

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

**IN 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**

Docket No. HWB 21-02

ORDER GRANTING IN-PART NMED'S MOTION IN LIMINE

BEFORE THE ADMINISTRATIVE LAW JUDGE is the N.M.

Environment Dept.'s *Motion in Limine*. After reviewing the argument of counsel in the motion and reply and the responses and being otherwise fully advised in the premises, finds as follows:

1. Pursuant to 20.1.4.100(E)(2) and 20.1.4.200(D) NMAC, the Hearing Officer has the "authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings," which includes ruling upon motions and admitting or excluding evidence.
2. The Hearing Officer also has the authority and duty to admit all relevant evidence unless the evidence is immaterial, unduly prejudicial or repetitious, or otherwise unreliable or of little probative value. See 20.1.4.400(B)(1) NMAC.
3. A motion in limine is a useful tool for controlling the presentation of evidence, as it allows the Hearing Officer to prevent immaterial or prejudicial matter from encumbering the record. *Proper v. Mowry*, 90

N.M. 710, 714 (N.M. Ct. App. 1977) Such a motion is a necessary adjunct to the inherent power of the Hearing Officer to assure the fair and impartial administration of justice. *See id.*

4. "In a permit modification under this section, only those conditions to be modified shall be reopened. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit."

20.4.1.901(B)(7) NMAC.

5. 20.4.1.900 NMAC incorporates by reference 40 CFR § 270 (permit modification at the request of the permittee). Specific to Class 3 modifications, the "permittee must submit a modification request to the Director that ... [e]xplains why the modification is needed." 40 CFR § 270.42(c)(1)(iii).

6. Furthermore, a certification by the permittee that "the information submitted is, to the best of our knowledge and belief, true, accurate, and complete." Permit Part 1, Section 1.9; 40 CFR §270.11(d)(1) and §270.30(k)

7. On August 15, 2019, the Permittees submitted a permit modification request (PMR) to modify the hazardous waste facility permit issued by the New Mexico Environment Department (NMED) authorizing the operation of the Waste Isolation Pilot Plant facility in Eddy County, New Mexico.

8. The PMR has been reviewed by the staff of the NMED who, finding the PMR to be administratively and technically complete, have prepared and issued a Draft Permit incorporating the requested changes into the Permit as submitted.
9. In permit hearings, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition. 20.4.1.901(F)(5) NMAC.

It is therefore based upon any and all of the foregoing,

ORDERED AND ADJUDGED:

- A. N.M. Environment Dept.'s *Motion in Limine* is granted in part, to wit: evidence of future expansion of the Waste Isolation Pilot Plant is not relevant to the approval or denial of the Draft Permit.
- B. The *Motion in Limine* is denied in part, to wit: evidence relevant to why the modification is needed, and the veracity of Permittees' Certification are relevant to the approval or denial of the Draft Permit.

DONE AND ORDERED in Santa Fe, New Mexico, this 26 day of April 2017.

Gregory
Chakalian

Digitally signed by
Gregory Chakalian
Date: 2021.04.26
16:49:49 -06'00'

Gregory Chakalian,
Administrative Law Judge, OPF

Certificate of Service

I hereby certify that on April 26, 2021 a copy of the foregoing **Order Granting In-Part NMED'S Motion in Limine** was emailed to the persons listed below:

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