

**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 other wise 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