

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT )  
DEPARTMENT, )  
Complainant, )  
 )  
v. )  
 )  
U.S. DEPARTMENT OF ENERGY )  
AND TULAROSA BASIN RANGE )  
SERVICES, LLC DOING BUSINESS AS )  
SALADO ISOLATION MINING )  
CONTRACTORS, LLC. )  
EPA ID #: NM4890139088, )  
Respondents. )

ADMINISTRATIVE ORDER  
NO. HWB-25-01

HWB 24-53

**RESPONDENTS' ORIGINAL ANSWER AND REQUEST FOR HEARING**

**REQUEST FOR HEARING**

Pursuant to NMSA 1978, Section 74-4-10(H) of the New Mexico Hazardous Waste Act (“HWA”), and New Mexico Environment Department’s (“NMED’s”) Adjudicatory Procedures, 20.1.5.200 NMAC, the Respondents, U.S. Department of Energy and Salado Isolation Mining Contractors LLC, request a hearing be conducted in this matter.

**GENERAL DENIAL**

Respondents deny each and every, all and singular, the allegations contained in the Administrative Compliance Order (“ACO”) issued by the NMED Hazardous Waste Bureau (“HWB”) to Respondents on or about August 21, 2024, except as admitted or specifically denied herein, and demand the Complainant provide strict proof thereof.

## SPECIFIC DENIALS

Respondents specifically deny the allegations contained in Paragraph 29 and the violation alleged in Paragraph 36 of the ACO.

Respondents specifically deny NMED inspectors observed excess accumulation of combustible materials at the following locations:

- a. The underground maintenance shop.
- b. Near the underground Satellite Accumulation Area (“SAA”).

Respondents specifically deny they failed to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of Transuranic mixed waste or mixed waste constituents to air, soil, groundwater, or surface water which could threaten human health, or the environment is a violation of Permit Condition 2.1, referencing 20.4.1.500 NMAC, incorporating 40 CFR §264.31.

The basis for denial of Paragraphs 29 and 36 of the ACO are as follows:

- a. The Waste Isolation Pilot Plant Hazardous Waste Facility Permit (“Permit”) the applicable regulations of the NMED, nor the HWA contain any explicit definition of the term “combustible materials.”
- b. The Permit, the applicable regulations of the NMED, and the HWA contain no specific standards or requirements for the handling of undefined combustible materials outside of hazardous waste management units.
- c. The Permit, the applicable regulations of the NMED, and the HWA do not define “Excess accumulation of combustible materials” as described in the ACO. Permit Part 2, Section 2.1 requires that the Respondents “design, construct, maintain, and operate WIPP to **minimize** the possibility of a fire, explosion, or any unplanned

sudden or non-sudden release of transuranic (TRU) mixed waste or mixed waste constituents.” (emphasis added). Neither the Permit nor the NMED regulations require Respondents to eliminate such a possibility by removing any and all combustible materials from the underground.

### **AFFIRMATIVE DEFENSES**

None of the Permit, the applicable regulations of the NMED, nor the HWA contain an explicit definition of “combustible materials.” Likewise, NMED has not defined “Excess accumulation of combustible materials” nor adopted standards for accumulation of such material. Thus, NMED has no basis for asserting there was an “excess accumulation of combustible materials” in areas outside of the hazardous waste disposal units (“HWDUs”). NMED’s purported determination that Respondents exceeded a standard that does not exist in the Permit, the applicable regulations of the NMED, or in the HWA is arbitrary and capricious, an abuse of discretion and not otherwise in accordance with the law.

Federal law assigns the responsibility for the health and safety of workers in the WIPP underground to the DOE. In accordance with this regulatory oversight, the WIPP site is subject to Standard Operating Procedure WP 12-FP3003 which assigns the responsibility to inspect and enforce combustible materials restrictions to the WIPP Fire Department. Underground employees are trained regarding underground fire protection and safety in SAF-501 Inexperienced Miner Training and SAF-502 Annual Underground Refresher. Neither the WIPP Fire Department inspectors nor underground employees have identified an “Excess accumulation of combustible materials” in violation of applicable standards.

Prior to receiving the ACO, Respondents have taken the following actions in accordance with Part 2, Section 2.1 of the Permit to “minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release”:

- a. Respondents have adopted procedures and implemented inspections pertaining to combustible materials that are based on fire protection standards. Pursuant to these procedures, Respondents conduct weekly and monthly inspections to assure proper management of combustible materials in the underground. Issues identified during these inspections are recorded in inspection reports and corrected. Combustible materials in the underground facility are managed in accordance with applicable requirements delineated in DOE 420.1C, Facility Safety; National Fire Protection Association (NFPA) 801, Standard for Facilities Handling Radioactive Materials; WP 12-FP.01, WIPP Fire Protection Program; WIPP Fire Hazards Analysis for the Waste Isolation Pilot Plant) and applicable WIPP standard operating procedures.
- b. The foregoing standards and procedures are reflected in the WIPP Documented Safety Analysis (“DSA”) (WIPP-023) which is reviewed and approved by DOE. The safety basis is the “documented safety analysis and hazard controls that provide reasonable assurance that a DOE nuclear facility can be operated safely in a manner that adequately protects workers, the public, and the environment.” 10 CFR 830.3.
- c. There are automatic fire suppression systems in the maintenance shop. The underground E-300 Maintenance Office and Underground Facility Engineer’s Office have a Stat-X fire suppression system installed. The underground E-300 Maintenance shop also has a dry chemical CEASE Fire suppression system installed. (photos attached).

- d. There is an ABC Fire Extinguisher located inside alcove #25 located near SAA #25. The SAA was managed in accordance with WIPP standard operating procedures implementing 40 CFR §262.15 and the preparedness and prevention requirements in 40 CFR 262 Subpart M thereby eliminating any potential ignition source.
- e. The exhaust air from the maintenance shop/SAA area flows southeast to the Exhaust Shaft. The exhaust air from Panel 8 also flows northeast to the Exhaust Shaft. There is no connection in ventilation flowing through the maintenance shop/SAA and Panel 8. The maintenance shop/SAA and Panel 8 are separated by non-combustible salt, bulkheads/bulkhead doors and access drifts. The WIPP repository is an MSHA Category IV, or a noncombustible and non-gassy mine.
- f. Transuranic (“TRU”) mixed waste is not handled at or near the underground maintenance shop, nor at the underground SAA. Therefore, there is no potential for a release of TRU mixed waste or mixed waste constituents in the unlikely event of fire in these areas. The Permittees continue to minimize the potential for a release of TRU mixed waste and their constituents through the rigorous waste characterization program and facility inspection procedures. The WIPP DSA has rigorous controls for combustibles at or near the Permitted HWDUs. Management of combustibles at or near the HWDUs is primarily driven by the DSA which requires active control over combustibles in this vicinity. The DSA determined that fires resulting from the hypothetical Large Pool Fire near TRU and TRU mixed waste is the primary fire hazard to be mitigated to protect the Maximally Exposed Offsite Individual.
- g. The WIPP Fire Marshal reviewed the April 2023 photographs of the materials observed by NMED inspectors and concluded that the materials shown in the

photographs did not warrant an “excess accumulation of combustible material” designation in accordance with WIPP Fire Protection Engineering procedures. The materials shown in the photographs were staged in an approved area for ongoing work activity and did not show sufficient critical heat flux nearby that would ignite exposed combustible material.

- h. This alleged violation was corrected as documented in the Order. Respondents provided NMED with documentation of the correction. This alleged violation was also not identified in the 2024 inspection.

### **ADMISSIONS**

Respondents admit that universal waste lamps were not labeled with the words “universal waste”, or with other wording to identify the waste as described in Paragraph 37 of the ACO. The remainder of this allegation is a conclusion of law for which no answer is required. Further, as documented in the ACO, Respondents had labeled the universal waste lamps at the time of the inspection and provided NMED with documentation of correction of this issue identified by NMED. This issue was not identified in the 2024 inspection.

Respondents admit that they did not demonstrate the length of time universal waste has accumulated as described in Paragraph 38 of the ACO. The remainder of this allegation is a conclusion of law for which no answer is required. Further, as documented in the ACO, Respondents identified the length of time the universal waste had accumulated at the time of the inspection and provided NMED with documentation. This issue was addressed by Respondents and was not identified in the 2024 inspection.

**PRAYER**

For the above reasons, Respondents request that an administrative order be issued containing only the violations described in Paragraphs 37 and 38, and that the alleged violation described in Paragraph 36 be dismissed. In the alternative, Respondents request that a contested case hearing be held on the Violation described in Paragraph 36.

*//Signatures on File//*

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**ATTORNEYS FOR SALADO  
ISOLATION MINING COMPANY, LLC**

**State of New Mexico**

**County of Eddy**

**AFFIRMATION STATEMENT**

Mr. Rick Chavez personally appeared before me and being first duly sworn declared that having read and reviewed this Respondents' Original Answer and Request for Hearing in the capacity designated, has indicated by his signature that to the best of his knowledge the information contained therein is believed to be true and correct.

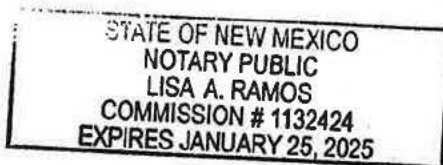
*//Signatures on File//*

Rick Chávez  
Environmental Program Manager  
Salado Isolation Mining Contractors, LLC

Date: 9/18/24

*//Signatures on File//*

Notary Signature





## CERTIFICATE OF SERVICE

I hereby certify that, on September 18, 2024, the foregoing Respondents' Original Answer and Request for Hearing was served on the following:

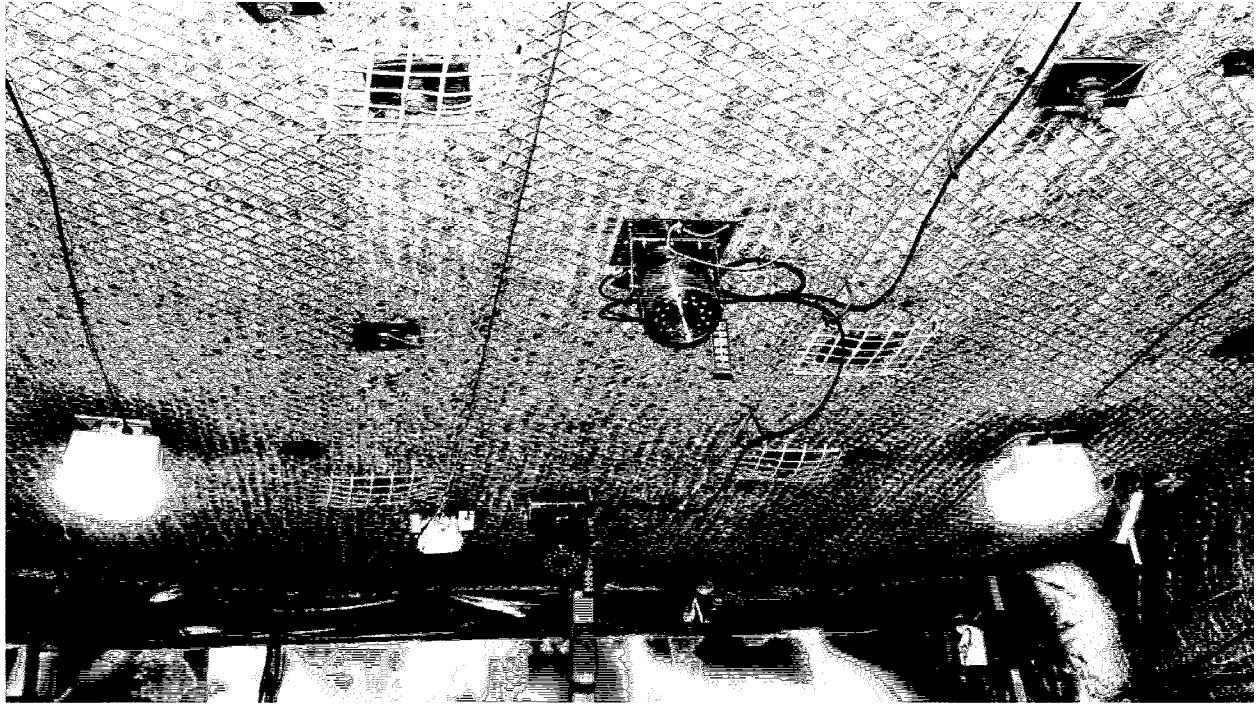
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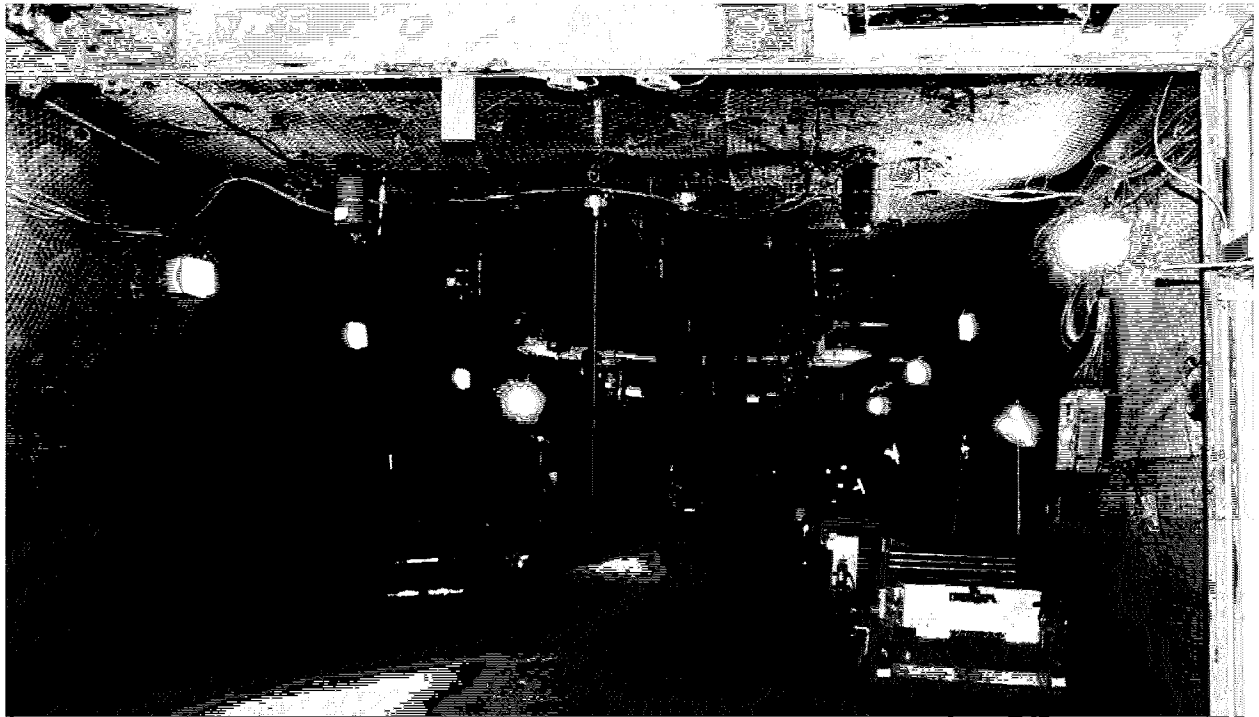
*//Signatures on File//*

Michael L. Woodward

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**E-300 Maintenance Office and UFE Stat-X Fire Suppression System**



**E-300 Maintenance Shop Cease Fire System**