



Department of Energy
Carlsbad Field Office
P. O. Box 3090
Carlsbad, New Mexico 88221
March 18, 2021

Mr. Kevin Pierard, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

Subject: Waste Isolation Pilot Plant Second Triennial Review

- Reference: 1) The Settlement Agreement and Stipulated Final Order No. HWB-14-21 (CO), January 22, 2016
- 2) New Mexico Environment Department correspondence from John E. Kieling, Chief, Hazardous Waste Bureau, to Todd A. Shrader, Manager, U.S. Department of Energy, Carlsbad Field Office and Philip J. Breidenbach, Project Manager, Nuclear Waste Partnership LLC; Subject: Triennial Review Scope of Work and Guidelines for Settlement Agreement and Stipulated Final Order No. HWB-14-21 Supplemental Environmental Projects Paragraph 34(a) Waste Isolation Pilot Plant EPA I.D.# NM4890139088, dated February 3, 2017
 - 3) Permittees' letter CBFO:OEP:GTB:AC:17-1003:UFC 5486.00 from Todd A. Shrader, Manager, U.S. Department of Energy Carlsbad Field Office and Philip J. Breidenbach, Project Manager, Nuclear Waste Partnership LLC to John E. Kieling Chief, Hazardous Waste Bureau; Subject: Triennial Review Scope of Work and Guidelines for Settlement Agreement and Stipulated Final Order No. HWB-14-21 Supplement Environment Projects Paragraph 34(a), dated January 20, 2017

Dear Mr. Pierard:

The purpose of this letter is to request New Mexico Environment Department's (NMED) approval of the proposed regulatory scope and timelines for the Waste Isolation Pilot Plant (WIPP) Second Triennial Review (STR). The regulatory scope has been extracted from the list of applicable environmental regulations contained in the *First Waste Isolation Pilot Plant Project Triennial Review Scope of Work SOW and Guidelines* (First SOW and Guidelines) and reflects discussions held between the NMED and the Permittees on December 9, 2020. The letter is also to notify you of the selected third-party contractor for performance of the Second Triennial Review.

The STR will be performed in accordance with the First SOW and Guidelines, which the NMED approved on February 03, 2017, with the following exceptions:

- The regulatory scope outlined in Table 1, *Environmental Regulations*
- The timelines outlined in Table 2, *Triennial Review Team Reporting Requirements to the STR*, and Section 6.0, *First WIPP Triennial Review Milestones*
- The STR will cover the time period subsequent to the First Triennial Review, with a cut-off date of December 31, 2020.
- Updated documents, including those listed in Section 9.0 of the First SOW and Guidelines, which will be used to facilitate the review will be provided to the third-party subcontractor, as needed.

The proposed regulatory scoping table and updated timelines for the STR are being provided in Enclosures 1 and 2, respectively. No other changes are being made to the First SOW and Guidelines. The STR is planned to be completed before the end of calendar year 2021.

The Permittees have identified Firewater Associates, LLC, to perform the STR. This independent firm is the same contractor that was used for the First Triennial Review and selected in accordance with Paragraph 34 of the referenced Settlement Agreement and Stipulated Final Order (Agreement). This firm is independent (does not participate in the compliance activities being reviewed) and is external (is not a WIPP project participant and not a regulatory agency that has regulatory authority over the WIPP project).

Due to the current COVID-19 pandemic and the preventive measures put in place at the WIPP facility, performance of the Triennial Review may experience delays. Furthermore, as a result of these preventive measures, it will be necessary for Firewater Associates, LLC, to conduct the STR activities mostly virtually in lieu of maintaining a physical presence at the WIPP facility. Should the Permittees determine that an extension of time for completion of the STR is necessary, a separate written request will be submitted to the NMED.

Because the change in the regulatory scope and timelines amends the First SOW and Guidelines, your approval is required in accordance with Paragraph 34(a) of the agreement. Please indicate your approval of the proposed regulatory scope and timelines for the STR (Enclosures 1 and 2).

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

If you have any questions, please contact Mr. Michael R. Brown at (575) 706-0072.

Sincerely,

Signatures on File

Reinhard Knerr
Manager
Carlsbad Field Office

Sean Dunagan
President and Project Manager
Nuclear Waste Partnership LLC

Enclosures (2)

cc: w/enclosures
R. Maestas, NMED *ED
N. Barka, NMED ED
D. Biswell, NMED ED
M. McLean, NMED ED
CBFO M&RC
*ED denotes electronic distribution

Enclosure 1 - Scope of the Second Triennial Review

ENVIRONMENTAL REGULATIONS*

Applicable Environmental Statute or Regulation	Focus of the Review	Included in First Review		Proposed for Scope of Second Review	
		YES	NO	YES	NO
Resource Conservation and Recovery Act (RCRA) (and New Mexico implementation through the HWA)	Processes and procedures to assure compliance to the operational requirements and compliance to requirements for the accumulation and retention of records and monitoring data Corrective actions taken to prevent the recurrence of non-compliances	✓		✓	
Clean Air Act (CAA) (including the National Emission Standards for Hazardous Air Pollutants (NESHAPs) and the New Mexico Air Quality Act)	Processes and procedures to assure compliance and the accumulation of required monitoring data		✓	✓	
Clean Water Act (CWA) (and the New Mexico Water Quality Act)	Processes for controlling permitted discharges and the collection of monitoring data for reporting to the NMED	✓		✓	
Safe Drinking Water Act (and the New Mexico Drinking Water Regulations)	Processes and procedures to assure timely sampling and reporting of facility drinking water quality and identification of and remediation of system repairs		✓	✓	
New Mexico Solid Waste Act	Procedures for implementation and the reporting requirements		✓	✓	
Emergency Planning and Community Right to Know Act (EPCRA) (and the New Mexico Hazardous Chemicals Information Act)	Processes for reporting spills and the processes to accumulate and report the required information annually		✓	✓	
New Mexico Ground Water Protection Act	Procedures to identify and report releases from underground storage tanks		✓		✓
Toxic Substances Control Act (TSCA) and polychlorinated biphenyl (PCB) Conditions of Approval	Processes and procedures to assure compliance to the operational requirements and compliance to the requirements for the accumulation and retention of records and monitoring data	✓			✓
Atomic Energy Act (AEA) and Environmental Protection Agency (EPA)	Processes for the collection and reporting of information required by the most recent Compliance Certification	✓			✓

Applicable Environmental Statute or Regulation	Focus of the Review	Included in First Review		Proposed for Scope of Second Review	
		YES	NO	YES	NO
DOE Order 231.1B , Admin Change 1, (Environment, Safety, and Health Reporting)	Procedures for implementation and the reporting requirements	✓			✓
DOE Order 151.1D, Admin Change 1 (Comprehensive Emergency Management System)	Procedures for implementation and the reporting requirements		✓		✓
DOE Policy 451.1 (NEPA Compliance Program)	Procedures for implementation and the reporting requirements		✓		✓
National Environmental Policy Act (NEPA)	Procedures for identifying decisions that require NEPA review and the process for conducting the review		✓		✓
DOE Order 458.1 , Change 3 (Radiation Protection of the Public)	Procedures for implementation and the reporting of environmental requirements	✓			✓
Comprehensive Environmental Response, Compensation, and Liability Act	Processes for determining reportable quantities.		✓		✓
Federal Insecticide, Fungicide, and Rodenticide Act (and the New Mexico Pesticide Control Act)	Assure only licensed applicators are used at WIPP Project facilities		✓		✓

*Additionally, the scope may include evaluations of the continued effectiveness of corrective actions taken to address findings/observations that resulted from the First Triennial Review.

Enclosure 2 – Timelines for the Second Triennial Review

SECOND TRIENNIAL REVIEW TEAM REPORTING REQUIREMENTS

Report Title	Content	Frequency	Due Date
Progress Report	Progress made in completing contract tasks	Monthly	10 th of the month for the previous month
On-Site Review Progress (if applicable)	Summary of review progress and findings	Weekly	Friday of each week on-site (to be determined)
Review Plan (Draft and Final)	Outline of the review objectives, scope and timetable, and the products that the review will generate.	Once	Within two weeks of subcontract award
Close out Report	Summary of all findings and recommendations from on-site visit	Once	September 30, 2021
Draft Review Report	Summary of review process, information collection activities, findings, and recommendations	Once	November 12, 2021
Comment Resolution Summary (Draft and Final)	Detail summary of how comments on the draft report were resolved	Once	November 30, 2021
Final Report	Summary of review process, information collection activities, findings, and recommendations	Once	December 31, 2021

SECOND TRIENNIAL REVIEW MILESTONES

Task	Finish Date
First Pre-Review Meeting	Within one week of subcontract award
Review Plan	Within two weeks of subcontract award
Second Pre-Review Meeting – Collect and Review Background Information	May 3, 2021
Final Pre-Review Meeting – Review Checklist	May 31, 2021
Conduct Review Activities	September 30, 2021
Draft Report and Comment Resolution	November 30, 2021
Final Report	December 31, 2021