

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTER OF THE RENEWED)
HAZARDOUS WASTE FACILITY PERMIT)
FOR THE WASTE ISOLATION PILOT PLANT)

HWB 10-26 (P)



CONCERNED CITIZENS FOR NUCLEAR SAFETY COMMENTS ON THE
HEARING OFFICER'S REPORT

Pursuant to 20.1.4.500.C(2) NMAC, Concerned Citizens for Nuclear Safety (CCNS) submit the following Comments on the Hearing Officer's Report in the above-captioned matter to the Secretary of the New Mexico Environment Department (NMED).

PRELIMINARY STATEMENT

CCNS opposes Section 1.10.2 of the "Proposed Permit" because it allows for modification of the permit without meeting the regulatory requirements for public notification under the Resource Conservation and Recovery Act (RCRA), as adopted by the New Mexico Hazardous Waste Act and the New Mexico Hazardous Waste Management Regulations. Exhibit 1 of the NMED's Statement of Intent, filed July 16, 2010, 40 CFR § 270.42. Proposed Section 1.10.2 is "inadequate, improper, [and] invalid," and should be deleted from the "Proposed Permit." 20.1.4.400.A(1) NMAC. CCNS has met its burden. Id.

EXCEPTIONS TO THE HEARING OFFICER'S REPORT

1. Finding of Fact No. 25. CCNS is concerned about any modifications to the permit which could be done under proposed Section 1.10.2 without public notification.



2. There is no listing, schedule, or attachment in the Proposed Permit to notify the public of the submittals that the Permittees will prepare under the terms of the Permit that are not subject to 20.4.2 NMAC which will be presented to the Secretary for approval. CCNS FOF No. 12.

3. FOF No. 23 cites NMED testimony that 40 CFR 270.32(b)(2), the "omnibus clause," as the legal basis for Proposed Section 1.10.2. NMED has not stated how Proposed Section 1.10.2 will "protect human health and the environment" when there is no requirement for public notification of modification to the permit.

4. 40 CFR 270.32(b) limits the applicable requirements to "Parts 264 and 266 through 268 of this chapter." It does not open the door to the Secretary to incorporate whatever action NMED chooses.

5. FOF No. 25 assumes that the public knows about an approved Section 1.10.2 modification to the requirements of the permit. How does the public receive notice of the modification in order to utilize the Inspection of Public Records Act or a citizens' suit under RCRA if it does not know about the permit modification?

6. FOF No. 24. Our main concern is that "the approved submittal supersedes any conflicting Permit terms, since it is effective and postdates the Permit." FOF No. 24.

7. Any modification to or alteration of the terms and conditions of the permit require notice to the public. 40 CFR §270.42 describes the public notification requirements for modification to the permit. Class 1 modifications (40 CFR §270.42(a); Class 2 modifications (40 CFR §270.42(b); and Class 3 modifications (40 CFR §270.42(c); and Other modifications (40 CFR §270.42(d). Any modification to the permit must fall

under one of these four sections of the RCRA regulations, thus requiring public notification.

CONCLUSION

The NMED has not met its "burden of proof for a challenged condition of the permit or license which the Department has proposed." 20.1.4.400.A(1) NMAC. NMED has not provided the legal basis for the provision.

CCNS respectfully requests that proposed Permit Section 1.10.2 be deleted from the "Proposed Permit."

Respectfully submitted,

Joni Arends, Executive Director
Concerned Citizens for Nuclear Safety
107 Cienega Street
Santa Fe, NM 87501
(505) 986-1973

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2010, a copy of the foregoing
CCNS Comments on the Hearing Officer's Report was sent by electronic mail to:

Robert Stranahan
The Stranahan Firm LLC
1314 ½ Madrid Road
Santa Fe, NM 87505
Rstranahan1@me.com

George Hellstrom
Legal Counsel
U.S. Department of Energy
Carlsbad Field Office
P.O. Box 3090
Carlsbad, NM 88221
George.Hellstrom@wipp.ws

Dennis N. Cook
Associate General Counsel
Washington TRU Solutions LLC
4021 National Parks Highway
P.O. Box 2078, GSA-202
Carlsbad, NM 88221
dennis.cook@wipp.ws

Michael L. Woodward
Hance Scarborough, LLP
111 Congress Ave., Suite 500
Austin, TX 78701
woodward@hslawmail.com

J. D. Head
Fritz, Byrne, Head and Harrison. PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701-4288
jdhead@fbhh.com

Joni Arends, Executive Director
Concerned Citizens for Nuclear Safety
107 Cienega St.
Santa Fe, NM 87501
jarends@nuclearactive.org

Janet Greenwald
Citizens for Alternatives to Radioactive Dumping
144 Harvard S.E.
Albuquerque, NM 87106
contactus@cardnm.org

Don Hancock
Southwest Research and Information Center
P.O. Box 4524
Albuquerque, NM 87196-4524
srcdon@earthlink.net

Scott Kovac, Operations and Research Director
Nuclear Watch New Mexico
551 Cordova Rd. #808
Santa Fe, NM 87501
scott@nukewatch.org

Marian Naranjo, Executive Director
Honor Our Pueblo Existence
Rt. 5, Box 474
Española, NM 87532
mariann2@windstream.net

Sherry M. Keeney
President/CEO
PECOS Management Services, Inc.
P.O. Box 13343
Albuquerque, NM 87192
skeeney@pecosmanagement.com

Christopher M. Timm
Vice Pres/Senior Project Manager
PECOS Management Services, Inc.
P.O. Box 13343
Albuquerque, NM 87192
ctimm@pecosmanagement.com

Leslie Barnhart
Assistant General Counsel
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502
leslie.barnhart@state.nm.us

Lindsay A. Lovejoy, Jr.
3600 Cerrillos Rd. – The Lofts
Unit No. 1001A
Santa Fe, NM 87507
lindsay@lindsaylovejoy.com

Joni Arends