

Permit



IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

DEC 29 2010

UNITED STATES OF AMERICA,

Appellant,

v.

Ct. App. No. _____

RON CURRY, in his official capacity
as Cabinet Secretary of the New Mexico
Environment Department, and the
NEW MEXICO ENVIRONMENT
DEPARTMENT,

Appellees.

NOTICE OF APPEAL

Please take notice that Appellant, the United States of America, on behalf of the United States Department of Energy ("DOE"), hereby appeals the November 30, 2010, Final Order of the Secretary of the New Mexico Environment Department ("NMED") issued in the following captioned matter: "In the Matters of the Application of the United States Department of Energy and Los Alamos National Security, LLC for a Hazardous Waste Facility Permit for Los Alamos National Laboratory and the Notice of Intent to Deny a Permit for Open Burn Units TA-16-388 and TA-16-399 for Los Alamos National Laboratory" (the "Final Order"). The Final Order, a copy of which is attached, grants DOE and Los



Alamos National Security, LLC, the permit applicants, a final Hazardous Waste Act permit for Los Alamos National Laboratory (the "Permit"). This appeal is taken to the New Mexico Court of Appeals against the State of New Mexico, the NMED, and Ron Curry, in his official capacity as Cabinet Secretary of NMED. This appeal is timely under the New Mexico Hazardous Waste Act. N.M. Stat. Ann. § 74-4-14(a).

The United States is filing this appeal as a protective matter only and already has an action pending in federal district court challenging the Permit and the Final Order, styled United States v. Ron Curry, No. CIV 10-1251 (D.N.M.). In that federal district court action, the United States contends that certain provisions of the Permit are contrary to the United States Constitution, two different federal laws, and regulations and orders issued pursuant to those federal laws. A decision favorable to the United States in that federal district court action will moot the identical issues that would be raised by the United States in this case. In order to ensure that these important questions of federal law are decided in a federal forum, and to avoid duplicative litigation, the United States will shortly file a motion to stay this case pending resolution of the federal district court action.

Respectfully submitted,

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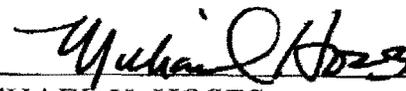


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