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Lieutenant Governor

**NEW MEXICO
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BUTCH TONGATE
Cabinet Secretary - Designate

J. C. BORREGO
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 16, 2016

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

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

**RE: NOTICE OF VIOLATION AND RESOLUTION
WASTE ISOLATION PILOT PLANT
EPA ID# NM4890139088**

Dear Messrs. Shrader and Breidenbach:

Beginning December 7, 2016, the New Mexico Environment Department (NMED) conducted a hazardous waste Compliance Evaluation Inspection at the U.S. Department of Energy (DOE) Waste Isolation Pilot Plant (WIPP), located at 34 Louis Whitlock Drive, Carlsbad, New Mexico. Based on the inspection and a review of the information obtained, NMED has determined that your facility is a Large Quantity Generator and a Permitted Treatment, Storage, and Disposal Facility of hazardous waste as defined in the Notification of Regulated Waste Activity Instructions (EPA Form 8700-12), and has violated the Hazardous Waste Management Regulations (20.4.1 NMAC) or WIPP's RCRA Hazardous Waste Operating Permit (Permit) as specified below.

The Permit is organized into parts and attachments. For the purposes of this Notice of Violation, the Permit part requirements are referred to as "permit conditions" or PCs, and attachment requirements are referred to as "attachment conditions" or ACs.

WIPP is a DOE facility that accepts and disposes of transuranic mixed waste from various DOE research laboratories around the U.S. Much of the mixed waste was originally generated from the

continuing research, production, and maintenance of the U.S. nuclear weapons arsenal, as well as other research of radioactive materials. The handling of these mixed wastes and the maintenance of the facility generates hazardous wastes such as waste gas, flammable solids, contaminated PPE and HEPA filters, misfired bolting cartridges, and used oil.

At the time of inspection, WIPP was operating at a limited capacity due to two incidents in February 2014. As a result of these two incidents, WIPP was subject to three Administrative Orders (AOs) issued by NMED: 1) a February 27, 2014, AO ("Above-ground" Order); 2) a May 12, 2014, AO ("Underground" Order); and 3) a May 20, 2014, AO ("Isolation" Order). Pursuant to these AOs, WIPP was directed to prepare and submit three planning documents to NMED: 1) an *Underground Compliance Plan*; 2) an *Underground Derived Waste Storage Plan*; and 3) a *Waste Isolation Pilot Plant Nitrate Salt Bearing Waste Container Isolation Plan*. WIPP also provided a *Recovery Plan* to NMED in October of 2014 as an addendum to, and providing compliance schedules for, the *Underground Compliance Plan*. The Compliance Evaluation Inspection evaluated WIPP's compliance with the AOs, the associated approved planning documents, the Permit, and standard hazardous waste generator requirements. The main focus of this inspection was to determine whether normal operations at the facility could be resumed safely and without any unacceptable risk to human health and the environment. NMED will make the determination as to whether or not WIPP may resume normal operations through separate correspondence.

NMED inspectors observed the following violations:

1. Failure to station emergency response equipment as specified in the RCRA Hazardous Waste Operating Permit. Specifically, NMED inspectors observed that there was no safety shower stationed in the Waste Handling Building, as is specified in the Permit in Attachment D, Table D-2. The safety shower serving this building was stationed in a separate building nearby. This is a violation of PC 2.10.1.
2. Failure to maintain a clearly legible label or marking on all contact-handled mixed waste packages indicating the package contains mixed waste. Specifically, NMED inspectors observed a TRUPACT container in the Waste Handling Building with a label that was almost completely obstructed by the handling equipment around the container, and was not legible. This is a violation PC 3.7.2.

NMED has reviewed DOE's submittal, dated December 15, 2016, regarding violation 1 above. Based on that review, NMED has determined that violation 1 was adequately addressed. Violation 2 was corrected at the time of the inspection. Therefore, no further action is required for either violation.

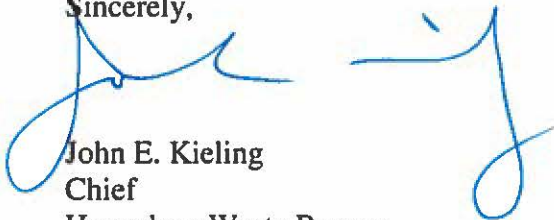
This Notice of Violation is considered an informal enforcement response in accordance with NMED's *Enforcement Response Protocol*. Please be aware that any future substantial deviations from regulatory requirements may result in your facility being considered for an elevated enforcement action. Also, be aware that any action taken during our inspection, or in response to

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this letter, does not relieve WIPP of its obligation to comply with any and all other applicable laws and regulations.

If you have any questions regarding this letter, please contact Aaron Coffman of my staff at (505) 476-6019 or by email at aaron.coffman@state.nm.us.

Sincerely,



John E. Kieling
Chief
Hazardous Waste Bureau

JEK: ac

cc: J. Kraemer, NMED HWB
A. Coffman, NMED HWB
R. Maestas, NMED HWB
M. Kesler, NMED District III Manager

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