

**New Mexico Environment Department
Response to Public Comments
on the August 6, 2018 WIPP Draft Permit
December 21, 2018**

On January 31, 2018, the Department of Energy (“DOE”) and Nuclear Waste Partnership (“NWP”) (together referred to as the “Permittees”) submitted a Class 2 Permit Modification Request (“PMR”) to the New Mexico Environment Department (“NMED”) requesting to revise the Resource Conservation and Recovery Act (“RCRA”) Hazardous Waste Facility Permit (“Permit”) for the Waste Isolation Pilot Plant (“WIPP”). The Class 2 PMR requested to make changes to clarify TRU mixed waste disposal volume reporting. The Permittees published a public notice on February 2, 2018 that commenced a 60-day public comment period, which ended on April 3, 2018. On June 1, 2018, NMED determined that it was appropriate to elevate the Class 2 PMR to a Class 3 PMR due to significant public concern and the complex nature of the proposed permit change.

On August 6, 2018, NMED issued a draft Permit based on the original the Class 2 PMR submittal, public comments, and additional information requested by NMED in the Technical Incompleteness Determination (TID) dated June 27, 2018. A 45-day comment period commenced on August 6, 2018, which ended on September 20, 2018. Due to opposition to the draft Permit and several requests for a public hearing from commenters, on September 22, 2018, NMED issued a notice announcing a public hearing would commence on October 23, 2018. A public hearing was held from October 23 through October 25, 2018 in Carlsbad, New Mexico. After the conclusion of the public hearing process, NMED took final agency action on December 21, 2018. This document is the NMED response to public comments received on this draft Permit, as required by 20.4.1.901.A(9) NMAC.

Table 1 of this document lists entities and persons who commented on the draft Permit.

Table 2 summarizes the comments received and contains the NMED’s responses thereto.

The original comments submitted to NMED and other documents related to the final action can be found on the NMED WIPP webpage at the following link: <https://www.env.nm.gov/hazardous-waste/wipp/> .

Table 1: List of Public Commenters

Commenter ID	Date of Letter, Email or Comment	Commenter (and Association, if Applicable)
A	8/8/2018	Jonathan M. Block
B	8/9/2018	Cedar Koons, Licensed Clinical Social Worker (LCSW)
C	8/9/2018	Cynthia McNamara
D	8/10/2018	Shel Neymark
E	8/10/2018	Nancy Williamson
F	8/10/2018	Dee Smith
G	8/10/2018	John Heaton, Carlsbad Mayor's Nuclear Task Force
H	8/12/2018	Edward T. Rodriguez, Carlsbad City Council Ward 1
I	8/13/2018	Dale Janway, Mayor, City of Carlsbad
J	8/13/2018	Jay Jenkins, Mayor's Nuclear Opportunities Committee
K	8/14/2018	Susan Crockett
L	8/15/2018	Lucille Cordova
M	8/17/2018	Jack Volpato, Eddy-Lea Energy Alliance (ELEA) Board Member
N	8/18/2018	Dr. Rebecca Mueller
O	8/24/2018	Russell Hardy, Director, Carlsbad Environmental Monitoring & Research Center (CEMRC)
P	8/27/2018	John Otter
Q	9/6/2018	John Klingel
R	9/8/2018	Helen Henderson
S	9/14/2018	Robin Laughlin
T	9/16/2018	Laura Stewart
U	9/17/2018	Cristy Holden
V	9/17/2018	Nancy Gilkyson
W	9/17/2018	John Tanner
X	9/19/2018	Todd Shrader/Bruce C. Covert (Permittees)
Y	9/19/2018	Ellen Ackerman
Z	9/19/2018	Christopher Fischahs

Commenter ID	Date of Letter, Email or Comment	Commenter (and Association, if Applicable)
ZA	9/19/2018	Don Hancock, Southwest Research and Information Center (SRIC)/ Joni Arends, Concerned Citizens for Nuclear Safety (CCNS)/ Deborah Reade, Citizens for Alternatives to Radioactive Dumping (CARD) Scott Kovac, Nuclear Watch New Mexico (NWNM)
ZB	9/20/2018	Joan Brown/Marlene Perrotte, Partnership for Earth Spirituality
ZC	9/20/2018	JJ Chavez, Carlsbad City Councilor Ward 2
ZD	9/20/2018	Edwin Lyman, Senior Scientist, Global Security Program, Union of Concerned Scientists
ZE	9/20/2018	Multiple (18) Group Letter
ZF	9/20/2018	Don Hancock, Director, Nuclear Waste Program, SRIC
ZG	9/20/2018	Scott Kovac, Operations and Research Director, NWNM
ZH	9/20/2018	Cathrynn N. Brown, New Mexico State Representative, District 55
ZI	9/20/2018	Joan Robins
ZJ	9/20/2018	Joni Arends, Executive Director, CCNS/Deborah Reade
ZK	9/20/2018	Steve Zappe
ZL	10/19/2018	Cynthia Weehler, Energia Mia
ZM	10/23/2018	John Heaton, Chairman, Carlsbad Mayor's Nuclear Opportunities Task Force
ZN	10/16/2018	Robert Defer, CEO Carlsbad Chamber of Commerce
ZO	10/23/2018	Mike Antiporda
ZP	10/23/2018	Dale Janway, Mayor, City of Carlsbad
ZQ	10/23/2018	Lisa Anaya Flores, Carlsbad City Councilor Ward 1
ZR	10/4/2018	Danny Cross, President, Board of Directors, Carlsbad Department of Development
ZS	4/3/2018	Don Hancock, SRIC (<i>Note: Received during Class 2 Comment Period and referenced in commenter's 9/20/2018 comment</i>)
ZT	4/3/2018	Steve Zappe (<i>Note: Received during Class 2 Comment Period and referenced in commenter's 9/20/2018 comment</i>)
ZU	10/23/2018	Susan Crockett, Commission Chairman, Eddy County Board of Commissioners

Table 2: Summaries of Public Comments and NMED Responses

NMED Response Number/ Topic Area	Commenter ID	Public Comment	NMED Response
<p>R1 Opposition to Change in Waste Measurement with Potential Volume Increase</p>	<p>A, B, C, D, E, L, N, Q, S, T, U, V, Y, Z, ZE, ZF, ZG, ZI, ZL</p>	<p>The commenters express concern about the potential expansion of waste volume based upon changing the way containers are measured.</p>	<p>The actual amount of transuranic (TRU) waste allowed by Congress to be emplaced will remain the same. The overall volume of transuranic (TRU) waste will not exceed the limit as established by the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act (LWA) (Pub. L. 102-579, as amended). However, the number of containers may increase as a result of the measurement change. Please see NMED Response R2.</p>
<p>R2 Opposition to New Definitions in Permit Part 1</p>	<p>A, B, C, D, E, L, N, Q, S, U, ZF, ZG, ZK, ZL, ZT</p>	<p>The commenters oppose the new definitions for TRU Mixed Waste Volume and Land Withdrawal Act (LWA) TRU Waste Volume in Permit Part 1.</p>	<p>These definitions relate to the RCRA Hazardous Waste Facility Permit (Permit) reporting requirements for volume based on the physical amount of space authorized in each Hazardous Waste Disposal Unit (HWDU) and the LWA volume limit as set forth by Congress in the WIPP LWA. The LWA does not specify how the TRU waste volume is to be calculated. The TRU Mixed Waste Volume, which is the RCRA volume, will continue to be based on the internal volume of the outermost disposal container as is the case currently. The LWA TRU Waste Volume will be measured based on the innermost disposal container (for instance, a 55-gallon drum) and not on the estimated amount of actual waste within a drum (fill factor). Please note the Permittees response to NMED's Technical Incompleteness Determination (TID) comment on July 12, 2018: "The [DOE] Policy will not instruct the use of 'fill factors' in performing the data collection."</p>
	<p>A, B, C, D, E, L, N, Q, S, U, ZL</p>	<p>The commenters state: "I object to the proposed definitions for the TRU Mixed Waste Volume ("the gross internal volume of the outermost disposal container") and the Land Withdrawal Act TRU Waste Volume ("the volume of TRU waste inside a disposal container.")"</p>	

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R3 Dunnage Drums/ Management of Maximum Capacities	A, B, C, D, E, L, N, Q, T, U, Y, ZL	The commenters note inefficiency of the empty (dunnage) drums that have been shipped to WIPP during its operating life, as well as the unfulfilled maximum capacities for the panels. The commenters believe this is a mismanagement of resources.	Dunnage drums are used as part of a payload management program to ensure TRU mixed waste is packaged in a manner that meets transportation and radiological limits. In some cases, the maximum capacities have not been met in certain panels as a result of ground control issues and contamination resulting from the February 14, 2014 event. It should be noted though that the management of efficiencies is internal to the Permittees and is outside the scope of RCRA.
R4 Transportation Concern	A	The commenter believes the draft Permit will increase the amount of highly radioactive and dangerous material on New Mexico's highways forming the WIPP route and will increase the occupational, public health and safety, and environmental risks to all New Mexicans.	WIPP waste transport is under the purview of the United States Department of Transportation (US DOT) and the Nuclear Regulatory Commission (NRC). The transportation of WIPP waste is not regulated under the Permit. The State of New Mexico also has the New Mexico Radioactive Waste Consultation Task Force, whose mission is to represent the interests of the State of New Mexico regarding the safe and uneventful transportation of nuclear waste in and through the state. 40 CFR 270.10(j), Exposure Information, does not apply to the WIPP facility because the Permittees do not store, treat, or dispose of hazardous waste in a surface impoundment or a landfill. 20.4.1.900 NMAC (incorporating 40 CFR 270.10(j)).

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	ZJ	The commenter states: "Section 40 C.F.R. §270.10 (j) requires exposure information to be included for releases from both normal operations and accidents at the facility, as well as for facility transportation. Because the volume of waste will increase almost 30 percent under this proposed modification, facility transportation will be increasing as well. None of the effects of these increases has been studied either for the facility or for facility transportation."	
R5 Safety Record	A, D, V, ZB	The commenters question the safety record of the WIPP facility.	The purpose of the Permit is to ensure the protection of human health and the environment pursuant to RCRA. Numerous regulatory entities, including the New Mexico Environment Department (NMED), conduct audits, surveillances, and inspections at the WIPP facility on a periodic basis in order to ensure compliance with the Permit.
R6 Recommendation to Deny Permit Modification Request (PMR)	A, B, C, D, E, L, N, Q, T, U, Y, ZA, ZE, ZG, ZL, ZS, ZT	The commenters believe NMED should deny the PMR because they believe the Permittees have not explained why the modification is needed, have not justified expanding the amount of waste, and have not stated where additional waste will be emplaced.	NMED has reviewed this PMR and requested additional information in a TID. The submitted PMR, along with the Permittees' TID Response, adequately explains the need for this modification. With the issuance of this final Permit, NMED is approving this PMR with changes. NMED understands the need to separate the reporting requirements for the Permit from the LWA capacity limit. The amount of TRU waste will remain the same and will remain under the LWA capacity limit of 6.2 million ft ³ (175,564 m ³). When additional HWDUs are requested, a Class 3 permit modification will be submitted, which will provide opportunity for public participation.
R7 LWA Volume Limit	A, ZF, ZG	The commenter states, "this proposal appears to be an attempt to increase the amount of waste stored in the WIPP beyond what Congress intended when it allowed the licensing of this facility".	The capacity limit for TRU waste allowed by Congress in the LWA is 6.2 million ft ³ (175,564 m ³). Permit Part 4, Table 4.1.1 tracks the LWA TRU waste volume in relation to the TRU mixed waste volume reported for the Permit. If future PMRs request additional HWDUs, NMED will

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	ZT	The commenter states: "In providing a "brief chronology of the LWA limit" (pp. 7-8), the PMR ultimately implies that the LWA limit of 6.2 million ft ³ of TRU waste is open to interpretation."	evaluate such PMRs in relation to both the LWA volume and the TRU mixed waste volume.
	ZS	The commenter states: "The modification request ignores those legal requirements and states that the capacity limit: 'constrains the DOE [Department of Energy] from achieving the goal of removing the inventory of TRU mixed waste from the generator/storage sites.' Page 9. In fact, the capacity limits are integral to the mission of WIPP to focus on legacy TRU waste, not on expanding the facility's capacity. The permittees' request is an attempt to circumvent the legal capacity limit, and it includes no specific limit."	
R8 Connected Actions and Segmentation of Recent PMRs	B, C, D, E, L, N, Q, T, U, Y, ZB, ZF, ZG, ZL, ZS	The commenters expressed concern about the segmentation of the recent permit modification requests and feel they do not allow the public access to review the Permittees' entire expansion plan.	In accordance with RCRA regulations, NMED can only review proposed modifications as they are submitted and received. NMED may approve, approve with changes, deny, or elevate a permit modification request. NMED does not determine which modifications are submitted by the Permittees.
R9 Contractors' Pay Basis	B, C, D, E, L, N, Q, T, U, Y, ZL	The commenters state that the contractors have been paid and received bonuses based on filled containers.	This comment is not within the scope of RCRA and such information was not considered in NMED's review.
R10 Support	H, I, J, K, M	The commenters state that the change represents one set of books with two compatible ways to count volume emplaced at WIPP. Both statistics will be made publicly available.	Comments noted.

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	G	The commenter believes that a substantial fraction of these shipping containers is overpacked, containing multiple inner containers. The commenter believes the volumes of these inner containers should be counted rather than the volume of the entire overpack.	
	G, I, J, K, M, ZM, ZN, ZO, ZP, ZR	The commenters believe the draft Permit is seeking to recognize the difference between the actual volume of waste occupied in the containers and the volume of TRU waste that is limited by the WIPP Land Withdrawal Act.	
	G	The commenter states: "NMED's regulatory responsibility is to ensure the hazardous waste disposal units themselves are operated and closed in a safe and environmentally protective way. NMED does not have the regulatory responsibility to limit the total volume of TRU waste emplaced in the WIPP repository."	
	H, I, K, ZD, ZQ	The commenters believe no operational aspect of WIPP, including waste characterization, transportation, unloading or emplacement procedures, will be changed with this draft Permit. The commenters believe a record keeping change will not have negative impacts on the safety of WIPP operations.	
	J, ZM	The commenters believe WIPP is a unique national treasure with an important mission to clean up the weapons complex in our country.	
	G, J	The commenter believes the PMR does not seek to expand WIPP but simply clarifies how volumes of waste are counted and reported to its regulatory oversight entities.	

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	J	The commenter states: "The proposed volume of record clarification does imply that the number of disposal units that NMED would eventually be asked to permit will increase beyond the originally planned ten disposal panels...But the level of protection of human health and the environment will not decrease."	
	M	The commenter states: "NMED is following the statutorily prescribed permit modification process to the letter of the law, while not materially disagreeing with, or modifying any part of DOE's original request. That is a good thing! It indicates that NMED agrees with DOE's proposed bookkeeping clarification."	
	G, H, I, J, K, M, O, ZC, ZD, ZH, ZN, ZO, ZP, ZQ, ZR, ZU	The commenters are in full support of the draft Permit.	
	W	The commenter states, "Considering the depth of the WIPP salt formation and the fact that it has been in existence for over 100,000,000 years, the proposed disposal increase should be safe."	
	ZC	The commenter believes as long as human health and the environment are protected, the Permittees should be allowed to make smart use of the WIPP Land Withdrawal Act area.	

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	ZD	The commenter states: "The Union of Concerned Scientists (UCS) strongly supports the draft Hazardous Waste Facility Permit..." The commenter further states, "...we believe that the draft Permit will ultimately result in a significant decrease in the overall risks that the DOE's waste plutonium inventory poses."	
	ZF	SRIC notes the following pertaining to Attachment B: "SRIC does support changing the Process Design Capacity on page B-8: 175,564.00"	
	ZH	The commenter states: "My purpose in writing today is to request that Secretary Tongate issue a final decision in favor of the permit modification before the end of the calendar year."	
R11 Hearing Requests	G, H, I, J, K, M, O, ZC, ZH	The commenters do not believe a hearing is warranted.	In accordance with the regulations for a Class 3 modification (20.4.1.900 NMAC incorporating 40 CFR 270.42(c)), a public hearing was requested and granted (20.4.1.901.A(5) NMAC). The hearing was held in Carlsbad October 24-26, 2018. In accordance with the regulations (20.4.1.901.F(2) NMAC), NMED chose Carlsbad for the hearing location because it is the community most substantially affected by the draft Permit changes.
	G, H, I, J, K, M, ZH, ZP	The commenters feel any hearing should be held in Carlsbad.	
	ZA, ZB, ZE, ZF, ZG, ZJ, ZK	The commenters request a hearing.	

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<p>R12 High-level Waste</p>	<p>P</p>	<p>The commenter believes high-level waste will be approved for disposal at WIPP, stating: "WIPP was sold to the public as a repository for low-level radioactive wastes. Storage of high-level waste would violate that agreement. Furthermore, the record of mismanagement at WIPP indicates that the storage of high-level waste would be a significant potential risk to public health. I oppose the proposal by DOE to expand the types of storage at WIPP."</p>	<p>The comment does not relate to this permit modification. The PMR did not request for high-level radioactive waste to be disposed of at WIPP. The existing permit specifically excludes high level radioactive waste from the definition of "TRU" Waste in Permit Part 1, Section 1.5.6.</p>
<p>R13 WIPP is a Pilot Plant and NM Has Taken Enough Waste</p>	<p>S, Z</p>	<p>The commenters believe New Mexico has taken enough waste and that it is time for other states to do their part.</p>	<p>Comment noted.</p>
	<p>ZS</p>	<p>The commenter states: "In December 1979, Congress authorized WIPP in southeastern New Mexico 'to demonstrate the safe disposal of radioactive waste resulting from the defense activities and programs of the United States exempted from regulation by the Nuclear Regulatory Commission.' The law specifically designates WIPP as a 'pilot plant,' and to 'demonstrate the safe disposal.' Both of those designations clearly indicate that WIPP was not the disposal site for all transuranic (TRU) waste."</p>	<p>WIPP was constructed for disposal of defense-generated TRU waste from DOE sites around the country. The maximum repository capacity of "6.2 million cubic feet of transuranic waste" is specified in the WIPP Land Withdrawal Act (Pub. L. 102-579, as amended).</p>

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<p>R14 Outer Container is Final Volume of Waste</p>	Z	The commenter states: "...the outer container and its volume is the final confinement protecting the public, workers, and the environment..."	<p>NMED has reviewed these historical references. However, the purpose of this PMR is to enact a new system for quantifying the LWA volume. The LWA does not specify how the volume of TRU waste is to be calculated. The Permit requires the use of gross internal volume of the outermost disposal container for tracking the RCRA TRU Mixed Waste Volume against the HWDU maximum capacities in Permit Part 4, Table 4.1.1. Please see NMED Responses R2, R27 and R33.</p>
	ZT	The commenter states: "However, there is no distinction among any of them – Permit, ROD [Record of Decision], C&C [Consultation and Cooperation Agreement], LWA – they are all the same volumes, originally based upon the gross internal volume of the outermost container."	
	ZF, ZG, ZK	The commenters noted that numerous other official DOE documents use the gross internal container volume to calculate TRU waste volumes.	
	ZF, ZS	The commenter cites numerous federal reports in which the waste is reported as the gross internal container volumes.	
<p>R15 State of New Mexico Authority</p>	ZE	The commenter states: "Those laws also provide specific authorities to the State of New Mexico, including to enforce capacity limits in individual waste panels and in the entire surface and subsurface facility. The Draft Permit could effectively eviscerate such authorities."	<p>This PMR does not affect NMED's RCRA authority to regulate emplacement of waste at WIPP. The correlation between the volumes being reported against the LWA by DOE internally and the RCRA volumes, based on the internal volume of the outermost disposal containers, must be clearly identified in the Permit for NMED to be able to accurately review the facility's volumetric capacity. This will enable NMED to accurately compare these volumes in Permit Part 4, Table 4.1.1. This table represents NMED's oversight of the RCRA</p>
	J, K	The commenters do not believe NMED has the authority to regulate the volume of waste emplaced at WIPP.	

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	ZF	The commenter states: "The attempt is to deny the state's authority to enforce any capacity limit on the Permittees. To the contrary, NMED has the authority to prohibit any more waste from coming to the facility, to restrict the amount of waste in any panel, regardless of whether the capacity limit is reached."	volume maximum capacities of the HWDUs and, therefore, also the correlated LWA limit. Please see NMED Responses R5 and R6 .
	ZT	The commenter states: "By removing regulatory requirements related to LWA capacity limits from the Permit, NMED has no authority to enforce the LWA limit."	
R16 Objection to Planned Schedule	ZA, ZB, ZE, ZF	The commenters request changes to the schedules for negotiations and a hearing. The commenters believe the proposed schedule will have the effect of excluding some parties from the negotiations.	The schedules for negotiations and the hearing are within the New Mexico Administrative Code (NMAC) regulatory requirements found in 20.4.1 NMAC. Accommodations at both proceedings were made available for people to participate in person or remotely.
R17 Objection to Administrative Record (AR)	ZF	The commenters state: "The AR Index provided with the Public Notice No. 18-05 is grossly inadequate in form and content."	During negotiations conducted on September 24-25, 2018, and in response to public requests, the Administrative Record was amended to include, among other items, commenters listed separately and any associated references that were submitted. References for the Class 2 PMR and the TID were also listed out separately. There were no confidential documents associated with this PMR. The Administrative Record continues to be available at the Hazardous Waste Bureau and online through the NMED WIPP Permit web page. Please see NMED Response R29 .
	ZJ	The commenters state: "Reade and CCNS find the PMR, the Draft Permit, the Administrative Record, the Index to the Administrative Record and supporting documentation, including the Department's Public Involvement Plan (PIP), to be incomplete, inconsistent and inadequate..." The commenters further state: "Where is the Administrative Record posted?" The commenters also state: "The Administrative Record Index is incomplete and inaccurate. The commenters state: "Where are the confidential documents/file stored?"	

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	ZK	The commenter states: "The published index to the administrative record for this draft Permit, prepared and issued by NMED on August 6, is so inadequate and favoring the Permittees position as to be embarrassing. At a minimum, it needs to include all references cited in all public comments submitted by the close of the Class 2 PMR (specifically mine and those of Don Hancock), as well as expanded to include all references cited in public comments submitted on the draft Permit."	
R18 Inadequate Fact Sheet	ZF, ZJ, ZK	The commenters believe the Fact Sheet should mention the 6.2 million cubic feet LWA capacity limit that is the crux of the PMR and the draft Permit.	The Fact Sheet does reference the LWA and thus, inherently, its capacity limit.
R19 Draft Permit Contrary to Federal Laws	ZF, ZS	The modification request is contrary to the requirements of the two primary federal laws that specifically govern WIPP: the WIPP Authorization Act and the LWA.	NMED has reviewed this PMR and has concluded that it is in compliance with the WIPP Authorization Act and the LWA.
R20 Historical Issues	ZF	The commenter believes the PMR does not adequately address various National Environmental Policy Act (NEPA) documents that state containers were assumed to be full for calculations of facility volume.	The purpose of this PMR is to implement a new system for quantifying the LWA volume. Although the NEPA review process is a regulatory requirement for WIPP, NEPA is not under the purview of RCRA or NMED. Permits are living documents, and the RCRA regulations allow permittees to request modifications. NMED has reviewed this PMR and requested additional information with the issuance of a TID. The submitted PMR along with the Permittees' TID Response adequately explains the need for this modification. RCRA permits are subject to a permit renewal process every ten years. NMED has retained references to the LWA capacity limit throughout the Permit. Please see NMED Responses R6 and R40 .
	ZT	The commenter states: "The Permittees have constructed a PMR narrative that is both misleading and incomplete, suggesting (p. 6) that 'TRU mixed waste volumes recorded in the Permit are not consistent' (in fact, they allege, have never been consistent), and that the solution is to remove information from the Permit that has always been there and replace it with new, 'improved' information."	

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	ZT	The commenter states: "The Permittees left out the context for the statement from SEIS-II [Supplemental Environmental Impact Statement-II] on page 8 of the PMR..."	
	ZT	The commenter states: "Historic methods of calculating the volume of emplaced waste in the Permit are constraining DOE from permitting future disposal capacity and achieving the goal of cleaning up sites because...they are running out of room and have more waste than they expected."	
	ZT	The commenter states: "...NMED intentionally included it to provide the bridge between the 'ten year period of the permit' and 'the Disposal Phase of the facility.' For the Permittees to now argue that an application that they have continually updated and regularly submitted to NMED for the past 20+ years is incorrect and even inappropriate is an astounding attempt to rewrite history."	
	ZS	The commenter states: "...the LWA capacity limit always has been incorporated into the WIPP Permit."	
R21 PMR Not Needed	ZG	The commenter states: "...the explanation is grossly inadequate and does not explain why the modification is needed."	Permittees may request modifications pursuant to the regulatory procedures found in 20.4.1.900 NMAC, incorporating 40 CFR 270.42). NMED then processes the PMRs in accordance with the regulations. In this instance, the PMR adequately explained the need for the modification. Please see NMED Responses R8 and R20 .
	ZF, ZS	The commenter discusses the State's authority to deny the PMR or consider it under Class 3 procedures.	
	ZT	The commenter states: "Modifying the WIPP Permit is the wrong way for DOE to achieve its goals."	

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<p>R22 Payload Management</p>	<p>ZT</p>	<p>The commenter states: "Sometime after the Permit was issued (date uncertain, but early- to mid-2000's), the Permittees implemented a process called 'payload management,' whereby waste containers from the same waste stream could be overpacked not because of waste container condition, but in order to manage TRU alpha activity concentration in a waste package. Waste containers belonging to the same TRU waste stream may be overpacked into a payload container (e.g., SWB or TDOP) as long as the TRU alpha activity concentration of the payload container exceeds 100 nCi/g, which is determined by summing the individual TRU alpha activity values of the individual waste containers and dividing by the sum of the individual net waste weights to determine the activity per gram for the payload container.</p> <p>Regardless of whether a container is overpacked for container integrity issues or for payload management, the original (or overpacked) container(s) are considered waste, and the overpack container is considered the waste container for volume calculation purposes."</p>	<p>Payload management is used for radiological control and for transportation purposes. Payload management is not addressed in the WIPP RCRA permit. Overpacking may be used for a variety of purposes including integrity issues. NMED agrees with the statement: "Regardless of whether a container is overpacked for container integrity issues or for payload management, the original (or overpacked) container(s) are considered waste, and the overpack container is considered the waste container for volume calculation purposes." This will be true for calculating the RCRA volume of waste in the Permit. Please see NMED Responses R6 and R15.</p>
<p>R23 Calculating Capacity Limits</p>	<p>ZF</p>	<p>The commenter notes that some sources for tracking the LWA volume are not traceable to publicly available sources.</p>	<p>The Permittees have stated their commitment to supply a link on their website where information related to the LWA TRU waste volume can be found and to update the information on a monthly basis. In Permit Part 4, Table 4.1.1, Footnote 4, the Permit has been updated to state: "A link to the LWA TRU Waste Volume is posted on www.wipp.energy.gov".</p>
<p>R24 Specific Provisions in Draft Permit</p>	<p>ZF, ZG, ZT</p>	<p>The commenters oppose the proposed Part 3, Section 3.3.1.8, <i>Shielded Container</i>.</p>	<p><i>Shielded Container</i> language was revised during negotiations conducted September 24-25, 2018. Revised <i>Shielded Container</i> language has been incorporated in Part 3 and Attachment A1 of the Permit.</p>

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	ZT	The commenter recommends the following: "...change the LWA total capacity limit expressed in m ³ throughout the Permit to 175,564 m ³ (the volume as proposed in the PMR and the most accurate conversion of 6.2 million ft ³ to m ³)..."	NMED has made these editorial changes to the Permit.
	S, T, X, ZF	The commenters believe the column "Final LWA TRU Waste Volume" in Part 4, Table 4.1.1 is not a legal term that can be incorporated into the Permit.	The LWA TRU Waste Volume will be measured based on the innermost disposal container (for instance, a 55-gallon drum). The TRU Mixed Waste Volume, which is the RCRA volume, will continue to be based on the internal volume of the outermost disposal container as is the case currently. The Permit requires the use of gross internal volume of the outermost disposal container for tracking the RCRA TRU Mixed Waste Volume against the HWDU maximum capacities in Permit Part 4, Table 4.1.1. Please see NMED Responses R2 , R6 , and R14
	ZF, ZT	The commenters oppose the proposed changes in Part 6, Section 6.5.2 because they feel they are unnecessary.	NMED has reviewed the PMR and understands the need to separate the reporting requirements for the Permit from the LWA capacity limit. The regulations at 20.4.1.500 NMAC (incorporating 40 CFR §264.113) require complete closure activities as specified in Permit Attachment G.
	ZF	The commenter states: "Attachment A1 – SRIC opposes the changes to 'TRU mixed waste volume' from 'volume of waste'..."	Editorial changes must be consistent throughout the Permit. Changes to Permit Table 4.1.1 and relevant parts of the Permit are necessary for tracking of the LWA and RCRA waste volumes. Please see NMED Responses R14 and R15 .
	ZF	The commenter states: "Attachment B – SRIC objects to the Draft Permit changes on page B-22, because the introduction of the Land Withdrawal Act tracking is contrary to law, as discussed above."	

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	ZF	The commenter states: "Attachment C – SRIC objects to the Draft Permit change on page C-26, because it restricts calculation of waste to TRU mixed waste, whereas the Permit has always stated and included all waste, whether purely radioactive or mixed waste."	
	ZF	The commenter states: "Attachment G – SRIC objects to the Draft Permit changes on pages G-2 and G-5, because they refer to the proposed changed Table 4.1.1..."	
	ZF	The commenter states: "Attachment H – SRIC objects to the Draft Permit change on page H-5, because it restricts calculation of waste to TRU mixed waste..."	
	ZF	The commenter states: "Attachment H1 – SRIC objects to the Draft Permit changes on page H1-3, because they would incorporate the WIPP Volume of Record waste measurements..."	
	X, ZF	The commenters object to the changed footnote 2 on page J-3 of Attachment J because it uses the LWA Volume.	
	ZF, ZJ	The commenter states: "Attachment A2 – SRIC objects to the Draft Permit changes on page A2-6, lines 25-28, because they refer to the proposed changed Table 4.1.1..."	

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	X	The commenters want to revise the definition 1.5.22, <i>Land Withdrawal Act TRU Waste Volume</i> to: a. Add the acronym “(LWA)” immediately following “Land Withdrawal Act”; b. Add “, separately from the Permit,” between “reported” and “by the DOE”; c. Replace “Land Withdrawal Act” with “LWA” between “WIPP” and “total”; d. Delete “of 6.2 million ft ³ (175,564 m ³)”; and e. Delete the last sentence, “For informational purpose, the LWA TRU...”.	The correlation between the volumes being reported against the LWA by DOE internally and the RCRA volumes, based on the internal volume of the outermost disposal containers, must be clearly identified in the Permit for NMED to be able to accurately review the facility’s volumetric capacity. This will enable NMED to accurately compare these volumes in Permit Part 4, Table 4.1.1. Please see NMED Responses R7 , R14 , and R15 .
	X	The commenters want to delete the column, “Final LWA TRU Waste Volume”, from Permit Part 4, Table 4.1.1, delete the associated footnote 4 of the table, and delete the last sentence of footnote 2 of Permit Attachment J, Table J-3, <i>Underground Hazardous Waste Disposal Units</i> .	
	X	The commenters want to revise footnote 3 in Permit Part 4, Table 4.1.1. This revision is required to reflect the Permittees' proposed deletion of the “Final LWA TRU Waste Volume” column in Table 4.1.1. This deletion is consistent with the Permittees' proposed methodology for tracking and reporting the LWA TRU waste volume and proposed in order to remove the reference to “6.2 million ft ³ (175,564 m ³) of TRU waste” in this table.	

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	X	The commenters want to delete references to the LWA TRU waste capacity of 6.2 million ft ³ (175,564 m ³) in Table 4.1.1 in the following sections of the draft Permit: Attachment 1, Part 4, Attachment B, Attachment G, Attachment H1, and Attachment J.	
	X	The commenters had additional editorial comments: a. in Part 4, Table 4.1.1, remove the reference to Table 4.1.1 in the "Note "at the bottom of the table; b. in Attachment B, revise the narrative to Item 6. <i>Process Codes and Design Capacities</i> to define the unit for cubic meters and add the conversion to cubic feet in three places, as well as add "separately from the Permit" in one place; c. in Attachment J, Table J-3, footnote 2, add "separately from the Permit" between "reported" and "by the DOE".	
<p>R25 Remove "Clarify" from PMR Title</p>	ZG	The commenter states: "The August 6, 2018 fact sheet gives the title of this PMR as, <i>Notice Of Intent To Approve A Class 3 Modification To Clarify TRU Mixed Waste Disposal Volume Reporting At The Waste Isolation Pilot Plant (WIPP) Carlsbad, New Mexico</i> . This PMR clarifies nothing."	The modified Permit definitions relate to the Permit reporting requirements for volume based on the physical amount of space authorized in each HWDU and the LWA volume as set forth by Congress in the WIPP LWA.

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R26 Transparency in Tracking and Reporting the LWA TRU Waste Volume	ZG, ZT	The commenters believe the Permittees must provide details of DOE's plan or mechanism to track and report waste volumes pursuant to the LWA.	The Permittees have described utilizing the WIPP Waste Data System (WDS) for tracking waste volume using the innermost container and not fill factor. In their TID Response, the Permittees addressed this: "The DOE complies with applicable statutes and regulations, including the pertinent LWA provisions. The CBFO [DOE Carlsbad Field Office] will post the VOR information on the WIPP Home Page to afford transparency. In addition, the VOR will be included in an annual report to the U.S. Environmental Protection Agency (EPA) describing the status of the system of controls in place to monitor key parameters such as material parameter weight estimates and the quantity of radionuclides." Please see NMED Responses R2 , R6 , R27 and R33 .
	ZJ	The commenter states: "If the proposed PMR is approved, it is clear that no state or federal agency will hold DOE accountable for the reporting. We'll never know when WIPP is "full," and has met its 6.2 million cubic feet capacity."	
	ZT	The commenter states: "Publishing the tracking results does not equal accountability."	
R27 Objection to Table 4.1.1, Footnote 4	ZG	The commenter asks: "...the statement that the WIPP Land Withdrawal Act total capacity limit of 6.2 million ft ³ (175,564 m ³) of TRU waste volume listed in the table is included here for informational purposes. Does "for informational purposes" mean that this volume is not required for this Table or that this volume serves no regulatory purpose?"	The transparency of providing data in Part 4, Table 4.1.1 serves to track emplaced volumes required by NMED in order to review and approve potential additional HWDUs and comply with federal laws. Please see NMED Responses R6 and R7 .
	ZT	The commenter states: "The footnotes were added as the table was revised, and the footnote regarding the 'maximum repository capacity' was added as a reminder of the ultimate capacity of the repository as disposal approaches that limit."	
	ZT	The commenter recommends: "Accept the proposed change in the PMR in Part 4, Table 4.1.1, to replace '7,500 ft ³ ' with '7,600 ft ³ ' and '214 m ³ ' with '215 m ³ ' in the RH TRU Waste Type for Panel 6."	NMED incorporated this change in the draft Permit, and the language was approved in the final Permit.

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R28 Draft Permit Not Based on Current Permit	ZJ	The commenter notes NMED did not provide a draft Permit based on the current version of the WIPP Permit for public review and comment.	The draft Permit issued August 6, 2018 was based on the current Permit at time of issuance.
R29 Inadequate Public Involvement Plan (PIP) / Public Notice	ZJ	The commenter believes NMED has not provided equal access or information to Spanish speaking members of the public.	In order to provide access to the Spanish-speaking public, NMED translated the following documents into Spanish: <i>Notice of Public Hearing and Opportunity to Request a Public Hearing</i> , the Public Service Announcement (PSA) for this same notice which was broadcast in both English and Spanish on the radio, <i>Notice of Public Hearing and Opportunity for Public Comment on Draft Hazardous Waste Facility Permit</i> , and the PSA for this notice which also was broadcast in both English and Spanish on the radio. To further provide access for the Spanish-speaking public, NMED provided Spanish translators at the hearing. In preparing the draft Permit, NMED developed a Public Involvement Plan (PIP) for WIPP. NMED is reviewing and will consider the comments received to further develop the public participation process. Please see NMED Response R17 .
	ZJ	The commenters state: "Reade and CCNS find the PMR, the Draft Permit, the Administrative Record, the Index to the Administrative Record and supporting documentation, including the Department's Public Involvement Plan (PIP), to be incomplete, inconsistent and inadequate..."	
	ZJ	The commenters articulate that some newspapers in southeastern New Mexico publish in Spanish. The commenters believe NMED should take note of when such publication occurs so that the Spanish-speaking communities could be notified of opportunities to participate in these matters.	
R30 Public Meetings	ZJ	The commenter believes that the public information meetings may need to be moved to an early evening timeframe.	Comment noted. The Hearing that was held in this matter provided for public comment during the early evening. Please see NMED Response R11 .

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<p>R31 Attachment N, <i>Post Closure Plan</i></p>	<p>ZJ</p>	<p>The commenters object to the proposal that the volatile organic compounds (VOC) monitoring program will begin after completion of closure of the first underground hazardous waste disposal unit. The commenter believes neither NMED nor the Permittees have provided the necessary information, data, and analysis to support such a change.</p>	<p>NMED believes the commenter is referring to a previous PMR that was approved by NMED on September 19, 2016.</p>
<p>R32 Container Volumes in TID Response Unverified</p>	<p>ZK</p>	<p>The commenter states: "The TID response includes Table 1 (p. 2) listing authorized containers per the WIPP WAC proposed for use in calculating LWA VOR volume. While many of the containers listed are already described in the Permit sufficiently to verify their internal volumes..."</p>	<p>Supplemental information concerning containers and their volumes was submitted in a comment by the Permittees on September 19, 2018.</p>
<p>R33 DOE Management Policy Availability to Public</p>	<p>ZK</p>	<p>The commenter expresses the need to understand and have DOE state what type of system will be established to track LWA waste.</p>	<p>As an exhibit to their testimony the Permittees, provided a draft management policy titled, "<i>Implementation of a Tracking Methodology to Ensure Compliance with the Total Capacity Limit for Transuranic Waste in Public Law 102-579, The Waste Isolation Pilot Plant Land Withdrawal Act, as Amended by Public Law 104-201 (H.R. 3230, 104th Congress)</i>". Please see NMED Responses R2, R6, and R27.</p>

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R34 Innermost Waste Container	ZK	The commenter expresses the need for a specific definition to explain exactly what the "innermost container" will be for waste disposal and tracking.	In their TID Response, the Permittees state: "Final TRU Mixed Waste Volume calculations are based on the outermost disposal container volumes, not the Land Withdrawal Act TRU Waste Volume of Record disposed. The volume listed here is reported pursuant to Permit Part 6, Section 6.10.1. The Land Withdrawal Act TRU Waste Volume of Record is tracked and reported, separately from the Permit, by the DOE relative to the WIPP Land Withdrawal Act total capacity limit of 6.2 million ft ³ (175,564 m ³) of TRU waste (Pub.L. 102-579, as amended)." Innermost containers will be limited to Pipe Overpack Containers or 55-gallon drums for LWA waste volume. Please see NMED Response R2, R6, R7, R15 and R33 .
	ZT	The commenter states: "...the proposed definition of LWA VOR is unclear...it could be interpreted to mean they would multiply the internal gross volume of each waste container by the fill factor percentage recorded for each container in the WWIS, which would be an even smaller volume."	
R35 Incomplete Table 4.1.1	ZK	The commenter states: "...there are no final LWA volumes reported in the table for Panels 1 through 6, and the table is thus incomplete."	NMED notes that no preliminary data is presented in the draft Permit in Part 4, Table 4.1.1. The Permittees stated that information will be provided upon finalization of the DOE Management Policy. In the final determination letter, NMED has required that the Permittees report to NMED the final LWA volumes for filled Panels 1 through 6, to populate Permit Part 4, Table 4.1.1, within 90 days of January 20, 2019, the effective date of the Permit (by April 22, 2019).
R36 Historical Management of TRU Waste	ZK	The commenter states: "For over 20 years, the WIPP LWA total capacity limit of 6.2 million ft ³ (175,600 m ³) of TRU waste has been enshrined in the Permit. By attempting to remove this limit in the Permittees' PMR and successfully convincing NMED to remove it from the draft Permit, DOE is essentially breaking this long-standing pledge to manage all waste in the same manner."	References to the LWA capacity limit in the Permit have been retained in Part 4, and in Attachments B, G, H1, and J. See NMED Responses R2 and R20 .

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<p>R37 DOE Self-Regulation</p>	ZK	<p>The commenter states: "DOE may have had authority to exercise full regulatory control over the radioactive constituents in TRU waste in 1977, but the status of mixed waste, such as TRU mixed waste, was not a settled matter at that time. This clarity of these issues changed as the understanding of the Resource Conservation and Recovery Act (RCRA) evolved, along with passage of the Federal Facility Compliance Act (FFCA) and Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA) in 1992."</p>	<p>Through transparency of the LWA TRU waste volumes on the WIPP Homepage as well as the inclusion of a LWA TRU waste volume column in Permit Part 4, Table 4.1.1, NMED will be able to assure that any potential HWMU requested will not violate the LWA. Please see NMED Responses R2, R6, R7, R15, and R27.</p>
	ZT	<p>The commenter states: "<i>DOE is attempting to self-regulate by redefining waste volume and removing LWA total capacity limits from the Permit:</i> Although never clearly stated in the PMR, it appears that the Permittees' true intent in submitting this PMR and defining the LWA VOR is to exclude NMED from having any regulatory oversight and enforcement authority over determining when the Permittees have reached (or exceeded) the LWA total capacity limit of 6.2 million ft³ of waste, and thus determining when to initiate final repository closure."</p>	
<p>R38 Overpacking</p>	ZK	<p>The commenter states: "DOE has provided no information to quantify the impact of overpacking on disposal volumes at WIPP, either in the PMR (other than to provide undocumented volume differences from the WWIS on p. 9) or in the TID response..."</p>	<p>Payload management is used for radiological control and for transportation purposes. Payload management is not specifically addressed in the WIPP RCRA Permit. Overpacking may be used for a variety of purposes including integrity issues. NMED agrees with this comment: "Regardless of whether a container is overpacked for</p>

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	Z	The commenter states: "Overpacking is done because the inner container is suspect, damaged or leaking. Obviously, in a degraded condition, the volume of material in the inner container should not be used for determining the volume calculation for these containers as the inner container can not be safety credited to contain the radioactive hazard from release."	container integrity issues or for payload management, the original (or overpacked) container(s) are considered waste, and the overpack container is considered the waste container for volume calculation purposes." This will be true for calculating the RCRA volume of waste in the Permit. Please see NMED Responses R6 , R15 and R22 .
	ZM	The commenter states: "...a significant amount of WIPP waste has been overpacked into another container for handling purposes. So, the 55 gallon drums holding the real transuranic waste have been put into other containers which make operations simpler and safer. But, rather than counting the volume of the 55 gallon drums as real waste volume, the volume that is being counted is the volume of container that holds the 55 gallon drums. I am sure you can visualize all the empty space in a container that is holding circular 55 gallon drums."	
R39 Void Space in Containers	ZT	The commenter states: "Everybody involved in the original permit application process understood that few waste containers would never be 100% full. Many solidified solid waste drums would be partially full due to weight limitations, and many debris waste drums would be loosely compacted, resulting in inefficiently packaged containers."	For the purpose of analysis in the WIPP Disposal Phase Final Supplemental Environmental Impact Statement, Volume 1, September 1997 (AR 971019), the volume of the drum or cask is used as if the drum or cask were full without void space. Please also see NMED Responses R3 and R22 .

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<p>R40 RCRA Application</p>	<p>ZT</p>	<p>The commenter states: "RCRA regulations limit the duration of a permit in 40 CFR §270.50(a), which states, 'RCRA permits shall be effective for a fixed term not to exceed 10 years.' Thus, in an initial permit, it is not possible to grant approval for any activities (e.g., construction) beyond the term of the permit...NMED recognized the limitations of the 10-year term of the Permit, and yet was able to retain language from the application to reflect both the 10-year and the long-term perspectives on the repository...This language has persisted in the Permit from its inception, and NMED intentionally included it to provide the bridge between the 'ten year period of the permit' and 'the Disposal Phase of the facility'."</p>	<p>RCRA permits are subject to a permit renewal process every ten years. The TID that was issued by NMED to the Permittees requested the submittal of the current Part A Application form. In the TID Response, the current form was submitted. The Process Code and Design Capacities section of the Part A Permit Application, which was included in the draft Permit identifies the individual units (HWDUs). NMED is also retaining references to the LWA capacity limit throughout the Permit. Please see NMED Responses R8, R20, R21 and R27.</p>
<p>R41 Improper PMR Classification</p>	<p>ZT</p>	<p>The commenter believes the Class 2 classification is not correct for this PMR.</p>	<p>After reviewing the PMR and public comments received, NMED elevated this PMR to a Class 3 on June 1, 2018.</p>