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

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,

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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:

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