

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

RESOURCE PROTECTION DIVISION,)
HAZARDOUS WASTE BUREAU,)
Complainant,)
)
)
)
)
)
UNITED STATES DEPARTMENT)
OF ENERGY, and)
NUCLEAR WASTE PARTNERSHIP, LLC,)
)
Respondents.)
)
)
WASTE ISOLATION PILOT PLANT)
EDDY COUNTY, NEW MEXICO)

NO. HWB-14-21 (CO)

v.

SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

This Settlement Agreement and Stipulated Final Order (“Settlement Agreement”) is entered into between the Hazardous Waste Bureau (“HWB”) of the Resource Protection Division (“Division”) of the New Mexico Environment Department (“NMED”), and the United States Department of Energy (“DOE”) and Nuclear Waste Partnership, LLC (“NWP”) (collectively, the “Respondents”) for the purpose of resolving Compliance Order No. HWB-14-21, issued to the Respondents on December 6, 2014 (“WIPP Order”), related to the Waste Isolation Pilot Plant (“WIPP”). Pursuant to 20.1.5.600(B)(2) NMAC, NMED and the Respondents (collectively “Parties”) enter into this Settlement Agreement to resolve alleged violations of the New Mexico Hazardous Waste Act (“HWA”), NMSA 1978, Sections 74-4-1 to -14, the Hazardous Waste Management Regulations, 20.4.1 NMAC, (“HWMR”), and Facility Permit EPA I.D. NUMBER NM4890139088-TSDF (“WIPP Permit”), as identified in the WIPP Order.

I. BACKGROUND

A. PARTIES

1. Pursuant to the Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -15, NMED is an agency of the executive branch of the State of New Mexico ("State"). NMED, through the HWB, is charged with administration and enforcement of the HWA, the HWMR and correlated Permits, including assessing civil penalties for violations thereof.

2. The U.S. Environmental Protection Agency has granted NMED authority to implement the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 to 6992k, within New Mexico. The HWMR incorporate portions of 40 C.F.R. § 260 to 40 C.F.R. § 270, 40 C.F.R. § 273, 40 C.F.R. § 279 and related federal regulations by reference.

3. The Respondents are each defined as a "person" within the meaning of Section 74-4-3(M) of the HWA.

4. The Respondents are engaged in the management, storage and disposal of defense transuranic ("TRU") mixed waste at WIPP. Hazardous waste management and the hazardous waste component of TRU mixed waste are subject to RCRA.

5. DOE is a federal agency; NWP is a for-profit corporation conducting business in New Mexico.

6. DOE is the owner of WIPP and the Respondents are collectively the co-operators of WIPP, which requires a permit under 20.4.1.900 NMAC (incorporating 40 C.F.R § 270.1(a)).

7. DOE and NWP are Co-Permittees under the WIPP Permit, first issued by NMED on October 27, 1999, and most recently renewed on November 30, 2010.

B. HISTORY

8. On February 5, 2014, an underground fire involving a salt haul truck occurred at WIPP.

9. On February 14, 2014, at approximately 11:14 PM, there was an incident in the underground repository at WIPP, which resulted in the release of americium and plutonium from a TRU mixed waste container (drum number 68660) into the environment.

10. After the February 5 and February 14, 2014 incidents, NMED opened an investigation into potential violations of the WIPP Permit, the HWA and the HWMR, which included a review and analysis of federal investigatory reports, Respondents' reports associated with the implementation of their RCRA Contingency Plan, and RCRA information requests.

11. Based upon the results of its investigation, NMED issued the WIPP Order to DOE and NWP on December 6, 2014 for violations of the WIPP Permit, HWA and HWMR.

12. After a request for a one week extension of the filing deadline, DOE and NWP filed separate Answers and Requests for Hearing on January 9, 2015.

13. The Parties met in an attempt to reach a mutual settlement of NMED's claims relating to the violations alleged in the WIPP Order.

14. The Parties executed a document entitled *General Principles of Agreement HWB-14-20 and HWB-14-21* on April 30, 2015 ("POA").

C. ALLEGED VIOLATIONS

15. NMED alleged the following violations in the WIPP Order.

16. The Respondents failed to maintain and operate WIPP to minimize the possibility of a fire which could threaten human health or the environment, in violation of Permit Condition 2.1, Design and Operation of the Facility, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.31.

17. The Respondents failed to submit a written notice concerning the fire within five (5) calendar days of the time the Respondents became aware of the circumstances, in violation of

Permit Conditions: 1.7.13.3, Written Notice, referencing 20.4.1.900 NMAC, incorporating 40 C.F.R. § 270.30(l)(6)(iii); and 1.7.13.2, Description of Occurrence, referencing 20.4.1.900 NMAC, incorporating 40 C.F.R. § 270.30(l)(6)(ii).

18. The Respondents failed to conduct adequate personnel training, in violation of Permit Conditions: 2.8, Personnel Training; 2.8.2, Personnel Training Requirements, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.16; and F-1e, Training for Emergency Response.

19. The Respondents failed to have an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to Facility personnel, in violation of Permit Conditions: 2.10.1, Required Equipment; and 2.10.1.1, Internal Communications, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.32(a).

20. The Respondents failed to test and maintain the equipment specified in Permit Condition 2.10.1, as necessary, to assure its proper operation in time of emergency, as specified in Permit Attachment E, in violation of Permit Conditions: 2.10.2, Testing and Maintenance of Equipment; and E-1a, General Inspection Requirements, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.33.

21. The Respondents failed to immediately implement the Contingency Plan found in Permit Attachment D when there was a fire that threatened human health or the environment, in violation of Permit Conditions: 2.12.1, Implementation of [Contingency] Plan, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.51(b); D-3, Implementation, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.51(b); and D-4a(1), Initial Emergency Response and Alerting the RCRA Emergency Coordinator.

22. The Respondents failed to design, maintain, and operate WIPP in a manner to minimize the possibility of a release to the atmosphere of TRU mixed waste or mixed waste constituents and to prevent undue exposure of personnel to hazardous waste, in violation of Permit Conditions: 2.1, Design and Operation of Facility, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.31; and 2.11, Hazards Prevention, referencing 20.4.1.900 NMAC, incorporating 40 C.F.R. § 270.14(b)(8).

23. The Respondents failed to provide oral notification to NMED within 24 hours of becoming aware of the Release, in violation of Permit Conditions: 1.7.13.1.ii, Oral Reporting, referencing 20.4.1.900 NMAC, incorporating 40 C.F.R. § 270.30(l)(6)(i); and 1.7.13.2, Description of Occurrence, referencing 20.4.1.900 NMAC, incorporating 40 C.F.R. § 270.30(l)(6)(ii).

24. The Respondents failed to submit a written notice regarding the Release within five (5) calendar days of the time DOE and NWP became aware of the circumstances, in violation of Permit Conditions: 1.7.13.3, Written Notice, referencing 20.4.1.900 NMAC, incorporating 40 C.F.R. § 270.30(l)(6)(iii); and 1.7.13.2, Description of Occurrence, referencing 20.4.1.900 NMAC, incorporating 40 C.F.R. § 270.30(l)(6)(ii).

25. The Respondents failed to immediately implement the Contingency Plan found in Permit Attachment D when there was a release of TRU mixed or hazardous waste or hazardous waste constituents which threatened human health or the environment, in violation of Permit Conditions: 2.12.1, Implementation of [Contingency] Plan, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.51(b); D-3, Implementation, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.51(b); and D-4a(1), Initial Emergency Response and Alerting the RCRA Emergency Coordinator.

26. The Respondents accepted, managed, stored, and disposed of 508 containers of ignitable wastes, in violation of Permit Conditions: Attachment B, (Part A Application); 2.9, General Requirements for Handling Ignitable, Corrosive, Reactive, or Incompatible Wastes, referencing 20.4.1.200 NMAC, incorporating 40 C.F.R. §§ 261.21 and 261.22, and referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. Part 264, Appendix V; 2.3.1, Waste Analysis Plan, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.13; 2.3.3, Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC); 2.3.3.7, Ignitable, Corrosive, and Reactive Wastes; 2.3.4, Permitted TRU Mixed Wastes; 3.2.1.3, Hazardous Waste Numbers; C-1b, Waste Summary Category Groups and Hazardous Waste Accepted at the WIPP Facility; and C-1c, Waste Prohibited at the WIPP Facility.

27. The Respondents accepted, managed, stored, and disposed of 503 containers of incompatible wastes, in violation of Permit Conditions: 2.9, General Requirements for Handling Ignitable, Corrosive, Reactive, or Incompatible Wastes, referencing 20.4.1.200 NMAC, incorporating 40 C.F.R. §§ 261.21 and 261.22, and referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. Part 264, Appendix V; 2.3.1, Waste Analysis Plan, referencing 20.4.1.500 NMAC, incorporating 40 C.F.R. § 264.13; 2.3.3, Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC); 2.3.3.4, Chemical Incompatibility; and C-1c, Waste Prohibited at the WIPP Facility.

28. The Respondents failed to verify the completeness and accuracy of the Waste Stream Profile Form, in violation of Permit Condition C-5a(2), Examination of the Waste Stream Profile Form and Container Data Checks.

II. COMPROMISE AND SETTLEMENT

29. The Parties enter into this Settlement Agreement to settle and completely resolve the alleged violations contained in the WIPP Order, and any future NMED claims, penalties, fines, liabilities or other sanctions against the Respondents and their officers, directors, employees, agents, constituent agencies, contractors, subsidiaries, successors, assigns, trustees, receivers, and other affiliates arising from or related to the February 5 and 14 incidents, the WIPP Order, the Extent of Condition review performed by DOE and its contractor, Los Alamos National Security, LLC (“LANS”), at the Los Alamos National Laboratory (“LANL”), and the self-disclosures made by the Respondents and LANS since February 5, 2014, and in order to avoid further litigation and expense. This Settlement Agreement shall not be construed as an admission by Respondents to the alleged violations. The Parties admit jurisdiction and consent to the relief specified herein. The Parties agree that this Settlement Agreement is and shall be construed as consistent with the POA.

30. In compromise and settlement of the alleged violations contained in the WIPP Order against the Respondents and their officers, directors, employees, agents, constituent agencies, contractors, subsidiaries, successors, assigns, trustees, receivers and other affiliates, and any future NMED claims, penalties, fines, liabilities, or other sanctions arising from or related thereto as identified in paragraph 29, the Respondents shall implement the following Corrective Actions and Supplemental Environmental Projects (“SEP(s)”), as well as perform all Other Commitments as specified in paragraphs 37 and 38.

A. COMPLIANCE SCHEDULE FOR CORRECTIVE ACTIONS

31. The WIPP corrective actions and corrective action schedules are included as *Attachment A*. The Respondents shall keep NMED apprised of progress made on corrective actions found in

Attachment A on a monthly basis. The Respondents shall complete all the corrective actions contained in *Attachment A* and submit the required Evidence of Completion to NMED for approval within sixty (60) calendar days of the effective date of this Settlement Agreement, unless an alternate date is approved by NMED in accordance with paragraph 53.

B. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

32. The following SEPs include deadlines for implementation and final execution. Upon completion of each SEP, Respondents shall submit a signed and sworn Certification of Completion, executed by their authorized representatives, including the pertinent attachments and data related to the final implementation of each SEP, to NMED for approval within thirty (30) calendar days after the completion of each SEP. Following completion of a SEP and submittal of a Certification of Completion, NMED will review and provide Respondents with written approval certifying satisfactory completion of each SEP, or alternatively, written correspondence identifying the specific reason(s) why the SEP or Certification of Completion is deficient. The Respondents shall have an opportunity to correct any deficiencies and/or supplement the Certification of Completion before resubmitting to NMED for approval.

33. DOE shall pay to the New Mexico Department of Transportation (“NMDOT”) \$34 million to fund necessary repairs to New Mexico roads used for the transportation of DOE shipments of transuranic waste to WIPP (“WIPP designated routes”), as specified at 18.20.9 NMAC, in the southeastern portion of New Mexico.

- a) Monies will be used first to repave/repair the WIPP North Access Road, an approximately 13-mile stretch of road between Highway 62-180 and the WIPP site.
- b) After providing for improvements of the WIPP North Access Road, NMDOT will prioritize such WIPP-designated routes for improvements to maximize safety, pavement

condition and available funding. NMDOT will provide a list of prioritized projects, including estimated total cost and schedule for completion to DOE prior to commencement of construction.

c) DOE and NMED agree that NMDOT will act as project manager and fiscal agent for all projects contemplated in this paragraph, including planning, designing and obtaining rights-of-way for each project and securing all environmental clearances and approvals as required for federally-funded highway projects.

d) DOE shall remit funds to NMDOT provided that NMDOT: strictly accounts for all invoices and disbursements for the projects funded pursuant to this paragraph; provides detailed reports within ninety days of the completion of each project; maintains all records relative to the projects for a period of six (6) years; and, makes records reasonably available for inspection or audit by DOE at NMDOT offices in New Mexico.

e) DOE shall remit at least \$7.2 million of the funds in this paragraph to NMDOT by the end of federal fiscal year 2016; and shall remit the remainder of the funds to NMDOT by the end of federal fiscal year 2017. In no event shall DOE extend the time for providing all funding identified in paragraph 33 past the end of federal fiscal year 2017.

f) DOE shall complete all funding obligations contained in this paragraph by the end of federal fiscal year 2017 and submit a Certification of Completion following NMDOT's receipt of all the funds.

34. DOE will fund independent, external triennial reviews of environmental regulatory compliance and operations at WIPP to ensure that any regulatory deficiencies are identified. Each member of the triennial review team shall meet all applicable WIPP facility security, access, environmental, safety, and health protocols and training requirements associated with

access to the WIPP site and WIPP records. The results of the triennial reviews shall be made available to the Respondents, NMED and the public. The Respondents, their constituent agencies, contractors and affiliates agree to address any potential regulatory violations, or operational deficiencies, that could lead to potential environmental regulatory violations, identified in the triennial reviews. NMED agrees to refrain from taking any enforcement action against the Respondents, their constituent agencies, contractors and affiliates for any potential regulatory violations, or operational deficiencies, that could lead to potential environmental regulatory violations, identified in the triennial reviews so long as the Respondents and their facility operators correct any deficiencies identified in the course of such reviews within sixty (60) calendar days of the finalization of each triennial review report, or for good cause shown, within another period of time beyond sixty (60) calendar days, if approved by NMED. DOE and NMED shall agree on a mechanism to procure and select a third party to perform the independent triennial reviews.

a) DOE shall submit to NMED a proposed *WIPP Triennial Review Scope of Work and Guidelines*, within one (1) calendar year of the effective date of this Settlement Agreement for comment and final approval by NMED. Should DOE amend any provision contained in an approved *WIPP Triennial Review Scope of Work and Guidelines* prior to any subsequent triennial review, DOE shall resubmit the amended *WIPP Triennial Review Scope of Work and Guidelines* to NMED for approval.

b) The initial triennial review for WIPP shall be completed and made public before the end of federal fiscal year 2018.

35. Within ninety (90) calendar days of the effective date of this Settlement Agreement, the Respondents shall obligate \$1 million to fund enhanced training and capabilities for local

emergency responders, including funding for training and exercises with local mine rescue teams, in and around Carlsbad, NM that exist at the time this Settlement Agreement is signed. The Respondents shall complete all requirements contained in this paragraph and submit a Certification of Completion by the end of federal fiscal year 2016.

36. The Respondents shall expend \$4 million to fund the construction of and equipment for an offsite emergency operations center near WIPP to be operated by DOE. DOE shall complete all requirements contained in this paragraph and submit a Certification of Completion by the end of federal fiscal year 2016.

C. OTHER COMMITMENTS

37. DOE agrees to enter into good-faith, informal discussions with NMED and NMDOT concerning the State's ongoing and future needs to maintain roads on WIPP designated routes and how best to address those needs in light of the expiration of the authorization contained in Section 16(a) of the Waste Isolation Pilot Plant Land Withdrawal Act, Pub. L. 104-201 in federal fiscal year 2012.

38. NMED agrees to consider in a timely manner a permit modification request, if submitted, to allow for the construction and operation of an above-ground storage facility for temporary on-site storage of transuranic waste at WIPP.

III. TERMS AND CONDITIONS

A. RESERVATION OF RIGHTS AND DEFENSES

39. This Settlement Agreement shall not be construed to prohibit or limit in any way NMED from seeking any relief authorized by the HWA, HWMR or the WIPP Permit for violation of any state or federal requirement applicable to Respondents not addressed in this Settlement Agreement. NMED reserves all of the powers, authorities, rights and remedies, whether

administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the HWA, HWMR or the WIPP Permit, for any past, present or future violation not addressed in this Settlement Agreement or in the WIPP Order. This Settlement Agreement shall not be construed to prohibit or limit in any way Respondents from raising any defense to any such NMED action.

40. Subject to paragraphs 41 and 52, NMED retains its right to enforce the Settlement Agreement, *Attachment A* and any documents submitted by Respondents relating thereto, by administrative or judicial action, including the issuance of additional civil penalties under NMSA 1978, § 74-4-10(C) (2001). Except with respect to paragraph 34, should Respondents fail to meet any deadline or perform any requirement contained in this Settlement Agreement, *Attachment A* and any documents submitted by Respondents relating thereto, for any reason, including reasons related to congressional appropriations, NMED, in its sole discretion, may revive the enforcement action proceedings in this matter and seek to enforce all claims, penalties, fines, liabilities or other sanctions against the Respondents and their constituent agencies, contractors, subsidiaries, successors, assigns, trustees, receivers, and other affiliates arising from or related to the February 5 and 14 incidents, the WIPP Order as issued on December 6, 2014, the Extent of Condition review performed by DOE and LANS at LANL, and the self-disclosures made by the Respondents and LANS since February 5, 2014. If NMED elects to revive the enforcement action proceedings in this matter under this paragraph, NMED will take into account the amount of money expended to date by the Respondents in performance of the SEPs in paragraphs 32 through 36 when calculating civil penalties and applying appropriate adjustment factors in accordance with NMED's Hazardous Waste Act Civil Penalty Policy. This Settlement Agreement shall not be construed to prohibit or limit in any way Respondents from raising any defense to any such NMED enforcement action.

41. Nothing in this Settlement Agreement, including paragraphs 32 through 36 above, is intended to require DOE to obligate or expend funds in excess of available appropriations, apportionments, or allotments in violation of the Anti-deficiency Act, 31 U.S.C. §§1341(a)(1)(A) and 1517(a). DOE will exhaust all of its legal authorities to take all necessary steps, including but not limited to budget reprogramming within its existing authority to effectuate the provisions of paragraphs 32 through 36. Funds used by DOE to execute this Settlement Agreement will not detract from the operational or environmental cleanup budget at LANL or from the WIPP recovery budget.

42. To the extent DOE has not evaluated in accordance with the National Environmental Policy Act ("NEPA") the actions required by this Settlement Agreement, DOE will prepare an appropriate NEPA document analyzing the potential environmental impacts associated with these actions prior to commencing work on the action(s).

43. Nothing in this Settlement Agreement will obligate the Respondents to disclose information when such disclosure is contrary to law, including classified information.

44. In the event that NMED disapproves any timely submission required by this Settlement Agreement, *Attachment A* or any documents relating thereto, NMED shall identify the specific reason(s) for the disapproval, and the Respondents shall have the opportunity to correct any deficiencies and supplement the submission.

B. MUTUAL RELEASE

45. The Parties mutually release each other from all claims that the Parties raised or could have raised against the other regarding the facts and violations alleged in the WIPP Order, and regarding the matters covered in paragraph 29 of this Settlement Agreement. This release extends to NMED, the Respondents and their respective officers, directors, employees, agents,

constituent agencies, contractors, subsidiaries, successors, assigns, trustees, receivers and other affiliates.

C. WAIVER OF STATE LIABILITY

46. Respondents shall assume all costs and liabilities incurred in performing their obligations under this Settlement Agreement. NMED, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for Respondents' performance of their obligations under this Settlement Agreement.

D. EFFECTIVE DATE AND TERMINATION DATES

47. This Settlement Agreement shall become effective on the date a Stipulated Final Order in this matter is signed by the Deputy Secretary of NMED, acting as Designee for the New Mexico Secretary of Environment.

48. Except as otherwise provided in this paragraph and paragraph 34, the terms of this Settlement Agreement shall terminate when Respondents have fulfilled the requirements of this Settlement Agreement. Respondents shall request termination of this Settlement Agreement in writing to NMED. The reservations of rights and defenses and the mutual release in paragraphs 39 to 45 shall not terminate, and shall remain in effect.

E. INTEGRATION

49. This Settlement Agreement, *Attachment A* and any documents submitted by Respondents relating thereto constitute the entire agreement between the Parties. All prior conversations, negotiations, meetings, discussions, drafts, and writings of any kind are specifically superseded by this Settlement Agreement. There exists between the Parties no oral agreement, understanding, statement, promise, representation, warranty, or inducement other than as may be expressly set forth in this Settlement Agreement.

F. AMENDMENT

50. This Settlement Agreement shall not be amended or modified except by express written agreement by the Parties.

G. BINDING EFFECT

51. This Settlement Agreement shall be binding on the Parties and their officers, directors, employees, agents, constituent agencies, contractors, subsidiaries, successors, assigns, trustees, receivers and other affiliates.

H. FORCE MAJEURE

52. The Respondents' obligation to comply with any provision of this Settlement Agreement shall be deferred under this paragraph to the extent and only for the duration that a failure in compliance is caused by force majeure. For the purposes of this Settlement Agreement, force majeure is defined as an event or set of circumstances which are beyond the Respondents' control and could not have been prevented by the Respondents' reasonable action or due diligence. Force majeure shall not apply to any failure in compliance due to increased costs or Respondents' financial inability to carry out the terms of this Settlement Agreement. The Respondents shall submit notification within five (5) days after the date when Respondents first know or should have known that a failure in compliance is reasonably foreseeable. Such written notice shall include the nature, cause and anticipated length of delay associated with the failure of compliance and all steps that Respondents have taken and will take to avoid or minimize the failure of compliance, with a schedule of implementation. Failure to provide written notice within the required time period shall constitute a waiver of Respondents' right to invoke force majeure for the particular event at issue. If NMED agrees that the failure in compliance is

attributable to force majeure, it shall extend the time for compliance only to the extent and only for the duration necessary to accommodate the force majeure.

I. EXTENSIONS OF TIME FOR GOOD CAUSE SHOWN

53. The Respondents may seek an extension of time to perform a requirement of this Settlement Agreement, or any attachment or requirement, for good cause, by sending NMED a written request for an extension of time and a proposed revised deadline or schedule. The Respondents will notify NMED within at least 72 hours if the Respondents determine they may not be able to meet a schedule and/or milestone contained in this Settlement Agreement, *Attachment A* or any document submitted thereto. The request shall state the length of the requested extension and describe the basis for the request. NMED will respond in writing to any request for extension within thirty (30) calendar days following receipt of the request. If NMED denies the request for extension, it will state the reasons for the denial in its written response.

J. NOTICE TO PARTIES

54. Whenever under the terms of this Settlement Agreement, any Party is required to provide notice to any other Party, or to submit any plan, report, or other document called for under this Settlement Agreement, such notice, plan, report or other document shall be sent or directed to the following persons via email and standard delivery:

NMED: Bureau Chief
NMED Hazardous Waste Bureau
2905 Rodeo Park Drive East, Bldg 1
Santa Fe, NM 87505

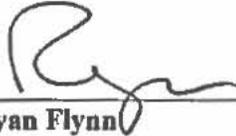
DOE: Manager
U.S. Department of Energy
Carlsbad Field Office
4021 National Parks Highway
Carlsbad, New Mexico 88220

NWP: Project Manager
 Nuclear Waste Partnership LLC
 4021 National Parks Highway
 Carlsbad, New Mexico 88220

K. AUTHORITY OF SIGNATORIES

55. The persons executing this Settlement Agreement represent that they have the requisite authority to bind either NMED or the Respondents, as appropriate, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind NMED or the Respondents to this Settlement Agreement. This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts.

NEW MEXICO ENVIRONMENT DEPARTMENT

By: 

Ryan Flynn
Secretary, New Mexico Environment Department

Date: 1/21/2016

UNITED STATES DEPARTMENT OF ENERGY

By: Signature on File

Todd Shrader
Manager, Carlsbad Field Office

Date: 1/21/16

NUCLEAR WASTE PARTNERSHIP LLC

By: _____
Philip J. Breidenbach
Project Manager, Nuclear Waste Partnership LLC

Date: _____

NEW MEXICO ENVIRONMENT DEPARTMENT

By: _____
Ryan Flynn
Secretary, New Mexico Environment Department

Date: _____

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Todd Shrader
Manager, Carlsbad Field Office

Date: _____

NUCLEAR WASTE PARTNERSHIP LLC

By: Signature on File
Philip J. Breidenbach
Project Manager, Nuclear Waste Partnership LLC

Date: 1/21/16

APPROVAL OF STIPULATED FINAL ORDER HWB-14-21

Pursuant to section 20.1.5.600(B)(2) NMAC, this Settlement Agreement and Stipulated Final Order, agreed to by NMED and the Respondents (DOE and NWP), is hereby **APPROVED** as a **FINAL ORDER**.



BUTCH TONGATE
DEPUTY SECRETARY OF ENVIRONMENT

Date: 1/22/15

Attachment A

AC#	Violation	Count	Topic	Documentation to Provide as Evidence of Completion
106	1	1	Combustible buildup in salt haul truck.	Provide a list of preventive maintenance procedures for liquid fueled vehicles in the underground. Provide a work plan to complete and submit the modifications to the Permit to add WP 12-FP0060 <i>Semi-Annual Inspection of Equipment: Automatic Fire Suppression and Fire Detection Systems</i> to procedures in Table E-1. Update inspection criteria for waste handling equipment.
106	1	2	Conversion of the fire suppression system to manual.	Provide copy of technical specifications for the automatic system and the Corrective Action Plan (CAP)-related schedule. Provide a work plan to complete and submit the modifications to the Permit to revise required equipment and inspection criteria in Permit Attachment D and E.
106	1	3	Removal of the automatic fire detection capability.	See the actions for Count 2.
106	1	4	Not using fire resistant hydraulic fluid in the truck.	Provide a copy of ETO-U-022 (the engineering evaluation).
106	1	5	An ineffective emergency preparedness and response program.	Records of these activities will be kept on file at the facility. Drill and exercise program will be evaluated as part of Operational Readiness Review. Provide the following documents: <ul style="list-style-type: none"> • WP 12-9 <i>WIPP Emergency Management Plan</i>. • WP 12-ER4920, <i>RCRA Contingency Plan Implementation</i>. • Description of the Resource Conservation and Recovery Act (RCRA) Contingency Plan training and provide number of sessions and number of personnel trained. • WP 12-ER4911 <i>Underground Fire Response</i>. • WIPP Three Year Drill and Exercise Program FY 2015 - 2017.
106	1	6	An out-of-service regulator and fans.	None identified. Improvements will be obvious by inspection.
106	1	7	Inoperable mine phones.	Inspection records and results are kept on file at the facility per the Permit. Provide example procedure (WP 05-WH1810, <i>Underground Transuranic Mixed Waste Disposal Area Inspections</i>) implementing daily inspection of mine pager phones in areas where they are being used. Provide a work plan to complete and submit the modifications to the Permit. Provide a work plan to complete and submit WP 04-PC301B, <i>Quarterly Essential Plant Communication Testing</i> .
106	1	8	Insufficiently rigorous equipment inspections.	Provide a list of preventive maintenance procedures for liquid fueled vehicles on the surface. Provide a work plan to complete and submit the modifications to the Permit.
106	1	9	Large quantities of material staged haphazardly throughout the mine negatively impacting worker egress.	Describe the training related to managing combustible loading in the underground and provide: <ul style="list-style-type: none"> • WP 12-FP3003 <i>Combustible Loading Controls for the Waste Handling Building and Underground</i>. • MWO00534 <i>Underground Entry/Exit</i>.
106	1	10	Numerous components of the mine ventilation system being out-of-service or impaired for an extended period of time.	None identified. Improvements will be obvious by inspection.
106	1	11	Impaired alarm systems.	Provide Action Request (AR) closure documentation.
106	1	12	Out of service water hydrants.	Provide AR closure documentation.
107	2	1	The Respondents' failure to submit a written notice concerning the fire within five (5)	See Violations 8 and 9.

AC#	Violation	Count	Topic	Documentation to Provide as Evidence of Completion
			calendar days of the time the Respondents became aware of the circumstances is a violation of Permit.	
108	3	1a	The Accident Investigation Board (AIB) Fire Report specified that "[t]he training and qualification of the operator was inadequate to ensure proper response to a vehicle fire."	An example of live fire training is included in FWT-101 <i>Fire Watch Training</i> . This training is required for underground access for personnel who have not received SAF-501 <i>Inexperienced Miner Training</i> . Provide FWT-101 <i>Fire Watch Training</i> . Provide a work plan to develop and submit live fire training that includes an appropriate refresher frequency. Provide a work plan to complete and submit the modifications to the Permit
108	3	1b	The AIB Fire Report discussed examples of inadequate training for the proper response to a vehicle fire: workers were unable to don personal protective equipment.	Provide description of revised training and summarize number of times the training has been provided and number of personnel trained in the last 12 months.
108	3	1c	Fully integrated emergency exercises had not been conducted.	Provide the following documents: <ul style="list-style-type: none"> • 12-9, <i>WIPP Emergency Management Plan</i>. • 12-ER.12, <i>WIPP Abnormal Condition Drill Program (New)</i>. • 12-ER.13, <i>WIPP Drills and Exercises (New)</i>. • 12-ER3006, <i>Abnormal Condition Drills (New)</i>. • WIPP Three Year Drill and Exercise Program FY 2015 – 2017.
108	3	1d	Individuals identified as coordinating the Facility's response to fires had not received Incident Command System training.	Provide the following documents: <ul style="list-style-type: none"> • 12-9, <i>WIPP Emergency Management Plan</i>, Support Annex I - <i>Incident Command System</i>. • 12-ER4922, <i>Incident Command System (New)</i>. • 12-ER4923, <i>Emergency Operations Center Personnel Selection and Qualification (New)</i>.
108	3	1e	The individual operating the salt haul truck had not received hands-on training in the use of portable fire extinguishers.	An example of live fire training is included in FWT-101 <i>Fire Watch Training</i> . This training is required for underground access for personnel who have not received SAF-501 <i>Inexperienced Miner Training</i> . Provide FWT-101 <i>Fire Watch Training</i> . Provide a work plan to develop and submit live fire training that includes an appropriate refresher frequency. Provide a work plan to complete and submit the modifications to the Permit
108	3	1f	The AIB Fire Report concluded that Facility personnel did not fully follow the procedures for response to a fire in the underground due in part to "the lack of effective drills and training."	Provide the following documents: <ul style="list-style-type: none"> • 12-ER.12, <i>WIPP Abnormal Condition Drill Program (New)</i>. • 12-ER.13, <i>WIPP Drills and Exercises (New)</i>. • 12-ER3006, <i>Abnormal Condition Drills (New)</i>. • WIPP Three Year Drill and Exercise Program FY 2015 - 2017.
108	3	1g	Facility personnel involved in the management of TRU mixed and hazardous waste were not trained in procedures relevant to the position in which they were employed and in a manner to perform their duties in a way that ensured the Facility's compliance.	Training records and results are kept on file at the facility per the Permit. Refer to 3 year drill schedule (see Violation 3, Count 1c).
109	4	1	Underground PA System.	Provide March 4, 2015 map of the location of Permit required equipment.
109	4	2	Evacuation Alarms.	Provide March 4, 2015 map of the location of Permit required equipment.

AC#	Violation	Count	Topic	Documentation to Provide as Evidence of Completion
109	4	3 to 14	12 Mine Pager Phones.	<p>Inspection records and results are kept on file at the facility per the Permit.</p> <p>Provide example procedure (WP 05-WH1810, <i>Underground Transuranic Mixed Waste Disposal Area Inspections</i>) implementing daily inspection of mine pager phones in areas where they are being used.</p> <p>Provide a work plan to complete and submit the modifications to the Permit.</p> <p>Provide a work plan to complete and submit WP 04-PC3018, <i>Quarterly Essential Plant Communication Testing</i>.</p>
110	5	1	534-Continuous Air Monitor (CAM)-001-152 has only been operational a total of 29 days in the last 22 months.	None identified. Improvements will be obvious by inspection.
110	5	2 to 4	Fire panels impaired.	None identified. Improvements will be obvious by inspection.
110	5	5 to 9	Three fire hydrants and two Post Indicator Valves (PIVs) were either impaired or out of service.	None identified. Improvements will be obvious by inspection.
110	5	10	A pull station was impaired.	<p>None identified. Improvements will be obvious by inspection.</p> <p>Provide AR closure documentation.</p>
110	5	11 to 43	33 Emergency Lights.	<p>Records of these activities will be kept on file at the facility.</p> <p>Provide AR closure documentation.</p>
111	6	1	Failure to implement the Contingency Plan.	Provide the following document: Procedure WP 12-ER4920, <i>RCRA Contingency Plan Implementation</i> .
112	7	1	Continuous air monitors.	None identified. Improvements will be obvious by inspection.
112	7	2	Ventilation dampers.	<p>None.</p> <p>Provide a work plan to complete and submit the modifications to the Permit.</p>
112	7	3a	Fans.	None.
112	7	3b	Fans.	Permit required inspections will be reported in the report required by the May 12, 2014 NMED Administrative Order.
112	7	4a	Sensors.	None. Improvements will be obvious by inspection.
112	7	4b	Sensors.	None. Improvements will be obvious by inspection.
112	7	5a	Primary system status display.	None. Improvements will be obvious by inspection.
112	7	5b	Primary system status display.	None. Improvements will be obvious by inspection.
112	7	5c	Primary system status display.	None. Improvements will be obvious by inspection.
113	8	1	24-hour notification for the release event.	Provide the following document: WP 02-PC-3005 <i>Permit Reporting 24-Hour, 5-Day Follow-Up, Other Noncompliances</i> .
114	9	1	5-day report for the release event.	Provide the following document: WP 02-PC-3005 <i>Permit Reporting 24-Hour, 5-Day Follow-Up, Other Noncompliances</i> .
115	10	1	Contingency Plan implementation.	<p>Provide the revised RCRA Contingency Plan implementing procedures:</p> <ul style="list-style-type: none"> • WP 12-ER4911 <i>Underground Fire Response</i>. • WP 12-ER4925 <i>CMR Incident Recognition and Initial Response</i>. • WP 12-ER4926 <i>CMR Expanded Staffing Operations</i>. • WP 12-ER4920 <i>RCRA Contingency Plan Implementation</i>. <p>Provide a work plan to complete and submit the modifications to the Permit.</p>
116	11		Accepting D001 waste.	<ul style="list-style-type: none"> • CCP-TP-005, Rev 27 <i>CCP Acceptable Knowledge Documentation</i>. • Revision to CBFO-MP-10.3 Rev 7 <i>Audits</i> to include expanded scope for certification /recertification audits. • CCP-PO-012, Rev 16, <i>CCP/Los Alamos National Laboratory (LANL) Interface Document</i>. • MP 10.10, Rev. 0 <i>Technical Review of TRU Waste Generator Site Processes (New Procedure)</i>. • Carlsbad Field Office (CBFO) will provide a memorandum to the LANL Carlsbad Difficult Waste Team defining their role in support of CBFO

AC#	Violation	Count	Topic	Documentation to Provide as Evidence of Completion
				<p>activities.</p> <p>Provide a work plan to complete and submit the procedures and Interface Agreements.</p>
117	12		Accepting Incompatible waste.	<ul style="list-style-type: none"> • CCP-TP-005, Rev 27 <i>CCP Acceptable Knowledge Documentation</i>. • Revision to CBFO-MP-10.3 Rev 7 <i>Audits</i> to include expanded scope for certification /recertification audits. • CCP-PO-012, Rev 16, <i>CCP/Los Alamos National Laboratory (LANL) Interface Document</i>. • MP 10.10, Rev. 0 <i>Technical Review of TRU Waste Generator Site Processes (New Procedure)</i>. • CBFO will provide a memorandum to the LANL Carlsbad Difficult Waste Team defining their role in support of CBFO activities. <p>Provide a work plan to complete and submit the procedures and Interface Agreements.</p>
118	13	1 to 4	Waste Stream Profile Form Review.	<p>Issue WP 08-NT.03, Rev 16 <i>Waste Stream Profile Form Review and Approval Program</i>.</p> <p>Issue WP 08-NT.1005, Rev. 0 <i>RCRA Review Criteria for Waste Stream Profile Forms</i>.</p> <p>Provide a work plan to complete and submit the procedures.</p>