



**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT DEPARTMENT**

IN THE MATTER OF THE APPLICATION
FOR A CLASS 3 MODIFICATION TO THE
HAZARDOUS WASTE FACILITY PERMIT
FOR THE WASTE ISOLATION PILOT PLANT,
EPA ID. No. NM 4890139088

No. HWB 06-01 (M)

SECRETARY'S FINAL ORDER APPROVING PERMIT

THIS MATTER came before the Secretary of the New Mexico Environment Department upon the Hearing Officer's report, proposed findings of fact and conclusions of law, and recommended decision. Having read and reviewed same, having consulted with the hearing officer, having reviewed the comments of the parties to the Hearing Officer's Report, and having duly considered the Application and all evidence and public comment of record pertaining to it, the Secretary **RULES AND ORDERS AS FOLLOWS:**

With the following noted modifications and exceptions, the Secretary adopts the Hearing Officer's report, proposed findings of fact and conclusions of law, and recommended decision. The May 25, 2006 draft permit as changed is hereby approved in its entirety.

The Secretary also adopts as part of this Order, the New Mexico Environment Department Hazardous Waste Bureau's proposed technical and environmental justice amendments to the Hearing Officer's Report, which were served on all parties on October 2, 2006. Those amendments, beginning at page 3 of 13 and ending at page 13 of 13 are incorporated by reference into this Order.

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The Secretary adopts and incorporates those proposed amendments to more accurately capture the complex technical and regulatory framework applicable to this permit and to WIPP's overall operation, and because they are consistent with the Hearing Officer's recommended decision.

For similar reasons and to the extent that they are not inconsistent with the New Mexico Environment Department Hazardous Waste Bureau's proposed amendments to the Hearing Officer's Report, the Secretary also adopts and incorporates by reference into this order, the Southwest Research and Information Center's proposed technical amendments to the Hearing Officer's Report.

Accordingly, the Secretary rejects the Hearing Officer's seventh and eighth conclusions of law on page 29 of the Hearing Officer's report on the grounds that they are unnecessary to the decision and do not necessarily constitute legal conclusions. The Secretary has given full and serious consideration to the issues raised by parties to and commenters at the public hearing regarding health and environmental effects, and environmental justice. In place of the foregoing two Hearing Officer's conclusions of law, the Secretary notes that in any administrative proceeding of this nature before the New Mexico Environment Department, claims of adverse health or environmental effects or of environmental justice issues must be made with a credible evidentiary basis. If such claims are not made with a credible evidentiary basis, or without even the suggestion of a credible rationale as to how a particular activity would be causing the claimed impacts, the unfortunate effect may be to undermine legitimate claims of adverse health effects, environmental effects,

and environmental justice. Hearing participants should always keep in mind that the New Mexico Environment Department cannot base permitting decisions upon speculation or innuendo.

IT IS SO ORDERED.


BILL RICHARDSON, GOVERNOR
State of New Mexico

Dated: 10/16/06


RON CURRY, CABINET SECRETARY
New Mexico Environment Department

Dated: 10/16/06

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of October, 2006, I served the foregoing Secretary's Final Order Approving Permit by U.S. mail, postage prepaid, upon the following:

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Sally Worthington, Hearing Clerk
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