

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**THE MATTER OF HEARING DETERMINATION
REQUEST CLASS 3 "EXCAVATION OF A NEW SHAFT
AND ASSOCIATED CONNECTING DRIFTS"
PERMIT MODIFICATION TO THE WIPP
HAZARDOUS WASTE FACILITY PERMIT**

HWB 21-02 (P)

**ORDER DENYING SOUTHWEST RESEARCH AND INFORMATION CENTER'S
MOTION TO DISMISS**

THIS MATTER came before the appointed Hearing Officer on Southwest Research and Information Center's (SRIC) Motion to Dismiss for Noncompliance with Rules Governing Permit Modification (Motion), filed March 10, 2021. Having thoroughly considered the Motion, the Responses and the Reply, and being otherwise fully advised, **FINDS:**

- a) On August 15, 2019, the Permittees submitted a Class 3 Permit Modification Request entitled "Excavation of a New Shaft and Associated Connecting Drifts".
- b) On October 28, 2019, the N.M. Environment Department Hazardous Waste Bureau (HWB) issued a determination of Administrative Completeness.
- c) Following a separate determination of Technical Completeness, the HWB issued the draft Permit on June 12, 2020.
- d) In a Class 3 modification request, the HWB must give notice and opportunity for a public hearing. See § 74-4-4.2(H) (stating that the N.M. Environment Dept. may not rule upon a major modification request without an opportunity for a public hearing); See *also* 20.4.1.901(A)(5) NMAC.

- e) On December 27, 2020 a *Hearing Determination Request, Class 3 "Excavation of a New Shaft and Associated Connecting Drifts"* Permit Modification to the *WIPP Hazardous Waste Facility Permit* was approved and filed in the Office of Public Facilitation.
- f) On February 4, 2021, Administrative Law Judge Gregory Chakalian was appointed pursuant to 20.4.1.401(A)(4) NMAC as the hearing officer in this matter.
- g) The Hearing Officer is without the authority to make final determinations on summary proceedings or issue Final Orders. See 20.1.100(E)(2)(c) NMAC; See also 20.1.4.600(B)(1) NMAC ("The Secretary may issue a final order after an expedited hearing on a motion by a party...").
- h) The Hearing Officer conducted a prehearing conference attended by all the parties (including SRIC), and filed and served a Scheduling Order entered February 12, 2021 in this matter. Statements of Intent to Submit Technical Testimony must be received on or before May 3, 2021, and the public hearing will commence on May 17, 2021.
- i) SRIC will not be prejudiced by denial of the Motion because they can assert their position regarding matters addressed in the Motion.

IT IS THEREFORE RECOMMENDED that the Motion be denied for the reasons set out in the Responses.


Gregory
Chakalian

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Chakalian
Date: 2021.04.23 14:23:24
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Gregory Chakalian
Administrative Law Judge
Office of Public Facilitation

APPROVAL OF ORDER DENYING MOTION TO DISMISS

Pursuant to 20.1.4.100(E)(2) NMAC, this Order is hereby APPROVED.

 Digitally signed by
James Kenney
Date: 2021.04.23
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JAMES C. KENNEY
SECRETARY
NEW MEXICO ENVIRONMENT DEPT.

Certificate of Service

I hereby certify that on April 23, 2021 a copy of the foregoing **Order Denying Motion to Dismiss** was emailed to the persons listed below. A copy will be mailed first class upon request.

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