

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

JAN 17 2019

Mr. Burt

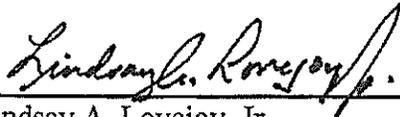
NEW MEXICO ENVIRONMENT DEPARTMENT)
HAZARDOUS WASTE BUREAU)
CLASS 3 PERMIT MODIFICATION REQUEST:)
CLARIFICATION OF TRU MIXED WASTE VOLUME)
REPORTING, PERMIT MODIFICATION TO THE)
WIPP HAZARDOUS WASTE FACILITY PERMIT)
NO. NM4890139088-TSDF)

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,



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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:

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**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 interest 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:

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for Pam Castaneda, Hearing Clerk