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**NEW MEXICO
ENVIRONMENT DEPARTMENT**

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DAVE MARTIN
Secretary

RAJ SOLOMON, P.E.
Deputy Secretary

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February 25, 2011

Mr. Nick Stone, WIPP Project Officer
State/Tribal Oversight Section
US EPA Region 6
1445 Ross Avenue, Suite 1200 (6PD)
Dallas, TX 75202-2733

RE: NMED Review of 2010 WIPP Biennial Environmental Compliance Report

Dear Mr. Stone:

The Hazardous Waste Bureau (HWB) conducted the New Mexico Environment Department's (NMED) review of the 2010 WIPP Biennial Environmental Compliance Report (BECR), which addresses compliance issues at WIPP from April 1, 2008 to March 31, 2010. NMED's review is consistent with the WIPP Land Withdrawal Act (Pub. L. 102-579) Section 9(a)(3), which requires the U.S. Environmental Protection Agency (EPA) Administrator or the State, as appropriate, to determine whether WIPP complies with applicable environmental laws, regulations, and permit requirements. This letter summarizes NMED's findings.

The BECR adequately describes in the summary of compliance issues the resolution of the two separate compliance orders issued by NMED on July 24, 2009. However, the BECR fails to include a complete discussion in the summary of compliance issues with respect to NMED's November 14, 2008 Notice of Violation (NOV) regarding the discharge of 150 gallons of brine from the Exhaust Shaft Intercept Borehole collection system into the H-19 Evaporation Pond that exceeded the regulatory limit of 5 mg/L for lead. The NOV alleged violations of both the New Mexico Hazardous Waste Act (HWA) and the New Mexico Water Quality Act (WQA). The BECR addresses the WQA component of the NOV, stipulated final order, and penalty on page 149 under *Notification of Discharge - Removal, 20.6.2.1203 NMAC* in Section 29.0 *New Mexico Water Quality Act*, but not the alleged HWA violations (*see* BECR Section 25.0 *New Mexico Hazardous Waste Act*). The NOV should have been included and discussed more thoroughly in Section 1.3, *Compliance Issues for Reporting Period*, because although the actual violation occurred during the previous reporting period, the NOV was issued and settled under the current reporting period.

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Nevertheless, in light of these resolutions and with the inclusion of the November 14, 2008 NOV, to the best of NMED's knowledge, WIPP was not in violation of any other environmental laws and regulations contained in Chapters 25 through 31 of the BECR during the reporting period. This review should not be construed as a determination that WIPP complied with all applicable laws and regulations during the reporting period.

If you have any questions regarding this matter, please contact me at (505) 476-6016.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: Raj Solomon, NMED WWMD
Art Vollmer, NMED HWB
Steve Zappe, NMED HWB
Bill Olson, NMED GWQB
Anne Clarke, NMEMNRD
Susan McCauslin, CBFO
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