

**STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT**

**IN THE MATTER OF:**

<b>UNITED STATES DEPARTMENT OF ENERGY AND NUCLEAR WASTE PARTNERSHIP LLC</b>	)	<b>ADMINISTRATIVE ORDER UNDER THE NEW MEXICO HAZARDOUS WASTE ACT § 74-4-13</b>
	)	
<b>WASTE ISOLATION PILOT PLANT EDDY COUNTY, NEW MEXICO</b>	)	

**ADMINISTRATIVE ORDER**

Pursuant to NMSA 1978, Section 74-4-13(A) of the Hazardous Waste Act (“HWA”), the New Mexico Environment Department (“NMED”) hereby orders the Department of Energy (“DOE”), and Nuclear Waste Partnership, LLC (“NWP”; collectively, with DOE, the “Permittees”), to comply with the terms and conditions of this Administrative Order (“Order”) relating to the Waste Isolation Pilot Plant (“WIPP” or “Facility”).

**BACKGROUND**

1. Pursuant to the Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -15, the NMED is an agency of the executive branch within the government of the State of New Mexico.
2. The NMED, through the Hazardous Waste Bureau of the Environmental Health Division, is charged with administration and enforcement of the HWA and the Hazardous Waste Management Regulations, 20.4.1 NMAC (“HWMR”).

3. The Permittees comprise a “person” within the meaning of Section 74-4-3(M) of the HWA.
4. The DOE and NWP are co-Permittees under a Treatment, Storage, and Disposal Facility (“TSDF”) Permit for WIPP, EPA I.D. NUMBER NM4890139088-TSDF (“Permit”).
5. The Permittees are engaged in the management, storage and disposal of defense transuranic (“TRU”) mixed waste. TRU mixed waste is subject to the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 to 6992k.
6. The U.S. Environmental Protection Agency (“EPA”) has granted the State of New Mexico delegated authority to implement RCRA within the state. The HWMR incorporate portions of 40 CFR 260 through 40 CFR 270, 40 CFR 279 and related federal regulations by reference.
7. The DOE is a federal agency; NWP is a for-profit corporation conducting business in New Mexico.
8. On February 5, 2014, the Permittees reported a vehicle fire in the WIPP underground. The WIPP underground was temporarily closed for normal operations and waste shipments from generator sites were suspended.
9. On February 15, 2014, the NMED was informed by the Permittees of a radiological incident that occurred within the underground repository at approximately 11:30 PM on February 14, 2014. The facility was still in “stand down” due to the February 5, 2014 fire.
10. On February 19, 2014, the NMED became aware that an off-site particulate air sample collected and analyzed by the Carlsbad Environmental Monitoring and Research Center (“CEMRC”) indicated an airborne release of radioactive material.

11. On February 28, 2014, the NMED issued an Administrative Order dated February 27, 2014, regarding above ground compliance issues.
12. On April 11, 2014, the NMED was notified by the Permittees that the RCRA Contingency Plan described in Permit Attachment D had been invoked.
13. On May 2, 2014, the DOE Carlsbad Field Office published an Occurrence Reporting and Processing System Operating Experience Report Notification, titled *Potential for the presence of untreated nitrate waste salts in TRU waste packages* (“ORPS Report”).
14. The ORPS Report indicated that experts, after review of evidence from re-entries into the WIPP underground, concluded that a possible cause of the condition was the presence of untreated nitrate salts in waste packages, and it was postulated that an energetic chemical reaction could have resulted from an untreated nitrate compound coming into contact with cellulosic material present in the packages. Certain nitrate salt bearing waste containers were present in the affected area in Panel 7, Room 7, which contained an americium/plutonium ratio similar to the isotopic ratios seen on environmental filter samples taken during the release event, including containers generated at the Los Alamos National Laboratory (“LANL”).
15. Once notified that a nitrate salt bearing waste container from LANL may have been the source of the release, NMED verbally required DOE to take immediate action to isolate and secure all such nitrate salt bearing waste containers at WIPP and LANL.
16. On May 12, 2014, the NMED issued an Administrative Order addressing permit-required actions in the underground that could not be performed and modifications to requirements under the February 27, 2014 Administrative Order.
17. On May 16, 2014, following review of photographs obtained during the May 15, 2014 re-entry into the WIPP underground, NMED was notified by DOE that one of two suspect LANL

nitrate salt bearing waste containers emplaced in the underground, at Panel 7, Room 7, was breached, and was a cause of the February 15, 2014 release in the WIPP underground. The photographs from the May 15, 2014 re-entry indicate that the lid of a LANL nitrate salt bearing waste container had opened and there was heat damage to the surrounding area.

18. The suspect nitrate salt bearing waste containers are described in the same acceptable knowledge summary report CCP-AK-LANL-006, which contains four waste streams: LA-MHD01.001; LA-CIN01.001; LA-MIN02-V.001; and, LA-MIN04-S.001. The DOE indicated that two of the four waste streams contain varying amounts of nitrate salts, LA-MIN02-V.001 and LA-MHD01.001. LA-MIN02-V.001 is a mixed absorbed waste stream that is largely comprised of transuranic (“TRU”) waste such as liquids and solids absorbed or mixed with absorbents. The two suspect LANL nitrate salt bearing waste containers are part of the LA-MIN02-V.001 waste stream, which has been identified by DOE as the primary waste stream that contains nitrate salts absorbed with cellulose based kitty litter (“Litter”). All the LA-MIN02-V.001 containers at LANL contain nitrate salts mixed with the Litter.

19. The most recent numbers provided to NMED by the Permittees indicate that there are 368 containers that contain similar nitrate salt bearing waste emplaced in the WIPP underground: 313 in Panel 6; and, 55 in Panel 7, Room 7.

20. Based on the evidence provided to NMED, the current handling, storage and disposal of the hazardous nitrate salt bearing waste containers in the WIPP underground may present an imminent and substantial endangerment to health or the environment.

21. This Order addresses closure of certain panels and rooms containing nitrate salt bearing waste containers in the WIPP underground.

## ORDER

22. It is hereby ORDERED that to ensure continued protection of human health and the environment, the Permittees shall submit to NMED, by 2:00 PM MST on May 30, 2014, a ***WIPP Nitrate Salt Bearing Waste Container Isolation Plan***.

- a) The WIPP Nitrate Salt Bearing Waste Container Isolation Plan shall contain the following:
- i. A detailed proposal for the expedited closure of Panel 6, so that a potential release from any nitrate salt bearing waste containers in Panel 6 does not pose a threat to human health or the environment;
  - ii. A schedule for the expedited closure of Panel 6;
  - iii. A detailed proposal for the expedited closure of Panel 7, Room 7, so that a potential release from any nitrate salt bearing waste containers in Panel 7, Room 7, does not pose a threat to human health or the environment;
  - iv. A schedule for the expedited closure of Panel 7, Room 7, that will take into account all factors related to the ongoing recovery efforts being undertaken at WIPP and be implemented following completion of the investigation in the underground related to the cause of the release in Panel 7, Room 7; and
  - v. The volumetric flow rate for ventilation in the WIPP underground, a description of how the volumetric flow rate is protective of human health and the environment, and a description of how volumetric flow rate will be achieved while the WIPP Nitrate Salt Bearing Waste Container Isolation Plan is implemented.

- b) Upon receipt of the WIPP Nitrate Salt Bearing Waste Container Isolation Plan, NMED will either: approve the WIPP Nitrate Salt Bearing Waste Container Isolation Plan; approve with modification; or, respond to the Permittees with changes that must be incorporated into the WIPP Nitrate Salt Bearing Waste Container Isolation Plan and resubmitted to NMED in a timeframe indicated by NMED.
- c) Upon NMED approval of the WIPP Nitrate Salt Bearing Waste Container Isolation Plan, the Permittees shall immediately begin implementation of the WIPP Nitrate Salt Bearing Waste Container Isolation Plan.
23. The Permittees shall provide daily updates on the implementation of the WIPP Nitrate Salt Bearing Waste Container Isolation Plan during pre-scheduled technical calls with NMED and memorialize such updates in daily written submissions to NMED until NMED indicates otherwise.
24. All submissions to NMED related to this Order shall be posted in the Information Repository within five (5) working days of submission to NMED.
25. The requirements in this Order shall not relieve the Permittees of any requirements under their current Permit, including those for panel closure, or as otherwise provided by law.
26. The requirements in this Order do not, in any way, waive any legal rights vested in NMED to take enforcement action against the Permittees in relation to panel closure, or otherwise.
27. The Permittees shall submit all required information to NMED via electronic mail and to the following addresses:

Bureau Chief  
Hazardous Waste Bureau  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87508-6303

and

Division Director  
Environmental Health Division  
Harold Runnels Building  
1190 Saint Francis Drive, PO Box 5469  
Santa Fe, New Mexico 87502-5469

It is so ORDERED.



5/20/2014

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RYAN FLYNN

SECRETARY OF ENVIRONMENT

DATE

**CERTIFICATE OF SERVICE**

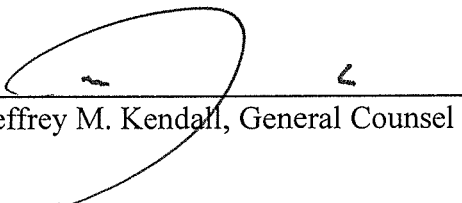
I hereby certify that on this 20th day of May, 2014, a copy of the foregoing  
Administrative Order was mailed via certified mail return receipt requested to:

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

Robert McQuinn, Project Manager  
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Jeffrey M. Kendall, General Counsel