



**Michelle Lujan Grisham**  
Governor

**Howie C. Morales**  
Lt. Governor

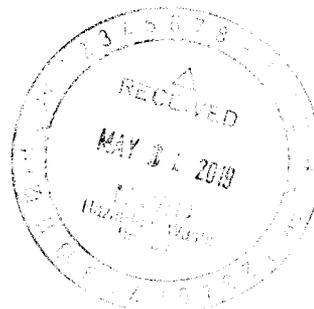
**NEW MEXICO  
ENVIRONMENT DEPARTMENT**

**Hazardous Waste Bureau**  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6313  
Phone (505) 476-6000 Fax (505) 476-6030  
[www.env.nm.gov](http://www.env.nm.gov)



**James C. Kenney**  
Cabinet Secretary

**Jennifer J. Pruett**  
Deputy Secretary



May 31, 2019

Mr. Don Hancock  
Southwest Research and Information Center  
P.O. Box 4524  
Albuquerque, NM 87505  
[\[sricdon@earthlink.net\]](mailto:sricdon@earthlink.net)

Dear Mr. Hancock,

The New Mexico Environment Department ("NMED") is in receipt of the April 5, 2019 and April 15, 2019 correspondence submitted via e-mail on behalf of Southwest Research and Information Center ("SRIC") to Secretary James Kenney. I am providing a response on behalf of Secretary Kenney.

In the April 5, 2019 correspondence, you expressed concern that the Class 1 Permit modification notification submitted to NMED on March 21, 2019 by the U.S. Department of Energy ("DOE") and Nuclear Waste Partnership, LLC ("NWP"), collectively, the ("Permittees"), was not a proper Class 1 Permit modification for various reasons. In your communication, you requested that NMED review and reject the modification pursuant to 20.4.1.900 New Mexico Administrative Code ("NMAC") (incorporating Title 40 of the Code of Federal Regulations ("CFR") 270.42(a)(1)(iii)) and NMED's historic practices, or that, in the alternative, the Permittees withdraw the Class 1 Permit modification. Additionally, you also requested that NMED convene pre-submittal-type meetings to review and discuss plans for proposed modifications before they are submitted to NMED, and you recommended that a meeting be convened soon to discuss what changes the Permittees intend to request in the Permit renewal.

NMED has reviewed both the March 21, 2019 Class 1 Permit modification notification and your April 5, 2019 correspondence. The Class 1 Permit modification is a proper Class 1 Permit modification and was submitted under the appropriate Appendix I listing, pursuant to 40 CFR 270.42(a). The correspondence also states that the Class 1 modification should not be considered a minor change since there has been a reduction in waste volumes as reported for LWA TRU

190521



Waste in the “Final LWA TRU Waste Volume<sup>4</sup>” column of Table 4.1.1. By submitting this Class 1 Permit modification notification, the Permittees are complying with NMED’s December 21, 2018 letter requesting that the Permittees populate Permit Part 4, Table 4.1.1 with the aforementioned volumes within 90 days of the effective date of the Permit resulting from the Class 3 Permit modification entitled “*Clarification of TRU Mixed Waste Disposal Volume Reporting.*” The Class 3 permit modification associated with the Class 1 permit modification volumes included a public participation process with a public hearing. The approval of the inclusion of such volumes occurred as a result of the Class 3 process and not of the Class 1 modification. The Class 1 permit modification was administrative in nature. In addition, the Class 1 is consistent with other volumetric inclusions in Table 4.1.1 (e.g., on August 8, 2011 and February 6, 2014) in which the Permittees reported the final waste emplacement volumes in a filled hazardous waste disposal unit to NMED per Permit Part 6, Section 6.10.1.

Additionally, NMED’s ability to verify the volumes in the “Final LWA TRU Waste Volume<sup>4</sup>” column of Table 4.1.1 was questioned in the April 5, 2019 correspondence. NMED has reviewed and verified these volumes using the Waste Data System/WIPP Waste Information System (“WDS/WWIS”). NMED also intends to conduct further reviews in the future to verify these volumes remain accurate in the Permit.

With regard to footnote 4 of Permit Part 4, Table 4.1.1 not being accurate: Revisions to footnote 4 are not being made in the Class 1 Permit modification and the footnote is unchanged from the current Permit. A link to the LWA TRU Waste volumes is posted and can be found on the DOE WIPP homepage at [www.wipp.energy.gov](http://www.wipp.energy.gov), just as footnote 4 indicates. Once on the DOE WIPP homepage one can find the link to “Shipment Information” under the “National Tru Program” drop down menu. From this webpage location one can find the TRU Mixed Waste volume and the LWA volume and a link to the “Weekly Status Report.”

Further, the comment that the notification does not sum either the “*Final TRU Mixed Waste Volume<sup>3</sup>*” column or the “*Final LWA TRU Waste Volume<sup>4</sup>*” column is inconsistent with the requirements of the Permit. These summed final volumes are not currently provided for in the Permit and have not been included in the Permit historically. Panels 7 and 8, included in the table, have not been filled and closed so summing these columns before all the disposal units are full is premature. To add them now would be inappropriate.

NMED notes that the title of the Class 1 Permit modification is “*Report Final LWA TRU Waste Volumes for Filled Panels 1 through 6 in Permit Part 4, Table 4.1.1*” and that the title does not include changes to the “*Final TRU Mixed Waste Volume<sup>3</sup>*” column, as mentioned in the correspondence. “*Attachment A: Description of the Class 1 Permit Modification Notification*” does adequately discuss the revisions to the TRU Mixed Waste volumes in the table. Since the LWA volumes are reported to the nearest hundredth cubic meter, the Permittees updated the TRU Mixed Waste volumes in the table for consistency and to provide greater accuracy in their volume reporting.

Mr. Hancock  
May 31, 2019  
Page 3

NMED is aware that SRIC and other organizations have objected to the Class 3 Permit modification decision and have filed appeals in the New Mexico Court of Appeals. As the appellate process proceeds, NMED will continue to review and process this Class 1 Permit modification, in accordance with the applicable Permit modification regulations at 20.4.1.900 NMAC, incorporating 40 CFR § 270.42.

In the April 15, 2019 correspondence, a summary was provided of the meeting that occurred on April 11, 2019 between the WIPP Permittees and several non-governmental organizations. Suggestions and feedback were provided for NMED to consider regarding the Permit renewal process and the construction timeline of Shaft #5. NMED has reviewed your suggestions and feedback and will take them into consideration.

NMED does expect the WIPP Permittees to hold a meeting on the 10-year Permit renewal and NMED will keep your organization updated in this regard. The correspondence also mentioned the Permittees' practice of holding pre-submittal meetings with stakeholders for certain proposed Permit modifications (i.e. Class 2 and Class 3 modifications), and NMED will continue to support such meetings, although not required by the regulations, to foster continued collaboration and interaction between stakeholders and the WIPP Permittees.

As always, NMED appreciates SRIC's comments and continued interest in the WIPP facility and Permit.

Sincerely,



Stephanie Stringer  
Director  
Resource Protection Division  
New Mexico Environment Department

cc: James C. Kenney, NMED Secretary  
John Kieling, HWB Chief