

## NMED's Response to Written Public Comments Submitted on the Draft Permit

Comment Number	Location in Proposed Permit	Comment Subject	Summary of Comment	NMED Response
1	General	General Support of WIPP Permit	<p>From all that has been published we believe it is desirable that a permit be issued to permit the WIPP to continue operating as it has been. This facility provides a service to the nation at no cost to the environment of New Mexico.</p> <p>PECOS believes the draft HWFP is acceptable and reasonable as presented.</p> <p>I favor the permit request.</p> <p>I favor less red tape and cost for future renewals and hopefully less cost for state government regulation.</p>	Comments noted.
2	Table 4.1.1.	Permitted disposal panels	<p>There is no discussion of Panels 9 &amp; 10 in the draft permit, which was in the original permit and which the DOE has acknowledged are planned. Since there is a strong possibility that the original plan to use the main access shafts that lead to Panels 3, 4, 5, and 6, for disposal of TRU waste will occur during the effective dates of the renewed permit, it is recommended that a discussion to that affect be included in the permit.</p>	<p>The Permittees' application requested that Panel 8 be added to the Permit. The Permittees did not propose that Panels 9 &amp; 10 will be used for waste disposal during the effective dates of the Proposed Permit.</p>
3	General	Expansion of WIPP's mission	<p>I favor WIPP storing future nuclear power concentrated wastes safely and less costly.</p>	<p>The WIPP Land Withdrawal Act established clear parameters for WIPP's mission as a permanent repository for defense-related TRU waste. To change or expand WIPP's mission would require action of the U.S. Congress.</p> <p>While the Department appreciates and considers this comment, no further response is necessary because the comment is outside of the scope of the Proposed Permit.</p>

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4	C-0b C-0c C6 C7-1e(2)	Permittees' roles and responsibilities	<p>NMED, in the Draft Permit, has divided the responsibilities of the Permittees by designating certain actions and responsibilities as DOE action only rather than Permittee actions. The applicants note that the NMED Fact Sheet indicates that this change is based on the perception of a conflict of interest. The applicants do not understand the necessity for this change. The Permittees have traditionally taken measures to assure such conflicts do not arise and to make the processes used for characterizing, approving and disposing of waste transparent to regulatory agencies and stakeholders. For example:</p> <ul style="list-style-type: none"> <li>• There is extensive, formal oversight (including regulatory and QA organizations) by five different groups of personnel consisting of WTS Internal oversight, Generator Site oversight, CBFO oversight, NMED oversight, EPA oversight</li> <li>• After eleven plus years of operating experience there have been no instances that would indicate that regulatory compliance is being compromised due to the organizational structure</li> <li>• The Permittees both encourage as a matter of policy and implement, as a matter of practice, self reporting of instances where permit conditions have not been met</li> <li>• Characterization and Confirmation activities modeled in accordance with standard industrial practices whereby those who perform these activities certify as to the accuracy of their determinations with full understanding of the consequences of purposeful violation of the regulations</li> </ul> <p>The changes as proposed add unnecessary complexity, increasing the potential for mistakes and errors, and introduce additional administrative burden for no regulatory benefit. The Applicants consider resolution of this issue prior to the hearing their highest priority.</p>	<p>The Proposed Permit clarifies the roles of DOE and WTS during the waste characterization process to ensure that there is independent oversight at critical stages of the process. Under the Proposed Permit, DOE, as distinguished from WTS or "Permittees," is given clear and sole responsibility for key waste analysis plan (WAP) related actions. These actions are:</p> <ol style="list-style-type: none"> <li>1. Audit and surveillance of characterization programs (Proposed Permit Part C6);</li> <li>2. Approval of a waste stream profile form (WSPF), authorizing disposal of waste coming within that waste stream (Proposed Permit Section C-0c);</li> <li>3. Provisional approval of an Acceptable Knowledge Sufficiency Determination (AKSD), an action that would allow disposal of a waste stream without certain characterization procedures normally required (Proposed Permit Section C-0b);</li> <li>4. Approval of confirmation of the characterization of a waste shipment, which is a double-check of characterization before shipment is allowed (Proposed Permit Section C7-1e(2)).</li> </ol> <p>The commenters stipulated to these language changes during negotiations on the Draft Permit, and the inclusion of the revised language in the Proposed Permit satisfactorily addressed their comment.</p>

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4		Permittees' roles and responsibilities (Continued)	<p>For waste acceptance and confirmation, the draft permit requires DOE to be the approval point in the process, whereas the current permit required the Permittees to be the approval point. Under the term Permittees, either Washington TRU Solutions (WTS) or DOE could be the approval point in the original permit. With these changes, the DOE now has responsibilities that had been performed by WTS or by WTS subcontractors. However, it is not clear whether DOE can delegate these responsibilities to others, such as the Carlsbad Technical Assistance Contractor; and, if so, can it be a full delegation including approval or must DOE employees issue the approvals.</p> <p>If the Draft becomes approved as written, will the Confirmation process then fall under direct management from DOE, or does the confirmation process remain as currently managed by URS/WRES?</p>	
5	C4-2b C4-2c C4-3b	Acceptable Knowledge	<p>With respect to Acceptable Knowledge (AK), NMED wants to change how a waste stream is defined and how Hazardous Waste Numbers (HWNs) are assigned. In doing so, waste streams truly will contain waste that is similar in both the method of generation and physical characteristics, not one or the other. PECOS is in agreement with NMED regarding those proposed changes to the permit that will ultimately strengthen the AK record. However, using conservative HWNs makes the management, treatment, and disposal of waste, much more complicated if not impossible. Use of these "conservative codings" for waste shipments is in direct violation of DOT. If codes don't apply, injury of emergency responders during a transport incident caused by miscoding is a real danger. PECOS recommends using HWNs which reflect the actual contents of the waste</p>	<p>The Department proposed several changes in the Permit to eliminate the requirement for sites to conservatively assign HWNs and instead to require sites to assign HWNs consistent with RCRA (Proposed Permit sections C4-2b, C4-2c, and C4-3b).</p> <p>However, EPA RCRA guidance allows sites to declare waste hazardous when the site lacks sufficient data or to save on analytical costs (December 18, 1978; 43 FR 58969). Therefore, this type of conservative assignment of HWNs is not inconsistent with RCRA requirements.</p> <p>The Department disagrees that conservative assignment of HWNs "is in direct violation of DOT."</p>

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			<p>container.</p> <p>We like the increased specificity for AK documentation and records.</p>	
6	General	NMED should incorporate outstanding Class 2 Permit Modification Requests.	Finally, PECOS recommends that as many as the outstanding Class 2 Permit Modification Requests (PMRs), including the proposed change in the volatile organic compound action limits be incorporated into this draft permit. Those changes could easily be proposed prior to the public hearing dates and since those Class 2 PMRs have already been made publicly available, it could be accomplished as a part of the renewal process.	All outstanding Class 2 PMRs were incorporated into the Proposed Permit.
	<p>1.5.18</p> <p>3.1.1</p> <p>3.3.1.1</p> <p>6.3</p> <p>Part 7</p> <p>Throughout</p> <p>A1-1a</p>	Editorial changes	<p>1.5.18. Observable Liquid "Observable liquid" means liquid that is observable using radiography or VE as specified in Permit Attachment B, Waste Analysis Plan. This should be Attachment "C".</p> <p>Part 3, Table 3.1.1 – delete second "," in Facility Total Area. Also, make same change in Attachment J, Table J-1.</p> <p>Part 3.3.1.1 to 6 should be: Each [container... has], i.e., – Each Standard 55-gallon drum has a gross internal volume of 7.3 ft<sup>3</sup> (0.21 m<sup>3</sup>).</p> <p>Part 6.3 – change "whenever necessary" to "as necessary."</p> <p>Part 7, page VII-6 – delete "?" from second reference.</p> <p>Attachment A – delete the "[SOZ_]" on pages 2 and 3.</p> <p>Attachment A1, page A1-1, line 21 – change "one</p>	<p>Change implemented.</p> <p>Change implemented.</p> <p>Change implemented.</p> <p>Change not implemented. Commenter stipulated to final language in Proposed Permit.</p> <p>Change implemented in a manner satisfactory to the commenter.</p> <p>Change implemented such that all indications of embedded comments were removed.</p> <p>Change implemented.</p>

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	<p>A1 C</p> <p>A2-1</p> <p>G-1 G-1c</p> <p>G-1c</p> <p>G-1d(1)</p>		<p>volume percent” to “one percent of the volume”.</p> <p>Attachments A1 and C lack “Page _ of _” throughout.</p> <p>Attachment A2, page A2-2, line 16 – change “per panel” to “in some panels.”</p> <p>Attachment G, page G-2, line 23 – change “(175,600)” to (175,594)” and page G-5, line 25 – change “(175,600 m<sup>3</sup>)” to “(175,594 m<sup>3</sup>)”; and page G-5, line 26 - change “(7,080 m<sup>3</sup>)” to “(7,079 m<sup>3</sup>)”.</p> <p>Attachment G, page G-5 – Delete the sentence on lines 37-38 as not accurate and unnecessary.</p> <p>Attachment G, page G-6, line 37 – delete the extra space after “monitoring”.</p>	<p>Change implemented.</p> <p>Change implemented in a manner satisfactory to the commenter.</p> <p>Change implemented to reflect correct volumes.</p> <p>Change implemented in a manner satisfactory to the commenter.</p> <p>Change implemented.</p>
	1.14	Electronic Information Repository	<p>We request an Electronic Information Repository for Permit-related documents.</p> <p>Draft Permit Part 1.14 requires establishment of an Information Repository (IR). Because of the widespread interest in WIPP from people throughout New Mexico (and in other states), an electronic IR should be required. Virtually all of the documents that would be in the electronic IR are currently available on the WIPP website, so SRIC knows of no reason that such an electronic IR would be controversial. From past experience, SRIC expects that the Permittees will be concerned about any requirement to make copyrighted material available, because of possible costs. SRIC believes that any reasonable concerns can be accommodated. If during the public comment period, there is public interest in a physical IR that could also be required.</p>	<p>Permit Section 1.14 requires the establishment and operation of an IR that is accessible electronically through the WIPP Home Page. It is to be established upon the effective date of the Proposed Permit and is to contain specific listed documents concerning the application for, issuance of, and application of the Proposed Permit. There is to be an index according to title, date, and authors; and the documents are to be searchable for words or numbers and printable. New items are to be added within ten days after their receipt by the Secretary. The availability of the IR is to be published by written notices, newspaper advertisements, and through the WIPP Home Page.</p> <p>The Department considers an electronic repository available through the Internet to be more readily accessible and therefore more likely to be used than a physical repository containing paper copies of documents. The requirement to include particular documents in an electronic repository is easier to</p>

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				enforce because the Department can check the documents contained in an Internet-based repository at any time. The Department's experience with physical repositories is that they are often incomplete and that they impose a burden on third parties to ensure that the documents are not removed or altered. The Department encourages the Applicants to collaborate with interested parties to determine an effective and reasonable electronic repository. In addition, the Department maintains a physical copy of information in the IR in its Administrative Record.
	1.7.11 1.7.11 1.7.13.3 1.7.15 4.6.1.3 4.6.2.3 4.6.3.2 6.4 6.10.1	E-mail notification	We request more e-mail notifications.  SRIC believes that the innovation of e-mail notification has proven its usefulness in providing additional information to the public. SRIC believes that in addition to continuing the e-mail notification in the existing permit, as are included in the draft permit, that additional provisions are e-mail notification are warranted: SRIC proposes that e-mail notification be added to the following provisions: (1) 1.7.11.1 – Report planned change (2) 1.7.11.2 – Report anticipated noncompliance (3) 1.7.13.3 – 24-hour notice of noncompliance (4) 1.7.15 – Report other information (5) 4.6.1.3 – Geomechanical notification (6) 4.6.2.3 – Repository VOC exceedances (7) 4.6.3.2 – Disposal room VOC exceedances (8) 6.4 – Underground HWDU closure (9) 6.10.1 – Panel closure volume	Comment implemented as a result of negotiation and stipulation.
	G-1d(1) Table G-1	Explosion/isolation Walls	We request that explosion/isolation walls seal the filled panels and believe there must be away to also monitor behind the explosion/isolation walls.  SRIC did not oppose the permit modification in early 2007 to allow for hydrogen/methane monitoring in panel 3 or the modification in early	Comment implemented in a manner satisfactory to the commenter as a result of negotiation and stipulation. The Proposed Permit requires that, once Panel 5 has been filled with waste, ventilation through Panel 5 will be blocked. Further, construction of an explosion-isolation wall of the panel closure system at Panel 5 will be completed within 180 days after the last receipt

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			<p>2008 to allow for hydrogen/methane monitoring in other panels. However, at those times there were not known exceedances of carbon tetrachloride levels. Over the past 18 months, there have been dozens of such exceedances above the 165 ppbv level in the permit. SRIC has reiterated on numerous occasions over the past six months the need to reconsider the need for explosion/isolation walls in light of those exceedances. While we have had some discussions with the Permittees about this matter, it appears to SRIC that the existing partial closure system is not adequate and the explosion/isolation wall needs to be further discussed in these proceedings.</p>	<p>of waste in that panel. (Permit Attachment G, Section G-1d(1); Table G-1)</p>
	Throughout	Standardization of description of the Department of Energy (DOE)	<p>Draft Permit Part 1.2 states that the permit is issued to “the United States Department of Energy (DOE), the owner and co-operator” of WIPP, which also is the language of the existing Permit Module I.A. There is a similar identification of DOE in Draft Permit Part 1.5.4 and in existing permit Module I.D.4.</p> <p>The existing Part A Application, included in Attachment B of the draft permit, states: “The U.S. Department of Energy (DOE), through its Carlsbad Field Office, has signed as ‘owner and operator’...” However, Draft Permit Attachments C, C1, C2, C3, C4, C5, C6, and C7 each include new language: “The Department of Energy Carlsbad Field Office (DOE)...” Also, in Attachment D, on page D-17 there are two references to CBFO.</p> <p>SRIC believes that the language should be standardized throughout the permit, either using the existing permit description of DOE or including the CBFO throughout the permit. Also, the reference to the “National TRU Program” on page C4-16 should be changed to “DOE.”</p>	Change implemented.

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	A2	BRT should be added	The magnesium oxide racks (or BRTs) are used in underground Hazardous Waste Disposal Units and have been involved in at least one accident that resulted in a 55-gallon drum being punctured. Thus, SRIC believes that those units should be included in the Permit Attachment A2 figures.	Change implemented.
	1.9	Shorten the time period for notification of changes of authorized representatives	The new sentence in Part 1.9 requires written notification within 30 days of changes in the names of and contact information for the responsible corporate and principal executive officers of the Permittees. The requirement is justified, but 15 days, not 30 days, is a sufficient time period for such notification. Changes in such positions will normally be known in advance, so the 15-day period should be more than sufficient to provide for the notification.	The proposed change subject to comment was deleted entirely in response to this comment.
	A1-1c(1)	Update discussion of closed circuit cameras	Attachment A1, page A1-11, line 20, change "will have" to "has." Delete the two sentences on lines 21-24.	Change implemented.
	G-1d(2) Tables G-1 and G-2	Update closure plan schedule	Attachment G, page 7, lines 2-4 and lines 39-41 should be updated and there should be consistency in the text and Tables G-1 and G-2.	Change implemented.
	A1	Elimination of the surge provisions	A major rationale stated when the permit was modified in 2006 was that surge capacity was needed because of the large amounts of waste that were coming to WIPP. Although the surge provisions for the Waste Handling Building (WHB) and Parking Area Unit (PAU) have been in effect since November 16, 2006, they have never been used. Fiscal Year 2006 was by far the peak year for the number of shipments to WIPP (1,126 shipments) and amount of waste disposed (10,556 cubic meters). Subsequent years have been substantially less than that peak year, and SRIC knows of no basis to continue those	The Department disagrees with the commenter and does not believe the commenter sufficiently demonstrated that surge storage provisions are unnecessary because they have never been used. For example, there are many provisions in the Contingency Plan that have never been implemented, but that does not mean they are either unnecessary or should be eliminated.

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			<p>provisions in the Permit. Thus, SRIC supports elimination of all provisions in the draft permit related to surge capacity in the WHB and PAU.</p>	
	C-0b C4-3d	Elimination of the Acceptable Knowledge Sufficiency Determination	<p>The rationale stated when the permit was modified in 2006 was that there were a few waste streams that had been characterized with full characterization information that should not require sampling and analysis. During that past 3-1/2 years, DOE has submitted AKSD requests for seven waste streams. SRIC believes that the AKSD process is an unnecessary exception to normal characterization requirements. Insofar as it had a purpose, it should have been fulfilled during the time that the provision has been in effect. Thus, SRIC supports elimination of the requirement in the draft permit. The draft permit as changed can contain a brief explanation about the process was used between November 2006 and 2010 so that there is no question about the validity of that process when it was in effect.</p> <p>We request the elimination of AKSD.</p>	<p>Several commenters voiced concern about the lack of transparency for the AKSD process, under which waste characterization by radiography or visual examination, chemical sampling and analysis, or both may be foregone. A new format for such requests has been developed and is included in the Proposed Permit. Under this format, first, DOE is to make public by July 1 of each year a list of waste streams that may be the subject of an AKSD request in the forthcoming federal fiscal year. The list will be published on the WIPP Home page, and notice will be given by e-mail to persons requesting it. In addition, DOE will schedule a public meeting to discuss the list. As to specific AKSD requests, once DOE determines that the available Acceptable Knowledge (AK) is sufficient, it will announce the request and its tentative decision and schedule a public meeting to take comment on the request. Comment will be taken for at least 30 days after the meeting. When forwarding the request to the Department for its evaluation, DOE is to include DOE's compilation of comments and DOE's responses to comments. The submittal shall be made public through e-mail notice and the WIPP Home Page. In addition, to reduce the regulatory burden, DOE is not to submit an AKSD request if one is currently pending.</p> <p>The Department's evaluation of an AKSD request may be the subject of Dispute Resolution under Permit Section 1.16. In addition, it is now stated that the Secretary's final decision under Dispute Resolution is "final agency action" for purposes of judicial review. The Department believes that this format is workable and will provide useful public input to the AKSD process. A similar pre-submittal process has been applied to permit modification requests for the past</p>

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				<p>several years, and has been effective in communicating public concerns and proposals for changes in such requests. The opportunity to elicit public comment on a proposed AKSD will contribute to protection of public health and the environment.</p>
	Table 4.6.2.3	Volatile Organic Compound (VOC) risk	<p>Scientific and health data clearly show that a risk level of <math>10^{-6}</math> is more protective of public health and is a reasonable and achievable risk level. Given the multiple carcinogens that are in the WIPP wastes and the fact that the Permittees have reopened the risk levels for VOCs in their permit modification and temporary authorization requests, a risk level of <math>10^{-6}</math> should be basis for VOC concentrations of concern.</p> <p>There is substantial support for this more stringent risk level in Environmental Protection Agency (EPA) practice. For example, in both cancer and non-cancer assessments, that agency has defined 1 in 1,000,000 excess risk as a de minimis risk level. Further, the President's Cancer Panel's April 2010 report states clearly that "The Panel was particularly concerned to find that the true burden of environmentally induced cancer has been grossly underestimated." Thus, a more protective risk level of <math>10^{-6}</math> should be used for VOCs.</p> <p>The Applicants have filed a Class 2 Permit Modification to reapportion the VOC risk. The Applicants will submit a written comment to address NMED's final action in the Draft Permit.</p>	<p>The Department uses the Environmental Protection Agency's (EPA's) human health toxicity values, identified in its Integrated Risk Information System (IRIS) database, in establishing VOC Concentrations of Concern. A Class 2 Permit Modification Request (PMR) approved by the Department on July 2, 2010 in the value for carbon tetrachloride contained in Table IV.F.2.c is supported by EPA's revised estimate of risk from exposure to carbon tetrachloride. The reduction in risk supports increasing the carbon tetrachloride Concentration of Concern from 165 parts per billion by volume (ppbv) to 412.5 ppbv. This change is incorporated in Table 4.6.2.3 of the Proposed Permit.</p> <p>The Class 2 PMR also sought to reapportion the quantities of various VOCs used in establishing Concentrations of Concern. The Department considered that task to be outside the scope of a Class 2 PMR and so denied that request. During the Permit Hearing and in comments on the hearing officer's report, the Permittees sought to reapportion excess cancer risk to reflect anticipated waste inventory, establishing a carbon tetrachloride Concentration of Concern at 1,660 ppbv. Alternately, the Permittees sought only the reallocation of risk formerly associated with 1,1-dichloroethylene (no longer a carcinogen) to carbon tetrachloride. The Secretary's final order established the carbon tetrachloride Concentration of Concern at 960 ppbv, which fully reallocates the risk to carbon tetrachloride.</p> <p>NMED retained the risk level of <math>10^{-5}</math>.</p>
	Attachments C through C6	Waste Analysis Plan Requirements	After eleven years of operation and numerous certification and recertification audits the W AP	Comment noted. Commenters stipulated to and agreed with all relevant language changes in the

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			<p>has been consistently implemented at generator/storage sites across the DOE complex. Specifically, for wastes received by WIPP, the following apply:</p> <ul style="list-style-type: none"> <li>• Waste Characterization requirements are the same for all waste streams</li> <li>• Waste Management requirements are the same for all waste streams</li> <li>• Disposal Requirements are the same for all waste streams</li> <li>• For WIPP, DOE manages TRU waste and TRU mixed waste streams the same</li> </ul> <p>The changes as proposed appear to increase the complexity, and the potential for mistakes and errors, and introduce additional administrative burden for no regulatory benefit.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>• Added specificity to AK documentation and records</li> <li>• Restricted definition of a Waste Stream</li> <li>• Change in the application of Hazardous Waste Numbers</li> <li>• New Observer Inquiry Process</li> <li>• New Requirement to use non-certified data such as fast scans and preliminary information</li> <li>• Changes in RTR training for identifying drum contents</li> <li>• Criteria for revising Waste Stream Profile Forms</li> <li>• Changes in the auditing process to separate CH and RH program approvals</li> </ul>	<p>Proposed Permit, even if the final language conflicted with the examples provided in this comment.</p>
	Throughout	Restructuring the Draft Permit and Administrative Burden of Implementation of Changes to Draft Permit	<p>The restructuring of the Draft Permit causes a significant administrative burden for the Permittees. This may cause errors in implementation. For example, changing Attachment B to Attachment C requires implementing all the reference changes to plans and procedures without significant changes to</p>	<p>Comment noted. No change made to the Proposed Permit as a result of this comment.</p>

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			<p>underlying requirements. At a minimum, change the alpha numeric title of the attachments that refer to the Waste Analysis Plan, attachments C thru C7, back to B through B7. Further, change the alpha numeric title of attachments dealing with surface and underground operations, attachments A through A3, back to M through M3. This will allow for the standardization of permits in New Mexico but avoid the administrative burden of making administrative changes to literally hundreds of WIPP documents that reference the Permit.</p> <p>An unintended consequence of the Draft Permit, as proposed, is the amendment of the plans, procedures, and other operating documents to address the proposed changes. In particular, two of the proposed changes will drive these changes. They are the restructuring of the Draft Permit which will require all references to be updated. Second, the proposed changes regarding "Permittee" and "DOE" also will require extensive revisions to the documents. The Applicants have identified preliminary comments regarding each of these issues and the benefit of implementing these issues above. The Applicants, due to the regulatory burden identified, request that implementation of the Permit be extended for 180 days from the date of approval of the Permit.</p>	
	1.15	Community Relations Plan	<p>After eleven years of operation DOE has established a model process for community relations in the state of New Mexico. Adding these requirements to the Draft Permit may create conflicts in implementation. For example, the DOE and New Mexico have the Consultation and Cooperation Agreement which is mandated by Section 213(b)(1) of Public Law 96-164 (December 29, 1979) and associated agreements which provides the statutory framework for</p>	<p>Comment noted. The Department retained the requirement to establish a Community Relations Plan and modified some requirements as a result of negotiations prior to the hearing. Commenters stipulated to and agreed with all relevant language changes in the Proposed Permit.</p>

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			intercommunication and defines the relationship between DOE, the community and the state. The requirements of the Community Relations Plan, as proposed, include enforceable measures for which there are no defined criteria for determining compliance.	
	4.5.3.1 A4-4	Alternate Underground Waste Transport Route	An additional underground waste transport route is required to prevent disruption of waste management activities due to maintenance in drift E-140. An alternate waste transport route (drift W-30) must be designated so that the Applicants can plan work in the drift E-140 without interrupting waste handling. This would provide the Applicants two options for waste transport routes and the strategic ability to accomplish both waste handling and underground maintenance simultaneously for many years to come. The Applicants will submit a written comment for an alternate underground waste transport route.	<p>The Proposed Permit contains a revision to Permit Section 4.5.3.1 and A4-4, concerning underground traffic flow. Because of planned maintenance to drift E-140, until now the only underground waste transport route, it is necessary to allow for intermittent use of drift W-30 for waste transport. The Proposed Permit would allow such use of W-30 and require that routes in use be designated by a map posted where it is visible to personnel entering the mine.</p> <p>Previously, this section had required that waste transport routes coincide with intake ventilation routes. Generally, the Applicants separate the ventilation systems used for waste transport and for mining and construction. Because of the configuration of ventilation systems, it is not possible to separate them entirely when drift W-30 is used for waste transport. The Proposed Permit therefore allows an exception to such separation north of drift S-1600.</p>

## NMED's Response to Non-Technical Oral Public Comments Submitted on the Proposed Permit

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NT.1	General	WIPP 's openness and transparency with stakeholders	The individual commented on the openness and transparency of the WIPP project and its transportation system. He stated that from the beginning, DOE has held frequent community meetings.	The Department agrees and acknowledges the constructive relationships that DOE has developed with WIPP stakeholders.
NT.2	General	WIPP's critical role in cleaning up weapons complex and nation's defense	<p>One commenter stated that WIPP has allowed the clean-up of TRU waste in the weapons complex which never could have happened without it.</p> <p>Several commenters commented on WIPP's critical role in cleaning up transuranic waste at Los Alamos and other DOE sites in the U.S. as well as in the nation's defense.</p> <p>One commenter stated that WIPP is the only repository for low-level and transuranic defense waste in the world.</p>	<p>The Department acknowledges and considers all public comment. No response is necessary to comments on national nuclear waste and defense issues, which are outside of the scope of the Proposed Permit.</p> <p>While WIPP is the only repository in the world for transuranic waste, WIPP is not allowed by federal law to accept low-level waste.</p>
NT.3	General	Transportation issues	<p>Several commenters stated that transportation of waste to WIPP is done safely. Several others stated that WIPP trucks have safely traveled more than 10 million miles loaded with TRU waste.</p> <p>Several commenters stated that the WIPP project has improved the highway infrastructure of New Mexico.</p>	With the exception of enforcing hazardous waste manifesting requirements through the Permit, the Department has no regulatory authority over the transportation of mixed TRU wastes from the waste generators to WIPP.
NT.4	General	Quality Assurance Audits at WIPP	<p>The commenter stated that NMED should include the following requirements in the Permit regarding WIPP's quality assurance/quality control (QA/QC) program:</p> <ul style="list-style-type: none"> <li>• All aspects of WIPP operations should be audited semiannually, including a report to NMED that is available to the public</li> <li>• A comprehensive semiannual quality assurance trend analysis report</li> </ul>	The QA program at WIPP is specified in DOE's WIPP Quality Assurance Program Document (QAPD). The Department has no authority to mandate changes to DOE's QA program in the Proposed Permit. The comment is outside the scope of the Proposed Permit and no further response is necessary.

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			<p>The commenter stated an example of QA problems at WIPP was a miscalibration of VOC monitoring that went undiscovered for well over a year.</p>	
NT.5	General	Future of Nuclear Energy	<p>One commenter stated that he considers WIPP an integral part of the energy industry in Southwestern New Mexico.</p> <p>Another commenter stated that WIPP is uniquely positioned to be the foundation of the country's nuclear energy future.</p>	<p>The Department acknowledges and considers all public comment. No response is necessary to comments on nuclear energy issues, which are outside of the scope of the Proposed Permit.</p>
NT.6	General	Expansion of WIPP Mission	<p>Two commenters stated they would like for WIPP's mission to be expanded.</p>	<p>The Department is not clear what the commenters meant by expansion of WIPP. The WIPP Land Withdrawal Act established clear parameters for WIPP's mission as a permanent repository for defense-related TRU waste. To change or expand WIPP's mission would require action of the U.S. Congress.</p> <p>While the Department acknowledges and considers these comments, no further response is necessary because they are outside of the scope of the Proposed Permit.</p>
NT.7	General	General Support of WIPP and/or the WIPP Permit	<p>Several commenters expressed general support for the WIPP project.</p> <p>One commenter stated he supports the Proposed Permit despite numerous parts of the Permit that could be improved.</p> <p>Another commenter stated that he sees no rational reason why WIPP's Permit should not be issued, and suggested that the vast majority of the community of Carlsbad supports it.</p> <p>Several commenters stated that WIPP has an</p>	<p>The Department acknowledges and considers all public comment. No response is necessary to comments on economic and non-economic issues that are outside of the scope of the Proposed Permit.</p>

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			<p>excellent safety record.</p> <p>One commenter discussed the extensive training that WIPP personnel must undergo.</p> <p>Several commenters stated that WIPP has a positive economic impact on Southeastern New Mexico, including job creation.</p> <p>Several commenters discussed the positive non-economic contributions that WIPP has made to the communities of Carlsbad and Hobbs.</p>	
NT.8	2.3.3.1. C-1c	Prohibited Items	<p>The commenter recommended the following changes to the liquid prohibition:</p> <ul style="list-style-type: none"> <li>• Allow liquid up to five percent by volume in containers if AK can demonstrate that the liquid is not corrosive, ignitable, or reactive</li> <li>• Allow liquid up to 0.5 gallons in internal containers as long as the sum of total liquid is less than two percent of the volume of the waste container</li> </ul> <p>The commenter stated that there have been several exposures to generator site workers due to removing small amounts of liquid from containers. The recommended changes would reduce risk to workers at the generator sites without increasing risk to the public.</p>	<p>The Department disagrees that the commenter's proposed liquid prohibition would not increase risk to the public, as the commenter has provided no basis for any of his recommendations.</p> <p>The WIPP Permittees submitted a Class 2 Permit Modification Request (PMR) in January 2010 proposing changes to the liquid prohibition, which NMED approved in April 2010. The changes made to the Permit in that PMR are protective of human health and the environment. Those changes are reflected in the Proposed Permit.</p>
NT.9	3.1.1.3. 3.1.1.4.	Volatile Organic Compounds	<p>One commenter stated that the VOC level of carbon tetrachloride has been established as an extraordinarily low level versus the OSHA standard of five parts per million. The Permittees' proposed value of 1,660 parts per billion is three times the order of magnitude less than the OSHA standard and still allows the "ten to the minus five" calculation for risk assessment.</p>	<p>The Department uses the Environmental Protection Agency's (EPA's) human health toxicity values, identified in its Integrated Risk Information System (IRIS) database, in establishing VOC Concentrations of Concern. A Class 2 Permit Modification Request (PMR) approved by the Department on July 2, 2010 in the value for carbon tetrachloride contained in Table IV.F.2.c is supported by EPA's revised estimate of risk from exposure to carbon tetrachloride. The reduction</p>

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			<p>Another commenter suggested that the Permit should reflect all of the lessons learned and include those lessons or information from the EPA with regard to carcinogens.</p> <p>Another commenter stated that measurements of carbon tetrachloride concentrations have not exceeded the previous action level for running annual average of 165 parts per billion by volume. This commenter also stated that the 165 parts per billion action level was for the running annual average, not for individual measurements.</p>	<p>in risk supports increasing the carbon tetrachloride Concentration of Concern from 165 parts per billion by volume (ppbv) to 412.5 ppbv. This change is incorporated in Table 4.6.2.3 of the Proposed Permit.</p> <p>The Class 2 PMR also sought to reapportion the quantities of various VOCs used in establishing Concentrations of Concern. The Department considered that task to be outside the scope of a Class 2 PMR and so denied that request. During the Permit Hearing and in comments on the hearing officer's report, the Permittees sought to reapportion excess cancer risk to reflect anticipated waste inventory, establishing a carbon tetrachloride Concentration of Concern at 1,660 ppbv. Alternately, the Permittees sought only the reallocation of risk formerly associated with 1,1-dichloroethylene (no longer a carcinogen) to carbon tetrachloride. The Secretary's final order established the carbon tetrachloride Concentration of Concern at 960 ppbv, which fully reallocates the risk to carbon tetrachloride.</p> <p>Section IV.F.2.c of the Current Permit requires the Permittees to notify the Department in writing when an individual validated measurement of a VOC listed in Table IV.F.2.c exceeds its Concentration of Concern, as well as when the running annual average is exceeded. Section 4.6.2.3 of the Proposed Permit retains this requirement. The Department has received notification of 46 individual measurements exceeding the 165 ppbv limit for carbon tetrachloride, although the running annual average has never exceeded this limit.</p>
NT.10	A1-1c(1) A1-1c(2)	Surge Storage should not be eliminated	The commenter stated that it makes no sense at all to eliminate surge storage capacity simply because WIPP has never used it before. The surge level was intended to handle emergency and inordinate events.	The Department agrees with the commenter and has not changed the requirements for surge storage in the Proposed Permit.

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NT.11	C4-2 C4-3	Acceptable Knowledge requirements should be consistent with RCRA	<p>The commenter agreed with NMED regarding the proposed changes to the AK requirements in the Permit, but does not think conservative assignment of EPA hazardous waste numbers (HWN) is consistent with RCRA requirements. The commenter stated that conservative assignment of HWNs violates Department of Transportation requirements and RCRA. The commenter stated that the Permit should be clear that HWNs are to be assigned consistent with RCRA requirements.</p> <p>The commenter stated that RCRA requires assigned HWNs to be representative of the waste in shipments so that first responders have accurate information in case there is an accident. Allowing conservative assignment of HWNs puts first responders more at risk for heat stress.</p> <p>Under cross-examination the commenter stated that the Proposed Permit could be interpreted to allow a generator site to assign HWNs with no basis.</p>	<p>The Department proposed several changes in the Permit to eliminate the requirement for sites to conservatively assign HWNs and instead to require sites to assign HWNs consistent with RCRA (Proposed Permit sections C4-2b, C4-2c, and C4-3b).</p> <p>However, EPA RCRA guidance allows sites to declare waste hazardous when the site lacks sufficient data or to save on analytical costs (December 18, 1978; 43 FR 58969). Therefore, this type of conservative assignment of HWNs is not inconsistent with RCRA requirements.</p> <p>The Department acknowledges the comment regarding putting first responders at risk, and agrees that HWN assignments should be representative of the waste stream.</p> <p>The Department disagrees with the comment. Sites must have some basis for assigning HWNs, and the Department has retained language in the Proposed Permit requiring sites to provide adequate justification for assigning HWNs.</p>
NT.12	G-1d(1)	Explosion Isolation Walls should not be required	<p>The commenter stated that there is no health and safety basis to require the installation of the explosion isolation walls.</p> <p>The commenter also stated that because the monitoring systems at WIPP have not detected hydrogen and methane near the action levels in closed panels, there is no need to change the Permit to require installation of the explosion isolation walls.</p>	<p>As a result of pre-hearing discussions with stakeholders, the Permittees added language to the proposed Permit requiring construction of an explosion-isolation wall for Panel 5 within 180 days after the last receipt of waste.</p>