



May 24, 2022

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

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

**Re: Excavation of the West Mains
Waste Isolation Pilot Plant
EPA I.D. Number NM4890139088**

Dear Messrs. Knerr and Dunagan,

The New Mexico Environment Department (NMED) is in receipt of the March 10, 2022, Response (March 10, 2022) to its Clarification Request Regarding the December 30, 2021, Response to its December 1, 2021, Request for Information (RFI) Concerning the Excavation of the West Mains, from the Department of Energy and Nuclear Waste Partnership, LLC (collectively, the Permittees). Along with the March 10, 2022, Response, the Permittees have included enclosures 1 and 2 from their original December 30, 2021, Response to NMED's RFI. In the interest of transparency, required by NMED, the Permittees have re-submitted these enclosures for the public record.

With this letter, NMED acknowledges receipt of these enclosures for the public record and cautions the Permittees that excavation of the West Mains is proceeding *at risk*, as the Class 3 Permit Modification Request (PMR) for Panels 11 and 12 has not been adjudicated. This acknowledgment by NMED does not constitute a final agency action on the pending Class 3 PMR, nor does it prejudice or presuppose the outcome of the final action on the PMR, now being reviewed as part of the Permit Renewal process. The Permittees accept all responsibility and risk in undergoing any permanent construction activities prior to a final action on the Permit Renewal, as clarified in the Federal Register: *"Finally, in any case where construction occurs prior to final Agency action, the permittee assumes the risk that the request will be denied or changed."* 53 Fed. Reg. 37912, 37918.

NMED reserves the right to terminate the West Mains excavation activities for cause, including: (1) During the execution of the tasks associated with the planned change to the permitted facility, noncompliance by the Permittees with any condition of the Permit, or any applicable requirement found within the Hazardous Waste Act or Hazardous Waste Management Regulations; (2) the discovery of the failure by the Permittees to disclose fully all relevant facts, or the Permittees' misrepresentation of any relevant facts, associated with this planned change; or (3) A determination that the activities endanger human health or the environment. The Permittees will be held fully accountable for any failure to comply with all

Messrs. Knerr and Dunagan

Permit requirements.

If you have any questions regarding this correspondence, please contact Ricardo Maestas of my staff at (505) 690-6148.

Sincerely,

Rick Shean
Digitally signed by Rick Shean
Date: 2022.05.24 10:47:37 -06'00'

Rick Shean
Chief
Hazardous Waste Bureau

cc: J. Kenney, NMED OOTS
C. Catechis, NMED RPD
R. Maestas, NMED HWB
D. Biswell, NMED HWB
M. McLean, NMED HWB
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File: WIPP '22