



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

July 27, 2023

Mark Bollinger, 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: Compliance Advisory Notice
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 June 29, 2023 Response to the Request for Information Concerning Generator Site Technical Review (GSTR) Reporting (Response)[AR 230619] submitted by the U.S. Department of Energy (DOE) and Salado Isolation Mining Contractors LLC (SIMCO) (together the "Permittees"). The information provided in the Response has enabled NMED to continue its review of the following nine final audit reports that were missing information regarding GSTRs at the corresponding generator/storage sites:

- 1) Idaho National Laboratory A-22-07 submitted April 19, 2022 [AR 220416];
- 2) Oak Ridge National Laboratory A-22-10 submitted June 21, 2022 [AR 220619];
- 3) Lawrence Livermore National Laboratory A-22-18 submitted October 6, 2022 [AR 221001];
- 4) Los Alamos National Laboratory A-22-12 submitted November 30, 2022 [AR 221120];
- 5) Argonne National Laboratory A-22-16 submitted December 13, 2022 [AR 221213];
- 6) Advanced Mixed Waste Treatment Project QAD-A-23-01 submitted December 19, 2022 [AR 221216];
- 7) Savannah River Site QAD-A-23-07 submitted February 23, 2023 [AR 230221];
- 8) Idaho National Laboratory QAD-A-23-12 submitted May 15, 2023 [AR 230513]; and
- 9) Oak Ridge National Laboratory QAD-A-23-13 submitted June 7, 2023 [AR 230602].

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.

Background:

On January 22, 2016, a Settlement Agreement and Stipulated Final Order (SFO) was issued between NMED

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Hazardous Waste Bureau - 2905 Rodeo Park Drive East, Building 1 Santa Fe, New Mexico 87505-6313
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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." In addition to providing a revision to the DOE *Audits* procedure, the Permittees were required to develop a new procedure (MP 10.10, Rev. 0 *Technical Review of TRU Waste Generator Site Processes*) to initiate new GSTRs which would review the generator site's processes to ensure they 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 site to ship waste to WIPP could occur. In practice, this meant final audit reports contained a section on GSTRs that NMED could review before approving them.

On March 30, 2022, during the monthly Audit Status Meeting between NMED and the Permittees, NMED was informed that a revision omitting the GSTR section from the DOE *Audits* procedure had occurred. NMED views this revision as a potential violation of the SFO since 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.

The effect of the DOE *Audits* procedure revision removed mention of the GSTR from final audit reports received by NMED between April 2022 and June 2023, impacting NMED's ability to ensure these reviews have been performed and the issues identified during them resolved. NMED issued two Requests for Information during this period, on April 8, 2022 [AR 220404] and on May 3, 2023 [AR 230503]. On June 29, 2023, NMED received the necessary GSTR information needed to continue the reviews of the nine final audit reports received during that timeframe, as stated previously.

On June 14, 2023, NMED received the Los Alamos National Laboratory interim audit report for Audit QAD-A-23-14 [AR 230603]. This interim report contained GSTR information in the executive summary section. In a July 13, 2023 phone call with the WIPP Permittees, it was confirmed that GSTR information (in a separate and distinct section of the report) would be included in the final audit report for LANL Audit QAD-

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A-23-14, as well as all future final audit reports submitted to NMED going forward. During the WIPP Permit renewal negotiations held June 20-23, 2023, the requirement for GSTR information to be included in final audit reports was agreed to and codified in the Permit. The final renewal Permit containing this condition is expected to be issued by NMED in October 2023 with an effective date thirty days later.

NMED is issuing this Compliance Advisory Notice, giving background related to the GSTR compliance concern, in order to put the Permittees on notice that NMED expects all audit reports submitted before the final renewal Permit's effective date to include a separate and distinct GSTR section. NMED further cautions the Permittees that making revisions to procedures that affect NMED's ability to review final audit reports is inappropriate and could result in enforcement action. This Compliance Advisory Notice is considered an informal enforcement response in accordance with NMED's Enforcement Response Protocol. Please be aware that any future substantial deviations from regulatory requirements may result in an elevated enforcement action. Also, be aware that any corrective action taken in response to this letter does not relieve the Permittees of their obligation to comply with all other applicable laws and regulations.

Pursuant to the NMED Delegation Order dated May 24, 2023, the Cabinet Secretary has delegated the authority to issue compliance orders and correlated documents under the Hazardous Waste Act and Hazardous Waste Management Regulations to the Bureau Chief of the Hazardous Waste Bureau.

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
A. Donahue, NMED HWB
B. Masse, NMED DOE-OB
M. Gerle, DOE-CBFO
M. Navarrete, DOE-CBFO
D. Jolley, DOE-CBFO
M. Stapleton, DOE-CBFO
R. Castillo, CTAC
R. Chavez, LATA
A. Waldram, LATA
L. Veal, EPA ORIA
T. Peake, EPA ORIA

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L. King, EPA Region 6
H. Shah, EPA Region 6
File: WIPP '23