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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 16, 2016

Todd A. Shrader, Manager
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Department of Energy
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Philip J. Breidenbach, Project Manager
Nuclear Waste Partnership, LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-2078

**RE: NMED INSPECTION
WASTE ISOLATION PILOT PLANT
EPA ID# NM4890139088**

Dear Messrs. Shrader and Breidenbach:

The New Mexico Environment Department (NMED) performed a site inspection (Inspection) at the Waste Isolation Pilot Plant (WIPP) on December 6 through December 9, 2016. The inspection focused on the Department of Energy (DOE) Carlsbad Field Office's (CBFO) and Nuclear Waste Partnership's (NWP; collectively with CBFO, the Permittees) compliance with the Hazardous Waste Act, the Hazardous Waste Management Regulations, Hazardous Waste Facility Permit (Permit) and associated Orders. Further details and results of this Inspection are being provided under separate correspondence.

On February 5, 2014, the Permittees reported a vehicle fire in the WIPP underground, that the underground was temporarily closed for normal operations, and that waste shipments from generator sites were suspended. On February 15, 2014, 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. It was believed by both NMED and the Permittees that WIPP would be unable to resume normal activities for a protracted period of time.

As a result of the February 2014 events at WIPP, and for the continued protection of human health and the environment, NMED issued three Administrative Orders (AOs): AO1 on February 27, 2014; AO2 on May 12, 2014; and AO3 on May 20, 2014. NMED also issued one

Administrative Compliance Order (ACO) on December 6, 2014, after which NMED and the Permittees entered into a Settlement Agreement and Stipulated Final Order (Settlement Agreement) on January 22, 2016. NMED conducted on-site inspections at WIPP in order to assess compliance with the hazardous waste regulations, the Permit and the above mentioned orders. These compliance inspections took place over multiple days in August 2014, December 2014, November 2015 and December 2016.

A brief summary of the Orders, Settlement Agreement and associated details are provided below:

- On February 27, 2014, NMED issued the Permittees AO1 to address all aboveground Permit requirements and related inspections, monitoring, recordkeeping, and reporting. AO1 also included provisions for the aboveground storage of TRU mixed waste in the permitted storage units of the Waste Handling Building (WHB) and Parking Area.
- On April 11, 2014, NMED was notified by the Permittees that the RCRA Contingency Plan described in Permit Attachment D had been invoked.
- On May 12, 2014, NMED issued AO2 to address the underground Permit requirements and related inspections, monitoring, recordkeeping and reporting. AO2 also required the submittal of an *Underground Compliance Plan* and an *Underground Derived Waste Storage Plan*.
- On May 20, 2014, NMED issued AO3 to address the isolation of Nitrate Salt Bearing Waste containers at WIPP and required the submittal of an *Isolation Plan*.
- On December 6, 2014, NMED issued ACO HWB-14-21 for violations of the Hazardous Waste Act, the Hazardous Waste Management Regulations and the Permit. The ACO included a *Schedule of Compliance* that required the submittal of a written report describing actions the Permittees have taken to prevent any recurrence of violations described in the ACO and changes to associated procedures and policies.
- On January 22, 2016, The NMED and the Permittees signed a Settlement Agreement for the purpose of resolving the December 6, 2014 ACO. The Settlement Agreement includes a Compliance Schedule for Corrective Actions under Attachment A and outlined a set of Supplemental Environmental Projects (SEPs). The Permittees are required to complete the corrective actions and SEPs on schedule and submit the required Evidence of Completion to NMED. As part of this Settlement Agreement, the WIPP RCRA Contingency Plan was also revised in a Class 2 Permit Modification that NMED approved on September 19, 2016 and went into effect on October 19, 2016.
- On October 18, 2016, NMED was notified by the Permittees that RCRA Contingency Plan activities related to the February 2014 events had concluded and the RCRA Contingency Plan had been exited.

Based upon NMED's review of the submitted information required by the Orders and the results of the December 2016 WIPP inspection, the Permittees are hereby notified that NMED is approving the resumption of normal operating status at WIPP.

Pursuant to this approval:

1. The provisions of AO1, and all associated reporting requirements, shall cease, in accordance with Paragraph 18 of the Order.
2. The current deadline for TRU mixed waste to remain in the WIPP Waste Handling Building (WHB) is June 30, 2017, as approved by NMED in a letter dated June 20, 2016 correlated to AO1. If the TRU mixed waste stored in the WHB cannot be emplaced by the expiration of this deadline, the Permittees shall request an extension of time in accordance with its Permit no later than June 16, 2017.
3. The Permittees may continue to use Surge Storage in the WHB until June 30, 2017, after which any use of Surge Storage will conform to the requirements of the Permit. If Surge Storage is no longer required prior to June 30, 2017, the Permittees will inform NMED and conform to the requirements of the Permit before new shipments of waste are received.
4. The provisions of AO2, and all associated reporting requirements, shall remain in effect until such time that NMED has approved the November 10, 2016 Request for Temporary Authorization (TA) (or as updated, if appropriate). This paragraph hereby amends AO2 and supersedes paragraphs 25 and 27 of AO2. NMED will address the closeout of AO2 under separate correspondence when appropriate to do so. The monitoring of trichloroethylene (TCE) also found in paragraph 25 of AO2 was included in the Permit through a January 2016 Permit modification.
5. The provisions of AO3 shall remain in effect until NMED has taken final action on the Panel Closure Class 3 Permit Modification that will address the final closure of all Panels.
6. The provisions of the January 22, 2016 Settlement Agreement shall remain in effect until the Permittees have fulfilled the requirements of the Settlement Agreement and a request for termination is provided to NMED in writing in accordance with Paragraph 48 of the Settlement Agreement.
7. In accordance with Permit Part 4 and Attachment N, disposal Room VOC monitoring in Panel 7 will commence in conjunction with the resumption of waste emplacement operations, beginning with Room 6.

Additionally, NMED would appreciate confirmation that all DOE Operational Readiness Review Pre-start activities and actions have been completed.

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If you have any questions regarding this matter, please contact Ricardo Maestas, at (505) 476-6050, or John Kieling, at (505) 476-6035.

Sincerely,



Kathryn Roberts
Director
Resource Protection Division

cc: J. Hower, NMED General Counsel
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Reading and File: WIPP 2016