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ENVIRONMENT DEPARTMENT



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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

August 31, 2017

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

Dear Mr. Hancock,

The New Mexico Environment Department (“NMED”) is in receipt of your correspondence dated June 20, 2017. In your communication, you expressed concern that Item 9 of the recent Class 1 Permit Modification notification submitted to NMED on June 14, 2017 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. Item 9 of the Class 1 Permit Modification incorporated the Supplemental Ventilation System (“SVS”) to the Waste Isolation Pilot Plant (“WIPP” or “Facility”) Hazardous Waste Facility Permit (“Permit”). 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. NMED has reviewed both Item 9 of the Class 1 Permit Modification and your correspondence, and provides the following response.

The RCRA regulations at 40 CFR 270.42(a) provide that:

(a) Class 1 modifications (1) Except as provided in paragraph (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in appendix I of this section under the following conditions:

- (i) The permittee must notify the Director concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why*

they are necessary. Along with the notice, the permittee must provide the applicable information required by §§ 270.13 through 270.21, 270.62, and 270.63.

- (ii) The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the Director in accordance with 40 CFR 124.10(c)(viii), and the appropriate units of State and local government, as specified in 40 CFR 124.10(c)(ix). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior Director approval, the notification must be made within 90 calendar days after the Director approves the request.*
- (iii) Any person may request the Director to review, and the Director may for cause reject, any Class 1 modification. The Director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.*

(2) Class 1 permit modifications identified in appendix I by an asterisk may be made only with the prior written approval of the Director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in § 270.42(b) for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the Director of this decision in the notice required in § 270.42(b)(1).

On June 14, 2017, the Permittees submitted a nine item Class 1 Permit Modification Notification in accordance with Permit Part 1, Section 1.3.1 (20.4.1.900 NMAC, incorporating 40 CFR §270.42[a]). Item 9 (incorporation of the SVS) of the Class 1 was submitted under Appendix I, A.3 of 40 CFR 270.42, which is Equipment Replacement or Upgrading with Functionally Equivalent Components (e.g., pipes, valves, pumps, conveyors, controls), which is a Class 1 permit modification.

Your communication states that NMED must review and reject the modification because of the RCRA Regulations under 40 CFR 270.42(d)(2)(i) which provides that:

Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

The RCRA Regulations under 40 CFR 270.42(d)(2)(i) fall under “Other modifications” (40 CFR 270.42(d)) which states:

(1) In the case of modifications not explicitly listed in appendix I of this section, the permittee may submit a Class 3 modification request to the Agency, or he or she may request a determination by the Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the Agency with the necessary information to support the requested classification.

(2) The Director shall make the determination described in paragraph (d)(1) of this section as promptly as practicable. In determining the appropriate class for a specific modification, the Director shall consider the similarity of the modification to other modifications codified in appendix I and the following criteria:

- (i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.*
- (ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to,
 - (A) Common variations in the types and quantities of the wastes managed under the facility permit,*
 - (B) Technological advancements, and*
 - (C) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.**
- (iii) Class 3 modifications substantially alter the facility or its operation.*

The Permittees submitted Item 9 under an existing listing of the Appendix, Appendix I, A.3. Item 9 was not submitted to NMED for a determination of class. NMED has reviewed the Class 1 Permit Modification and concurs that Item 9 is a proper Class 1 permit modification and was submitted under the appropriate Appendix I listing, pursuant to 40 CFR 270.42(a).

In addition to this evaluation, it is NMED's current understanding that the SVS is scheduled to start operations in the fall of 2017. NMED is currently performing an inspection (August 30, 2017 through August 31, 2017), pursuant to Permit Part 1, Section 1.7.11.2, to ensure that the incorporation of the SVS is done in compliance with the Permit. NMED will have the opportunity to inspect and review internal procedures that implement Permit requirements before the SVS is brought online.

As part of this inspection, NMED will also evaluate the Facility Test and Balance process and the quarterly verification of total mine air flow, as described in Permit Attachment O, Section O-3, to ensure that the Permit requirements are being met. NMED will verify that the SVS will be included in the Test and Balance process described in Section O-3a(1), which states "the WIPP ventilation system and the underground ventilation modes of operation are described in Permit Attachment A, Section A2-2a(3). The Permittees shall verify underground ventilation system performance by conducting a periodic Test and Balance." This Class 1 Permit Modification adds the SVS ventilation mode of operation to the Permit in Section A2-2a(3).

Regarding your concerns related to training, inspections and underground maintenance activities, NMED will evaluate during our inspection if any additional training will be required, and whether the additional training relates to any Permit-required training. NMED will also confirm that the SVS will be inspected and maintained as required by Permit Attachment E, Table E-1, "Underground Openings-Roof Bolts and Travel Ways" and "Geomechanical Instrumentation System". In addition,

Mr. Hancock
August 31, 2017
Page 4

NMED during the inspection will evaluate the SVS ventilation air flow under the “Ventilation Exhaust” inspection component, also in Permit Attachment E, Table E-1. NMED does not anticipate any changes to underground traffic patterns or evacuation routes based upon the Class 1 Permit Modification, but will further evaluate while at the Facility.

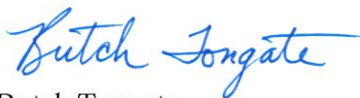
The regulations dictate what requirements the Facility Permit must contain and the implementation of these requirements are carried out using internal procedures. In many cases, changes to Permit language is not necessary, only that internal procedures appropriately capture the actions. NMED may review internal procedures to evaluate whether procedures are consistent with the requirements of the Permit, and will do so in the upcoming inspection.

Your correspondence also references the Defense Nuclear Facilities Safety Board report from September 2015. NMED expects the Permittees to comply with all Permit requirements, including the evacuation plan. The WIPP Facility RCRA Contingency Plan, Permit Attachment D, Section D-8, includes the Evacuation Plan for the Facility, which is implemented by various internal procedures. A discussion specific to the SVS system in Attachment D is not necessary, just as various other operations are not listed, because specific actions are contained in internal implementing procedures. As part of our inspection, NMED will review the Facility’s internal procedures that implement the Evacuation Plan and further evaluate that internal procedures appropriately address Permit requirements.

Finally, further modifications to the Permit will likely be needed as the Facility continues to upgrade the underground ventilation system. NMED will evaluate these modifications as the modifications are submitted under the regulations. As you are aware, it has been the Permittees practice to hold pre-submittal meetings with stakeholders, for certain proposed Permit modifications (i.e. Class 2 and Class 3), and NMED will continue to support such meetings, although not required by the regulations.

NMED appreciates SRICs comments and continued interest in the WIPP Facility and Permit.

Sincerely,



Butch Tongate
Cabinet Secretary
New Mexico Environment Department

cc: J.C. Borrego, Deputy Secretary
John Kieling, HWB Chief
Ricardo Maestas, Staff Manager (WIPP)