

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

Southwest Research and Information Center,
Appellant

-against-

New Mexico Environment Department,
Appellee.

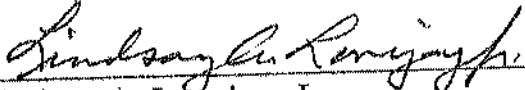
NEW MEXICO ENVIRONMENT DEPARTMENT)
HAZARDOUS WASTE BUREAU)
CLASS 3 PERMIT MODIFICATION REQUEST:)
EXCAVATION OF A NEW SHAFT AND ASSOCIATED)
CONNECTING DRIFTS, WASTE ISOLATION PILOT)
PLANT, NO. NM4890139088-TSDF)

NOTICE OF APPEAL ON BEHALF OF
SOUTHWEST RESEARCH AND INFORMATION CENTER

Comes now Southwest Research and Information Center (“SRIC”), which is a party to the administrative proceeding referred to above before the Secretary of the New Mexico Environment Department, which proceeding gave rise to an Order dated April 24, 2020. That Order constitutes final administrative action with respect to the construction of the new shaft and drifts referred to in the pending permit modification request. The Order is attached hereto.



Pursuant to Rule 12-601 of the Rules of Appellate Procedure and Section 74-4-14, NMSA 1978, SRIC hereby gives notice that it appeals from the Secretary's Order dated April 24, 2020 and all proceedings underlying that Order.


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Counsel for Southwest Research
and Information Center

April 27, 2020

Certificate of Service


I hereby certify that the foregoing Notice of Appeal was served pursuant to the Court of Appeals electronic filing and service system upon the following attorneys and parties on April 27, 2020:

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 24, 2020

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Carlsbad, New Mexico 88221-3090

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**RE: APPROVAL OF TEMPORARY AUTHORIZATION REQUEST
FOR CLASS 3 PERMIT MODIFICATION
WASTE ISOLATION PILOT PLANT
EPA I.D. NUMBER NM4890139088**

Dear: Messrs. Sosson and Dunagan:

The New Mexico Environment Department (“NMED”) has received the Department of Energy’s (“DOE”) and Nuclear Waste Partnership’s (“NWP”) (collectively the “Permittees”) January 16, 2020 Request for a Temporary Authorization (“Request”) for the August 15, 2019 Class 3 Permit Modification Request (“PMR”) to the Waste Isolation Pilot Plant (“WIPP”) Hazardous Waste Facility Permit (“Permit”) entitled *“Excavation of a New Shaft and Associated Connecting Drifts.”*

The Permittees are requesting to begin construction activities within the scope of the Class 3 PMR. Specifically, the Request seeks to begin excavating a new shaft, Shaft #5, approximately 1,200 feet to the west of the existing Air Intake Shaft.

Pursuant to the NMED Delegation Order dated January 15, 2020, the Cabinet Secretary has delegated the authority to issue or deny temporary authorizations under the Hazardous Waste Act to the Director of the Resource Protection Division. Upon review of the documentation provided by the Permittees in the Request, NMED finds the documentation sufficient to support the issuance of a temporary authorization.

This approval letter grants the Permittees a 180-day temporary authorization, effective April 27, 2020 and expiring on October 24, 2020, to undertake only those activities specified in the Request. If the

Permittees are not able to complete the activities associated in the Request within this timeframe, the Permittees may request the re-issuance of the temporary authorization for one additional term of 180 days pursuant to 20.4.1.900 NMAC (incorporating 40 CFR §270.42(e)(4)). Any such request is subject to re-evaluation by NMED.

This authorization is temporary and does not constitute a final agency action on the pending Class 3 PMR, nor does it prejudice or presuppose the outcome of the final action on the PMR. If NMED ultimately denies the PMR, the Permittees must reverse all construction activities associated with this Request at their expense and within the timeframes specified by the Department. Also, pursuant to 74-4-10 NMAC NMED reserves the right to pursue enforcement action which may include a suspension or revocation of this temporary authorization for cause, including: (1) During the execution of the tasks associated with the temporary authorization, noncompliance by the Permittees with any condition of the Permit, or any applicable requirement found within the Hazardous Waste Act or Hazardous Waste Management Regulations; (2) the discovery of the failure by the Permittees to disclose fully all relevant facts, or the Permittees' misrepresentation of any relevant facts, associated with this temporary authorization; or (3) A determination that the temporary authorization activities endanger human health or the environment.

The regulations at 40 CFR §270.42(e)(2)(iii) require that the Permittees notify the public, via the Facility Mailing list, within seven (7) days of submitting the Request. NMED received the Request on January 21, 2020 and the Permittees notified the Facility Mailing List on January 22, 2020. The Request and NMED's approval letter are available and may be found on the NMED WIPP Information Page at <https://www.env.nm.gov/hazardous-waste/wipp/>.

If you have any questions regarding this letter, please contact Ricardo Maestas of my staff at (505) 476-6050.

Sincerely,

 Stephanie Stringer
Digitally signed by
Stephanie Stringer
Date: 2020.04.23 19:18:37
-0600

Stephanie Stringer
Director
Resource Protection Director

cc: K. Pierard, NMED HWB
R. Maestas, NMED HWB
D. Biswell, NMED HWB
M. McLean, NMED HWB
C. Catechis, NMED DOE-OB
M. Brown, DOE CBFO
R. Chavez, NWP
L. King, EPA Region 6
T. Peake, EPA ORIA
File: WIPP '20