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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

September 11, 2020

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

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

**RE: INFORMATION REQUEST CONCERNING THE HAZARDOUS WASTE FACILITY PERMIT
AUDIT AND SURVEILLANCE PROGRAM
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Messrs. Knerr and Dunagan:

On March 31, 2020, the New Mexico Environment Department (“NMED”) received the Department of Energy’s and Nuclear Waste Partnership’s (collectively, the “Permittees”) Request for Extension of Time for certain inspections, reports, personnel training, and recertification audits specified in the Hazardous Waste Facility Permit (“Permit”) at the Waste Isolation Pilot Plant (“WIPP or the Facility”) due to Coronavirus Disease 2019 (“COVID-19”) preventive measures. The Request was submitted pursuant to Permit Part 1, Section 1.10.3, *Extension of Time* and stated: *“The basis for this request is that certain actions are mandated of employers in response to the COVID-19 disease. The Permittees request this extension of time starting immediately and continuing until staffing levels are returned to normal, in accordance with CDC, State, local, and Federal guidelines. The extension does not reduce the ability of the Permittees to provide continued protection of human health and the environment.”*

The Request for Extension of Time addressed four Permit-required items: 1) Permit Part 2, Section 2.3.2, *Audit and Surveillance Program*; 2) Permit Part 2, Section 2.7.3, *Inspection Frequency*; 3) Permit Part 2, Section 2.8, *Personnel Training* and Permit Part 2, Section 2.8.4, *Continuing Training*; and 4) Permit Part 1, Section 1.10.1, *Information Submittal*.

On April 2, 2020, NMED responded to this Request for Extension of Time, stating, *“NMED hereby grants the Request for an extension of time for items 2, 3 and 4 above until the State of New Mexico Executive Order 2020-004 has been rescinded and the Facility resumes normal operating status. NMED will*

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respond to Item 1: Permit Part 2, Section 2.3.2, Audit and Surveillance Program in a separate correspondence detailing additional guidance and expectations.”

On April 24, 2020, NMED addressed the *Audit and Surveillance Program*. The extension of time was also granted to this item with the condition that these three additional requirements be met:

1. Final Audit Reports shall contain a description of how Permit requirements were met in atypical situations;
2. Future Audit Plans shall describe how Permit requirements will be met when affected by COVID-19 preventive measures;
3. Department of Energy-Carlsbad Field Office (“DOE-CBFO”) must return to site-specific audits, consistent with Permit requirements, once normal waste characterization activities resume.

In accordance with item 1 of the above requirements, the Los Alamos National Laboratory (“LANL”)/Central Characterization Program (“CCP”) Audit Plan A-20-15 was submitted on May 20, 2020 stating the following: *“Due to heightened awareness and to decrease the potential development, spread, and impact of the acute respiratory illness, COVID-19, limited audit team members will travel to the LANL site. Most audit activities will be conducted from Carlsbad, NM, or via teleconference. This will not be the normal method for performing recertification audits.”*

A remote portion of the audit was held June 23 - 25, 2020. On-site field activities were scheduled to be evaluated later in July 2020, as described in the Audit Plan. These on-site field activities were not able to occur during the audit as scheduled due to COVID conditions. NMED was notified via phone on July 15, 2020, that the on-site portion of the LANL audit would not occur and that site visits at future audits may be similarly affected by ongoing COVID-19 preventive measures.

Currently, all future audits may be affected by COVID-19 preventive measures reducing the ability to comply with Permit requirements calling for the on-site presence of auditors with on-site observation of field activities. NMED has concerns about the continued adequacy, implementation, and effectiveness of programs for waste characterization activities performed at generator sites when audits are remote and limited in scope, without the on-site attendance of auditors or the ability to observe on-site field activities.

To better evaluate the issues which continue to affect the ability of the auditors to observe on-site field activities due to COVID-19 preventive measures and their subsequent effect on the *Audit and Surveillance Program* and the WIPP shipping schedule, NMED is issuing this Request for Information with the following questions:

1. Describe the approach the Permittees will take to meet *Audit and Surveillance Program* Permit requirements if on-site visits are not able to occur. Describe how this will be reflected in the Final Audit Reports?
2. Describe the immediate implications for the WIPP shipping program if NMED is not able to, in part or in whole, approve Final Audit Reports that have been affected by COVID-19 preventive measures.

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3. For all generator sites currently shipping or planning to ship in calendar years 2020 and 2021, please provide the following information, as of August 31, 2020:
 - A. Current number of containers at each generator site certified through an NMED-approved Final Audit Report;
 - B. Current number of containers on-site awaiting certification;
 - C. Current WIPP shipment schedule;
 - D. Current restrictions for on-site visits of the audit team, and its observers, due to COVID-19 preventive measures.

NMED is requesting a response to the questions within 30 days of receipt of this Request for Information. If you have any questions regarding this matter, please contact Ricardo Maestas of my staff at (505) 476-6050.

Sincerely,

**Kevin
Pierard**  Digitally signed by
Kevin Pierard
Date: 2020.09.11
14:56:28 -06'00'

Kevin M. Pierard, Chief
Hazardous Waste Bureau

cc: R. Maestas, NMED HWB
D. Biswell, NMED HWB
M. McLean, NMED HWB
C. Catechis, NMED DOE/OB
L. King, EPA Region 6
T. Peake, EPA ORIA
File: WIPP '20