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State of New Mexico
ENVIRONMENT DEPARTMENT
Hazardous Waste Bureau

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BUTCH TONGATE
Cabinet Secretary
J. C. BORREGO
Deputy Secretary

MEMORANDUM

TO: Butch Tongate, Secretary, New Mexico Environment Department

THROUGH: J.C. Borrego, Deputy Secretary
John E. Kieling, Chief, Hazardous Waste Bureau

FROM: Ricardo Maestas, WIPP Staff Manager, Hazardous Waste Bureau

CC: Jennifer Hower, General Counsel, Office of General Counsel

DATE: September 21, 2018

RE: **RECOMMENDATION**
CLASS 3 CLARIFICATION OF TRU MIXED WASTE DISPOSAL VOLUME
REPORTING PERMIT MODIFICATION TO THE WIPP HAZARDOUS WASTE
FACILITY PERMIT

On August 6, 2018, the New Mexico Environment Department (“NMED”) Hazardous Waste Bureau (“HWB”) issued a draft Permit (“Draft Permit”) for a 45-day public comment period. NMED concurrently issued a Public Notice, Fact Sheet and an Index to the Administrative Record as part of this action. The draft Permit is based on the January 31, 2018 Class 2 modification *Clarification of TRU Mixed Waste Volume Disposal Volume Reporting* permit modification request (“Modification”) proposing modifications to the Waste Isolation Pilot Plant Hazardous Waste Facility Permits submitted by the Department of Energy (“DOE”) and Nuclear Waste Partnership LLC (“NWP”) (collectively the “Permittees”). Additional details of the Modification and the draft Permit can be found on the NMED WIPP Permit webpage at the following link: <https://www.env.nm.gov/hazardous-waste/wipp/> under WIPP News dated August 6, 2018.

Brief Summary

The Permittees submitted a Class 2 Modification on January 31, 2018 entitled “*Clarification of TRU Mixed Waste Disposal Volume Reporting.*” The Permittees published a public notice on February 2, 2018 that commenced a 60-day public comment period, which ended on April 3, 2018, where almost sixty comments were submitted. On June 1, 2018, NMED determined that it was appropriate to process the Class 2 Modification as a Class 3 Modification due to significant public concern and the complex nature of the proposed change. NMED continued its review of

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the Modification as a Class 3 modification. On June 22, 2018, NMED issued an Administrative Completeness Determination. On June 27, 2018, NMED issued a Technical Incompleteness Determination, requesting clarification and additional information. The Permittees provided a response on July 12, 2018 providing technical information as requested. NMED issued the draft Permit for a 45-day public comment period that started on August 6, 2018 and concluded on September 20, 2018. The draft Permit is based on the Modification submitted on January 31, 2018, input from the public as provided during the Permittee's public comment period, and the additional information requested and received by NMED from the Permittee's.

Technical Analysis Review of the Public Comments

HWB has conducted a review and analysis of the 36 comments and 23 requests for a public hearing received during the 45-day comment. Based on initial review of the comments and pursuant to 20.4.1.900 NMAC (incorporating 40 CFR §270.42(c)), the public comments indicate that there is public concern with significance and therefore HWB recommends a public hearing be granted. For reference the comments can be found on the NMED WIPP Permit webpage at the following link: <https://www.env.nm.gov/hazardous-waste/wipp/>.

Conclusion

In conclusion, based upon the analysis conducted by NMED, as described above, it is the HWB's recommendation that this action be granted a public hearing. In proceeding with a public hearing, the HWB will coordinate negotiations under the provision of 20.4.1.901.A(4) NMAC. HWB is hopeful that the negotiations with the Permittee and the public hearing requestors can be productive to limit the issues during the public hearing.

✓
Approved

Disapproved

Butch Tongate

Butch Tongate
Secretary of Environment