

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
)
v.)
)
U.S. DEPARTMENT OF ENERGY)
& SALADO ISOLATION MINING)
CONTRACTORS, LLC, Waste Isolation Pilot)
Pilot Plant Co-permittees,)
EPA ID #: NM4890139088,)
Respondent.)
_____)

**ADMINISTRATIVE ORDER
NO. HWB-25-04**

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Hazardous Waste Act (“HWA”), New Mexico Statutes Annotated (“NMSA”) 1978, §§ 74-4-1 to -14, the Resource Protection Compliance and Enforcement Bureau (“RPCEB”) of the Compliance and Enforcement Division (“Division”) of the New Mexico Environment Department (“NMED”), issues this Administrative Compliance Order (“Order”) to the U.S. Department of Energy (“DOE”) & Salado Isolation Mining Contractors LLC (“SIMCO”), Co-Permittees of the Waste Isolation Pilot Plant (“WIPP”) facility (“Respondent”). This Order requires that Respondent, located at 34 Louis Whitlock Road, Carlsbad, New Mexico, perform corrective actions to comply with the Hazardous Waste Act (“HWA”) and the Hazardous Waste Management Regulations (“HWMR”) in the New Mexico Administrative Code (“NMAC”).

A. PARTIES AND LAW

1. Pursuant to the Department of Environment Act, NMSA 1978, §§ 9-7A-1 to -15, NMED is an agency of the executive branch within the government of the State of New Mexico.

2. NMED, through its RPCEB, is charged with administration and enforcement of the HWA and HWMR.

3. The U.S. Environmental Protection Agency (“EPA”) has granted the State of New Mexico delegated authority to implement the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 to 6992k, within the state. The HWMR incorporate portions of 40 Code of Federal Regulation (“CFR”) §§ 260 through 270, 40 CFR § 279 and related federal regulations by reference.

4. The State of New Mexico adopted the federal hazardous waste regulations by reference on June 14, 2000. The State of New Mexico subsequently amended the HWMR on March 1, 2009 and on December 1, 2018, to adopt updated federal hazardous waste regulations.

5. Respondent is a “person” within the meaning of NMSA 1978, Section 74-4-3(M) of the HWA.

6. Respondent operates a mixed waste deep geologic repository facility, located at 34 Louis Whitlock Road, Carlsbad, New Mexico (“Facility”).

7. Respondent’s Facility is currently registered as a Large Quantity Generator of hazardous waste as defined in the HWMR, under EPA Identification Number NM4890139088.

8. Pursuant to NMSA 1978, Sections 74-4-10 and 74-4-12 of the HWA, the Respondent is liable for a civil penalty of up to \$10,000.00 per day of noncompliance for each violation of the HWA and HWMR.

9. If Respondent fails to comply in a timely manner with the Schedule of Required Corrective Actions (Section D, below), the Secretary may assess additional civil penalties of up to \$25,000 for each day of continued noncompliance pursuant to NMSA 1978, Section 74-4-10(C) of the HWA.

B. HWA INVESTIGATION

1. On June 24, 2025, the U.S. Government Accountability Office (GAO) published report GAO-25-107333, titled “*Nuclear Waste Cleanup: DOE Needs to Improve Contractor Oversight at the Waste Isolation Pilot Plant,*” the Respondent’s Facility.

2. This independent federal audit presents evidence of systemic failures in infrastructure maintenance and oversight at WIPP that raise concerns about the Facility’s continued compliance with Permit conditions requiring operational maintenance of the Facility.

3. On June 18, 2025, the Defense Nuclear Facilities Safety Board (DNFSB) issued a letter to DOE following a focused review of shaft and escapeway hoists at WIPP.

4. The DNFSB identified significant safety concerns with the physical condition of multiple hoists. These findings further underscore DOE and SIMCO’s failure to maintain critical infrastructure in accordance with Permit requirements.

C. VIOLATIONS

1. Violation 1. Failure to Maintain Facility Infrastructure in Good Repair

On June 24, 2025, the U.S. Government Accountability Office (GAO) published report GAO-25-107333, identifying over \$37 million in deferred maintenance at the Waste Isolation Pilot Plant (WIPP), with 29 of 56 mission-critical assets rated as “substandard” or “inadequate.” These include critical infrastructure such as hoists, electrical systems, and other operational components necessary for safe facility operation. Permit Part 1, Section 1.7.7 requires the Permittees to maintain the facility and associated equipment and structures in good repair to protect human health and the environment.

a. Respondents’ failure to maintain mission-critical infrastructure in a condition

consistent with Permit Part 1, Section 1.7.7 constitutes a violation of that section.

2. Violation 2. Failure to Maintain Evacuation Equipment as Required by the Permit

On June 18, 2025, the Defense Nuclear Facilities Safety Board (DNFSB) issued a letter to DOE identifying degradation and obsolescence of escapeway hoists at WIPP. The DNFSB noted that, despite awareness of the issues, DOE has failed to implement timely corrective action and that plans remain conceptual. Escapeways and associated hoisting equipment are mission-critical in the event of an underground emergency. Permit Part 2, Section 2.10.1 requires the Permittees to maintain at the facility the equipment specified in the Contingency Plan (Permit Attachment D).

a. Respondents' failure to maintain escapeway hoists as required by the Contingency Plan constitutes a violation of Permit Part 2, Section 2.10.1.

3. Violation 3. Failure to Address Identified Equipment Deficiencies

Permit Attachment E, Section E-1 requires that inspections identify equipment malfunctions or deterioration, and that deficiencies, discrepancies, or needed repairs are documented. Table E-1 outlines detailed inspection criteria for deterioration and operability, including items such as corrosion, structural damage, and mechanical function.

a. While inspections were performed and deficiencies recorded (as noted by GAO), Respondents failed to initiate timely corrective actions to repair degraded equipment. This disconnect between inspection findings and maintenance response violates the overall requirement in Permit Part 1, Section 1.7.7 to maintain the facility and its systems in good repair. This failure also undermines

the intent and purpose of Permit Attachment E, which is to identify issues so they may be corrected to ensure safe operations.

b. Respondents' failure to act on inspection data and address known deficiencies constitutes a violation of Permit Part 1, Section 1.7.7, in conjunction with Permit Attachment E, Section E-1 and Table E-1.

4. Violation 4. Failure to Maintain Equipment Integrity Required for Design-Basis Events

Permit Attachment A2-2a(1) states that WIPP's hoist systems are designed to withstand dynamic forces and a design-basis earthquake of 0.1g peak ground acceleration. Long-term deterioration of hoist systems, as identified by DNFSB and GAO, calls into question their continued ability to meet these design requirements. No requalification or assessment of structural integrity in light of degradation has been documented.

a. Respondents' failure to ensure continued integrity and qualification of the waste shaft conveyance systems to meet original design standards constitutes a violation of the facility's operational commitments under Permit Attachment A2-2a(1) and undermines the basis for safe operation under seismic and emergency conditions.

5. Violation 5. Inaccurate and Outdated Infrastructure Condition Data

The GAO report also found that condition data entered into the Federal Infrastructure Management System (FIMS) were frequently inaccurate or outdated. Despite being aware of these discrepancies, DOE did not require its contractor to correct them or provide a timeline for doing so.

a. Respondents' failure to ensure accurate documentation of infrastructure conditions constitutes a violation of Permit Part 1, Section 1.7.7, as this impairs the ability to ensure compliance and protect human health and the environment.

D. SCHEDULE OF REQUIRED CORRECTIVE ACTIONS

1. Based upon the foregoing findings and conclusions, Respondents are hereby ordered to take the following corrective actions, according to the following schedule, to achieve compliance with the HWA and the HWMR.

No later than 60 calendar days from the date of this Order (by September 24, 2025), Respondents shall submit to NMED the following:

- a. A corrective action schedule for the repair or replacement of mission-critical infrastructure, including all hoist systems and related components identified as deficient by GAO and DNFSB.
- b. The schedule must include milestones, responsible entities, and completion dates presented in a table format.
- c. A description of how WIPP will ensure that evacuation and hoisting equipment, as specified in Permit Attachment D, will be maintained in a state consistent with Permit Part 2, Section 2.10.1.
- d. A plan to evaluate the structural integrity and compliance of hoist systems with design-basis event requirements under Permit Attachment A2-2a(1), including an engineering assessment if degradation has occurred.
- e. Documentation demonstrating that inspection findings (Permit Attachment E) are being used to inform and drive timely corrective maintenance actions. This should include a discussion of how inspection records are integrated into

maintenance tracking systems and how gaps between inspection and action will be closed.

f. A revised process or procedure that ensures infrastructure condition data in FIMS or other relevant tracking systems are accurate, current, and subject to routine verification.

2. Ongoing Requests:

a. NMED requests to be included on the correspondence list for all future responses to the GAO report (GAO-25-107333) and the DNFSB's June 18, 2025 letter.

b. NMED requests periodic status updates on DOE's implementation of the three recommendations outlined in its June 9, 2025 response to GAO (Appendix II), including estimated completion timelines.

E. RIGHT TO ANSWER AND REQUEST A HEARING

1. Pursuant to NMSA 1978, Section 74-4-10(H) of the HWA, and NMED's Adjudicatory Procedures, 20.1.5.200 NMAC, Respondent may file a written request for a public hearing with the Hearing Clerk no later than 30 days from the receipt of this Order. An Answer must be filed with the Request for Hearing. The Answer shall:

a. Clearly and directly admit, deny, or explain each of the factual allegations contained in this Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent shall so state, and Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. 20.1.5.200.A(2)(a) NMAC.

b. Assert any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject

matter jurisdiction, shall be deemed waived. 20.1.5.200.A(2)(b) NMAC.

c. Be signed under oath or affirmation that the information contained therein is, to the best of the signer's knowledge, believed to be true and correct. 20.1.5.200.A(2)(c) NMAC.

d. Include a copy of this Order attached. 20.1.5.200.A(2)(d) NMAC.

2. The Answer and Request for Hearing shall be filed with the Hearing Clerks at the following email addresses:

Hearing Clerks

New Mexico Environment Department

luís.lopez@env.nm.gov

pamela.jones@env.nm.gov

3. Respondent also must serve a copy of the Request for Hearing on Ray Romero, Office Manager and Paralegal, Office of General Counsel, New Mexico Environment Department, ray.romero@env.nm.gov.

F. FINALITY OF ORDER

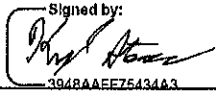
This Order shall become final unless Respondent files a Request for Hearing and Answer with the Hearing Clerk within 30 days after the date of receipt of this Order pursuant to NMSA 1978, § 74-4-10(H).

G. TERMINATION

This Order shall terminate when Respondent certifies that all requirements of this Order have been met and the Department has approved such certification, or when the Secretary of the Environment approves a settlement agreement and signs a stipulated final order.

H. COMPLIANCE WITH OTHER LAWS

Compliance with the requirements of this Order does not remove the obligation to comply with all other applicable laws and regulations.

Signed by:

3948AAEF75434A3

DATE: 7/24/2025

KYLE STAGGS, CHIEF
RESOURCE PROTECTION COMPLIANCE AND ENFORCEMENT BUREAU


CERTIFICATE OF SERVICE

I hereby certify that, on 7-25-25, the foregoing Administrative Compliance

Order was mailed, postage prepaid, via Certified Mail, Return Receipt Requested, to the following:

Mark Bollinger, Manager
Department of Energy - Carlsbad Field Office
P.O. Box 3090
Carlsbad, NM 88221-3090

Ken Harrawood, Program Manager
Salado Isolation Mining Contractors LLC
P.O. Box 2078
Carlsbad, NM 88221-2078


New Mexico Environment Department