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RYAN FLYNN
Cabinet Secretary
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Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 7, 2014

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

Robert L. McQuinn, Project Manager
Nuclear Waste Partnership, LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-2078

**RE: WIPP NITRATE SALT BEARING WASTE CONTAINER ISOLATION PLAN
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Messrs. Franco and McQuinn:

On July 30, 2014, the New Mexico Environment Department (“NMED”) received written notification that the Department of Energy (“DOE”) and Nuclear Waste Partnership, LLC (“NWP”; collectively, with DOE the “Permittees”) “are provisionally applying EPA Hazardous Waste Number (code) D001 for the characteristic of ignitability to some nitrate salt bearing waste containers that have been disposed at the WIPP facility.”

The notification states that the assignment “affects up to 368 containers from Los Alamos National Laboratory waste stream LA MIN.02-V.001” and lists the general locations of those containers. NMED is requiring additional information regarding this notification per WIPP Permit Section 1.7.8. The Permittees shall address the items enumerated below and submit this information to NMED by September 5, 2014.

1. The Permittees shall describe the regulatory basis for “provisionally” assigning the EPA Hazardous Waste Number D001. NMED is not aware that this approach is supported by regulations or EPA guidance documents. If there are such provisions, the Permittees shall provide copies of or links to such supporting documents.

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2. The Permittees shall provide a timeline detailing the series of events leading up to and including the date of identification of the discrepancy. Since the discrepancy was not resolved within 15 days of receiving the waste, 40 CFR 264.72(c) requires the Permittees to submit "a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue." *See also* WIPP Permit Attachment C, pp. C-22-23. The Permittees shall provide the above reference and required documents.
3. The Permittees shall identify the specific location of the currently identified waste containers that have the "provisional" assignment of EPA Hazardous Waste Number D001.
4. The Permittees shall thoroughly describe and provide the reasoning and analyses for the speculation that the nitrate salt bearing waste is an oxidizer and the subsequent assignment of EPA Hazardous Waste Number D001.
5. The Permittees shall provide an analysis of permit requirements and compliance regarding the assignment of an EPA Hazardous Waste number to only part of a waste stream. This analysis shall include a review of WIPP Permit Section C-1a which states "TRU mixed waste destined for disposal at WIPP will be characterized on a waste stream basis."

If you have any questions or concerns, please contact Trais Kliphuis at (505) 476-6051 or John Kieling at (505) 476-6035

Sincerely,



Ryan Flynn
Secretary
New Mexico Environment Department

cc: T. Blaine, Director, NMED EHD
J. Kendall, NMED OGC
J. Kieling, NMED HWB
S. Pullen, NMED HWB
T. Kliphuis, NMED HWB
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