



SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Office of the Secretary

Harold Runnels Building
1190 Saint Francis Drive (87505)
PO Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-2990 Fax (505) 827-1628
www.nmenv.state.nm.us



RYAN FLYNN
Cabinet Secretary - Designate
BUTCH TONGATE
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 2, 2013

Jose R. Franco, Manager
Carlsbad Field Office
Department of Energy
P. O. Box 3090
Carlsbad, New Mexico 88221-3090

M. Farok Sharif, Project Manager
Nuclear Waste Partnership LLC
P. O. Box 2078
Carlsbad, New Mexico 88221-5608

**RE: ELEVATION OF CLASS 2 MODIFICATION TO REMOVE EXCLUDED
WASTE PROHIBITION
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear Messrs. Franco and Sharif:

The New Mexico Environment Department (Department) received a permit modification request dated April 8, 2013 from the U.S. Department of Energy Carlsbad Field Office and Nuclear Waste Partnership, LLC (the Permittees) on April 9, 2013. The Permittees seek to modify the Waste Isolation Pilot Plant (WIPP) Hazardous Waste Facility Permit (Permit) and request that the Department process the request as a Class 2 modification under the regulations at 20.4.1.900 NMAC, incorporating 40 CFR § 270.42(b).

The request modifies the prohibition of excluded waste from the WIPP Permit. The exclusion applies to waste that has been managed as high-level waste from specified tanks in Permit. The Permittees request to modify the permit at: Permit Part 2, Section 2.3.3.8, *Excluded Waste*, and Table 2.3.3.8, *Additional Approved Waste Streams*; Attachment C, *Waste Analysis*, Section C-1c, *Waste Prohibited at the WIPP Facility*, and Table C-4, *Waste Tanks Subject to Exclusion*; and Attachment C6, Table C6-1, *Waste Analysis Plan (WAP) Checklist*.

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Under 40 CFR § 270.42(b)(6)(i)(C), the Secretary may determine that the modification request must follow the procedures in § 270.42(c) for Class 3 modifications for the following reasons: (1) There is significant public concern about the proposed modification; or (2) The complex nature of the change requires the more extensive procedures of Class 3.

In this matter, I have determined that it is appropriate for the Department to process the modification request as a Class 3 modification under 40 CFR § 270.42(c) because there is significant public interest.

If you have questions regarding this matter please address them to Trais Kliphuis, of the Hazardous Waste Bureau, at 476-6051 or trais.kliphuis@state.nm.us.

Sincerely,



Ryan Flynn
Cabinet Secretary-Designate

cc: T. Blaine, NMED EHD
J. Kieling, NMED HWB
T. Kliphuis, NMED HWB
J. Kendall, NMED OGC
C. de Saillan, NMED OGC
L. King, EPA Region 6
T. Peake, EPA ORIA

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