



Michelle Lujan Grisham
Governor

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**NEW MEXICO
ENVIRONMENT DEPARTMENT**

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 11, 2020

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

Sean Dunagan, Project Manager
Nuclear Waste Partnership LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-2078

**RE: INFORMATION REQUEST REGARDING EXPIRATION OF TEMPORARY AUTHORIZATION
FOR CLASS 3 PERMIT MODIFICATION
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Messrs. Knerr and Dunagan:

On November 18, 2020, the New Mexico Environment Department (“NMED”) denied the September 9, 2020 Temporary Authorization Re-Issuance Request submitted by the Department of Energy (“DOE”) and Nuclear Waste Partnership (“NWP”) (collectively the “Permittees”) to continue activities associated with the Class 3 Permit Modification Request (“PMR”) entitled “*Excavation of a New Shaft and Associated Connecting Drifts.*” The Temporary Authorization was previously approved on April 24, 2020 and expired on October 24, 2020.

On October 23, 2020, NMED directed the Permittees to halt all construction activities associated with the Temporary Authorization by 11:59 pm on October 24, 2020. On October 29, 2020, the Permittees verbally informed NMED that construction activities associated with the Temporary Authorization had been halted by 11:59 pm on October 24, 2020.

On November 5, 2020, the Permittees notified NMED of the implementation of Scenario 1 as described in their Response to Information Request Regarding Schedule and Work Stoppages for the Excavation of Shaft #5, dated October 16, 2020.

As stated in NMED's November 18, 2020 denial, the Permittees must adhere to their "Contingency Plan Scenario 1: No Reissuance of Temporary Authorization" until the Class 3 PMR process has concluded. This request seeks information on the Permittees' shut down of Temporary Authorization activities, implementation of Scenario 1, and on-going surface activities associated with the shaft project.

Pursuant to Section 74-4-4.3.A of the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-4-1 to -14, NMED hereby requests the following information:

1. Provide details of the steps taken to shut down the Temporary Authorization activities by 11:59 pm on October 24, 2020, including any specific procedures or processes employed to accomplish this.
2. The timeline given in Contingency Plan Scenario 1, as referenced in your November 5, 2020 letter, is outdated. Provide details of the implementation of Contingency Plan Scenario 1 including updated date/time references.
3. Provide other details of the current and anticipated state of activity at the shaft site while the Class 3 process is on-going, including any surface activities, preventive maintenance, and inspections associated with the shaft project. Provide applicable date references and any delineated maintenance/inspection schedules.

Included with the response should be a certification of the responsible official stating the following:

"I certify under penalty of law that this information in this letter and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Your compliance with this information request is mandatory. Failure to respond fully and truthfully within the time specified herein, or adequately justify such failure to respond, may result in an enforcement action by NMED pursuant to Section 74-4-10 of the HWA. The HWA provides for the imposition of civil penalties for non-compliance. Section 74-4-12 of the HWA provides that any person who violates any provision of the HWA "may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs, *see also* Sections 74-4-10(A) and (B) of the HWA. The HWA also provides for criminal fines and imprisonment for knowingly omitting material information or making a false statement or representation in any document use for compliance with Section 74-4-11(A)(3) of the HWA.

The Permittees may claim confidentiality of any information required by this information request pursuant to the requirements of Sections 74-4-4.3(D) and (F) of the HWA, and 20.4.1.100 NMAC (incorporating 40 CFR 260.2). Such a claim must be made at the time of submittal. Any records, reports or information provided in response to this request shall be available to the public upon request if no claim of confidentiality is asserted by the Permittees.

Messrs. Knerr and Dunagan
December 11, 2020

Please submit your response by January 10, 2021. If you have any questions regarding this information request, please contact Ricardo Maestas of my staff at (505) 476-6050.

Sincerely,

for
Kevin M. Pierard, Chief
Hazardous Waste Bureau

cc: S. Stringer, NMED RPD
R. Maestas, NMED HWB
D. Biswell, NMED HWB
M. McLean, NMED HWB
C. Catechis, NMED DOE-OB
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File: WIPP '20