

**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF THE PETITION
FOR A HEARING ON THE ORDER OF
THE SECRETARY REMANDING FOR
CONSIDERATION OF FINANCIAL ASSURANCE
FOR GROUND WATER DISCHARGE PERMIT
(DP-1132) FOR THE RADIOACTIVE LIQUID
WASTE TREATMENT FACILITY**

WQCC No. 20-39(A)

**The United States Department of Energy, Triad
National Security, LLC,**

Petitioners.

ORDER DISMISSING PETITION

This matter came before the Water Quality Control Commission (“Commission”) on the Petition for Review and Notice of Appeal of the Environment Department Secretary’s Order Remanding for Consideration of Financial Assurance filed July 17, 2020 by the United States Department of Energy (“DOE”) and Triad National Security, LLC (“Triad”) (collectively “DOE/Triad” or “Petitioners”). The New Mexico Environment Department (“Department”) and Petitioners filed a Joint Motion for a Stay of Proceeding on July 23, 2020, asking to delay the procedural and briefing deadlines. NMED filed the Administrative Record on July 31, 2020, triggering briefing deadlines pursuant to 20.1.3.16.A(4) NMAC.

After reviewing the pleadings, Water Quality Act (NMSA 1978 §74-6-1 et seq) and Commission regulations, the Commission finds as follows:

1. Pursuant to 20.1.3.10.B NMAC, the Chair serves as Hearing Officer until the Commission appoints another Hearing Officer. As Hearing Officer, the Chair may rule on

motions and procedural requests that do not seek final resolution of the proceeding and issue all necessary orders. *See also* 20.1.13.10(A)(1) NMAC.

2. The Water Quality Act allows appeal to the Commission “if the constituent agency denies, terminates or modifies a permit or grants a permit subject to condition” (NMSA 1978 §74-6-5 (N)), by “a person who participated in a permitting action before a constituent agency or a person ... who is adversely affected by such permitting action...” (NMSA 1978 §74-6-5 (O)).

3. Petitioners seek Commission review of the Secretary’s Order Remanding for Consideration of Financial Assurance. The Secretary has not denied, terminated or modified a permit, nor granted a permit subject to condition. Therefore, there is no final permit issued by the Department triggering the Water Quality Act provisions for review by the Commission.

4. This matter is not ripe for review by the Commission, and it would violate concepts of judicial economy for the Commission to review an action mid-way through the permitting process.

5. This ruling is not “final resolution of the proceeding” requiring full Commission review under 20.1.3.10.B NMAC, because the matter will return to the Department to complete the financial assurance consideration directed by the Secretary. After the agency completes its consideration of financial assurance and the Secretary issues a permit (with or without conditions) or denies the permit application, the matter would be ripe for appeal to the Commission.


6. If the Commission were to decide this Petition, the Commission would be substituting its judgment and action for that of the Department and Secretary before they have taken action on financial assurance. This would set an inappropriate precedent for the Commission’s involvement in permitting actions before a final permit is issued.

7. In the interest of time and to avoid the need for briefing matters not yet before the Commission, it is reasonable and appropriate for the Chair to issue this order as Hearing Officer in this matter.

IT IS THEREFORE ORDERED that WQCC No. 20-39(A) is dismissed.

Dated this 21st day of August, 2020.

Jennifer
Pruett

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Pruett
Date: 2020.08.21 15:32:04
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Jennifer J. Pruett, Chair
Water Quality Control Commission

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2020 a copy of the foregoing **Order Dismissing Petition** was emailed to the persons listed below. A copy will be mailed first class upon request.

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