

January 22, 2009

Mr. David Moody, Manager
Carlsbad Field Office
U.S. Department of Energy
P.O. Box 3090
Carlsbad, NM 88221

SUBJECT: REVIEW OF 2008 WASTE ISOLATION PILOT PLANT BIENNIAL
ENVIRONMENTAL COMPLIANCE REPORT

Dear Mr. Moody:

I am responding to your letter dated October 27, 2008, that transmitted pertinent parts of the U.S. Department of Energy's (DOE's) report entitled, "Waste Isolation Pilot Plant (WIPP) Biennial Environmental Compliance Report." As stated in your letter, DOE is periodically required to submit to the U.S. Environmental Protection Agency and the State of New Mexico documentation of continued compliance with applicable Federal laws pertaining to the public health and the environment. Among the laws referenced in the report is Section 16(a) of the WIPP Land Withdrawal Act, which declares that "no transuranic waste may be transported by or for the Secretary to or from WIPP, except in packages -- (1) the design of which has been certified by the Nuclear Regulatory Commission; and (2) that have been determined by the Nuclear Regulatory Commission to satisfy its quality assurance requirements."

In your letter, you stated that the Compliance Report discusses compliance with the applicable laws administered by the U.S. Nuclear Regulatory Commission (NRC) during April 1, 2006, to March 31, 2008. In general, NRC does not have regulatory authority over DOE. The NRC regulations that apply to WIPP are the relevant sections of 10 CFR Part 71, promulgated under the authority of the Atomic Energy Act of 1954, as amended (AEA). These requirements pertain to the certification of packages for the transport of radioactive material and quality assurance programs as applied to transportation packages.

NRC has certified the design of four packages for DOE's use in transporting transuranic waste to WIPP. Certificate of Compliance No. 9218 was issued to DOE on August 30, 1989 for Model No. TRUPACT-II. The NRC approved several amendments to the certificate, most recently Revision No. 18, issued on July 19, 2005. The certificate has an expiration date of August 31, 2009. On March 3, 2000, NRC certified the design for DOE's transport package for remote-handled transuranic waste, the Model No. RH-TRU 72-B (Certificate of Compliance No. 9212). NRC has approved several amendments and a renewal to this certificate. The renewal, Revision No. 4, of RH-TRU 72-B Certificate of Compliance dated July 28, 2006, was issued as a "-96" Certificate of Compliance and has an expiration date of February 28, 2010. On November 2, 2000, NRC certified a third package design for transuranic waste, the Model No. HalfPACT Waste Shipping Container (Certificate of Compliance No. 9279). The renewal of the Certificate of Compliance for HalfPACT approved on October 19, 2005 (Revision No. 4) has an expiration date of October 31, 2010. The CNS 10-160B (Certificate of Compliance No. 9204) has been authorized for shipment of certain transuranic wastes. The certificate dated

D. Moody

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September 26, 2007 (Revision No. 12) for the CNS 10-160B package was issued to EnergySolutions and has an expiration date of October 31, 2010.

We have conducted six quality assurance inspections of the fabrication activities for TRUPACT-II and RH-TRU 72-B packages. From these inspections, we determined that the quality assurance program was satisfactorily implemented and that the quality assurance requirements of 10 CFR Part 71 had been met. Furthermore, when TRUPACT-III fabrication commences, we plan to conduct inspections at that time.

In light of Section 16(a) of the WIPP Land Withdrawal Act, we reviewed our records and relevant portions of Chapter 14.0 of the WIPP Biennial Environmental Compliance Report (BECR). Based on our records and our review of those sections of the BECR, we consider DOE to be in compliance with Section 16(a) of the WIPP Land Withdrawal Act as evaluated against applicable sections of 10 CFR Part 71, promulgated under the authority of the AEA.

If you have any questions regarding this matter, please contact me at 301-492-3300.

Sincerely,

/RA/

E. William Brach, Director
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

Docket Nos: 71-9212, 71-9218
71-9279, 71-9204

cc: Susan McCauslin, DOE Carlsbad Field Office
Nick Stone, EPA Region 6

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Docket Files 71-9218, 71-9279, 71-9212, 71-9204 PUBLIC SFPO r/f NMSS r/f

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