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Lieutenant Governor

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**

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BUTCH TONGATE  
Cabinet Secretary

J. C. BORREGO  
Deputy Secretary

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

June 1, 2018

Todd Shrader, Manager  
Carlsbad Field Office  
Department of Energy  
PO Box 3090  
Carlsbad, NM 88221-3090

Bruce C. Covert, Project Manager  
Nuclear Waste Partnership, LLC  
PO Box 2078  
Carlsbad, NM 88221-2078

**RE: ELEVATION OF CLASS 2 PERMIT MODIFICATION  
CLARIFICATION OF TRU MIXED WASTE DISPOSAL VOLUME REPORTING  
WASTE ISOLATION PILOT PLANT  
EPA I.D. NUMBER NM4890139088**

Dear Messrs. Shrader and Covert:

On February 2, 2018, the New Mexico Environment Department (“NMED”) received a Request for a Class 2 Permit Modification (“Modification”) to the Waste Isolation Pilot Plant Hazardous Waste Facility Permit (“Permit”) from the Department of Energy and Nuclear Waste Partnership LLC (collectively, the “Permittees”) dated January 31, 2018. The Modification is entitled “*Clarification of TRU Mixed Waste Disposal Volume Reporting.*” The Permittees seek to modify the Permit and request that NMED process the request as a Class 2 modification under the regulations at 20.4.1.900 NMAC, incorporating 40 CFR 270.42(b).

The Permittees are seeking to distinguish and differentiate the method of counting the TRU mixed waste disposal volume for the purposes of reporting and tracking against the Permit and the federal Land Withdrawal Act (“LWA”). The LWA waste volume is proposed to be reported by a different method and tracked separately from the Permit. The Modification requests to make changes to Permit Parts: 1, 3, 4, 6, and Permit Attachments A1, A2, B, C, G, H, H1 and J.

Messrs. Shrader and Covert  
June 1, 2018  
Page 2

Under 40 CFR 270.42(b)(6)(i)(C), the Secretary may determine that a modification request must follow the procedures in 40 CFR 270.42(c) for Class 3 modifications for the following reasons: (1) There is significant public concern about the proposed modification; or (2) The complex nature of the change requires the more extensive procedures of Class 3.

The Permittees published a public notice on February 2, 2018 that commenced a 60-day public comment period, which ended on April 3, 2018. After reviewing the comments, and in accordance with 40 CFR 270.42(b)(6)(i)(C), I have determined that it is appropriate for NMED to process the Modification as a Class 3 modification under 40 CFR 270.42(c), as there is significant public concern and the complex nature of the proposed change requires the more extensive procedures of a Class 3 modification.

If you have questions regarding this matter, please address them to Ricardo Maestas of the Hazardous Waste Bureau, at 476-6050 or [ricardo.maestas@state.nm.us](mailto:ricardo.maestas@state.nm.us).

Sincerely,



Butch Tongate  
Secretary  
New Mexico Environment Department

cc: J.C. Borrego, NMED RPD Acting Division Director  
J. Hower, NMED OGC  
J. Kieling, NMED HWB  
R. Maestas, NMED HWB  
D. Biswell, NMED HWB  
H. Tellez, NMED HWB  
M. McLean, NMED HWB  
S. Lucas-Kamat, NMED DOEOB  
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