



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 03 2016

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The Honorable Ernest Moniz
Secretary of Energy
Washington, D.C. 20585

Dear Mr. Secretary:

The U.S. Environmental Protection Agency has completed its review of the Department of Energy's most recent Biennial Compliance Report for the Waste Isolation Pilot Plant, covering April 1, 2012, through March 31, 2014. Section 9(a)(2) of the Waste Isolation Pilot Plant Land Withdrawal Act requires the DOE to submit to the EPA documentation of the Waste Isolation Pilot Plant's continued compliance with designated federal laws pertaining to public health and safety or the environment. On October 29, 2014, the DOE submitted documentation regarding the compliance of the Waste Isolation Pilot Plant with certain federal statutes and regulations designated in Section 9(a)(1) of the Waste Isolation Pilot Plant Land Withdrawal Act, as amended, for the reporting period, April 1, 2012, through March 31, 2014.

During this reporting period, however, on February 14, 2014, an airborne radiological release occurred at the Waste Isolation Pilot Plant. The DOE's Accident Investigation Board's review of this incident identified a number of deficiencies associated with the operation of the Waste Isolation Pilot Plant. These deficiencies were not addressed in the DOE's October 2014 Biennial Compliance Report submission. On April 6, 2015, EPA Region 6 provided an interim response on the Biennial Compliance Report indicating that the agency was unable to complete its review of the Waste Isolation Pilot Plant's compliance status because it did not have complete documentation of continued compliance and because investigations and adjudication processes associated with the radiological incident were incomplete.

The New Mexico Environment Department is authorized to implement the Resource Conservation and Recovery Act program in New Mexico and is responsible for oversight of the Waste Isolation Pilot Plant's state-issued hazardous waste permit. As a result of the radiological incident and previous fire in the underground, the New Mexico Environment Department identified a number of Resource Conservation and Recovery Act noncompliance issues and alleged violations of the state's hazardous waste permit at the Waste Isolation Pilot Plant.

The New Mexico Environment Department signed a settlement agreement addressing the Resource Conservation and Recovery Act noncompliance issues with the Department of Energy Carlsbad Field Office and Nuclear Waste Partnership on January 22, 2016. The New Mexico Environment Department has indicated to the EPA that the DOE's signing of a settlement agreement with the state of New Mexico adequately addresses the alleged Resource Conservation and Recovery Act violations in its December 2014 compliance order for the Waste Isolation Pilot Plant because it sets forth the necessary corrective actions and supplemental environmental projects that must be completed to settle the violations. In addition, the New Mexico Environment Department has indicated that the department's administrative

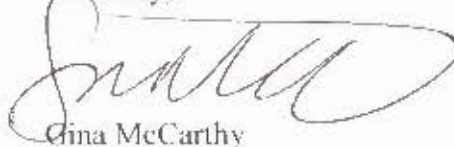
orders issued in 2014 remain in effect and that the permittees are in compliance with those orders. The EPA will continue to monitor the DOE's adherence to the settlement agreement.

Where noncompliance with federal laws and regulations is identified, Section 9(c)(1) of the Waste Isolation Pilot Plant Land Withdrawal Act directs the EPA Administrator to "request a remedial plan from the Secretary describing actions the Secretary will take to comply with such law, regulation, or permit requirement." The EPA finds that the corrective actions the DOE has agreed to perform, taken together, are equivalent to the type of remedial plan that the EPA could request under the Waste Isolation Pilot Plant Land Withdrawal Act. Provided that the DOE complies with the terms of the settlement agreement and all applicable New Mexico Environment Department orders, the EPA does not intend to request an additional remedial plan to address Resource Conservation and Recovery Act compliance issues.

The EPA's receipt of corrective action documentation from the DOE and the settlement agreement between the state of New Mexico and the DOE addresses the information gaps described in the April 6, 2015, letter discussed above. With this information the EPA has been able to conclude its review of the Biennial Compliance Report for the reporting period, April 1, 2012, through March 31, 2014. The EPA will consider the DOE's compliance with the settlement agreement as part of its review of the DOE's compliance for the next reporting period, from April 1, 2014, to March 31, 2016, and subsequent reporting periods as appropriate. The EPA's review of the Biennial Compliance Reports is not directly related to, nor is it a part of, the EPA's certification decision regarding whether the Waste Isolation Pilot Plant complies with the disposal standards for transuranic radioactive waste (40 CFR Part 191).

We will continue our oversight of the Waste Isolation Pilot Plant and continue to work cooperatively with the DOE, the state of New Mexico and the public to ensure that the Waste Isolation Pilot Plant protects human health and the environment. We look forward to full implementation of the recovery plan and the settlement agreement with the New Mexico Environment Department.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", written over a horizontal line.

Gina McCarthy