



IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

CONCERNED CITIZENS FOR NUCLEAR SAFETY, SOUTHWEST RESEARCH AND INFORMATION CENTER, AND NUCLEAR WATCH NEW MEXICO,

Petitioners-Appellants,

Court of Appeals of New Mexico
Filed 4/26/2019 4:44 PM

Mark Reynolds

v.

No. A-1-CA-37894

NEW MEXICO ENVIRONMENT DEPARTMENT,

Respondent-Appellee,

NUCLEAR WASTE PARTNERSHIP, LLC, AND UNITED STATES,

Respondents-Intervenors.

DOCKETING STATEMENT

Concerned Citizens for Nuclear Safety ("CCNS"), by its counsel, make the following Docketing Statement pursuant to Rule 12-208 NMRA.

1. Nature of the proceeding: This is an appeal pursuant to § 12-601 NMRA and § 74-4-14 NMSA 1978 from the Secretary's Order Approving Draft Permit, dated December 21, 2018 (the "Secretary's Order"), by the Secretary of the New Mexico Environment Department (the "Environment Department") concerning the adoption of a modified Hazardous Waste Act



(§ 74-4-1 *et seq.* NMSA 1978) (“HWA”) Permit for the Waste Isolation Pilot Plant (“WIPP”). The Secretary’s Order was made pursuant to a Permit Modification Request (“PMR”) submitted by the Permittees, dated January 31, 2018, and Hazardous Waste Management Regulations, 20.4.1 NMAC. The U.S. Department of Energy (“DOE”) and Nuclear Waste Partnership, LLC (“NWP”) are collectively referred to as the “Permittees.”

The PMR, submitted by the DOE and its contractor, NWP, seeks a thirty percent (30 percent) increase in the amount of radioactive and hazardous waste disposed of at WIPP, which would result in a 30 percent increase in the number of shipments to WIPP, increased transportation risks, accidents, and impacts to communities along the designated WIPP routes in New Mexico, and across the country. The social concerns and environment justice concerns have not been properly addressed by the Environment Department.

2. Date of the Order on Review: The date of the Secretary’s Order is December 21, 2018. A Notice of Appeal was filed by CCNS in this Court (Docket No. A-1-CA-37894 on January 22, 2019, which filing is timely in accordance with § 12-601 NMRA. On January 17, 2019, Southwest Research and Information Center (“SRIC”) and Nuclear Watch New

Mexico (“NWNM”), filed a Notice of Appeal, also seeking review of the Secretary’s Order (Docket No. A-1-CA-37898), which filing is timely in accordance with § 12-601 NMRA.

On January 31, 2019, SRIC and NWNM filed a Motion to Intervene into Docket No. A-1-37894. On February 7, 2019, the Motion was granted.

On February 7, 2019, the United States filed an Unopposed Motion to Intervene. On February 8, 2019, the Court granted the Motion.

On February 8, 2019, NWP filed an Unopposed Motion to Intervene and Unopposed Motion to Consolidate (Docket Nos. A-1-CA-37894 and A-1-CA-37898). The Court granted the motion on February 14, 2019.

3. Statement of the Case: WIPP is a federal government repository for defense-related transuranic (“TRU”) and hazardous waste, operated pursuant to certification by the U.S. Environmental Protection Agency (“EPA”) under the Land Withdrawal Act, Pub. L. No. 102-579 (1992) (“LWA”). WIPP is also operated pursuant to a permit under the HWA, which is the statute that applies the Resource Conservation and Recovery Act, 42 U.S.C. § 6921 *et seq.* (“RCRA”) in New Mexico.

The Environment Department is a recipient of federal funds from the EPA for its programs, including the Hazardous Waste Bureau (“HWB”).

The HWB permits and regulates hazardous waste facilities, such as WIPP.

As a result of receiving such funds, the Environment Department is not allowed to discriminate on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance.¹

On January 19, 2017, the Environment Department entered into an Informal Resolution Agreement (“Resolution Agreement”)² with the EPA to resolve a 2002 civil rights complaint filed against the Environment Department concerning the permitting of another hazardous waste facility located in southeast New Mexico, Triassic Park.

The Environment Department agreed that it is “committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulation at 40 C.F.R. Part 7.”³

¹ Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000 d-7 (Title VI) and the U.S. EPA regulations at 40 C.F.R. Part 7.

² *Informal Resolution Agreement between the U.S. Environmental Protection Agency and the New Mexico Environment Department, External Civil Rights Compliance Office, Office of General Counsel, ECRCO Complaint No. 09R-02-R6, dated January 19, 2017.*

³ *Id.*, § I.E., p. 1.

At the time of the WIPP hearing, the Resolution Agreement had been in effect for nearly two years. CCNS raised concerns about implementation of the Resolution Agreement, the associated Environment Department Policy and Procedures, and use of the EJ Screen to create Public Involvement Plans (“PIPs”).⁴

(a) This Proceeding: On January 31, 2018, Permittees submitted a Class 2 PMR pursuant to 20. 4.1.900 NMAC, entitled, “Clarification of TRU Mixed Waste Disposal Volume Reporting.” This PMR sought Permit modification to add new definitions in Section 1.5.21, TRU Mixed Waste Volume, and Section 1.5.22, Land Withdrawal Act TRU Waste Volume; to revise Permit Section 3.3.1.8 regarding Shielded Containers; to revise Table 4.1.1, Underground Hazardous Waste Disposal Units (“HWDUs”) to state that the LWA volume is tracked and reported by DOE with respect to the 6.2 million cubic feet (“ft³”) WIPP capacity limit; to revise Section 6.10.1 Panel Closure; to clarify that the final TRU mixed waste volume reported for a panel when it is full is based on the outer container volume; and to make other changes in Section 6.5.2, Attachments A1, A2, B, C, G, H, H1,

⁴ Environment Policy and Procedure 07-10 *Non-Employee Disability*; Environment Department Policy and Procedure 07-11 *Limited English Proficiency*; Environment Department Policy and Procedure 07-13 *Public Participation*, and EJScreen User Guide. <https://www.env.nm.gov/general/epa-and-nmed-informal-resolution-agreement-no-09r-02-r6-public-participation-limited-english-proficiency-and-non-employee-disability-policies/>

and J regarding waste volume calculation and reporting. Modified language was presented in 16 pages, and there were three pages of attachments with figures showing Standard Pipe Overpack, Standard Waste Box, and Ten Drum Overpack containers.

Pursuant to 40 C.F.R. § 270.42(b)(2), Permittees gave notice of public meetings and a 60-day public comment period, ending April 3, 2018. Appellant CCNS submitted timely comments, stating, *inter alia*, that the Environment Department deny the PMR and require the Permittees to resubmit their request as a Class 3 PMR.

Eighteen other organizations, including CCNS, and individuals submitted comments opposing the PMR as contrary to law and requesting that the PMR be denied or considered under Class 3 procedures.

On June 1, 2018, the NMED Secretary determined “there is significant public concern and the complex nature of the proposed change requires the more extensive procedures of a Class 3 modification.”

On June 27, 2018, the Environment Department’s HWB sent a Technical Incompleteness Determination (“TID”) to the Permittees, requesting additional information about the PMR. On July 12, 2018, the Permittees responded to the TID.

On August 6, 2018, the HWB issued a draft Permit for a 45-day public comment period, ending on September 20, 2018.

On August 20, 2018, CCNS and 21 other organizations, including SRIC and NWNM, requested an extension of the comment period to 90 days, which the Secretary denied on August 22, 2018.

The HWB proposed negotiations, required by 20.4.1.901.A.4 NMAC, be held on September 24, 2018. On September 19, 2018, CCNS and four other organizations objected to the HWB's proposed schedule because of the short time frame. The groups further objected to the schedule and location of the public hearing that would deprive a large majority of the state's population from attending the hearing and providing public comment.

On September 20, 2018, CCNS submitted timely comments on the draft Permit, stating, *inter alia*, that:

- (i) a public hearing and negotiations be held, and that negotiations be held before a public hearing notice was issued;
- (ii) the Administrative Record ("AR"), which did not include many references that had been used throughout the PMR public comment period, include those references;
- (iii) the AR was not available electronically on the Environment Department's website;

- (iv) the AR Index was incomplete, inconsistent, and inadequate to allow the public to prepare a Notice of Intent to Present Technical Testimony at the hearing upon which the Secretary of the Environment Department would make a final determination approving or disapproving the Permit;
- (v) the discriminatory way in which the AR Index grouped some public comments (without listing the individuals separately), while in other cases, the comments of individual elected officials were listed separately;
- (vi) the August 6, 2018 draft Permit released for public comment was not the most current version of the Permit, which was based on the June 2018 version of the permit. The draft Permit did not reflect the successful negotiations about another PMR - the Panel Closure PMR, which occurred between the Environment Department, the Permittees, CCNS, SRIC, NWNM and Steve Zappe on July 31, August 1 and 2, 2018. The Parties agreed to language changes to sections of the Permit.⁵ Unfortunately, those sections were also proposed to be changed by the Volume of Record PMR, the subject of this appeal;
- (vii) the administrative proceeding because the Environment Department did not provide equal access or translated information to Low Proficiency English (“LEP”) members of the public;
- (viii) fact sheets, portions of the AR and the AR Index were not translated into Spanish;
- (ix) the Public Involvement Plan (“PIP”) was inadequate;

⁵ For example, Attachment G, Panel Closure, and Attachment H, Post-Closure Plan.

- (x) the lack of compliance with 40 C.F.R. § 270.10 (j) exposure information for hazardous waste facilities as required by the *Resolution Agreement*;
- (xi) the Environment Department did not publish public notices in the weekly Spanish newspapers in the area;
- (xii) if the PMR were approved, the public would never know when WIPP was “full” and met its 6.2 million ft³ capacity. No one would know when “closure” and “post-closure” requirements under the Permit would be required;
- (xiii) technical issues remained unresolved, such as the VOC monitoring and proposed changes to the HWDU;
- (xiv) the Permittee’s explanations for the PMR are incomplete and inaccurate; and
- (xv) objections were stated for each new provision proposed in the draft Permit.

On September 21, 2018, SRIC, by letter to the Environment Department Secretary, objected to the inadequate posting of comments on the draft Permit, because several comments were excluded from the initial comment posting on the evening of September 20, 2018 – the end of the public comment period. SRIC reiterated its objections to the schedule for negotiations and the date and location of the public hearing.

On September 22, 2018, the HWB issued a fact sheet and public hearing notice, stating that the hearing would begin on Tuesday, October 23, 2018

in Carlsbad, New Mexico, and that the deadline to submit Notices of Intent to Present Technical Testimony was October 9, 2018.

On September 24 - 25, 2018, negotiations were held in Santa Fe, attended by representatives of the Environment Department HWB, CCNS, SRIC, NWNM, Steve Zappe, and the Permittees. The negotiations resulted in agreement on permit Section 3.3.1.8 and on revisions to the AR, but there was no agreement on other issues.

On October 9, 2018, the Permittees (two witnesses), HWB (one witness), SRIC (two witnesses), and Steve Zappe (individual) filed timely Notices of Intent, including direct testimony and exhibits.

On October 23 - 25, 2018, the public hearing was held in Carlsbad. CCNS participated by telephone.

On November 2, 2018, the transcript of the public hearing on October 25, 2018 was filed. On November 7, 2018, the transcript of the public hearing on October 23, 2018 was filed. On November 19, 2018, the transcript of the public hearing on October 24, 2018 was filed. On November 20, 2018, corrections to the November 19, 2018 transcript were filed.

On November 28, 2018, the parties, including CCNS, filed proposed findings of fact, conclusions of law, and closing argument. CCNS requested oral argument before the Secretary. 20.1.4.500.C.(3) NMAC.

On December 10, 2018, the Hearing Officer filed his Report.

On December 18, 2018, the parties, including CCNS, filed comments on the Hearing Officer's Report.

On December 21, 2018, the Environment Department Secretary issued his Order approving the draft Permit. He also denied CCNS's request for oral argument, incorrectly stating that SRIC had requested it.

On January 17, 2019, SRIC and NWNM timely filed a Notice of Appeal in No. A-1-CA-37898.

On January 22, 2019, CCNS timely filed a Notice of Appeal.

(b) Factual background. The Environment Department receives federal funding from the EPA. As a result, the Environment Department is prohibited from discriminating on the basis of race, color, or national origin in any program or activities receiving federal financial assistance.

Early on October 25, 2018, the last day of the hearing and as other Parties had done, CCNS electronically submitted three exhibits in three separate emails to all the parties, including the Hearing Clerk, explaining,

“The exhibits will be used during cross examination of the [Environment Department] witness.”⁶

During cross-examination of the Environment Department witness, CCNS attempted to bring in CCNS Ex. 2. Counsel for the Environment Department, without evidence, challenged its admittance. In response, the Hearing Officer said, “I am inclined to conditionally sustain the objection to the admission of your exhibits, and I will make a final ruling after I have had a chance to look at them.” 10/25/18 Tr. 45, ll. 7 - 13 (Hearing Officer Shepherd).

Near the end of the hearing, CCNS asked the Hearing Officer about the admission of the three CCNS Exhibits, when he would make a decision about them, and how the parties would be contacted about his decision. 10/25/18 Tr. 251, ll. 19 - 22.

⁶ CCNS Exhibit 1 is EPA *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs*, also known as *EPA Public Involvement Guidance*. Vol. 71 Fed. Reg. 54 (March 21, 2006), pp. 14207 - 14217.

CCNS Exhibit 2 is EPA *Guidance to EPA Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting LEP [Low English Proficiency] Persons*, also known as *EPA LEP Guidance*, Vol. 59 Fed. Reg. 122 (June 25, 2004), pp. 35602 - 35613.

CCNS Exhibit 3 is the January 19, 2017, *Informal Resolution Agreement between the New Mexico Environment Department and the United States Environmental Protection Agency*, External Civil Rights Compliance Office, Office of General Counsel, ECRCO Complaint 09R-02-R6.

On October 30, 2018, without explanation, the Hearing Officer issued an Order sustaining the Environment Department's objection to the admission of CCNS's Exhibits 1, 2 and 3.⁷

The EPA LEP Guidance states that recipients of federal funds must assess service needs at a programmatic level, not only on a project-by-project basis. CCNS Ex. 2.

New Mexico is one of the few states in the United States where distinct minority racial groups constitute the majority of the population. In New Mexico, 35.7 percent of the population speaks a language other than English in the home.

The Environment Department's efforts to include Low English Proficiency ("LEP") speakers have been inadequate to provide equal access to information for this segment of the public about the PMR, and the public process itself. A significant number of New Mexicans, and an even larger percentage of potentially affected members of the public, live in the vicinity of WIPP.

The August 6, 2018 *Notice of Public Comment Period and Opportunity to Request a Public Hearing* was translated into Spanish. The September 22,

⁷ 20.1.4.7.A.14 NMAC defines "Hearing Record" as "the Record Proper and the written transcript or recorded tape of the public hearing, including all exhibits offered into evidence, whether or not admitted."

2018 *Notice of Public Hearing and Opportunity for Public Comment on Draft Hazardous Waste Facility Permit (No. 18-07)* was translated into Spanish. This is the extent of the public materials that were translated into Spanish. Official documents must be made available for the LEP speaking community so that they can meaningfully participate in the hearing process.

The four-page AR Index, the 17-page AR Index, nor the August 6, 2018 Fact Sheet were not translated into Spanish.

As required by the NMED *Policies and Procedures*, translators were present at the public hearing. Nevertheless, no written Environment Department notice was provided to the public about the availability of translators at the hearing to provide equal access to information that had not been translated.

The written materials for the public were limited almost exclusively to English, creating disparate effects or impacts for most New Mexican communities located near the WIPP site and along the transportation routes in New Mexico.

The Environment Department did not meet its Civil Rights Act of 1964, Title VI, obligations with this PMR. As a result, the Environment Department continues to discriminate against LEP speakers.

The Environment Department recognized its understanding “that meaningful public involvement consists of informing, consulting and working with potentially affected and affected communities at various states of the environment decision-making process to address their needs.” CCNS Exhibits 1 and 3.

“Therefore, [the Environment Department] will ensure its public involvement process is available to all persons regardless of race, color, national origin (including limited-English proficiency), age, disability, and sex. CCNS Ex. 3, § III.G.1., p. 11.

“[The Environment Department] will develop and implement a public participation policy that will require [the Environment Department] to create and/or carry out each step listed in (a) – (i) below, each time they engage in an action that triggers the public participation process.” CCNS Ex. 3, § III.G.2., pp. 11 – 12.

The Public Involvement Plan focused on the residents living within a 15-mile radius of the WIPP site. As a result, the PIP did not include the largest community in southeast New Mexico – Carlsbad.

An EJSCREEN computer program was used to determine the make-up of the residents within the 15-mile radius of the WIPP site. The Environment Department did not conduct a preliminary screen of the WIPP transportation routes that, if the PMR were approved, would experience a 30 percent increase in shipments, transportation risks, etc.

4. Issues Presented by this Appeal. The Hearing Officer adopts the findings of fact, conclusions of law, and closing argument of the Environment Department. The Hearing Officer did not address CCNS's findings of fact, conclusions of law, and closing argument in his Hearing Report. The Hearing Officer did not provide his reasoning. The Secretary's Order adopts the findings of the Hearing Officer.

The public was unable to participate in a meaningful manner in the WIPP PMR public hearing because of the lack of compliance with the *Informal Resolution Agreement*. In the Agreement, the Environment Department stated it would perform certain tasks to bring the opportunities for public participation in hazardous waste permitting

process into compliance with the Civil Rights Act. Nearly two years later, the Environment Department had not fully implemented their commitments, to the detriment of residents along the WIPP transportation routes and near the site.

It does not appear that EPA will hold the Environment Department accountable as evidenced by the delays by EPA to respond to the 2001 Civil Rights Act complaint about the public hearing process associated with the Triassic Park hazardous waste permit. In the meantime, the LEP communities continue to be kept in the dark because of the discrimination exhibited by the Environment Department and the EPA who is not enforcing the 40 C.F.R. Part 7 requirements.

As demonstrated in tis expedited hearing process, the Environment Department is in violation of its *Resolution Agreement* with EPA. Documents were not translated, including the proposed permit modification request, the AR Index, and other “vital” documents. Following the 2014 salt haul truck fire and detonation in the WIPP underground, the Environment Department did not require the Permittees to submit updated 40 C.F.R. § 270.10 exposure information as required by *Resolution Agreement*, Section III.C.a. *Hazardous Waste Permits in General*.

The PIP is inadequate and only addresses those residing within a 15-mile radius of the WIPP site. It does not include Carlsbad, New Mexico, the largest community in southeast New Mexico; nor does it include the proliferation of proposed and existing nuclear facilities in the area. The Environment Department has continued its patterns and practices of discrimination based on race, color, national origin, age, and sex.

In so many ways, the findings and holdings in *Martinez v. Maggiore* and *Colonias Dev. Council* cases are being challenged in this PMR proceeding.

We once again follow *Nesbit* and hold that the administrative proceedings conducted subsequent to Landfill's defective notice are invalid. We vacate the order granting Landfill's application and remand to the Secretary for de novo review of Landfill's application after publication of notice substantially complying with Subsection 74-9-22(C).

In the Matter of the Application of the Northeastern New Mexico Regional Landfill for Modification for the Northeastern New Mexico Regional Landfill, *Martinez v. Maggiore*, 64 P.3d 499 ¶ 13 (2002).

As the regulations indicate, the Department cannot ignore concerns that relate to environmental protection simply because they are not mentioned in technical regulation. The Department has a duty to interpret its regulations liberally in order to realize the purposes of the Acts. *See Atlixco Coalition v. Maggiore*, 1998-NMCA-134, ¶ 15, 125 N.M. 786, 965 P.2d 370. Because the impact of the proliferation of landfills and industrial sites on a community is relevant to environmental protection, we conclude the Solid Waste Act and its regulations

require the Department to consider whether evidence of harmful effects from the cumulative impact of industrial development rises to the level of a public nuisance or potential hazard to public health, welfare or the environment. Cf. City of Santa Fe, 73 N.M. at 412 – 15, 389 P.2d at 14 – 17 (holding that an ordinance creating an historical district and requiring new buildings harmonize with existing structures was within the scope of the enabling statute allowing municipalities to zone consistently with a comprehensive plan “to promote the health and general welfare.”).

Colonias Dev. Council v. Rhino Environmental Svcs. Inc., 2005-NMSC-024, 138 N.M. 133 ¶ 34, 117 P.3d 939.

We also reject the argument that any consideration of testimony and other evidence regarding the proliferation would be ambiguous, without adequate standards, and impossible to enforce. In certain situations, when an agency is charged with protecting public health, safety, and welfare, it may be difficult to lay down a definite comprehensive rule. See *Old Abe Co. v. N.M. Mining Comm’n*, 121 N.M. 83, 92 – 93, 908 P.2d 776, 785 – 86 (Ct. App. 1995). Our courts have recognized that a certain amount of discretion is necessary to administer and enforce regulations so as to implement legislative enactments and meet the needs of individual justice. *Id.*

Colonias Dev. Council v. Rhino Environmental Svcs. Inc., 2005-NMSC-024, 138 N.M. 133 ¶ 35, 117 P.3d 939.

Neither the Permittees, nor the Environment Department has provided a cogent argument for why the PMR is needed. The PMR does not clarify anything; it just muddies the waters.

The Environment Department has acted in an arbitrary and capricious manner by not complying with the *Resolution Agreement* and the Civil

Rights Act of 1964 and 40 C.F.R. Part 7 to the detriment of the residents living around the WIPP site and along the transportation routes.

5. Judicial Review: The Hazardous Waste Act, § 74-4-14(C) NMSA

1978, states the standard of judicial review:

Upon appeal, the court of appeals shall set aside the action only if it is found to be:

1. arbitrary, capricious, or an abuse of discretion;
2. not supported by substantial evidence in the record; or
3. otherwise not in accordance with law.

A permit modification request should be denied if the application (a) is incomplete, (b) fails to comply with applicable requirements, or (c) fails to protect human health or the environment. 40 C.F.R. § 270.42(b)(7).

The meaning of a statute is an issue of law that is judicially reviewed *de novo*. *Southwest Research & Information Center v. State*, 2003-NMCA-012 ¶ 24, 133 N.M. 179, 62 P.3d 270. It is arbitrary and capricious for an agency to follow an erroneous interpretation of the applicable law. *Phelps Dodge Tyrone v. N.M. Water Quality Control Commission*, 2006-NMCA-115 ¶ 33, 140 N.M. 464, 143 P.3d 502.

New Mexico courts apply principles of judicial review similar to those used by federal courts. *Rio Grande Chapter of the Sierra Club v.*

N.M. Mining Commission, 2003-NMSC-005 ¶ 11, 133 N.M. 97, 61 P.3d 806; *Atlixco Coalition v. Maggiore*, 1998-NMCA-134 ¶ 16, 125 N.M. 786, 965 P.2d 370.

The Secretary must state reasons for his decision. *Citizen Action v. Sandia Corp.*, 2008-NMCA-031 ¶ 19, 143 N.M. 620, 179 P.3d 1228, *cert. denied*, 2008 NM LEXIS 135, 143 N.M. 666, 180 P.3d 673; *Atlixco Coalition v. Maggiore*, 1998-NMCA-134 ¶ 15, 125 N.M. 786, 965 P.2d 370; *Green v. New Mexico Human Services Department*, 1988-NMCA-083 ¶ 13, 107 N.M. 628, 762 P.2d 915.

Agency action must stand or fall on the basis of the agency's reasoning. The reviewing court may not supply a reasoned basis for the agency's action that the agency itself has not given. Thus, the Court may not make agency policy but only review it. *Rio Grande Chapter of the Sierra Club v. N.M. Mining Commission*, 2003-NMSC-005 ¶ 11, 133 N.M. 97, 61 P.3d 806; *Atlixco Coalition v. Maggiore*, 1998-NMCA-134 ¶ 20, 125 N.M. 786, 965 P.2d 370.

An administrative agency may not change its position on a regulatory issue without offering a reasoned explanation of the change. *Motor Vehicle Manufacturers Association v. State Farm Mutual*

Automobile Insurance Co., 463 U.S. 29, 57 (1983); *Citizens Awareness Network v. U.S. Nuclear Regulatory Commission*, 59 F.3d 284, 291 (1st Cir. 1995). *See also: Smiley v. Citibank (S.D.) N.A.*, 517 U.S. 735, 742 (1996).

6. Recording of the proceedings: A transcript of the public hearing has been prepared and appears in the Record.

7. Related or prior appeals: The two related appeals have been consolidated (A-1-CA-37894 and A-1-CA-37898).

Dated: April 26, 2019.

Respectfully submitted,

/s/ Joni Arends

Joni Arends
Concerned Citizens for Nuclear
Safety
P. O. Box 31147
Santa Fe, NM 87507
(505) 986-1973
jarends@nuclearactive.org

CERTIFICATION OF SERVICE

I hereby certify that on April 26, 2019, this Docketing Statement was served upon all parties to this proceeding, listed below, in accordance with Rule 12-307.2 of the Rules of Appellate Procedure:

Jennifer L. Hower
General Counsel
New Mexico Environment Department
121 Tijeras Ave. NE, Suite 1000
Albuquerque, NM 87102
jennifer.hower@state.nm.us

Attorney for New Mexico Environment Department

Lindsay A. Lovejoy, Jr.
3600 Cerrillos Road, Unit 1001 A
Santa Fe, NM 87507
Lindsay@lindsaylovejoy.com

*Attorney for Southwest Research and Information Center and
Nuclear Watch New Mexico*

John C. Anderson, United States Attorney
Michael H. Hoses, Assistant United States Attorney
U.S. Department of Justice
Environmental Defense Section
P. O. Box 607
Albuquerque, NM 87102
Michael.Hoses@usdoj.us

Attorneys for the United States

Michael L. Woodward
Wesley P. McGuffey
HANCE SCARBOROUGH, LLP

400 W. 15th Street, Ste. 950
Austin, Texas 78701
mwoodward@hslawmail.com
wmcguffey@hslawmail.com

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

Dalva L. Moellenberg
Gallagher & Kennedy
1239 Paseo de Peralta
Santa Fe, NM 87501
dln@gknet.com

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

Attorney for Nuclear Waste Partnership, LLC

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

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

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

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

/s/ Joni Arends

Joni Arends