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Via Electronic Mail

April 11, 2014

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APR 11 2014

NMED  
Hazardous Waste Bureau

Re: DOE/NWP Response (Mar 21, 2014) to NMED Request for Information (Mar 12, 2014)

Dear Messrs. Hellstrom, Franco, Cook, and McQuinn:

The New Mexico Environment Department (NMED) appreciates your Response to its request for information. Also, we appreciate the steps taken by the United States Department of Energy (DOE) and Nuclear Waste Partnership LLC (NWP) to keep NMED informed of progress at the Waste Isolation Pilot Plant (WIPP). NMED is pleased to see DOE/NWP complying with the requirements in NMED's First Administrative Order of February 27, 2014.

Though NMED has maintained a forward approach focused on the safe re-entry of the underground, ensuring human health and protection of the environment, and providing information to New Mexicans, we have concerns about the rationale and justification in your Response for not invoking the RCRA Contingency Plan, WIPP Permit Attachment D.

DOE/NWP states in the Response that this event was treated as a "radiological" one in light of the monitoring at Stations A and B, and that "there is no indication of a release of hazardous waste or hazardous constituents to the surface." Also, you state that the chemical analysis of the radiological sampling from the time of the event indicates "the event is being appropriately managed as a surface radiological event," and that it was "determined that the criteria in Permit Attachment D, Section D-3 requiring implementation of RCRA Contingency Plan had not been met." NMED feels that your decision and rationale was based on a strained reading of the WIPP Permit and the applicable Code of Federal Regulations.

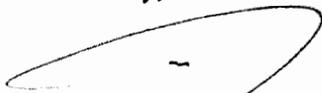
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WIPP Permit Attachment D, Section D-3, allows for the Contingency Plan to be invoked whenever there is potential for an event (here, a release of hazardous substances, materials or wastes) that could threaten human health and the environment. We understand that you applied the criteria in Section D-3 and determined otherwise. However, based on acceptable knowledge about the waste streams and containers in Panel 7 (most likely origin), the potential of the release coming from a mixed waste container is very high.

NMED was pleased to see in your Response that you intend to invoke the RCRA Contingency Plan after re-entry. At the time of receipt of your Response, March 21, 2014, NMED was optimistic about this prospect. But, though we agree with a thorough and deliberate approach for re-entry, NMED felt that the continued delay in invoking the Contingency Plan needed to be addressed in this reply. The Contingency Plan should have been used to minimize hazards to human health and the environment at the outset rather than at DOE/NWP's convenience.

Yours truly,



Jeffrey M. Kendall  
General Counsel  
New Mexico Environment Department

Cc: Ryan Flynn, Secretary, NMED  
Butch Tongate, Deputy Secretary, NMED