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Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 28, 2017

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

Bruce C. Covert, Project Manager
Nuclear Waste Partnership LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-2078

**RE: REQUEST FOR TERMINATION OF SETTLEMENT AGREEMENT AND
STIPULATED FINAL ORDER No. HWB-14-21
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Messrs. Shrader and Covert:

The New Mexico Environment Department ("NMED") is in receipt of correspondence from the Department of Energy's Carlsbad Field Office ("CBFO") and Nuclear Waste Partnership ("NWP") (collectively "the Permittees") titled *Request for Termination of Settlement Agreement and Stipulated Final Order* ["Agreement"] No. HWB-14-21 ("Request"), dated November 30, 2017. The Request states that the requirements of the Agreement have been fulfilled in accordance with Paragraph 48. The Request included a table demonstrating the completion of each requirement by indicating the dates of submittal and subsequent NMED approval, if applicable.

Paragraph 48 of the Agreement states:

"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."

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However, paragraph 34 of the Agreement states in part:

“DOE will fund independent, external triennial reviews of environmental regulatory compliance and operations at WIPP to ensure that any regulatory deficiencies are identified... 34a) 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... 34b) The initial triennial review for WIPP shall be completed and made public before the end of federal fiscal year 2018.”

In accordance with Paragraph 34a, the Permittees submitted their proposed *Triennial Review Scope of Work and Guidelines* on January 20, 2017, which NMED reviewed and approved on February 3, 2017. In accordance with Paragraph 34b, the Permittees have until September 30, 2018 to complete and make public the initial triennial review.

NMED has reviewed the Request and acknowledges that all requirements of the Order except for Paragraph 34b have been completed, as discussed above. Because Paragraph 34b has not been completed, and is not scheduled to be completed until several months from now, NMED cannot terminate the Agreement in its entirety at this time. This request may be readdressed after Paragraph 34b has been completed. The Permittees should notify NMED once the initial triennial review has been completed and the results are made available.

NMED reminds the Permittees that NMED may attend triennial reviews, including but not limited to, status meetings, close-out meeting, or other activities during a triennial review, as initially communicated in the February 3, 2017 NMED approval of the *Triennial Review Scope of Work and Guidelines*. Please keep NMED apprised as to the scheduling of the upcoming triennial review and events surrounding the triennial review.

If you have any questions regarding this letter, please contact John Kieling at (505) 476-6035.

Sincerely,



J.C. Borrego
Deputy Secretary
New Mexico Environment Department

cc: J. Kieling, NMED HWB
R. Maestas, NMED HWB
D. Biswell, NMED HWB
H. Tellez, NMED HWB
S. Lucas-Kamat, NMED DOEOB
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File: WIPP '17