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IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

JAN 17 2019

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JAN 17 2019

NEW MEXICO ENVIRONMENT DEPARTMENT)
HAZARDOUS WASTE BUREAU)
CLASS 3 PERMIT MODIFICATION REQUEST:)
CLARIFICATION OF TRU MIXED WASTE VOLUME)
REPORTING, PERMIT MODIFICATION TO THE)
WIPP HAZARDOUS WASTE FACILITY PERMIT)
NO. NM4890139088-TSDF)

**NOTICE OF APPEAL ON BEHALF OF
SOUTHWEST RESEARCH AND INFORMATION CENTER
AND NUCLEAR WATCH NEW MEXICO**

Come now Southwest Research and Information Center ("SRIC") and Nuclear Watch New Mexico ("NWNM"), both of which are parties to the administrative proceeding No. HWB 18-19(P) before the Secretary of the New Mexico Environment Department, which proceeding gave rise to an Order of the Secretary dated December 21, 2018. That Order is attached hereto.

Pursuant to Rule 12-601 of the Rules of Appellate Procedure and Section 74-4-14, NMSA 1978, SRIC and NWNM hereby give notice that they appeal from the Secretary's Order dated December 21, 2018 and all proceedings underlying that Order.

Respectfully submitted,

Lindsay A. Lovejoy, Jr.

Lindsay A. Lovejoy, Jr.
3600 Cerrillos Rd., Unit 1001 A
Santa Fe, NM 87507
505/983-1800
lindsay@lindsaylovejoy.com
Counsel for Southwest Research
and Information Center and
Nuclear Watch New Mexico

190110



AFFIDAVIT OF SERVICE

I hereby attest that the original of this Notice of Appeal was served via the stated methods below on January 17, 2019 in accordance with Rule 12-307 of the Rules of Appellate Procedure:

Via first class mail and by email:

Pam Castañeda
Administrator to Boards and Commissions
P.O. Box 5469
Santa Fe, NM 87502
(505) 827-2425
pam.castaneda@state.nm.us

Jennifer L. Hower
General Counsel
New Mexico Environment Department
121 Tijeras Ave. NE, Suite 1000
Albuquerque, NM 87102
Office: (505) 222-9550
Cell: (505) 500-7628
Fax: (505) 383-2064
jennifer.hower@state.nm.us

Michael L. Woodward
HANCE SCARBOROUGH, LLP
400 W. 15th Street, Ste. 950
Austin, Texas 78701
Telephone: (512) 479-8888
Facsimile: (512) 482-6891
mwoodward@hslawmail.com

Myles Hall, Legal Counsel
U.S. Department of Energy
4021 National Parks Highway
Carlsbad, NM 88220
Myles.hall@cbfo.doe.gov

Dennis Cook, Legal Counsel
Nuclear Waste Partnership LLC
P.O. Box 2078, GSA-202
Carlsbad, NM 88221-2078
dennis.cook@wipp.ws

Steve Zappe
60 La Pradera
Santa Fe, NM 87508
steve_zappe@mac.com

Scott Kovac
Nuclear Watch New Mexico
903 W. Alameda #325
Santa Fe, NM, 87501
scott@nukewatch.org

Joni Arends
Concerned Citizens for Nuclear Safety
P. O. Box 31147
Santa Fe, NM 87594-1147
jarends@nuclearactive.org

J.D. Head
Fritz Byrne, Head & Gilstrap, PLC
221 W. 6th St., Suite 960
Austin, TX 78701
jhead@fbhg.law

Robert A. Stranahan, IV
Law Office of Robert A. Stranahan, IV
29 A Rancho Mañana
Santa Fe, NM 87506
Rstranahan1@me.com



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

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT



**IN THE MATTER OF THE HAZARDOUS WASTE
BUREAU CLASS 3 CLARIFICATION
OF TRU MIXED WASTE DISPOSAL
VOLUME REPORTING PERMIT
MODIFICATION TO THE WIPP HAZARDOUS
WASTE FACILITY PERMIT**

No. HWB 18-19 (P)

SECRETARY'S ORDER APPROVING DRAFT PERMIT

This matter came before the Secretary of the Environment following a hearing before the Hearing Officer held on October 23, 24 and 25, 2018 in Carlsbad, New Mexico.

The Applicants/Permittees, the U.S. Department of Energy (“DOE”) and Nuclear Waste Partnership, LLC (“NWP”), seek to modify the existing Waste Isolation Pilot Plant (WIPP) Hazardous Waste Facility Permit (Permit) Number NM4890139088-TSDF to differentiate between the way Resource Conservation and Recovery Act (“RCRA”) waste volume is calculated versus the way Land Withdrawal Act (“LWA”) TRU waste volume is calculated for the Waste Isolation Pilot Plant (“WIPP”). The Secretary of the Environment ultimately escalated the PMR to a Class 3 proceeding based upon significant public interested and the complexity of the modification being requested. In accordance with Class 3 permit modification request procedures, and pursuant to 20.4.1.901.A(3) NMAC, the Bureau issued a Draft Permit (AR 180804) initiating a 45-day public comment on August 6, 2018. During the public comment period, the Bureau received approximately 37 public comments, both for and against the PMR, several of which requested a public hearing on the matter (and several of which requested that no hearing be held on the matter). As stated above a public hearing was held on October 23 through 25, 2018 in Carlsbad, New Mexico, the area of the state substantially affected by the proceedings in accordance with 20.4.1.901.F(2) NMAC. Parties to the proceeding were the HWB, the

Applicants, Southwest Research and Information Center (“SRIC”), Concerned Citizens for Nuclear Safety (“CCNS”), Nuclear Watch New Mexico (“Nuke Watch”), and Mr. Steve Zappe. All but CCNS and Nuke Watch filed Statements of Intent to Present Technical Testimony.

As found in both written and oral testimony, the Bureau generally supported the PMR, but rejected certain requested modifications and added others to ensure that the Permit contained all necessary components. SRIC, CCNS, Nuke Watch, and Mr. Steve Zappe were in opposition to the PMR, arguing that it was in violation of federal law and contrary to past Bureau positions.

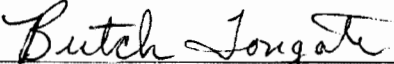
Having considered the administrative record in its entirety, including Proposed Findings of Fact and Conclusions of Law, closing arguments and all post hearing submittals submitted by the Applicants, the HWB and the other parties to these proceedings, and the Hearing Officer’s Report and being otherwise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

THE SECRETARY HEREBY ADOPTS THE HEARING OFFICER’S REPORT, PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECOMMENDED DISPOSITION, IT IS THEREFORE ORDERED THAT:

The Draft Permit issued by the HWB on August 6, 2018 as amended by language agreed upon by the HWB and the Parties during their negotiations held September 24-25, 2018 that revised the definition of “Shielded Containers” in Permit Part 3, Section 3.3.1.8 and Permit Attachment A1, Section A1-1b (2) is hereby approved in its entirety.

Southwest Research and Information Center’s request for oral argument pursuant to 20.1.4.500 C (3) NMAC is denied.

IT IS SO ORDERED.



BUTCH TONGATE, CABINET SECRETARY
New Mexico Environment Department

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Secretary's Order Approving Draft Permit** was sent via electronic mail to the following parties of record on December 21, 2018:

ON BEHALF OF THE NEW MEXICO ENVIRONMENT DEPARTMENT:

Jennifer L. Hower
121 Tijeras Avenue, NE
Suite 1000
Albuquerque, New Mexico 87502-3400
Telephone: (505) 222-9550
jennifer.hower@state.nm.us

ON BEHALF OF THE NUCLEAR WASTE PARTNERSHIP, LLP:

Michael L. Woodward
HANCE SCARBOROUGH, LLP
400 W. 15th Street, Ste. 950
Austin, Texas 78701
Telephone: (512) 479-8888
Facsimile: (512) 482-6891
mwoodward@hslawmail.com

J.D. Head
Fritz Byrne, Head & Gilstrap, PLLC
221 W. 6th St., Suite 960
Austin, Texas 78701
Telephone: (512) 476-2020
jhead@fbhg.law

Dennis N. Cook
General Counsel
Nuclear Waste Partnership LLC
4021 National Parks Highway
P.O. Box 2078, GSA-202
Carlsbad, New Mexico 88221
Telephone: (575) 234-7116
dennis.cook@wipp.ws

Robert A. Stranahan, IV
The Stranahan Firm, LLC
1314 ½ Madrid Road
Santa Fe, New Mexico 87505
Telephone: (505) 577-0729
rstranahan2@me.com

ON BEHALF OF THE U.S. DEPARTMENT OF ENERGY:

Myles Hall
Legal Counsel
Department of Energy
Carlsbad Field Office
4021 National Parks Highway
Post Office Box 3090
Carlsbad, New Mexico 88220

ON BEHALF OF HIMSELF:

Steve Zappe
60 La Pradera
Santa Fe, New Mexico 87508
Telephone: (505) 660-0353
steve_zappe@mac.com

ON BEHALF OF SOUTHWEST RESEARCH
AND INFORMATION CENTER:


Lindsay A. Lovejoy, Jr.
3600 Cerrillos Rd.
Unit 1001 A
Santa Fe, New Mexico 87507
Telephone: (505) 983-1800
Facsimile: (505) 983-4508
lindsay@lindsaylovejoy.com

Don Hancock
Southwest Research and Information Center
PO Box 4524
Albuquerque, New Mexico 87196-4524
Telephone: (505) 262-1862
Facsimile: (505) 262-1864
sricdon@earthlink.net

ON BEHALF OF CONCERNED CITIZENS
FOR NUCLEAR SAFETY

Joni Arends
Concerned Citizens for Nuclear Safety
P. O. Box 31147
Santa Fe, New Mexico 87594-1147
Telephone: (505) 986-1973
jarends@nuclearactive.org
ON BEHALF OF NUCLEAR WATCH NEW MEXICO:

Scott Kovac
Nuclear Watch New Mexico
903 W. Alameda, #325
Santa Fe, NM 87501
Telephone: (505) 983-7342
scott@nukewatch.org


for Pam Castaneda, Hearing Clerk