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May 3, 2023

Mark Bollinger, Acting Manager
Department of Energy - Carlsbad Field Office
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Ken Harrawood, Program Manager
Salado Isolation Mining Contractors LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-2078

**Re: Request for Information
Concerning Generator Site Technical Review Reporting
Waste Isolation Pilot Plant
EPA I.D. Number NM4890139088**

Dear Messrs. Bollinger and Harrawood,

The New Mexico Environment Department (NMED) is in receipt of the following Final Audit Reports that are currently missing information regarding Generator Site Technical Reviews (GSTRs) at the corresponding generator/storage sites:

- 1) Idaho National Laboratory A-22-07 submitted April 19, 2022;
- 2) Oak Ridge National Laboratory A-22-10 submitted June 21, 2022;
- 3) Lawrence Livermore National Laboratory A-22-18 submitted October 6, 2022;
- 4) Los Alamos National Laboratory A-22-12 submitted November 30, 2022;
- 5) Argonne National Laboratory A-22-16 submitted December 13, 2022;
- 6) Advanced Mixed Waste Treatment Project A-23-01 submitted December 19, 2022; and
- 7) Savannah River Site A-23-07 submitted February 23, 2023.

The U.S. Department of Energy (DOE) Carlsbad Field Office submitted the above Final Audit Reports as required by the Waste Isolation Pilot Plant (WIPP) Hazardous Waste Facility Permit (Permit), as specified in Permit Part 2, Section 2.3.2.3. NMED is currently unable to complete our review of the above referenced in-house Final Audit Reports due to the missing GSTR information.

On May 23, 2022, NMED received the Response to the Request for Information Concerning Attachment A of the 2016 Settlement Agreement and Stipulated Final Order (SFO) (May 23, 2022 RFI Response) [AR 220520] submitted by the Permittees. This prior RFI, issued by NMED on April 8, 2022, [AR 220404] contained requests for specific information related to GSTRs at generator/storage sites.

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Background:

On January 22, 2016, the SFO was issued between NMED and the Permittees to address WIPP Permit violations resulting from issues identified as leading to the 2014 fire in the WIPP underground and subsequent radiological release. Among other items, the SFO required actions to be taken on the part of the Permittees to enhance their ability to characterize waste and to ensure the adequacy of the waste certification program. These items were addressed by requiring actions from the Permittees outside the Permit. The Permit itself was not changed in regard to audit issues identified since the Waste Analysis Plan in the Permit was considered to contain broad enough language that updates were not necessary. Instead, changes were made to DOE procedures to enhance and expand the scope of the audits.

The SFO contained Attachment A which detailed the corrective actions and their associated schedules required to address the multiple violations of the Permit. To correct Violation 11 (Accepting D001 waste) and Violation 12 (Accepting Incompatible waste), the Permittees were required to complete five tasks including a "Revision to CBFO-MP-10.3 Rev. 7 *Audits* to include expanded scope for certification/recertification audits." As well as providing a revision to the DOE *Audits* procedure, the Permittees were also required to develop a new procedure (MP 10.10, Rev. 0 *Technical Review of TRU Waste Generator Site Processes*) to initiate new reviews (GSTRs) of the generator/storage sites that would go "behind the fence" to ensure the generator/storage site's processes were adequate, satisfactory, and effective.

On March 18, 2016, the WIPP Permittees submitted Evidence of Completion required by Attachment A of the SFO, detailing the steps taken to complete required items as well as work plans for those not able to be completed within the 60-day effective date. In order to fulfill the two aforementioned requirements associated with Violations 11 and 12, the Permittees created the new procedure for the GSTR and added Section 5.3.8 to the *Audits* procedure which required verification that a GSTR had been performed and the issues identified resolved before certification of a generator/storage site to ship waste to WIPP could occur. In practice, DOE added a section to the Final Audit Reports which contained GSTR information that NMED could review before approving them.

In March 2022, NMED became aware that some processes and procedures related to the audits and GSTR programs were being reviewed by the Permittees and cautioned the Permittees that making revisions to procedures specifically listed in the SFO should not be done without prior consultation with NMED. The May 23, 2022 RFI Response verified a revision omitting the GSTR section from the DOE *Audits* procedure was issued on March 22, 2022, stating: "*These verifications were removed because GSTRs are performed at a different frequency than certification audits. The DOE plans to conduct GSTRs, but they have not yet been scheduled. Since the GSTRs continue to be performed, these procedures continue to address the compliance requirements in the SFO.*" NMED continues to be concerned with this assessment.

The Permittees provided evidence, in their March 18, 2016 submittal, that the GSTR section was being incorporated into the *Audits* procedure to fulfill one of the five tasks identified in Attachment A of the SFO to address Violations 11 and 12. Additionally, NMED verbally cautioned the Permittees against making revisions to the *Audits* procedure without first consulting with NMED as to their effects on the SFO.

The decision to remove the GSTR section was explained in recent Final Audit Reports by stating: "*The Generator Site Technical Review was not necessary per memorandum CBFO:ONTP:KEP:RMS:19-1241*

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dated April 25, 2019” and “In February 2022, the CBFO revised office procedure (OP) 10.13, Audits, to remove the Generator Site Technical Review (GSTR) requirement.” The revision removed the GSTR section from DOE’s *Audits* procedure, the effect of which has removed mention of the GSTR from Final Audit Reports, impacting NMED’s ability to ensure these reviews have been performed, regardless of frequency, and the issues identified during them resolved.

At this time, NMED is issuing this current Request for Information, which requires the submittal by the Permittees of the following information within 60 days, to ensure the above referenced in-house Final Audit Reports are complete:

1. Verification that a technical review of the associated generator/storage site’s process has been performed;
2. Verification that issues identified during the most recent technical review have been resolved; and
3. The date of the most recent GSTR for the associated generator/storage site.

In addition, please provide the following:

1. CBFO Memorandum *CBFO:ONTP:KEP:RMS:19-1241* dated April 25, 2019; and
2. A list of upcoming GSTRs planned for calendar years 2023 and 2024.

NMED requests a response to these items by July 7, 2023. NMED further directs the Permittees to include a section on the most current GSTR in all future Final Audit Reports submitted to NMED so that NMED may review this section as part of the approval process. The WIPP Renewal Draft Permit proposes new language on GSTRs intended to make the process less ambiguous in regard to Permit requirements.

Finally, it is NMED’s current understanding that the last GSTR conducted at Los Alamos National Laboratory (LANL) was in April 2017, over six years ago. NMED strongly recommends a GTSR be scheduled at LANL and that NMED personnel are notified to be able to observe this review.

If you have any questions regarding this correspondence, please contact Megan McLean of the Hazardous Waste Bureau at 505-690-5654.

Sincerely,

Ricardo Maestas
Acting Chief
Hazardous Waste Bureau

cc: R. Shean, NMED RPD
M. McLean, NMED HWB
D. Biswell, NMED HWB
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File: WIPP '23