Advanced Mixed Waste Treatment Project ("AMWTP") at WIPP. This shipment included Standard Waste Box ("SWB") BN10166592 that had been used to overpack drum number BN10161094, which had not been characterized in accordance with the written waste analysis plan in the Facility Permit and which failed to meet the waste acceptance criteria in the Facility Permit.

5. On July 17, 2007, AMWTP notified Respondent of the potential non-compliance. Also on July 17, 2007, Respondent orally notified the Department of the potential non-compliance.

6. On July 20, 2007, Respondent transmitted written notification of the non-compliance to the Department.

7. In an August 3, 2007 letter, the Department ordered Respondent to remove SWB BN10166592 from the WIPP repository.

8. On August 17, 2007, Respondent removed SWB BN10166592 from Panel 4, Room 6 and placed it in storage in the Waste Handling Building Container Storage Unit.

9. On August 18, 2007, Respondent shipped SWB BN10166592 containing drum number BN10161094 back to AMWTP.

10. On November 26, 2007, the Department issued a Compliance Order to Respondent alleging violations of the HWA, the HWMR, and the Facility Permit.

11. On December 20, 2007, Respondent filed an "Answer to Compliance Order." Respondent did not request a hearing but did contest the assessment of penalties. Respondent also submitted documentation intended to satisfy the Schedule of Compliance in the Compliance Order.

C. ALLEGED VIOLATIONS

12. The Department alleged the following violations in the Compliance Order:

a. Respondent violated the HWMR, 20.4.1.500 NMAC (incorporating 40 CFR §264.13(b)), and Permit Condition II.C.1 Waste Analysis Plan, which states, "The Permittees shall not manage, store, or dispose TRU mixed waste at WIPP which fails to meet the characterization requirements of 20.4.1.500 NMAC (incorporating 40 CFR §264.13), as specified by this Permit." Respondent stored and disposed container BN10161094 without following the written waste analysis plan.

b. Respondent violated Permit Condition II.C.3, Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC), by storing and disposing container BN10161094 which was not subject to Permittee Level TRU Waste Confirmation Processes in Permit Attachment B7.

c. Respondent violated Permit Condition II.C.3, Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC), by storing and disposing container BN10161094 which failed to meet waste acceptance criteria requirements.

II. COMPROMISE AND SETTLEMENT

13. The parties enter into this Stipulated Order to settle and completely resolve the violations alleged in the Compliance Order, and to avoid further litigation and expense. This Stipulated Order shall not be construed as an admission by Respondent of the allegations.

14. In compromise and settlement of the violations alleged in the Compliance Order, the parties agree that the Respondent shall pay a civil penalty and implement a schedule of compliance as follows:

A. CIVIL PENALTY

15. Respondent agree to pay a civil penalty of \$110,700 to resolve all the violations alleged in the Compliance Order. Respondent shall pay the civil penalty to the State of New Mexico within 30 days after the effective date of this Stipulated Order. Payment shall be by certified check or other guaranteed negotiable instrument, payable to the *State of New Mexico*, and shall be sent to the Department at the following address:

James P. Bearzi
Chief, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

A copy of the transmittal letter shall be sent to Charles F. Noble, counsel for the Department.

If Respondent fails to make timely and complete payment, Respondent shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-

4.

B. SCHEDULE OF COMPLIANCE

16. Within 30 days from the effective date of this Stipulated Order, Respondent shall provide the Department with a plan for its review and approval to independently confirm that all

certified overpack containers from any generator/storage site contain the certified inner containers specified in the WWIS prior to approval of shipment of such overpack containers.

17. Within 30 days from the effective date of this Stipulated Order, Respondent shall provide the Department evidence of training for Acceptable Knowledge (“AK”) personnel at generator/storage sites of enhanced implementation of existing procedures that explicitly requires an accurate assessment in AK summary reports of the potential for prohibited items (e.g., non-residual liquids, ignitables, corrosives, reactives) in waste containers prior to characterization, remediation, treatment, or certification.

IV. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

18. Except as expressly provided in Paragraph 19 of this Stipulated Order, the Department reserves the right to take any action, administrative or judicial, civil or criminal, to enforce the requirements of the HWA, the HWMR, the Facility Permit, or this Stipulated Order. In any such action, DOE reserves the right to assert any defenses that they may have.

B. COVENANTS NOT TO SUE

19. The Department covenants not to sue or take any administrative or civil action against DOE for the violations of the HWA, the HWMR, and the Facility Permit alleged in the Compliance Order.

20. DOE covenants not to sue the State of New Mexico for any claims arising from the Compliance Order.

C. EFFECTIVE DATE

21. This Stipulated Order shall become effective on the date it is approved and signed by the Department Secretary.

D. INTEGRATION

22. This Stipulated Order merges all prior written and oral communications between or among the parties concerning the subject matter of this Stipulated Order, contains the entire agreement among the parties, and shall not be modified without the express written agreement of the parties.

E. BINDING EFFECT

23. This Stipulated Order shall be binding on the Department and its successor agencies, and on DOE and its successor agencies.

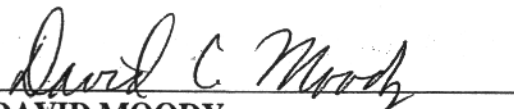
F. AUTHORITY OF SIGNATORIES

24. Each person executing this Stipulated Order represents that he or she has the authority to bind the party he or she represents to this Stipulated Order, and such representation shall be legally sufficient evidence of actual or apparent authority to bind such party to this Stipulated Order.

For the NEW MEXICO ENVIRONMENT DEPARTMENT:

By:  Date: 3.26.08
JON GOLDSTEIN
ACTING DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

For the UNITED STATES DEPARTMENT OF ENERGY:

By:  Date: 3/26/08
DAVID MOODY,
MANAGER
CARLSBAD FIELD OFFICE
DEPARTMENT OF ENERGY
P.O. BOX 3090
CARLSBAD, NEW MEXICO 88221-3090

FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Stipulated Order, agreed to by the Department and by Respondent, the DOE and WTS, is hereby **APPROVED** as a **FINAL ORDER**.



RON CURRY
SECRETARY OF ENVIRONMENT

Date: 3/26/08