

 ENTERED

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

IN THE MATTER OF:

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

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 (“HWMR”).



3. The Permittees comprise a “person” within the meaning of Section 74-9-3(I) of the HWA.
4. The DOE and NWP are co-Permittees under a Treatment, Disposal, and Storage Facility (“TDSF”) Permit, EPA I.D. NUMBER NM4890139088-TSDF (“Permit”).
5. The Permittees are engaged in the storage and disposal of defense transuranic (“TRU”) mixed waste. TRU mixed waste is subject to the Resource Conservation and Recovery Act (“RCRA”).
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 at 20.4.1 NMAC, 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.
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 that there had been 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. It is believed by both the NMED and the Permittees that the WIPP will be unable to resume normal activities for a protracted period of time.

13. On April 2, 2014, the NMED received notice from the Permittees that they cannot comply with various underground monitoring Permit requirements due to inaccessibility of the Facility's underground, including:

- (a) Geomechanical Monitoring, Permit Part 4, Section 4.6.1 and associated requirements found in Attachment A2-5b(2), and required monthly monitoring as described in Attachment E, Table E-2. In addition, the Permittees will not be able to provide a complete annual report for geomechanical monitoring as required by the Permit Part 4, Section 4.6.1.2;
- (b) Repository Volatile Organic Compound ("VOC") Monitoring: Permit Part 4, Section 4.6.2, including Table 4.6.2.3, and associated requirements in Attachment N. In addition, the Permittees will not be able to comply with the applicable reporting requirements for repository VOC monitoring found in the Permit, Part 4;
- (c) Room Based VOC Monitoring, Permit Part 4, Section 4.4.3: Ongoing Disposal Room VOC Monitoring, and Table 4.4.1; Section 4.6.3, VOC Room-Based Limits, Table 4.4.1; and Section 4.6.3, Table 4.6.3.2, and associated provisions in Attachment N. In addition, the Permittees will not be able to comply with the applicable reporting requirements for disposal room VOC monitoring found in the Permit, Part 4;
- (d) Hydrogen and Methane Monitoring, Permit Part 4, Section 4.6.5 and associated requirements in Attachment N1. In addition, the Permittees will not be able to comply with the applicable reporting requirements for hydrogen and methane monitoring found in the Permit, Part 4;

- (e) Mine Ventilation Rate Monitoring, Permit Part 4, Section 4.6.4; Ventilation, Section 4.5.3.2; and associated requirements of Attachment O. In addition, the Permittees will not be able to maintain the minimum running annual average (“RAA”) for ventilation flow rate, and will not be able to comply with the applicable ventilation reporting requirements found in the Permit, Part 4;
- (f) Underground Inspections, Permit Part 4, Section 4.7: Inspection Schedules and Procedures; and associated requirements of Attachment E, including, but not limited to, the portions of Tables E-1, E-1a, and E-2 that pertain to underground operations;
- (g) The Permittees anticipate that derived waste will be generated in the underground as part of the decontamination process, and derived waste storage in the underground is not addressed in the Permit.

14. On April 11, 2014, the NMED was notified by the Permittees that the RCRA Contingency Plan described in Permit Attachment D was invoked.

15. Limited access to contaminated portions of the repository is expected to be prolonged.

16. This Order addresses, among other things, Permit-required actions that cannot be performed as described in Paragraph 13. This Order amends, in part, the February 27, 2014 Administrative Order. The requirements of this Order shall ensure continued protection of human health and the environment.

ORDER

17. It is hereby ORDERED that to ensure continued protection of human health and the environment, the Permittees shall adhere to the following:

(a) No later than 45 days from the date of this Order, the Permittees shall submit a draft ***Underground Compliance Plan*** to the NMED for review and comment. Once the NMED has reviewed and commented on the Underground Compliance Plan, the Permittees shall incorporate NMED's revisions and comments and proceed to finalize and submit the Underground Compliance Plan to the NMED. To the extent the NMED's revisions and comments are not incorporated, the Permittees shall communicate these decisions to the NMED. The timeline for the Underground Compliance Plan shall begin on the date of issuance of this Order and continue until the facility is in full compliance with the Permit. The Underground Compliance Plan shall include:

- i. A detailed compliance schedule for those requirements described in Paragraph 13 of this Order, including identification of all underground Permit requirements; a description of the current compliance status of each underground Permit requirement; a proposed timeline, including dates, for compliance and achieving underground recovery; any plans related to attaining compliance with the Permit; the reason(s) for any Permit non-compliance; and, any other pertinent information. This shall include a spreadsheet summary with each category listed above as a column or row.

(b) No later than 45 days from the date of this Order, the Permittees shall submit an ***Underground Derived Waste Storage Plan*** to the NMED for approval. This plan shall include, but is not limited to:

- i. A detailed description of the planned derived waste storage areas to be created and/or used in the underground;

- ii. The volumetric flow rate for ventilation in each storage area, a description of how the volumetric flow rate is protective of human health and the environment and a description of how it will be achieved;
- iii. For the derived waste stored in the WIPP underground, a description of how the requirements found in 40 CFR 264 Subpart I will be met and how the storage area(s) will meet Permit Part 2, Section 2.3.3 - Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (“TSDF-WAC”); and
- iv. For the derived waste stored in the WIPP underground, a description of how all other applicable RCRA and Permit requirements will be complied with.

(c) Following finalization and submittal of the Underground Compliance Plan, Paragraph 17(a), any revisions and updates to the Underground Compliance Plan shall be provided to the NMED for review and comment before being incorporated. Following approval of the Underground Derived Waste Storage Plan, Paragraph 17(b), any revisions and updates to the Underground Derived Waste Storage Plan shall be submitted to the NMED for approval before the changes are implemented.

18. Beginning on Monday, May 19, 2014, the Permittees shall augment the reporting currently required by the February 27, 2014 Administrative Order, with the initial bi-weekly report due Friday June 13, 2014, and every other Friday thereafter, as follows (subsequent augmented reports may identify new information only):

- (a) The Permittees may combine information required by the Administrative Order dated February 27, 2014 and this Order in a bi-weekly (i.e., every two weeks) report;

- (b) In addition to any other reporting requirements, the bi-weekly report shall include the current status of activities required by the RCRA Contingency Plan, Permit Attachment D, including identification of applicable sections of the Contingency Plan, the schedule for actions required under the Contingency Plan, and any deviations from any Contingency Plan requirements. Non-applicable sections shall also be identified and explanations shall be provided as to why such sections do not apply;
- (c) The bi-weekly report shall include any updates on activities performed pursuant to the Underground Compliance Plan, Paragraph 17(a) of this Order;
- (d) The bi-weekly report shall include any updates on activities performed pursuant to the Underground Derived Waste Storage Plan, Paragraph 17(b) of this Order, including a description of any underground derived waste produced, the contents, container type, container location, total container count, and an approximate volume of derived waste per container;
- (e) The Permittees shall report the status of the underground, including:
- i. The accessibility for personnel performing Permit requirement activities;
 - ii. The status of recovery activities; and
 - iii. The status of underground inspections required by the Permit.
- (f) The bi-weekly report shall include the submission of a list containing all additional requirements placed upon the WIPP by any state or federal agency relating to corrective actions or recovery and as a result of the incidents referenced in Paragraphs 8 and 9 of this Order, including requirements by other segments of DOE;

- (g) The Permittees shall provide a paper copy of the Panel 7, Room 7 waste placement layout map or diagram, as required by Permit Section 4.8.2;
- (h) The Permittees shall provide the most recent Weekly Map Update that shows waste disposal and mining activities for Panels 7 and 8;
- (i) The Permittees shall provide documentation of the “as found” condition of Panel 7, including relevant photographs of the waste;
- (j) The Permittees shall provide documentation of the “as found” condition of Panel 6 partial closure system, including relevant photographs;
- (k) The Permittees shall provide a summary of recovery-related work performed in Panel 7, including relevant photographs; and
- (l) The Permittees shall provide the status and description of the Waste Handling Building Unit (“WHB”) and the Waste Shaft soot clean-up activities.

19. Consistent with this Order, the Permittees shall begin monitoring for the VOC trichloroethylene (“TCE”) as a target analyte. The room-based concentration limit for TCE shall be 48,000 ppmv. The 50% Action Level shall be 24,000 ppmv and the 95% Action Level shall be 45,600 ppmv. If the value of TCE in any active open room or closed room reaches the 95% Action Level, another sample will be taken to confirm the existence of such a condition. If the second sample confirms that TCE in any active open room or closed room has reached the 95% Action Level, the active open room shall be abandoned, ventilation barriers shall be installed as specified in Permit Part 4, Section 4.5.3.3, and monitoring of the subject closed room shall continue at a frequency of once per week until commencement of panel closure. Prior to reaching the 95% Action Level in any active open room or closed disposal room, the Permittees may propose an alternative remedial action to implement in the event the 95% Action Level is

reached. This alternative remedial action must be approved by the NMED prior to implementation.

20. Paragraph 12(f) of the February 27, 2014 Administrative Order is amended to read as follows: The Permittees may use the remote handled (“RH”) Bay or Room 108 in the Waste Handling Building for the storage of derived waste from the recovery and cleanup activities associated with the events of February 5 and February 14, 2014. The Permittees may accumulate no more than 200 cubic meters of derived waste in the RH Bay and Room 108 in the Waste Handling Building, collectively. Waste shall be managed in accordance with the generator requirements found in 40 CFR 262.34.

21. To clarify, Section 12(f) of the February 27, 2014 Administrative Order, as amended above, does not exclude derived waste that has a surface dose rate less than 200 mrem/hr from being stored in the contact handled (“CH”) Bay as permitted by Permit Part 3, Section 3.1.1.7 if it is intended for disposal at the WIPP.

22. Documents required by Paragraph 14(g) of the February 27, 2014 Administrative Order shall only contain relevant round sheets, which are: Facility Site Operations and Infrastructure RH Room D/P and HVAC Panel Round Sheet, Facility Site Operations and Infrastructure Ventilation Fans Round Sheet and Facility Site Operations and Infrastructure WHB CH Room D/P/HVAC/Air Dryer Round Sheet.

23. Derived waste stored in the CH Bay shall follow Paragraphs 12(c), 12(d), 12(e), 12(g) and 15 of the February 27, 2014 Administrative Order.

24. Under no circumstances shall the Permittees commence normal operating status without prior inspection and approval of the NMED.

25. Upon approval of the NMED to return the Facility to normal operating status, the provisions of this Order shall cease except for the monitoring of TCE, which shall continue until the appropriate Permit Modification is issued.

26. All final reports and submissions to the NMED related to this Order and the February 27, 2014 Administrative Order shall be posted in the Information Repository within 5 working days of submission to NMED.

27. All terms and conditions of the Permit shall stay in effect unless specifically superseded by this Order, or the February 27, 2014 Administrative Order, and all Permit requirements superseded by this Order, or the February 27, 2014 Administrative Order shall continue upon commencement of normal operating status.

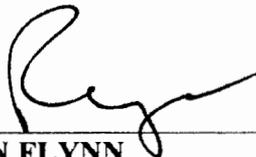
28. The Permittees shall submit all requested information, including the bi-weekly reports, to the NMED at the following addresses:

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.



RYAN FLYNN
SECRETARY OF ENVIRONMENT

5/12/2014

DATE

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2014, a copy of the foregoing

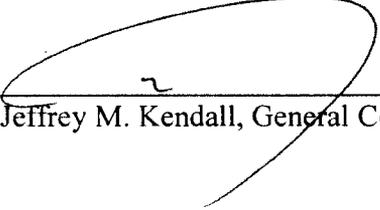
Administrative Order was mailed via certified mail return receipt requested to:

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

Robert McQuinn, Project Manager
Nuclear Waste Partnership LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-2078

George W. Hellstrom, Legal Counsel
U.S. Department of Energy
Carlsbad Field Office
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Dennis N. Cook, General Counsel
Nuclear Waste Partnership LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-2078



Jeffrey M. Kendall, General Counsel