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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 13, 2017

Todd A. Shrader, Manager
Carlsbad Field Office
Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Philip J. Breidenbach, Project Manager
Nuclear Waste Partnership, LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-2078

**RE: HAZARDOUS WASTE FACILITY PERMIT NONCOMPLIANCE AND
INFORMATION REPOSITORY GUIDANCE
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Messrs. Shrader and Breidenbach:

On January 4, 2017, the New Mexico Environment Department (NMED) received a Notification of Anticipated Noncompliance with Permit Requirements (Notification) in a letter dated December 22, 2016 that was submitted by the Department of Energy Carlsbad Field Office (CBFO) and Nuclear Waste Partnership (NWP) (collectively, the Permittees). This Notification was submitted pursuant to Part 1, Section 1.7.11.2, Reporting of Anticipated Noncompliance, of the Hazardous Waste Facility Permit (Permit) for the Waste Isolation Pilot Plant (Facility) which requires the Permittees to give advance notice to the Secretary of "any activity which may result in the noncompliance with permit requirements".

The Notification indicated that the Permittees intend to permanently dispose of waste, in a permitted Hazardous Waste Disposal Unit, that does not fully meet the Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC) requirements specified in the Permit Part 2, Section 2.3.3.1., *Liquid*, and Section 2.3.3.7., *Ignitable, Corrosive, and Reactive Waste*, and the requirements of Section 2.3.4., *Permitted TRU Mixed Waste*.

The Notification included discussion and information on six (6) pieces of radiologically contaminated diesel-fueled equipment located in Room 6 of Panel 7. The Permittees are planning to permanently dispose of the equipment as contact-handled transuranic mixed waste characterized using the derived-waste process described in the Permit, Part 2, Section 2.3.5., Derived Waste. The Notification goes on to state that “[t]his equipment ... was originally planned to be abandoned-in-place once fluids and batteries were removed. However, the geotechnical stability of the area of Room 6 where the vehicles are located (north of the S-2520 intake drift and south of the S-2180 exhaust drift) is deteriorating, and access to this area is now prohibited to personnel pursuant to the Mine Safety and Health Administration requirements. Sending underground workers into this area in its present condition to drain the fluids and retrieve the batteries from the equipment would present an imminent and substantial endangerment to worker safety.” The Notification also included the estimated liquid volumes (comprised of diesel fuel, hydraulic fluid, engine oil, brake fluid, coolant and battery acid) and waste material parameter weights associated with each piece of equipment.

Additionally, the Notification states that “[d]ue to the presence of diesel fuel and lead-acid batteries within this equipment, the waste will be assigned the Environmental Protection Agency (EPA) hazardous waste numbers D001 and D002 for the characteristics of ignitability and corrosivity, respectively. Per the TSDF-WAC, wastes exhibiting these characteristics are also not acceptable for disposal at the WIPP facility” and “[i]n accordance with the Permit Part 1, Section 1.7.6., *Duty to Mitigate*, the Permittees will take steps to minimize releases to the environment and carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment. These steps will include closing Room 6, once waste emplacement activities are complete in the S-2520 portion of Room 6, by constructing chain link/brattice cloth barricades as described in the Permit Attachment A2, thereby restricting ventilation through the room and minimizing potential releases via the air pathway.”

Based on the information provided, NMED concurs with the Permittees’ approach to abandon the six (6) pieces of equipment in Room 6 of Panel 7 and directs the Permittees to implement the actions that are identified in the Notification, including entering the EPA hazardous waste number and material waste parameters into the waste data system for tracking purposes. NMED also notes that room-based VOC monitoring has commenced in Room 6 of Panel 7 in conjunction with waste emplacement activities which will provide ongoing VOC monitoring. The Permittees shall include this instance of Permit noncompliance in the annual report required in Permit Part 1, Section 1.7.14. NMED further recommends that the Permittees communicate the abandoned equipment details with the U.S. Environmental Protection Agency (EPA) and requests that the nuclear safety hazard evaluation that was referenced in the Notification be submitted to NMED for the Facility record. NMED will not issue penalties for this noncompliance.

Information Repository Guidance

On November 10, 2016, the Permittees submitted to NMED a Request for Temporary Authorization (TA) related to various activities included in the Class 3 Permit Modification on Panel Closure. On November 30, 2016, NMED contacted the Permittees to discuss Permit Part 1,

Sections 1.14.2 and 1.14.3 that contain the requirements of the WIPP Information Repository. Section 1.14.2.3 states that the Information Repository must contain "[p]ermit modification notifications and requests associated with this Permit submitted pursuant to 20.4.1. 900 NMAC (incorporating 40 CFR §270.42) and any associated responses from the Secretary." Further discussions took place on January 10, 2017 and on January 11, 2017, the Permittees provided NMED with information supporting the Permittees in their interpretation of Permit Section 1.14.2 since the section was added to the Permit during the 2010 Permit Renewal. The supporting information included evidence that in the past NMED had supported the Permittees in their interpretation of Section 1.14.2.3 to only post Permit Modification Notifications, Permit Modification Requests and associated responses to these from the Secretary. NMED has reviewed the information, which has aided in the understanding of the discrepancy between NMED and the Permittees in the interpretation of the requirement.

This letter hereby provides the Permittees with current guidance on implementing the provisions of Permit Part 1, Section 1.14.2.3. The Permittees must include the posting of TAs and any associated responses from the Secretary in the Information Repository effective immediately. Because of the past discrepancy in the interpretation of the requirements, the November 2016 instance of the delay in the posting of the TA does not constitute a noncompliance of the requirements of the Permit.

If you have any questions regarding either of these matters, please contact Ricardo Maestas at (505) 476-6050.

Sincerely,

Handwritten signature of John E. Kielling, with the word "for" written below it.

John E. Kielling
Chief
Hazardous Waste Bureau

cc: K. Roberts, NMED RPD Director
J. Hower, NMED OGC
R. Maestas, NMED HWB
D. Biswell, NMED HWB
S. Lucas-Kamat, NMED DOE/OB
L. King, EPA Region 6
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File: WIPP 2017