



December 17, 2021

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: 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**

Dear Messrs. Knerr and Dunagan,

On March 31, 2020, the New Mexico Environment Department (NMED) received the Resource Conservation and Recovery Act (RCRA) Ten-Year Permit Renewal Application (Renewal Application) from the Department of Energy and Nuclear Waste Partnership, LLC (collectively, the Permittees). The Renewal Application included Addendum G1 which addressed the Permittees' stated need for two new Hazardous Waste Disposal Units (HWDUs) over the next ten-year term of the Waste Isolation Pilot Plant (WIPP) Hazardous Waste Facility Permit (Permit). On July 30, 2021, NMED received a Class 3 Permit Modification Request (PMR) from the Permittees addressing the Permittees' stated need for two new HWDUs, entitled "*Construction and Use of Hazardous Waste Disposal Units 11 and 12*" (Class 3 PMR for Panels 11 and 12).

NMED has made the decision to consolidate these two Permit actions pursuant to the following authority:

- 1) Section 9-7A-6(D) of the Department of Environment Act which empowers the Secretary to "*make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions.*"
- 2) 40 CFR 270.10.k which allows the Secretary to "*require a permittee or an applicant to submit information in order to establish permit conditions...*"
- 3) NMED's hearing procedure regulations at 20.1.4.100.E.1 NMAC which allow the Secretary to "*specify procedures in addition to or that vary from those provided in this Part in order to expedite the efficient resolution of the action or to avoid obvious injustice, so long as such procedures do not conflict with the Act or the Regulations or prejudice the rights of any party.*"

At this time, NMED's primary focus in regard to permitting actions is the processing of the Renewal Application. In discussions with NMED, the Permittees have stated a preference for prioritizing the Class 3 PMR for Panels 11 and 12. NMED is accomplishing this by consolidating this PMR with the Renewal

action. Additionally, NMED regards these permitting actions as interlinked given the scope of the Renewal Application, particularly the inclusion of Addendum G1 stating a need for two new HWDUs over a new ten-year Permit term.

NMED serves many constituencies and tries to best serve all parties. While considering an alternative approach to work on the Class 3 PMR and the Renewal Application simultaneously, NMED came to the conclusion that such a concurrent course is unrealistic given the time and resources available to NMED and the public. Furthermore, including the Class 3 PMR allows the public to comment on and debate the expansion of the facility footprint in its appropriate venue, the ten-year Renewal process, allowing for transparency and efficiency. This course also causes less confusion with the issuance of one draft Permit by NMED for public comment and an opportunity to request one public hearing.

NMED acknowledges the Permittees' submittal of the Renewal Application ahead of schedule having complied with all regulatory requirements for posting the draft and holding pre-application meetings. On October 6, 2020, NMED determined the Renewal Application to be administratively complete, stating *"that it constitutes a timely and complete application."* NMED further stated that it *"may request additional technical information from the Permittees to clarify, modify, or supplement previously submitted material."* Formally, NMED continues to consider the Renewal Application to be administratively complete, the inclusion of the Class 3 PMR for Panels 11 and 12 being a supplement to previously submitted material.

NMED acknowledges the public participation efforts and requirements already met for the Class 3 PMR for Panels 11 and 12 including a town hall, the public notice which initiated a 60-day public comment period, and a public meeting. NMED considers these public participation actions sufficient to not necessitate a re-issuance of the public notice for the Renewal Application, especially given the fact the regulations do not require a public comment period at this stage in the Renewal process, this coming later with the issuance of a draft Permit by NMED. NMED's objective here is the efficient continuation of the Renewal process.

In order to consolidate the Class 3 PMR for Panels 11 and 12 with the Renewal Application effectively, and to base the requested modifications to the Renewal Application on the current Permit, NMED requests the following from the Permittees within 90 days of this letter, by March 17, 2022:

- 1) Please update the submitted Red Line Strike Out (RLSO) for the Renewal Application adding only those modifications requested in the Class 3 PMR for Panels 11 and 12 (do not include any additional items as these will not have had any form of public engagement);
- 2) Please base the updated Renewal Application RLSO on the current Permit at the time of submittal; and
- 3) Please post the updated RLSO for the Renewal Application on the WIPP Information Repository webpage by the submittal date indicated above.

One of the six objectives of the Permit-required WIPP Community Relations Plan is to "[i]nform communities and interested parties of permit activities." In alignment with this objective, NMED also

Messrs. Knerr and Dunagan

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requests the Permittees send a courtesy notification of the consolidation of the Class 3 PMR for Panels 11 and 12 with the Renewal Application to the WIPP Facility Mailing List in order to keep all parties who have expressed an interest in the WIPP facility informed. Please send this notification to the WIPP Facility Mailing List and post this notification on the WIPP Information Repository webpage by the submittal date indicated for the requested items above, by March 17, 2022.

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: 2021.12.17  
14:12:40 -07'00'

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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