

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

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



HWB 10-26(P)

FINAL ORDER

This matter comes before the Secretary of the Environment following a hearing before the Hearing Officer held on August 9 and 10, 2010, in Santa Fe, New Mexico and for the sole purpose of receiving non-technical public comment, on August 16, 2010, in Carlsbad, New Mexico.

The Applicants, the United States Department of Energy, owner and operator of WIPP, and Washington TRU Solutions, operator of WIPP, seek to renew for a period of ten years, the current Permit from the Department to store and dispose of hazardous waste under the New Mexico Hazardous Waste Act, NMSA §§ 74-4-1 to 74-4-17. The New Mexico Environment Department Hazardous Waste Bureau (Bureau) supports the issuance of the permit with conditions necessary to protect the public health, welfare and the environment.

Having considered the administrative record in its entirety, including the Proposed Findings of Fact and Conclusions of Law, closing arguments, and all post hearing submittals submitted by the Applicants, the Bureau and other parties to these proceedings, and the Hearing Officer's Report; and being otherwise fully advised regarding this matter:

THE SECRETARY HEREBY ADOPTS THE HEARING OFFICER'S REPORT, PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECOMMENDED CONDITIONS, EXCEPT AS NOTED BELOW.



IT IS THEREFORE ORDERED:

The Application of the United States Department of Energy and Washington TRU Solutions LLC to store and dispose of hazardous waste at WIPP is granted subject to the conditions set out in the Hearing Officer's Report, with the following modifications:

1. The permit that shall be issued is the 'Proposed Permit,' NMED Exhibit 1 to the Bureau's Statement of Intent filed July 16, 2010, reference to "Draft Permit" in the Hearing Officer Report on page 30 notwithstanding.
2. Without making a determination to fully allocate risk as the Applicant requests, the permit shall be revised to reallocate the risk previously assigned to 1,1-DCE and assign that risk to carbon tetrachloride, so that the concentration of concern for carbon tetrachloride be established at approximately 1000 ppbv, which fully allocates the allowable risk of the accepted environmental performance standard but does not require a change to the other concentrations of concern in Table 4.6.2.3. This change is supported in the testimony of both Mr. Kehrman and Mr. Zappe:
 - a. 1,1-DCE is no longer classified as a carcinogen by the United States Environmental Protection Agency.
 - b. It is reasonable to reapportion at least some of the risk to another carcinogen listed in Table 4.6.2.3, and that reapportionment to carbon tetrachloride is appropriate.
 - c. Reapportionment reduces the probability that the facility would be compelled to prematurely abandon disposal space in the underground repository.

- d. Carbon tetrachloride is the most prevalent volatile organic compound (VOC) in the waste streams scheduled to be disposed of at the WIPP facility and presents the greatest likelihood of being detected at VOC Monitoring Station A at the facility.



RON CURRY
Secretary of Environment

Notice of Opportunity for Judicial Review

Pursuant to NMSA 1978, Section 74-4-14, any person who is or may be affected by any final administrative action of the Secretary may appeal to the Court of Appeals for further relief within thirty days after the action.