



Department of Energy

Carlsbad Field Office
P. O. Box 3090
Carlsbad, New Mexico 88221

March 16, 2022

Mr. Rick Shean, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

Subject: Response to the December 17, 2021, Consolidation of Class 3 Permit Modification Request for Panels 11 and 12 with Ten-Year Permit Renewal Application Waste Isolation Pilot Plant, Environmental Protection Agency I.D. Number NM4890139088

Reference: New Mexico Environment Department correspondence from Rick Shean, Chief, Hazardous Waste Bureau, to Reinhard Knerr, Manager, and Sean Dunagan, Project Manager; Subject: Consolidation of Class 3 Permit Modification Request for Panels 11 and 12 with Ten-Year Permit Renewal Application, Waste Isolation Pilot Plant, EPA I.D. Number NM4890139088, dated December 17, 2021

Dear Mr. Shean:

The purpose of this letter is to respond to the referenced letter in which the New Mexico Environment Department (NMED) notified the Permittees of its decision to consolidate the pending Ten-Year Permit Renewal Application with the pending Class 3 Permit Modification Request (PMR) for Panels 11 and 12 (the Consolidation Decision). In a letter dated December 17, 2020, the NMED explained that consolidation of these two permit actions would accommodate NMED's "primary focus" to process the Renewal Application in light of the Permittees' "preference for prioritizing the Class 3 PMR for Panels 11 and 12." Thus, the Consolidation Decision achieves the priorities of both NMED and the Permittees.

The Permittees are providing the NMED with an update of the redline strikeout submitted for the Renewal Application by the proposed deadline of March 17, 2022. By this letter, the Permittees consent to the Consolidation Decision pursuant to 40 Code of Federal Regulations (CFR) § 270.42, which is consistent with the Resource Conservation and Recovery Act (RCRA) regulatory scheme¹. Furthermore, the Permittees acknowledge that the NMED retains discretion to issue separate decisions on the pending permit actions to avoid any delays from the consolidated approach.

¹ See, generally, 40 C.F.R. § 270.41 (limiting "causes" for permit modifications, revocation and reissuance, while giving permittees flexibility to "request" decisions on such permit actions); 53 Fed. Reg. 37912, 37913, 37933 (September 28, 1988) (recognizing intent of 40 C.F.R. § 270.42 to give flexibility to permittees to determine timing, scheduling and assembly of permit modifications in order to meet the operational and safety needs of the facility).

The Permittees will continue to work with the NMED to meet the Proposed Timeline². The Permittees request working meetings with the NMED to discuss whether the proposed date for the public hearing could be moved up from January 2023 to the fall of 2022 in light of the significant progress that already has been made on both the Permit Renewal Application and the Class 3 PMR for Panels 11 and 12. During such meetings, the Permittees would like to explore measures that can help facilitate the path forward to the satisfaction of both parties.

If you have any questions, please contact Mr. Ed Garza at (575) 234-8368, or Mr. Myles Hall at (575) 706-0033.

Sincerely,

REINHARD KNERR Digitally signed by REINHARD KNERR
Date: 2022.03.16 15:08:53 -06'00'

Reinhard Knerr
Manager
Carlsbad Field Office

SEAN DUNAGAN Digitally signed by SEAN DUNAGAN (Affiliate)
Date: 2022.03.16 14:48:27 -06'00'
(Affiliate)

Sean Dunagan
President and Project Manager
Nuclear Waste Partnership LLC

cc:

- R. Maestas, NMED *ED
- D. Biswell, NMED ED
- M. McLean, NMED ED

CBFO M&RC

*ED denotes electronic distribution

² Under the Proposed Timeline recently provided by the NMED technical personnel, the Permittees will support NMED's efforts to meet the following dates for processing the Permit Renewal and Class 3 PMR:

- Technical Completeness Determination by April 2022
- Hearing by January 2023
- Decision by May 2023
- Permit effective date June 2023