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Public Comments Received Class 3 VOR Draft Permit
Comment Period August 6 - September 20, 2018

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Jonathan M. Block
138 Verano Loop
Santa Fe, NM 87508
(505) 984-1782

August 8, 2018

Mr. Ricardo Maestas
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive E, Building 1
Santa Fe, New Mexico 87505
Via email to: ricardo.maestas@state.nm.us

Re: Public Comment concerning proposed WIPP expansion by “Volume Reporting” and changing waste measurement

Dear Mr. Maestas:

I am deeply concerned about the proposed nearly 30% expansion of the amount of waste disposed of in the Waste Isolation Pilot Plant (WIPP) based upon a change in the way the containers are measured. For that reason, I hereby register my opposition to the proposed new definitions for the *TRU Mixed Waste Volume* that uses “the gross internal volume of the outermost disposal container” and to the *Land Withdrawal Act TRU Waste Volume* that uses “the volume of TRU waste inside a disposed container.”

In close to two decades of operating history, the DOE shipped a rather large number of dunnage drums. These containers were not filled to capacity. Allowing the proposed expansion increases the amount of highly radioactive and dangerous material on New Mexico’s highways that form the WIPP route, exposes people who stand nearby or live near idling trucks that haul to WIPP, and generally increases the occupational and public health and safety and environment risks to all New Mexicans. Significantly, during its operational life to date, the WIPP project does not have the kind of safety record that warrants gambling on the increased risks to workers and the public that occur by increasing the volume of radioactive waste shipped and stored there.

The New Mexico Environment Department should deny the request because DOE and Nuclear Waste Partnership, LLC, have not justified expanding the amount of waste being disposed of at the WIPP. Moreover, 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.

Thank you for considering these comments.

Sincerely,

/s/ Jonathan M. Block

August 9 2018

By email to: ricardo.maestas@state.nm.us

Mr. Ricardo Maestas
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive E, Building 1
Santa Fe, New Mexico 87505

Re: Public Comments about Proposed WIPP Expansion – “Volume Reporting”
Draft Permit - Changing the way waste is measured

Dear Mr. Maestas:

My husband, Edward Scheps, and I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP) – a proposed 28% increase – all by changing the way waste is measured. 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 disposed container.”)

Rather than increasing WIPP’s capacity, the New Mexico Environment Department should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees’ entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments. We hope you will reject this plan.

Sincerely,

Cedar R. Koons, LCSW

Dixon, New Mexico

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#)
Subject: FW: WIPP "Volume Reporting" Draft Permit - Changing the way waste is measured
Date: Friday, August 10, 2018 12:57:33 PM

From: Cynthia McNamara <cynthia_mcnamara@yahoo.com>
Sent: Thursday, August 09, 2018 3:39 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP "Volume Reporting" Draft Permit - Changing the way waste is measured

August, 9, 2018

Mr. Ricardo Maestas
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive E, Building 1
Santa Fe, New Mexico 87505

Re: Public Comments about Proposed WIPP Expansion – "Volume Reporting"
Draft Permit - Changing the way waste is measured

Dear Mr. Maestas:

I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP) – a proposed 28% increase – all by changing the way waste is measured. 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 disposed container.")

Rather than increasing WIPP's capacity, the New Mexico Environment Department should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees' entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has

not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments.

Sincerely,

Cynthia McNamara

Cynthia_mcnamara@yahoo.com

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#)
Subject: FW: WIPP comments
Date: Friday, August 10, 2018 12:58:31 PM

From: Shel Neymark <shelneymark@windstream.net>
Sent: Friday, August 10, 2018 12:19 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP comments

August 10, 2018

Mr. Ricardo Maestas
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive E, Building 1
Santa Fe, New Mexico 87505

Re: Public Comments about Proposed WIPP Expansion – “Volume Reporting”

Draft Permit - Changing the way waste is measured

Dear Mr. Maestas:

With the accident a few years ago, the release of radioactivity, and the subsequent closure of WIPP, it is clearly not the safe storage place it is touted as.

I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP) – a proposed 28% increase – all by changing the way waste is measured. 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 disposed container.”)

Rather than increasing WIPP’s capacity, the New Mexico Environment Department

should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees' entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments.

Sincerely,

Shel Neymark

PO Box 25

Embudo NM 87531

505 570-4432

shelneymark@windstream.net

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#)
Subject: FW: WIPP
Date: Friday, August 10, 2018 12:57:56 PM

From: Nancy Williamson <nancywnm@gmail.com>
Sent: Friday, August 10, 2018 10:22 AM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP

Re: Public Comments about Proposed WIPP Expansion – “Volume Reporting”
Draft Permit - Changing the way waste is measured

Dear Mr. Maestas:

I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP) – a proposed 28% increase – all by changing the way waste is measured. 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 disposed container.”)

Rather than increasing WIPP’s capacity, the New Mexico Environment Department should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees’ entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments.

Sincerely,
Nancy Williamson, 6 Pottery Road, San Lorenzo, NM 88041

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#)
Subject: FW: WIPP Expansion
Date: Thursday, September 20, 2018 6:45:33 PM

From: Maestas, Ricardo, NMENV
Sent: Friday, August 10, 2018 12:58 PM
To: McLean, Megan, NMENV <Megan.McLean@state.nm.us>
Subject: FW: WIPP Expansion

From: Nancy Williamson <nancywnm@gmail.com>
Sent: Friday, August 10, 2018 10:24 AM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP Expansion

Re: Public Comments about Proposed WIPP Expansion – “Volume Reporting”
Draft Permit - Changing the way waste is measured

Dear Mr. Maestas:

I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP) – a proposed 28% increase – all by changing the way waste is measured. 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 disposed container.”)

Rather than increasing WIPP’s capacity, the New Mexico Environment Department should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees’ entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments.

Sincerely,
Dee Smith, 20 Warm Springs Road, San Lorenzo, NM 88041

Ricardo Maestas, WIPP Project Manager
New Mexico Environment Department Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
E-mail: ricardo.maestas@state.nm.us

Subject: Comments on Draft WIPP Permit Issued August 6, 2018

Dear Mr. Maestas;

The New Mexico Environmental Department (NMED) issued a draft WIPP permit on August 6, 2018 that introduces two compatible and complementary ways of counting the volume of waste emplaced in WIPP. Instead of counting the volume of containers shipped inside the transportation cask, a new volume statistic would recognize that a substantial fraction of these shipping containers actually are over-packed, and contain multiple inner containers that are filled with waste. DOE does this to protect workers and control potential contamination, and it is a practice employed throughout the nuclear industry. NMED's draft permit thus recognizes the difference between the volume occupied in each of the hazardous waste disposal units that it permits at WIPP, and the volume of TRU waste that is limited by the WIPP Land Withdrawal Act of 1992.

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. That is the regulatory role of EPA under its legislated authority via 40 CFR Part 194. The draft permit issued by NMED for comment recognizes this distinction, and provides a clear and straightforward way to ensure NMED serves its regulatory role appropriately. The NMED Administrator should issue the permit as drafted. There is no need to invest the time and effort to engage the Class 3 public hearing process over such an obvious clarification.

Sincerely,

John Heaton

A handwritten signature in dark ink, appearing to read "John Heaton", with a stylized, cursive script.

Carlsbad Mayor's Nuclear Task Force

Ricardo Maestas, WIPP Project Manager
New Mexico Environment Department Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
E-mail: ricardo.maestas@state.nm.us

Regarding comments on Draft WIPP Permit Issued August 6, 2018

Dear Mr. Maestas,

It is the duty of the Hazardous Waste Bureau of the New Mexico Environment Department is to ensure the Department Of Energy and its contractors operate WIPP safely through a prescribed process, issued by a specific permit, with requirements and restrictions that NMED has determined will protect human health and the environment. Your Bureau has successfully regulated WIPP operations for more than 18 years.

In your consideration of the proposed clarification in the draft permit, please note that it does not change any operational aspect of the permittees' regulatory requirements. There are no changes to processes of waste receipt, unloading, handling, emplacement, or closure. There are no changes to quality assurance, training, calibration, monitoring, safety measures, or access. The only thing this permit modification seeks to change is record keeping. Your Bureau has shown WIPP operations to be protective of human health and the environment for 18 years. We cannot see how changing a record keeping practice can have any effect on the facility's safe operation.

This permit modification does not meet the requirements for a Class 3 change process. NMED should not have elevated the permittees January 31, 2018 Class 2 request to Class 3. But now that the process must follow through, it would be even more inappropriate to conduct a public hearing, which will drag on for months and cost millions of dollars. NMED may believe a public hearing would lessen the challenge of litigation once a new permit is approved. However, history has shown WIPP critics will mount legal challenges of any defeat, regardless of whether a public hearing was held as part of the permit modification process or not. The proposed change is so simple and obvious, that NMED should approve the draft permit as written, and forego a public hearing. In an over-abundance of caution, if NMED elects to grant WIPP's interveners a public hearing, we feel the only place to hold such a hearing is Carlsbad.

Thank you for your time and consideration on this vital issue,

Edward T. Rodriguez
Carlsbad City Council Ward 1
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575-302-8007



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MAYOR

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MICHAEL HERNANDEZ
CITY ADMINISTRATOR

Ricardo Maestas, WIPP Project Manager
New Mexico Environment Department Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
E-mail: ricardo.maestas@state.nm.us

Subject: Comments on the proposed Draft WIPP Permit Issued August 6, 2018

Dear Mr. Maestas:

Thank you for offering this opportunity to comment on the draft permit NMED issued on August 6, 2018. This permit modification process is being conducted under the RCRA rules for a Class 3 change. However, this change does not affect the operation or use of the WIPP facility. It doesn't change the way waste is characterized under the rules of the waste analysis plan. It doesn't change the way waste is transported to WIPP, or how it is unloaded, or emplaced. This change is simply a bookkeeping change. In the first place, it should never have been elevated to a class 3 process. But now that NMED has elected to invest the time and energy for a class 3 process, it would be even more wasteful for the NMED Administrator to elect to invoke an optional public hearing as part of the class 3 process.

The NMED should simply issue the permit as drafted. NMED should avoid the time and cost to taxpayers to agonize through a public hearing, and waste a hearing officer's time over such a simple and obvious bookkeeping change. If NMED persists in holding a hearing, it must be held in Carlsbad, which is the only affected community by WIPP.

Sincerely,

Mayor Dale Janway

COUNCILORS

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August 13, 2018

Ricardo Maestas, WIPP Project Manager
New Mexico Environment Department Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
E-mail: ricardo.maestas@state.nm.us

Dear Mr. Maestas:

The 16 square miles designated in the 1992 WIPP Land Withdrawal Act provide an enormous area, both horizontally, and vertically through the Salado formation, for isolating defense TRU waste from the environment forever. That is why WIPP was sited almost 50 years ago, where it is today. WIPP is a national treasure. It represents the closing of the circle of nuclear weapons production in our country. Atom bombs were invented in New Mexico, and it is fitting that detritus from their creation be interred in New Mexico as well. It's sort of a "born here...buried here" argument.

NMED hazardous waste regulations' prime intent is to ensure the protection of human health and the environment. If an applicant for a disposal permit can show hazardous waste disposal meets these regulations, NMED does not have the authority to limit the amount of waste projected to be emplaced. The DOE's permit modification request does not seek to expand WIPP. It simply clarifies how volumes of waste are counted and reported to its regulatory oversight entities. Those opposed to this permit modification claim that it will expand WIPP because it decouples the hazardous waste volumes in each disposal unit permitted by NMED from the TRU waste volume capacity, which was legislatively limited in the WIPP Land Withdrawal Act.

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. There could be as many as 15. But the level of protection of human health and the environment will not decrease. Whether the final disposal of the America's TRU waste will require 10 disposal units or 15 disposal units is not the question that NMED must rule upon! NMED must avoid arguing for or against the controversial claim that clarifying the volume of record will "expand" WIPP. NMED must focus on whether the DOE disposal practices, and its permit requirements, protect human health and the environment. NMED should issue the draft permit as written. NMED should also avoid the spectacle (and time and cost) of a public hearing.

Sincerely,



Jay Jenkins
Member
Mayors Nuclear Opportunity Committee

Ricardo Maestas, WIPP Project Manager
New Mexico Environment Department Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
E-mail: ricardo.maestas@state.nm.us

Subject: Comments on the proposed Draft WIPP Permit Issued August 6, 2018

Dear Mr. Maestas;

NMED issued a draft WIPP permit on August 6, 2018, which incorporated DOE's proposal for accounting of the volume of mixed TRU waste as regulated by NMED and identified a separate accounting for the volume of TRU waste to be counted against the legislated "capacity" limit specified in the WIPP Land Withdrawal Act of 1992. While WIPP critics will claim that this is tantamount to keeping two sets of books, it is not. This volume of record clarification is one set of books that counts and makes available to all parties two distinct statistics. Both the volume of mixed TRU waste regulated by NMED, as that volume limited in each hazardous waste disposal unit, as well as the TRU waste regulated by the EPA under the requirements of the Land Withdrawal Act will be tallied, and both made publically available.

This is not some scheme cooked up by DOE to expand WIPP as critics claim. It is an open clarification, that counting waste volume in a disposal unit, which is the purview and responsibility of NMED, should be reconciled with the inner container volume of TRU waste packages, which tally the true TRU volume of waste, as defined in the WIPP Land Withdrawal Act. The Land Withdrawal Act does not limit or specify the difference in the volumes of inner containers over-packed into larger shipping containers. NMED's responsibility must be for the total mixed TRU waste volume emplaced in each hazardous waste disposal unit that it permits. That accounting method will always be greater than the TRU waste volume, because of the over-packing practice that DOE uses to protect workers and control contamination.

This is not a complex change in how DOE operates the WIPP disposal facility. In fact, there is no change in physical operations or practices being proposed. DOE is simply ensuring the separate regulatory responsibilities between NMED and EPA are satisfied, and that they do not conflict. While NMED has stipulated this new permit must be processed through the Class 3 requirements under RCRA, it definitely does not rise to the standard for a public hearing, which is optional under the Class 3 process. NMED should not expend unnecessary resources and time for a public hearing on this permit modification. It should issue the permit as written.

Sincerely...

Susan Crockett

August 15, 2018

By email to: ricardo.maestas@state.nm.us

Mr. Ricardo Maestas
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive E, Building 1
Santa Fe, New Mexico 87505

Re: Public Comments about Proposed WIPP Expansion – “Volume Reporting”
Draft Permit - Changing the way waste is measured

Dear Mr. Maestas:

I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP) – a proposed 28% increase – all by changing the way waste is measured. 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 disposed container.”)

Rather than increasing WIPP’s capacity, the New Mexico Environment Department should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees’ entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

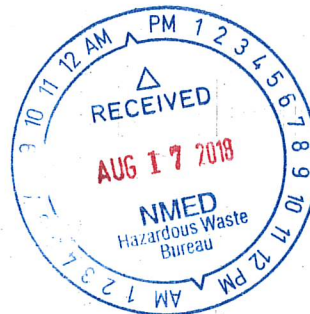
Thank you for your careful consideration of my comments.

Sincerely,

Lucille Cordova

Jadeco505@gmail.com
Contact information

Ricardo Maestas, WIPP Project Manager
New Mexico Environment Department Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
E-mail: ricardo.maestas@state.nm.us



Subject: Comments on Draft WIPP Permit Issued August 6, 2018

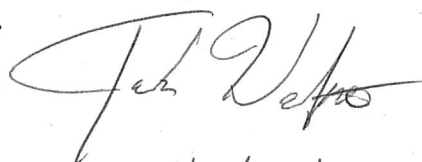
Dear Mr. Maestas, when NMED issued the subject draft permit, it essentially copied DOE's suggested Class 2 permit modification request from January 31, 2018 word-for-word. From February 2 through April 3, public comments were requested, and public meetings in Carlsbad and Albuquerque were held in March. On June 1, 2018, NMED decided to process the proposed Class 2 modification as a Class 3 modification due to "significant public concern" and the "complex nature" of the proposed change". On June 27, 2018, NMED requested clarification and additional information from the Permittees. The Permittees provided a response on July 12, 2018. In its request for comments on the draft permit of August 6, 2018, NMED claims the draft Permit is based on the modification request submitted on January 31, 2018, input from the public as provided during the comment period, and the additional information requested and received by NMED. Yet the draft is essentially a word-for-word copy of the permit modification request originally made by DOE January 31, 2018.

It would seem that 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. It seems that NMED elevated the permit modification from a Class 2 to Class 3 process based solely upon the basis of "significant public concern", and not on the basis of its "complex nature". NMED is correct in recognizing this proposed change simply as a clarification in accounting and reporting of the volume of waste emplaced in WIPP.

Those opposed to the proposed volume of record clarification claim it will give DOE license to expand the WIPP repository and grow the inventory of TRU waste that eventually could be permanently isolated there. The statutory mission of WIPP is to isolate all TRU waste from defense actions of the United States. The WIPP Land Withdrawal Act does limit the TRU waste volume capacity of WIPP, but that limit is not related to the geographic, geologic, or scientific basis for isolation. As long as NMED can assure the WIPP permittees protect human health and the environment, DOE should be allowed to make maximal use of the WIPP Land Withdrawal Act area, while conforming with statutory capacity limits.

While a public hearing about the permit modification may be requested by any party to the proceedings, the NMED Administrator may determine one is unnecessary. Since NMED clearly recognizes the modification as a simple clarification, it should avoid the delay and cost of a hearing, and issue the draft permit as written. If an unnecessarily contentious hearing must be held, it must be in Carlsbad.

Sincerely...


ECRA Board member

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#)
Subject: FW: Public Comment on Proposed Major WIPP Expansion
Date: Monday, August 20, 2018 7:49:03 AM

From: Rebecca Mueller <rannmueller@gmail.com>
Sent: Saturday, August 18, 2018 10:25 AM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Public Comment on Proposed Major WIPP Expansion

August 18, 2018

Mr. Ricardo Maestas
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive E, Building 1
Santa Fe, New Mexico 87505

Re: Public Comments about Proposed WIPP Expansion – “Volume Reporting” Draft Permit - Changing the way waste is measured

Dear Mr. Maestas:

I oppose the proposal to expand the amount of radioactive and hazardous waste allowed at the Waste Isolation Pilot Plant (WIPP) by approximately 30 percent. This proposal not only goes against the original intention of the regulation – by proposing a change in the way the waste is measured – but greatly increases the risk of harm to humans, animals, and the environment from the effects of radioactive and other hazardous materials now and in the future. 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 disposed container.”)

Rather than increasing WIPP’s capacity, the New Mexico Environment Department should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees’ entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has

not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments.

Sincerely,

Dr. Rebecca Mueller
Dixon, NM
(505) 919-9634

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [McLean, Megan, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: Public comment regarding draft hazardous waste permit for WIPP
Date: Monday, August 27, 2018 9:23:35 AM

From: Russell Hardy <rhardy@nmsu.edu>
Sent: Friday, August 24, 2018 1:51 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Cc: Russell Hardy <rhardy@nmsu.edu>
Subject: Public comment regarding draft hazardous waste permit for WIPP

Good morning Ricardo, below is my public comment in support of the draft hazardous waste permit for the WIPP, EPA ID number NM4890139088-TSDF, pertaining to the Clarification of TRU Mixed Waste Disposal Volume Reporting.

I have reviewed the draft permit issued by your office and am in full support of the proposed red-lined changes to the draft permit. Also, I believe that there has been sufficient public meetings and comments on this topic and therefore, do not feel that another round of public hearings or extended comment period are warranted.

Thank you for the opportunity to comment on this important permit modification.

Sincerely,

Russell Hardy, Ph.D.
Director
Carlsbad Environmental Monitoring & Research Center
1400 University Drive
Carlsbad, NM 88220
(575) 234-5555 phone
(575) 234-5573 fax

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#); [McLean, Megan, NMENV](#)
Subject: FW: Expansion of WIPP
Date: Monday, August 27, 2018 10:43:06 AM

From: John Otter <jmotter@q.com>
Sent: Monday, August 27, 2018 10:42 AM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Expansion of WIPP

August 27, 2018
Mr. Ricardo Maestas
New Mexico Environment Department
2905 Rodeo Park Drive, Building 1
Santa Fe, NM 87505
Dear Mr. Maestas,

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.

John Otter
jmotter@q.com

Make our great nation gracious again

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: WIPP
Date: Tuesday, September 11, 2018 8:49:55 AM
Attachments: [WIPP-Amt-of-Waste-public-comment-8-8-18.doc](#)

-----Original Message-----

From: Jon Klingel <jon@klingel.name>
Sent: Thursday, September 06, 2018 11:53 AM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP

Comments attached as MS WORD document.

Sept. 6 , 2018

By email to: ricardo.maestas@state.nm.us

Mr. Ricardo Maestas
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive E, Building 1
Santa Fe, New Mexico 87505

Re: Public Comments about Proposed WIPP Expansion – “Volume Reporting”
Draft Permit - Changing the way waste is measured

Dear Mr. Maestas:

WIPP was originally billed as storage for low level waste such as contaminated gloves. It should only be used for low level waste, not high level waste. I don't like being lied to by my government.

I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP) – a proposed 28% increase – all by changing the way waste is measured. 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 disposed container.”)

Rather than increasing WIPP's capacity, the New Mexico Environment Department should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees' entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments.

Sincerely,

Name

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: Expansion of nuclear waste storage.
Date: Tuesday, September 11, 2018 8:56:23 AM

From: Helen Henderson <mickeyh43@yahoo.com>
Sent: Saturday, September 08, 2018 12:33 AM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Expansion of nuclear waste storage.

I am against this proposal. America needs to stop making more nuclear arms. We have too many as it is....Also New Mexico has taken enough of this waste. Time for other states to do their part. Why concentrate it in one area. It is because of our demographics, which is racist and our population size. NM supplies a third of the US fuel. This is lunacy at best. Sincerely Ms. Henderson.

[Sent from Yahoo Mail on Android](#)

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: WIPP is over, or should be
Date: Monday, September 17, 2018 7:49:16 AM

From: robin laughlin <laughrob@gmail.com>
Sent: Friday, September 14, 2018 5:03 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP is over, or should be

Dear Ricardo,

I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP) – a proposed 28% increase – all by changing the way waste is measured. 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 disposed container.”)

Robin Laughlin

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: No to expansion of WIPP
Date: Monday, September 17, 2018 7:50:23 AM

From: Laura Stewart <yogini850@gmail.com>
Sent: Sunday, September 16, 2018 1:43 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: No to expansion of WIPP

Dear Mr. Maestas,

I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP).

Rather than increasing WIPP's capacity, the New Mexico Environment Department should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees' entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you,

Laura Stewart
8 Vista Precioso
Santa Fe, NM

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: Public Comments about Proposed WIPP Expansion
Date: Monday, September 17, 2018 12:01:59 PM

From: mtnviewco@aol.com <mtnviewco@aol.com>
Sent: Monday, September 17, 2018 11:46 AM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Public Comments about Proposed WIPP Expansion

Dear Mr. Maestas:

I oppose the expansion of the amount of waste disposed in the Waste Isolation Pilot Plant (WIPP) – a proposed 28% increase – all by changing the way waste is measured. 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 disposed container.”)

Rather than increasing WIPP’s capacity, the New Mexico Environment Department should deny the request because the Permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned about the segmentation of the recent permit modification requests that do not allow the public to review the Permittees’ entire expansion plan.

Over its 19 years of operations, DOE has shipped many empty (dunnage) drums, has not filled containers to capacity, yet the contractors have been paid fully – and in some cases received bonuses. To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments.

Cristy Holden
Taos, New Mexico

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: Potential WIPP Expansion
Date: Monday, September 17, 2018 4:03:34 PM

From: Nancy Gilkyson <nancygilkyson@gmail.com>
Sent: Monday, September 17, 2018 3:06 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Potential WIPP Expansion

Dear Mr. Maestas, I am emailing to let you know that, as a resident of New Mexico, I oppose any expansion of the amount of waste that will be disposed at WIPP. At a time when we are trying to increase state revenue by representing our beautiful state as a source of healthy outdoor recreation, how we could rationalize storing hazardous waste in ANY amount is beyond me, especially when we know how badly this facility has been managed and DON'T know how badly this storage – in any amount - will affect our health, our safety and the environment.

Thank you for reading my comment.
Sincerely,
Nancy Gilkyson

*Nancy Gilkyson
96 Arroyo Hondo Road
Santa Fe, NM 87508
505-780-5970*

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: regarding EPA ID#: NM4890139088
Date: Tuesday, September 18, 2018 7:26:49 AM

-----Original Message-----

From: John & Martha Tanner <pust@datawav.net>
Sent: Monday, September 17, 2018 10:56 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: regarding EPA ID#: NM4890139088

It has been explained elsewhere that the net effect of this permit would be to somewhat increase the actual amount of radioactivity stored under ground. 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. As always, radiation exposures during the act of burial should be controlled within safe limits.

John Tanner, Idaho Falls, 208-529-5605



Department of Energy
Carlsbad Field Office
P. O. Box 3090
Carlsbad, New Mexico 88221

SEP 19 2018

Mr. John E. Kieling, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Subject: Comments on the August 6, 2018, Draft Waste Isolation Pilot Plant Hazardous Waste Facility Permit Pertaining to the Class 3 Permit Modification Request entitled "Clarification of Transuranic Mixed Waste Disposal Volume Reporting, Permit Number NM4890139088-TSDF"

Dear Mr. Kieling:

The purpose of this letter is to provide you with comments on the August 6, 2018, Draft Waste Isolation Pilot Plant Hazardous Waste Facility Permit pertaining to the Class 3 Permit Modification Request entitled "Clarification of TRU Mixed Waste Disposal Volume Reporting".

We certify under penalty of law that this document and all attachments were prepared under our direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on our inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of our knowledge and belief, true, accurate, and complete. We are aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If you have any questions, please contact Mr. Michael R. Brown at (575) 234-7476.

Sincerely,

Todd Shrader, Manager
Carlsbad Field Office

Bruce C. Covert, Project Manager
Nuclear Waste Partnership LLC

Enclosure

cc: w/enclosure
R. Maestas, NMED * ED
D. Biswell, NMED ED
M. McLean, NMED ED
H. Tellez, NMED ED
CBFO M&RC
*ED denotes electronic distribution

Permittees' Comments on the August 6, 2018, Draft Waste Isolation Pilot Plant Hazardous Waste Facility Permit Pertaining to the Class 3 Modification entitled "Clarification of TRU Mixed Waste Disposal Volume Reporting"

The Permittees propose the following changes to the August 6, 2018, Draft Waste Isolation Pilot Plant Hazardous Waste Facility Permit (Permit). The proposed changes are shown in redline strikeout text in Attachment 1.

1. Revise Definition 1.5.22., *Land Withdrawal Act TRU Waste Volume* 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 ft³ (175,564 m³)" pursuant to comment 4.
 - e. Delete the last sentence, "For informational purpose, the LWA TRU..." pursuant to comment 2.

The revised definition is shown in Attachment 1.

2. Delete the column, "Final LWA TRU Waste Volume"⁴ from Permit Part 4, Table 4.1.1, *Underground HWDUs*; delete the associated footnote 4; and delete the last sentence of footnote 2 to Permit Attachment J, Table J-3, *Underground Hazardous Waste Disposal Units*. These changes are shown in Attachment 1. Deletion of the "Final LWA TRU Waste Volume" column and respective footnote information is required for the following reasons:
 - a. Including this column is inconsistent with the Permittees request to track and report the LWA TRU waste volume separately from the Permit. The Permit Modification Request states "*The TRU waste VOR [volume of record] will be tracked and reported, separately from the Permit, by the DOE pursuant to the WIPP Land Withdrawal Act ("LWA") so that the LWA total capacity limit for TRU waste is not exceeded.*" The Permittees clearly established in the PMR that DOE has the responsibility, separate from the Permit, to track and report the LWA TRU waste volume in order to determine when the DOE has reached the statutory total capacity limit of 6.2 million cubic feet (ft³) (175,564 cubic meters (m³)) of TRU waste:

This change will allow the DOE to establish a formal tracking and reporting mechanism, independent of the Permit, for comparing the disposed TRU waste VOR to the 6.2 million ft³ (175,564 m³) capacity limit of the WIPP LWA. Because several regulatory requirements are implemented at the WIPP facility, it is important to distinguish between these requirements since they are subject to different regulatory authority. For example, the authority for overseeing RCRA at the WIPP facility has been granted to the NMED by the Environmental Protection Agency, and

the authority for management, tracking, and reporting the LWA TRU waste volume has been granted to the DOE by Congress.

- b. Including this column for informational purposes as stated in Permit Part 4, Table 4.1.1, footnote 4 and in Table J-3, footnote 2 is not appropriate because this table reflects Permit conditions and maximum capacities relevant to RCRA (e.g., authorized Panels) and, therefore, should be restricted to RCRA requirements. The LWA TRU waste volume capacity is not a RCRA requirement. Permit Part 4, Table 4.1.1 should be restricted to RCRA requirements since it reflects Permit conditions and maximum capacities. Regardless of whether the data to be included in the column are considered “informational,” adding the final LWA TRU waste volumes and maintaining the information in the Permit would be subject to the RCRA requirements in 40 CFR Part 270 and would, therefore, be subject to RCRA enforcement requirements. This is inappropriate for a requirement driven by the LWA and the Atomic Energy Act, and not RCRA.
 - c. The Final LWA TRU Waste Volume that would be reported in Permit Part 4, Table 4.1.1 would not reflect the most current information. The most current LWA TRU waste volumes will be posted on the WIPP Home Page. This posted LWA TRU waste volume will reflect real-time values for the active Panel, as well as for filled Panels. As stated in the Permittees’ Response to the Technical Incompleteness Determination, dated July 12, 2018,¹ *“A link to the information regarding the VOR will be placed on the WIPP Home Page at www.wipp.energy.gov. The DOE plans to update the information at least monthly as the information changes.”* The information reported in Permit Part 4, Table 4.1.1 could only be updated after Panels are full, and Panels are typically filled over a time span of two to three years.
3. Revise footnote 3 to consolidate some information from footnote 4 in Permit Part 4, Table 4.1.1 as shown in Attachment 1.

This revision is required to reflect the proposed deletion to the “Final LWA TRU Waste Volume” column, and corresponding footnote 4 in comment 2; to delete information that is inconsistent with the Permittees proposed methodology for tracking and reporting the LWA TRU Waste Volume; and to remove “6.2 million ft³ (175,564 m³) of TRU waste” (see comment 4). Footnote 4 states that “The LWA TRU Waste Volume is based on the volume of TRU waste inside a disposal container...” The Permittees described the planned methodology for tracking and reporting the LWA TRU Waste Volume in the Permittees’ response to the TID. The Permittees provided clarification that a DOE policy will be developed and that pursuant to this policy, the volumes will be tracked by using container volumes. The Permittees further clarified that “The policy will not instruct the use of ‘fill factors’ in performing the data collection.” Footnote 4 implies the use of fill

¹ U.S. Department of Energy (DOE) and Nuclear Waste Partnership LLC (NWP). 2018. Letter from Mr. Todd Shrader, Manager, Carlsbad Field Office, and Mr. Bruce C. Covert, Project Manager, Nuclear Waste Partnership LLC to Mr. John E. Kielling, Chief, Hazardous Waste Bureau, New Mexico Environment Department, subject: Response to the Referenced Technical Incompleteness Determination, Waste Isolation Pilot Plant Hazardous Waste Facility Permit Number: NM4890139088-TSDF. July 12, 2018. Carlsbad, New Mexico.

factors by stating, “The LWA TRU Waste Volume is calculated based on the volume of TRU waste inside a disposal container...” This is inconsistent with the Permittees’ TID response.

4. Delete references to LWA TRU waste capacity of 6.2 million ft³ (175,564 m³) and/or the additional Final LWA TRU Waste Volume column in Permit Part 4, Table 4.1.1 in the following sections of the draft Permit as shown in Attachment 1:
 - a. Permit Part 1, Section 1.5.22.
 - b. Permit Part 4, Table 4.1.1
 - c. Permit Attachment B, Narrative to Item 6. Process Codes and Design Capacities
 - d. Permit Attachment G, Section G-1
 - e. Permit Attachment G, Section G-1c
 - f. Permit Attachment H1, Introduction
 - g. Permit Attachment J, Table J-3

Referring to the LWA TRU waste capacity of “6.2 million ft³ (175,564 m³)” in the footnotes to Table 4.1.1 and throughout the Permit is unnecessary because this value is clearly delineated in the LWA which is cited in the proposed revision to footnote 3 (see comment 3 above) and in other places in the Permit. Removing the references to the LWA TRU waste capacity limit is one of the Permittees’ objectives in the PMR since the number is not relevant to RCRA and stating two separate limits in the Permit is a source of confusion. This point is made in the following excerpt from the PMR Overview (emphasis added):

*The Permit states in several places that the capacity of the WIPP facility is 6.2 million ft³ (175,564 m³) of TRU waste based on the WIPP LWA limitation. However, since the permitted HWDUs are the panels, and currently Panels 1 through 8 are permitted for the disposal of TRU mixed waste, the permitted capacity of the WIPP repository is more appropriately defined as the sum of the individual maximum capacities of the eight permitted panels, as listed in Permit Part 4, Table 4.1.1, Underground HWDUs, which equates to 151,135 m³. **This proposed modification is necessary to clarify the basis for the permitted maximum capacity of the WIPP repository and to modify the Hazardous Waste Permit Part A and the Closure Plan accordingly for consistency.** For example, when the Permittees seek a Permit modification to allow for the disposal of TRU mixed waste in Panel 10, a revision to the maximum permitted capacity of the WIPP repository would be included at that time.*

In addition, including this value here and throughout the Permit is redundant and the information is not pertinent to the existing TRU mixed waste volumes in Permit Part 4, Table 4.1.1 and should therefore be deleted. Removing redundancy throughout the Permit is needed to reduce administrative burden in maintaining the Permit.

5. Editorial Comments (shown in Attachment 1)
 - a. Permit Part 4, Table 4.1.1
 - Remove reference to Table 4.1.1 in the “Note”

- b. Attachment B, Narrative to Item 6. Process Codes and Design Capacities
 - Define the unit for cubic meters and add the conversion to cubic feet in three places.
 - Add “, separately from the Permit,” in one place.
- c. Attachment J, footnote 2
 - Add “, separately from the Permit,” between “reported” and “by the DOE.”

Attachment 1
Permittees Comments on the Draft Permit
Redline Strikeout

PART 1 - GENERAL PERMIT CONDITIONS

1.5. **DEFINITIONS**

Unless otherwise expressly provided herein, the terms used in this Permit shall have the meaning set forth in RCRA, HWA, and/or their implementing regulations.

1.5.22. Land Withdrawal Act TRU Waste Volume

“Land Withdrawal Act (LWA) TRU Waste Volume (LWA TRU Waste Volume)” means the volume of TRU waste inside a disposal container. This volume is tracked and reported separately from the Permit, by the DOE internally relative to the WIPP Land Withdrawal Act LWA total capacity limit of 6.2 million ft³ (175,564 m³) (Pub. L. 102-579, as amended). For informational purposes, the LWA TRU Waste Volume is included in Table 4.1.1.

PART 4 - GEOLOGIC REPOSITORY DISPOSAL

Table 4.1.1 - Underground HWDUs				
Description ¹	Waste Type	Maximum <u>TRU Mixed Waste</u> Capacity ²	Final <u>TRU Mixed Waste Volume</u> ³	<u>Final LWA TRU Waste Volume</u> ⁴
Panel 1	CH TRU	636,000ft ³ (18,000 m ³)	370,800 ft ³ (10,500 m ³)	
Panel 2	CH TRU	636,000 ft ³ (18,000 m ³)	635,600 ft ³ (17,998 m ³)	
Panel 3	CH TRU	662,150 ft ³ (18,750 m ³)	603,600 ft ³ (17,092 m ³)	
Panel 4	CH TRU	662,150 ft ³ (18,750 m ³)	503,500 ft ³ (14,258 m ³)	
	RH TRU	12,570 ft ³ (356 m ³)	6,200 ft ³ (176 m ³)	
Panel 5	CH TRU	662,150 ft ³ (18,750 m ³)	562,500 ft ³ (15,927m ³)	
	RH TRU	15,720 ft ³ (445 m ³)	8,300 ft ³ (235 m ³)	
Panel 6	CH TRU	662,150 ft ³ (18,750 m ³)	510,900 ft ³ (14,468 m ³)	
	RH TRU	18,860 ft ³ (534 m ³)	7,600 7,500 ft ³ (215) 214 m ³)	
Panel 7	CH TRU	662,150 ft ³ (18,750 m ³)		
	RH TRU	22,950 ft ³ (650 m ³)		
Panel 8	CH TRU	662,150 ft ³ (18,750 m ³)		
	RH TRU	22,950 ft ³ (650 m ³)		
Total	CH TRU	5,244,900 ft³ (148,500 m³)		
	RH TRU	93,050 ft³ (2,635 m³)		

¹ The area of each panel is approximately 124,150 ft² (11,533 m²).

² "Maximum TRU Mixed Waste Capacity" is the maximum ~~volume of~~ TRU mixed waste volume that may be emplaced in each panel. This volume is calculated based on the gross internal volume of the outermost disposal containers. 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)

³ Final TRU Mixed Waste Volume is calculated based on the gross internal volume of the outermost disposal containers. The volume listed here is reported pursuant to Permit Part 6, Section 6.10.1. The LWA TRU Waste Volume is tracked and reported.

Table 4.1.1 - Underground HWDUs

Description¹	Waste Type	Maximum <u>TRU Mixed Waste</u> Capacity²	Final <u>TRU Mixed Waste</u> Volume³	<u>Final LWA TRU Waste Volume</u>⁴
--------------------------------	-------------------	--	--	--

separately from the Permit, by the DOE internally pursuant to the WIPP LWA total capacity limit (Pub. L. 102-579, as amended). A link to the LWA TRU Waste Volume is posted on www.wipp.energy.gov

⁴ Final LWA TRU Waste Volume is calculated based on the volume of TRU waste inside a disposal container. The volume listed here is tracked and reported by the DOE internally pursuant to the WIPP Land Withdrawal Act total capacity limit of 6.2 million ft³ (175,564 m³) of TRU waste (Pub. L. 102-579, as amended) and is included here for informational purposes. A link to the LWA TRU Waste Volume is posted on www.wipp.energy.gov.

Note: The final TRU mixed waste volumes reported in Table 4.1.1 in ft³ are rounded to the nearest 100 ft³.

ATTACHMENT B

HAZARDOUS WASTE PERMIT APPLICATION PART A

EPA ID Number: NM4890139088

Hazardous Waste Permit Part A Form

Narrative to Item 6. Process Codes and Design Capacities 7. ~~PROCESS CODES AND DESIGN CAPACITIES~~ (continued)

For purposes of this application, all TRU waste is managed as though it were mixed. During the Disposal Phase of the facility, which is expected to last 25 years, the ~~total amount of waste received from off-site generators and any derived~~ emplaced TRU mixed waste volume will be limited to 175,600 m³ of TRU waste of which up to 7,080 m³ may be remote-handled (RH) TRU mixed waste not exceed the design capacity specified in Item 6, Process Codes and Design Capacities. ~~For purposes of this application, all TRU waste is managed as though it were mixed. This volume is calculated based on the gross internal volume of the outermost disposal containers and cannot exceed 151,135 cubic meters (m³) (5.337,282 million cubic feet (ft³)) for Panels 1 through 8. The Land Withdrawal Act (LWA) TRU waste volume is tracked and reported, separately from the Permit, by the DOE internally for the purposes of compliance with the WIPP LWA total capacity limit for TRU waste of 6.2 million ft³ (175,564 m³), and is included for informational purposes in Permit Part 4, Table 4.1.1.~~

The process design capacities for each of the ~~miscellaneous unit (composed of ten underground HWMUs in the geologic repository)~~ eight underground HWMUs in the geologic repository (i.e., miscellaneous unit) are shown in ~~Section 7-B~~ Item 6, Process Codes and Design Capacities, ~~is for the maximum amount of waste that may be received from off-site generators plus the maximum expected amount of derived wastes that may be generated at the WIPP facility.~~ In addition, two HWMUs have been designated as container storage units (S01) in ~~Section 7-B~~ Item 6, Process Codes and Design Capacities. One is inside the Waste Handling Building (WHB) and consists of the contact-handled (CH) bay, waste shaft conveyance loading room, waste shaft conveyance entry room, RH bay, cask unloading room, hot cell, transfer cell, and facility cask loading room. This HWMU will be used for waste receipt, handling, and storage (including storage of derived waste) prior to emplacement in the underground geologic repository. No treatment or disposal will occur in this S01 HWMU. The capacity of this S01 unit for storage is 194.1 m³ (6,854.6 ft³), based on 36 ten-drum overpacks on 18 facility pallets, four CH Packages at the TRUDOCKs, one standard waste box of derived waste, two loaded casks and one 55-gallon drum of derived waste in the RH Bay, one loaded cask in the Cask Unloading Room, 13 55-gallon drums in the Hot Cell, one canister in the Transfer Cell and one canister in the Facility Cask Unloading Room. The second S01 HWMU is the parking area outside the WHB where the Contact- and Remote-Handled Package trailers and the road cask trailers will be parked awaiting waste handling operations. The capacity of this unit is 50 Contact-Handled Packages and twelve Remote-Handled Packages with a combined TRU mixed waste volume of 242 m³ (8,546 ft³).

ATTACHMENT G

CLOSURE PLAN

G-1 Closure Plan

For the purposes of this Closure Plan, final facility closure is defined as closure that will occur when all waste disposal areas permitted HWDUs are filled or have achieved their maximum capacities as outlined in Permit Part 4, Table 4.1.1 ~~or when the WIPP achieves its capacity of 6.2 million cubic feet (ft³) (175,564 cubic meters (m³)) of Land Withdrawal Act (LWA) TRU waste volume~~. At final facility closure, the surface container storage areas will be closed, and equipment that can be decontaminated and used at other facilities will be cleaned and sent off site. Equipment that cannot be decontaminated plus any derived waste resulting from decontamination will be placed in the last open underground HWDU. Stockpiled salt may be placed in the underground; it may be used as the core material for the berm component of the permanent marker system; or it must be otherwise disposed of in accordance with Sections 2 and 3 of the Minerals Act of 1947 (30 U.S.C. §§602 and 603). In addition, shafts and boreholes which lie within the WIPP Site Boundary and penetrate the Salado will be plugged and sealed, and surface and subsurface facilities and equipment will be decontaminated and removed. Final facility closure will be completed to demonstrate compliance with the Closure Performance Standards contained in 20.4.1.500 NMAC (incorporating 40 CFR §264.111, 178, and 601).

G-1c Maximum Waste Inventory

The maximum waste inventory (maximum capacity) for the permitted HWDUs is established in Permit Part 4, Table 4.1.1. ~~In accordance with the LWA, The WIPP will receive no more than 6.2 million ft³ (175,564 m³) of LWA TRU mixed waste volume, which may include up to 250,000 ft³ (7,079 m³) of remote-handled (RH) TRU mixed waste.~~ Excavations are mined as permitted when needed during operations to maintain a reserve of disposal areas. The amount of waste placed in each room is limited by structural and physical considerations of equipment and design. Transuranic mixed waste Waste volumes include waste received from off-site generator locations as well as derived waste from disposal and decontamination operations. ~~The maximum volume of TRU mixed waste in a disposal panel is established in Permit Part 4, Table 4.1.1.~~ For closure planning purposes, a maximum achievable volume of 685,100 ft³ (19,400 m³) of TRU mixed waste per panel is used. This equates to 662,150 ft³ (18,750 m³) of contact-handled (CH) TRU mixed waste and 22,950 ft³ (650 m³) of RH TRU mixed waste per panel.

ATTACHMENT H1

ACTIVE INSTITUTIONAL CONTROLS DURING POST-CLOSURE

Introduction

Upon receipt of the necessary certifications and permits from the EPA and the New Mexico Environment Department, the Permittees will begin disposal of contact-handled (**CH**) and remote-handled (**RH**) TRU and TRU mixed waste in the WIPP. This waste emplacement and disposal phase will continue until the initiation of final closure when the HWDUs have received the final volume of waste regulated capacity of the repository of or when the 6.2 million 6,200,000 cubic feet (ft³) (175,588 cubic meters (m³)) of LWA TRU and TRU mixed waste volume has been reached, and as long as the Permittees comply with the requirements of the Permit. For the purposes of this Permit Attachment, this time period is assumed to be 25 years. The waste will be shipped from DOE facilities across the country in specially designed transportation containers certified by the Nuclear Regulatory Commission. The transportation routes from these facilities to the WIPP have been predetermined. The CH TRU mixed waste will be packaged in 55-gallon (208-liter), 85-gallon (322-liter), 100-gallon (379-liter) steel drums, standard waste boxes (**SWBs**), ten drum overpacks (**TDOPs**), and/or standard large box 2s (**SLB2s**). An SWB is a steel container having a free volume of 66.3 cubic feet (1.88 cubic meters). Figure H1-2 shows the general arrangement of a seven-pack of drums and an SWB as received in a Contact-Handled Package. RH TRU mixed waste inside a Remote-Handled Package is contained in one or more of the allowable containers described in Permit Attachment A1. Some RH TRU mixed waste may arrive in shielded containers as described in Permit Attachment A1.

ATTACHMENT J

HAZARDOUS WASTE MANAGEMENT UNIT TABLES

**Table J-3
Underground Hazardous Waste Disposal Units**

Description ¹	Waste Type	Maximum Capacity ²	Container Equivalent
Panel 1	CH TRU	636,000ft ³ (18,000 m ³)	86,500 55-Gallon Drums
Panel 2	CH TRU	636,000 ft ³ (18,000 m ³)	86,500 55-Gallon Drums
Panel 3	CH TRU	662,150 ft ³ (18,750 m ³)	90,150 55-Gallon Drums
Panel 4	CH TRU	662,150 ft ³ (18,750 m ³)	90,150 55-Gallon Drums
	RH TRU	12,570 ft ³ (356 m ³)	400 RH TRU Canisters
Panel 5	CH TRU	662,150 ft ³ (18,750 m ³)	90,150 55-Gallon Drums
	RH TRU	15,720 ft ³ (445 m ³)	500 RH TRU Canisters
Panel 6	CH TRU	662,150 ft ³ (18,750 m ³)	90,150 55-Gallon Drums
	RH TRU	18,860 ft ³ (534 m ³)	600 RH TRU Canisters
Panel 7	CH TRU	662,150 ft ³ (18,750 m ³)	90,150 55-Gallon Drums
	RH TRU	22,950 ft ³ (650 m ³)	730 RH TRU Canisters
Panel 8	CH TRU	662,150 ft ³ (18,750 m ³)	90,150 55-Gallon Drums
	RH TRU	22,950 ft ³ (650 m ³)	730 RH TRU Canisters
Total	CH TRU	5,244,900 ft³ (148,500 m³)	713,900 55-Gallon Drums
	RH TRU	93,050 ft³ (2,635 m³)	2960 RH TRU Canisters

¹ The area of each panel is approximately 124,150 ft² (11,533 m²).

² "Maximum Capacity" is the maximum volume of TRU mixed waste that may be emplaced in each panel. 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) and is tracked and reported separately from the Permit, by the DOE internally as the LWA TRU Waste Volume. The LWA TRU Waste Volume is included for informational purposes in Permit Part 4, Table 4.1.1.

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: Public Comment on proposed "Volume Reporting" for WIPP
Date: Thursday, September 20, 2018 9:12:15 AM

From: Pelican Lee <pelicanlee4@gmail.com>
Sent: Wednesday, September 19, 2018 7:10 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Public Comment on proposed "Volume Reporting" for WIPP

September 19, 2018
Mr. Ricardo Maestas
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive E, Building 1
Santa Fe, New Mexico 87505

Dear Mr. Maestas:

I oppose the proposed new measurement of volume for waste disposed in the Waste Isolation Pilot Plant (WIPP). *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 disposed container") would expand amount by 28% of waste allowed at WIPP.

Rather than increasing WIPP's capacity, the New Mexico Environment Department should deny the request because the permittees (the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC) have not explained why the expansion is needed and where the additional waste would be disposed. I am very concerned that recent permit modification requests do not allow the public to review the Permittees' entire expansion plan.

Waste emplaced at WIPP has always been measured based on the volume of the container. Container volume is the way DOE has always reported to Congress how much waste is at WIPP. Container volume is how DOE contractors have been paid and received performance bonuses. Container volume is the way that the WIPP Permit and permits in other states calculate the amount of waste.

An unstated reason for the proposed measurement is that space for more than 1,000,000 cubic feet of waste has been forfeited or lost because of bad DOE management, poor contractor performance, and inefficiencies during the past 19 years of WIPP's operations. Because of poor planning and other inefficiencies, DOE has shipped and disposed of many empty containers and has not filled containers to capacity, yet the contractors have been paid fully – and in some cases received a bonus.

To allow the proposed expansion risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments.

Sincerely,

Ellen Ackerman
PO Box 304
Ribera NM 87575

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: WIPP Draft Permit
Date: Thursday, September 20, 2018 9:12:45 AM

-----Original Message-----

From: Chris Fischahsø <cfischahs@comcast.net>
Sent: Wednesday, September 19, 2018 8:17 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP Draft Permit

> No, the requested volume change should not be approved.

>

> The outer container is the system, structure or component (SSC) which is safety credited to provide confinement of the radioactive hazards within the drum and/or pipe overpack container (POC). As such, the outer container and its volume is the final confinement protecting the public, workers and the environment from radioactive and other hazards.

>

> 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.

>

> Similarly, the effectiveness of POCs are based upon their proper assembly within an outer container. Without their packaging within an outer container, POCs are not safety credited to provide confinement of radioactive and other hazards. In other words, the outer container and its volume (again) is the final confinement protecting the public, workers and the environment.

>

> I do not support this request, and I urge that this change not be adopted.

>

> Respectfully submitted,

> Christopher Fischahs

> 4205 Alabama Avenue #C

> Los Alamos, NM. 87544

> (505) 310-1176



PO Box 6531, Albuquerque, NM 87197***<http://www.earthspirituality.org/>***505-266-6966

September 19, 2018

Mr. Ricardo Maestas
New Mexico Environment Department--Hazardous Waste Bureau
2905 Rodeo Park Drive E, Building 1
Santa Fe, New Mexico 87505
ricardo.maestas@state.nm.us

Re: Public Comments Proposed WIPP Draft Permit and Expansion

Dear Mr. Maestas:

As faith leaders working with various communities around New Mexico, we have the opportunity to be with many people in their communities. We know that they want healthy lives and futures for their children. People of all spiritual traditions are also concerned about caring for our sacred creation. In addition, they believe in fairness and the common good. It is out of this ethical and moral worldview that we write with great concerns for the proposed expansion of the WIPP site and request a public hearing and that NMED postpone the negotiations for at least 30 days to allow people to be notified and read the documents. We also request that when the hearing date is delayed that the location be moved to Santa Fe, the Capitol of New Mexico, which is more centrally located and accessible to all New Mexicans.

Over the last years, with the accidents and near accidents, WIPP has cast doubts of safety and this affects New Mexicans and all people in the United States. We have concerns about the current operation of this facility and future implications on health and the common good. In addition, New Mexicans were promised at the onset that the facility would be limited in size, and scope. The current proposal would increase waste by nearly 30%. We believe there is a lack of transparency in the current permit process.

As Catholic Sisters, we seek guidance from the scriptures, one from 2 Timothy 2:15 states: "Do your best to present yourself to God as one approved, a worker who does not need to be ashamed and who correctly handles the word of truth." Increasingly, all Religious traditions hold that the opportunity for community wisdom, concerns, and questions are essential in issues of the public good.

Usually, the only argument for expansion of waste in New Mexico is short term economic gain. We hold that an "integral ecology" approach grounded in ethical principles of environmental justice, social concern and economics must be held together and hope this approach would be utilized.

Thank you for your consideration and we look forward to hearing from you soon regarding the extension time for the WIPP expansion hearing and input from citizens.

Peace and good,

Sister Joan Brown,osf
Sister Marlene Perrotte, rsm

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [McLean, Megan, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: Volume of record
Date: Thursday, September 20, 2018 2:50:54 PM
Attachments: [JJ Chavez.docx](#)

From: Jason Chavez <jochavez@cityofcarlsbadnm.com>
Sent: Thursday, September 20, 2018 2:33 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Volume of record

Volume of record statement for reclassification of volume for the WIPP site
Thank you
JJ Chavez
City Councilor Ward 2 Carlsbad, NM

Ricardo Maestas, WIPP Project Manager
New Mexico Environment Department Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
E-mail: ricardo.maestas@state.nm.us

Subject: Comments on Draft WIPP Permit Issued August 6, 2018

Dear Mr. Maestas,

As a Carlsbad City Councilor, I support the Draft WIPP Permit issued on Aug. 6 regarding Volume of Record. Those opposed to the proposed volume of record clarification claim it will allow the DOE license to expand the WIPP repository and grow the inventory of TRU waste that eventually could be permanently isolated there. However, the statutory mission of WIPP is to isolate TRU waste from defense actions of the United States. As long as NMED can assure the WIPP permittees protect human health and the environment, DOE should be allowed to make smart use of the WIPP Land Withdrawal Act area, while conforming with statutory capacity limits. This Volume of Record concept is easy to understand – we are simply putting the facility to its intended good use.

While a public hearing about the permit modification may be requested by any party to the proceedings, the NMED Administrator has the right to decide this isn't needed. Since NMED clearly recognizes the modification as a simple clarification, it should avoid the delay and cost of a hearing, and issue the draft permit as written. We appreciate the NMED for allowing the stakeholders in Carlsbad the opportunity to comment on this issue.

Sincerely...

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: Union of Concerned Scientists Comments on WIPP Draft Permit
Date: Thursday, September 20, 2018 2:58:16 PM
Attachments: [wipp permit comments UCS 9 20 18.pdf](#)

From: Edwin Lyman <ELyman@ucsusa.org>
Sent: Thursday, September 20, 2018 2:55 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Union of Concerned Scientists Comments on WIPP Draft Permit

Dear Mr. Maestas,

I am pleased to submit these comments on behalf of the Union of Concerned Scientists. Please see the attached PDF file. Thank you for your consideration.

Sincerely,

Edwin Lyman
Union of Concerned Scientists
Washington, DC
elyman@ucsusa.org

September 20, 2018

Mr. Ricardo Maestas, WIPP Project Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
By email: Ricardo.maestas@state.nm.us

Comments of the Union of Concerned Scientists (UCS) on the WIPP Draft Permit

The Union of Concerned Scientists (UCS) strongly supports the draft Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP). The draft Permit would change the way that transuranic waste (TRU) waste volume is calculated for the purpose of compliance with the Land Withdrawal Act (LWA) limit on the total TRU volume that can be disposed of in WIPP. Simply put, the proposed change is a common-sense fix that would allow the Department of Energy (DOE) to only include actual TRU waste, and not empty space and packaging structural materials, in its calculation of the TRU waste volume that is counted against the LWA statutory limit. This would enable the DOE to more efficiently utilize scarce WIPP capacity, and to safely and securely dispose of the U.S. “excess” (i.e. “waste”) plutonium inventory in a deep geologic repository.

The proposed change to the calculational method for TRU waste volume in the draft Permit would not have a direct impact on the safety and security of the WIPP repository. The draft Permit would allow the DOE to dispose of a greater quantity of TRU waste in terms of its activity (curie content) than under the current Permit without exceeding the LWA volume limit. However, to ensure safety, any increase in radioactive inventory could only occur in compliance with all applicable environmental laws and regulations. And additional approvals would be required to excavate new panels if an increase in the physical volume of repository space were needed to accommodate additional TRU inventory. By itself, the proposed change in the draft Permit would not allow the DOE to significantly increase the TRU activity loading in WIPP.

Even so, 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. The change would facilitate the geologic disposal of many thousands of nuclear bombs’ worth of plutonium that the U.S. no longer wants or needs. This would allow this dangerous material to be expeditiously transferred from temporary surface storage, where it poses long-term safety and security risks, to deep geologic disposal, where it will be isolated and significantly less inaccessible for weapons use. The DOE’s plan for disposal of this waste plutonium is to blend it down with an inert diluent and to emplace small quantities of the mixture in standard TRU waste drums. Each drum would contain only about 300 grams of plutonium. The actual TRU waste volume would be a small fraction of the volume of the disposal drum. If the proposed change in the draft Permit is authorized, the corresponding reportable LWA TRU waste volume could be reduced by a factor of 100 or more. This fix would enable the DOE to dispose of the entire remaining waste plutonium inventory currently in surface storage—roughly 50 metric tons—while only increasing the volume of emplaced TRU waste by less than one percent of the LWA limit.

The State of New Mexico has played a critical role in the history of the nuclear age. Now it has the opportunity to leverage a unique asset—the WIPP repository—to help the U.S. honor its commitment to reducing its nuclear weapons stockpile. Approval of the draft Permit is a critical first step down this path.

Thank you for consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edwin S. Lyman', with a long, sweeping horizontal stroke at the end.

Edwin S. Lyman, PhD
Senior Scientist, Global Security Program
Union of Concerned Scientists
1825 K St, NW Ste. 800
Washington, DC 20006
elyman@ucsusa.org
202-331-5445

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: WIPP Draft Permit - Requests for hearing
Date: Thursday, September 20, 2018 3:33:58 PM
Attachments: [Group hearing letter 092018 final.pdf](#)

-----Original Message-----

From: Don Hancock <sricdon@earthlink.net>
Sent: Thursday, September 20, 2018 3:32 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>; Kieling, John, NMENV <john.kieling@state.nm.us>
Subject: WIPP Draft Permit - Requests for hearing

Please see the attached letter with comments and request for a public hearing.

Thank you.

September 20, 2018

Ricardo Maestas
New Mexico Environment Department (NMED)
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

via email: Ricardo.Maestas@state.nm.us

RE: Class 3 Draft Permit – TRU Mixed Waste Disposal Volume Reporting

Dear Mr. Maestas:

The undersigned organizations, representing thousands of New Mexicans, oppose the Draft Permit and request a public hearing. The undersigned organizations also request sufficient advanced notice to each organization of any negotiations held pursuant to 20.4.1.901. A.4 NMAC.

Our specific objections include that the Draft Permit and the modification request are contrary to the requirements of the two primary federal laws that specifically govern the Waste Isolation Pilot Plant (WIPP). Those laws are the WIPP Authorization (Public Law 96-164, Section 213 of 1979) and the WIPP Land Withdrawal Act (LWA, Public Law 102-579 of 1992). Those laws provide specific requirements and limitations on WIPP and specific authorities to the State of New Mexico. Many provisions of the Draft Permit are inconsistent with those legal requirements. For example, that the legal limit of 6.2 million cubic feet of defense transuranic waste is based on the waste volume being measured by the size of the gross internal volume of the container, as has always been included in the Permit. 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.

The Permittees have not shown in the Administrative Record a need for, or their legal authority for, the proposed “Volume of Record” or for the substantial WIPP expansion that the changes would allow. NMED has not shown in the Administrative Record how the Draft Permit protects public health and the environment or fulfills the State’s legal authorities.

Each of the undersigned organizations requests a public hearing and sufficient advanced notice of any negotiations.

Thank you for your careful consideration.

Sincerely,

Joni Arends
Concerned Citizens for Nuclear Safety
Santa Fe, NM
jarends@nuclearactive.org

Scott Kovac
Nuclear Watch New Mexico
Santa Fe, NM
scott@nukewatch.org

Janet Greenwald
Citizens for Alternatives to Radioactive Dumping
Albuquerque, NM
contactus@cardnm.org

Don Hancock
Southwest Research and Information Center
Albuquerque, NM
sricdon@earthlink.net

Bob Anderson
Stop the War Machine
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Douglas Meiklejohn
New Mexico Environmental Law Center
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Rayellen Smith
Indivisible Nob Hill
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Susan Gordon
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Albuquerque, NM
sgordon@swuraniumimpacts.org

Tina Cordova
Tularosa Basin Downwinders Consortium
Albuquerque, NM
tcordova@queston.net

Tina Kachele
Presiding Clerk
Albuquerque Monthly Meeting of the Religious Society of Friends (Quakers)
Albuquerque, NM
tkachele17@gmail.com

Ross Lockridge
Concerned Citizens of Cerrillos
Cerrillos, NM
murlock@raintreecounty.com

Susan Schuurman
Albuquerque Center for Peace and Justice
Albuquerque, NM
abqpeaceandjusticecenter@gmail.com

John Buchser, Chair, Water Issues Committee
Rio Grande Chapter of the Sierra Club
Santa Fe, NM
jbuchser@comcast.net

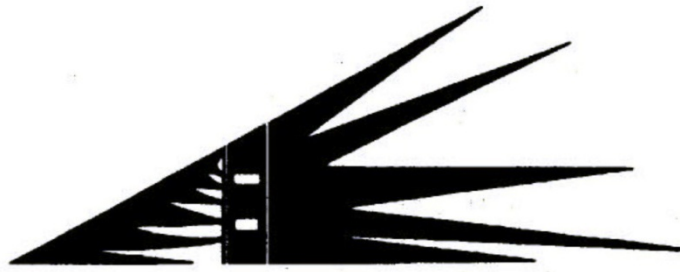
From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: WIPP Draft Permit - SRIC Comments
Date: Thursday, September 20, 2018 4:42:58 PM
Attachments: [SRIC comments Draft Permit 092018.pdf](#)

-----Original Message-----

From: Don Hancock <sricdon@earthlink.net>
Sent: Thursday, September 20, 2018 4:03 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>; Kieling, John, NMENV <john.kieling@state.nm.us>
Subject: WIPP Draft Permit - SRIC Comments

Attached are additional and more detailed comments from SRIC.

Thank you for your strong consideration of these and all comments.



SOUTHWEST RESEARCH AND INFORMATION CENTER

P.O. Box 4524 Albuquerque, NM 87196 505-262-1862 FAX: 505-262-1864 www.sric.org

September 20, 2018

Ricardo Maestas
New Mexico Environment Department (NMED)
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

via email

RE: Class 3 Draft Permit – TRU Mixed Waste Disposal Volume Reporting

Dear Ricardo:

Southwest Research and Information Center (SRIC) provides the following comments on the package of Class 3 Draft Permit Modification TRU Mixed Waste Disposal Volume Reporting, which was noticed for public comment on August 6, 2018, according to the NMED Fact Sheet. As NMED is well aware, SRIC is a non-profit organization based in Albuquerque, New Mexico that focuses on public education and involvement and public health and environmental justice. SRIC has been involved in WIPP permitting activities for more than 20 years, including being a party in the original permit proceeding, the permit renewal, and dozens of permit modification requests.

On April 3, 2018, SRIC submitted detailed comments on the class 2 permit modification request. Administrative Record (AR) 180402. While SRIC appreciates that class 3 procedures are being followed, SRIC continues its strong objections to the modification request and the Draft Permit because the proposed Volume of Record is contrary to the requirements of the two primary federal laws that specifically govern the Waste Isolation Pilot Plant (WIPP) – the WIPP Authorization and the WIPP Land Withdrawal Act (LWA), as well as state statutory authorities.

Request for Public Hearing and Negotiations

For the reasons stated in its comments on April 3, 2018 and the comments that follow, SRIC opposes the Draft Permit and requests a public hearing. Further, and prior to any notice of public hearing, pursuant to 20.4.1.901. A.4 NMAC and NMED practice regarding past class 3 modifications and the permit renewal hearing, SRIC requests that NMED, the Permittees, SRIC, and other parties conduct negotiations to attempt to resolve issues.

Objections to NMED's planned schedule for negotiations and public hearing

On September 19, 2018, SRIC, Concerned Citizens for Nuclear Safety (CCNS), Nuclear Watch New Mexico (NWNM), and Citizens for Alternatives to Radioactive Dumping (CARD) sent NMED a letter objecting to the proposed schedule for negotiations to begin on September 24 and to the proposed Notice of Public Hearing. The four organizations requested changes to the negotiation and hearing schedules. SRIC incorporates and reiterates those requests and objections.

Objections to the Administrative Record

The AR Index provided with the Public Notice No. 18-05 is grossly inadequate in form and content. The inadequate AR significantly inhibits commenting on the Draft Permit, because it is impossible to determine what items NMED has included and excluded from the AR. Further, it is difficult to identify and cite to particular comments or documents. While it unnecessarily requires additional time and effort, SRIC is again citing many documents from its April 3 comments to ensure that they are included in the AR.

In form, the AR separately lists and numbers documents from the Permittees and from some individuals, but combines in AR 180316 numerous emails and comment letters and in AR 10401, 180402, 180404, and 180405 numerous comments. Such combining is inconsistent with previous practice, requires people to go through numerous comments to find and cite particular comments or documents, and leads to confusion and likely inconsistent citing to the record. Each individual comment and each document should be separately listed and numbered.

As to content, many of the references included in SRIC's comments of April 3 (and those of other commenters, including Steve Zappe) are not listed. SRIC specifically cited 23 references and provided active links to those documents. But they are not listed in the AR Index. SRIC also cited to numerous other documents, including (but not limited to) Public Law 96-164, Section 213, which is AR 180121; Public Law 97-425, which is not included in the AR Index; Public Law 102-579, which is AR 180706 (along with other documents); NMED's written Direct Testimony Regarding Regulatory Process and Imposed Conditions for the original permit, which is not included in the AR Index; the original Permit Hearing Transcript, which is not included in the AR Index; the Permittees' Part A application, Original Permit Attachment O, which is not in the AR Index; WIPP Transuranic Waste Baseline Inventory Report (WTWBIR) in June 1994. Revision 2 (DOE/CAO-95-1121), which is not in the AR Index; Senate Report 102-196, which is not in the AR Index; H.Rept 102-241 Part 1, H.Rept 102-241 Part 2, and H.Rept 102-241 Part 3, which are not in the AR Index; DOE/EIS-0026-S-2, which is AR 180706 (along with other documents). All of those SRIC and other commentors' documents must be included and separately numbered in the AR.

Further, the AR effectively begins the record on January 31, 2018 with the submission of the modification request. In fact, the AR should begin with the original Permit application documents, and include the Permit AR in 1999 and the Permit Renewal AR in 2010. In addition, selected prior references cited by the Permittees, SRIC, and other parties must be in the AR.

SRIC suggests that, unless NMED has issued a revised AR Index that adequately addresses the many deficiencies, the negotiations begin with resolving issues in the Administrative Record. Resolving those issues would provide the basis for the negotiations, as well as being essential for an efficient public hearing.

Insofar as NMED has changed its procedures – without public notice or explanation or change in the regulations – to exclude from the AR documents cited unless they are submitted in hard copy or on a compact disk (CD), SRIC strongly objects. Such a procedure, among other problems, is an improper suppression of public participation, especially when many documents can be accessed by NMED and other parties on the internet. Such a procedure also will greatly complicate and

lengthen a public hearing by requiring significant time and effort to challenge whether documents are in the AR and adding documents that should have already been included in the AR.

Deficiencies of the Fact Sheet

The permitting regulations provide: “The fact sheet shall briefly set forth the principal facts and the significant factual legal, methodological and policy questions considered in preparing the Draft Permit.” 20.4.1.901.D.(1) NMAC. The Fact Sheet, issued on August 6, 2018, does not set out such questions. The Fact Sheet does not even mention the 6.2 million feet number that is the crux of the request and Draft Permit. The Fact Sheet does not even mention that quantity is established by the WIPP LWA. The Fact Sheet does not even mention that quantity is included in the legally binding Consultation and Cooperation Agreement, nor does it even mention that Agreement.

The permitting regulations also provide: “The fact sheet shall include, when applicable: ... the type and quantity of wastes which are proposed to be or are being treated, stored, disposed, injected, emitted, or discharged.” 20.4.1.901.D.(2)(b) NMAC. As already discussed, the Fact Sheet includes no such quantities. Nor does the Fact Sheet mention that the Draft Permit could increase the capacity of WIPP by approximately 30 percent, according to the Permittees’ Request. Page 9.

The Draft Permit and the request are contrary to federal laws

The modification request is contrary to the requirements of the two primary federal laws that specifically govern the Waste Isolation Pilot Plant (WIPP) – the WIPP Authorization and the WIPP Land Withdrawal Act (LWA). NMED has long required: “The Permittees must establish that their proposed changes both comply with applicable law and regulations and are supported by objective technical data.” Notice of Deficiency Comments at 4.

https://www.env.nm.gov/wipp/Consolidated_Response_NOD_Final_09-01.pdf

The Permittees must establish that proposed modifications comply with applicable law, because NMED cannot approve a request or issue permit changes that do not comply with federal and state laws.

A. WIPP Authorization - Public Law 96-164, Section 213

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. Congress has maintained those legal requirements and constraints for the last 39 years, including in subsequent nuclear waste laws.

In 1982, Congress passed the Nuclear Waste Policy Act (NWPA) of 1982 (Public Law 97-425), “to provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes.”

The law did not apply to WIPP because the facility was authorized as being exempt from Nuclear Regulatory Commission (NRC) licensing, while any repository only for high-level defense waste would be licensed by the NRC. Section 8(b)(3).

In 1987, Congress amended the NWSA to designate a single high-level waste and spent fuel repository, and discussed whether that facility should be WIPP, but again determined that WIPP would not be that facility, and instead designated Yucca Mountain, Nevada as the repository.

The Permittees have not addressed the issue that WIPP is not the disposal site for all transuranic (TRU) waste in the permit modification request, nor in the July 12, 2018 Response to the NMED Technical Incompleteness Determination (TID). Thus, the Administrative Record is undisputed that Congress has limited WIPP's capacity, determining that WIPP is not the disposal site for all transuranic (TRU) waste.

B. WIPP Land Withdrawal Act (LWA)

In 1992, Congress passed and President George H.W. Bush signed, Public Law 102-579 that established many requirements for WIPP, including that it was subject to the Solid Waste Disposal Act. Section 9(a)(1)(C).

The LWA clearly states:

“CAPACITY OF WIPP.—The total capacity of WIPP by volume is 6.2 million cubic feet of transuranic waste.” Section 7(a)(3).

Thus, Congress again determined that WIPP was to demonstrate safe disposal of a limited amount of TRU waste, not more than the capacity, and not all TRU waste. Indeed, in the House floor debate before the final vote, one of the bill co-sponsors, Rep. Peter Kostmayer stated:

“Whether we are going to generate more nuclear waste is not the question. The question is we have got to get rid of the material we have. This facility will take only 20 percent of all the waste that we have. Still 80 percent will remain unburied. We have to deal with that.” Cong. Rec. 32552 (c. 2), October 5, 1992.

Further, Congress recognized that the 6.2 million cubic feet limit is based on gross internal container volumes, which the request and the Draft Permit do not discuss and do not adequately consider, even though the factual basis for the limit is included in SRIC's April 3, 2018 comments and documents that must be in the Administrative Record.

Congress was well aware of container volume as the basis for the WIPP capacity limits that were in the land withdrawal bills. Senate Report 102-196 on the WIPP LWA (S 1671) from the Energy and Natural Resources Committee specifically states: “According to DOE's current plans, a total of 4,525 55-gallon drums of transuranic waste would be used during the experimental program.” Page 27. The House Land Withdrawal Bill (HR 2637) version reported by the House Armed Services Committee stated:

“CAPACITY OF THE WIPP.—The total capacity of the WIPP by volume is 6.2 million cubic feet of transuranic waste. Not more than 850,000 drums (or drum equivalents) of transuranic waste may be emplaced at the WIPP.” Section 9(a)(3). House Report 102-241, Part 2.

House Report 102-241, Part 1 from the Interior and Insular Affairs Committee included capacity limits of 5.6 million cubic feet of contact-handled waste and 95,000 cubic feet of remote-handled waste. Section 7(a). The Report noted that the Test Phase was limited to no more than 4,250 55-gallon drums. Page 18. House Report 102-241, Part 3 from the Energy and Commerce Committee included a dissent opposing the capacity limits “of not more than 5.6 cubic million cubic feet of contact-handled transuranic waste and 95,000 cubic feet of remote-handled transuranic radioactive waste in WIPP.” Section 7(a). The dissenters also opposed the limits of the Test Phase of 4,250 barrels or 8,500 barrels of waste. Page 42.

The capacity of a 55-gallon drum is 7.4 cubic feet. The volume of 850,000 55-gallon drums is 6,290,000 cubic feet. Thus, the 6.2 million cubic feet volume included in the LWA is clearly based on a maximum of 850,000 55-gallon drums (or drum equivalents) being emplaced, regardless of whether they are filled with waste. The fact that the law did not leave in the redundant drum limit to calculate the waste capacity does not change the clearly established limit and its basis.

In their TID Response #6 (AR 180706), the Permittees do not address that legislative history. The Permittees erroneously – with no evidence – state: “the Congress ultimately focused on the 6.2 million ft³ of waste identified in the DOE NEPA documentation.” at 6. There is no NEPA documentation, and the Permittees do not cite to any, that states that the total capacity of WIPP should be 6.2 million cubic feet. The Final Environmental Impact Statement (FEIS, AR 180706) and the 1981 Record of Decision (AR 180706) state that the WIPP capacity is 6.45 million cubic feet, so Congress clearly did not rely or focus on that capacity. The TID Response tries to “deduce” that the FEIS “assumes the containers are filled.” As is more fully discussed below, that is not true, as DOE has long known that not all containers are filled, including many of the TRU containers that existed in 1980 when the FEIS was issued and in 1992 when the LWA was passed.

Moreover, the request and the TID Response do not discuss the then-current WIPP NEPA documentation, which was the Final Supplement Environmental Impact Statement (DOE/EIS-0026-FS, January 1990 “SEIS-I”).

https://www.energy.gov/sites/prod/files/2015/01/f19/EIS-0026-S-volume1_0.pdf

That document repeatedly describes the WIPP capacity as 6.45 million cubic feet. Pages 1-2, 1-6, 2-8, 3-2, 3-4 and others.

So there is no basis to say that Congress focused on or derived the capacity limit from the then current NEPA documentation. The Permittees have provided no evidence that Congress was not aware of the SEIS-I. Nor have the Permittees provided any explanation of why they did not discuss that document. As with the request, the Permittees are not being complete and accurate in their TID Response, and the NMED cannot rely on such submittals. Such incompleteness and inaccuracy is an additional reason that the request and the Draft Permit cannot be approved.

DOE has complied with the capacity limit calculations in reports to Congress

Not only is the WIPP capacity limit appropriately based on those gross internal container volumes, that is the way that DOE has reported to Congress how much waste is disposed at WIPP.

In the annual budget requests to Congress, the volume of waste disposed at WIPP is reported as the gross internal container volumes. See page 17 (and others) of the Fiscal Year 2005 Request.

<https://www.energy.gov/sites/prod/files/FY05Volume5.pdf>
See page 15 (and others) of the Fiscal Year 2006 Request.
<https://www.energy.gov/sites/prod/files/FY06Volume5.pdf>
See page 32 (and others) of the Fiscal Year 2007 Request.
<https://www.energy.gov/sites/prod/files/FY07Volume5.pdf>
See page 33 (and others) of the Fiscal Year 2008 Request.
<https://www.energy.gov/sites/prod/files/FY08Volume5.pdf>
See page 98 (and others) of the Fiscal Year 2009 Request.
<https://www.energy.gov/sites/prod/files/FY09Volume5.pdf>
See page 97 (and others) of the Fiscal Year 2010 Request.
<https://www.energy.gov/sites/prod/files/FY10Volume5.pdf>
See page 94 (and others) of the Fiscal Year 2011 Request.
<https://www.energy.gov/sites/prod/files/FY11Volume5.pdf>
See page 45 (and others) of the Fiscal Year 2012 Request.
<https://www.energy.gov/sites/prod/files/FY12Volume5.pdf>
See page 88 (and others) of the Fiscal Year 2013 Request.
<https://www.energy.gov/sites/prod/files/FY13Volume5.pdf>
See page EM-52 (and others) of the Fiscal Year 2014 Request.
<https://www.energy.gov/sites/prod/files/2013/04/f0/Volume5.pdf>
See page 90 (and others) of the Fiscal Year 2015 Request.
<https://www.energy.gov/sites/prod/files/2014/04/f14/Volume%205%20EM.pdf>
See page 101 (and others) of the Fiscal Year 2016 Request.
<https://www.energy.gov/sites/prod/files/2015/02/f19/FY2016BudgetVolume5.pdf>
See page 91 (and others) of the Fiscal Year 2017 Request.
https://www.energy.gov/sites/prod/files/2016/02/f29/FY2017BudgetVolume5_3.pdf
See page 102 (and others) of the Fiscal Year 2018 Request.
<https://www.energy.gov/sites/prod/files/2017/06/f34/FY2018BudgetVolume5.pdf>
See page 117 (and others) of the Fiscal Year 2019 Request.
https://www.energy.gov/sites/prod/files/2018/03/f49/DOE-FY2019-Budget-Volume-5_0.pdf

Thus, DOE has been reporting to Congress each year about the amount of waste emplaced at WIPP compared with the LWA and Permit capacity limit. Those amounts are the same, again showing that the capacity limit is based on gross internal container volume. The AR is undisputed that DOE has continued to report WIPP volumes as gross internal container volumes, as Congress intended with the LWA capacity volumes.

The modification request ignores those legal requirements and states that the capacity limit: “constrains the DOE from achieving the goal of removing the inventory of TRU mixed waste from the generator/storage sites.” Page 9. As already discussed on pages 3-4, Congress was fully aware and intentionally “constrained” WIPP’s mission and capacity. In fact, the laws prohibit DOE from expanding the capacity limit or from managing other than defense transuranic waste at WIPP.

The permittees’ request – and the Draft Permit – attempt to circumvent the legal capacity limit, or any regulatory limit. The request and Draft Permit would allow DOE to calculate the amount of waste in an unknown and unverifiable way (which could change in the future). 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.

The Permit correctly complies with the legal capacity limit, so no changes are warranted
NMED cannot issue a Permit modification that is contrary to the LWA. NMED is well aware of the LWA. In its written Direct Testimony Regarding Regulatory Process and Imposed Conditions for the original permit, the “Statutory Background” began with the WIPP Authorization and LWA. Page 1 of 9. NMED’s permit writer (Steve Zappe) testified extensively about the LWA. Hearing Transcript, p. 2586-2617.

The WIPP Permit has always incorporated the LWA and the capacity limit. The definition of the facility is:

“The WIPP facility comprises the entire complex within the WIPP Site Boundary as specified in the WIPP Land Withdrawal Act of 1992, Pub. L. 102-579 (1992), including all contiguous land, and structures, other appurtenances, and improvements on the Permittees' land, used for management, storage, or disposal of TRU mixed waste.” Original (1999) Permit Module I.D.2, now Section 1.5.3.

The 6.2 million cubic feet capacity limit always has been incorporated into the WIPP Permit. The limit was included in the Permittees’ Part A application, Original Permit Attachment O, now Attachment B. The capacity limit also is now included in Table 4.1.1, Attachment B, Attachment G1, Attachment G1c, Attachment H1, and Table J3. Until submittal of this request, the permittees have never publicly opposed the capacity limit, measured by gross interior container volume, being in the Permit, nor is there any such evidence in the AR.

SRIC also agrees with Steve Zappe’s April 3, 2018 detailed comments (AR 180402) on pages 4-7 regarding the permit history.

Although the permittees apparently no longer want to comply with the WIPP legal capacity limits, NMED must ensure compliance with the federal law and cannot approve a Permit modification that is contrary to federal laws. Indeed, the history of the Permit includes occasions when the permittees strongly objected to the Permit including provisions that they deemed contrary to legal requirements.

In November 1999, the permittees sued NMED in federal and state courts regarding several provisions of the original WIPP Permit, including the financial assurance conditions that were alleged to be contrary to federal law. On August 9, 2000, the NMED Secretary withdrew the financial assurance conditions because of changed federal law that prohibited such contractor financial assurance requirements. In 2003-2005, there was a prolonged permit modification process regarding Energy and Water Development Appropriations Acts “Section 310 and 311” requirements, in which because of federal law changes, NMED agreed to certain waste characterization and related requirements to be included in the Permit.

NMED has a practice and legal obligation to ensure that provisions of the Permit must comply with federal law. This current request and Draft Permit are contrary to the intent and specific provisions of laws, and NMED must deny the request and not approve the Draft Permit.

The modification request and Draft Permit are contrary to the State's legal authority

In 1981, the State of New Mexico sued the Department of Energy regarding WIPP in Federal District Court in New Mexico. Case Civil Action No. 81-0363 JB. On July 1, 1981, the State Attorney General and U.S. Attorney filed a Joint Motion to Stay All Proceedings, which was approved that day by the Court. As part of the Stipulated Agreement, the Governor of New Mexico and DOE Secretary signed a Consultation and Cooperation (C&C) Agreement, which was provided for by Public Law 96-164, Section 213(b). The C&C Agreement has been modified. AR 180706 (and other documents). The Second Modification, signed on August 4, 1987, incorporates the 6.2 million cubic feet limit into the agreement. Page 4.

The WIPP LWA, passed five years later, states:

“Section 21. Consultation and Cooperation Agreement. Nothing in this Act shall affect the Agreement or the Supplemental Stipulated Agreement between the State and the United States Department of Energy except as explicitly stated herein.”

Further, the New Mexico Hazardous Waste Act (HWA-Chapter 74, Article 4 NMSA 1978) and its regulations require that NMED protect human health and the environment. Complying with federal and state laws is required by the HWA.

Neither the request nor the Draft Permit demonstrate that the “Volume of Record” is needed

The HWA and its regulations, 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(c)(1)(iii)), require a request to “explain[s] why the modification is needed.” The request includes a section 3 purportedly to explain the need (pages 6-11), but the explanation is grossly inadequate and does not explain why the modification is needed. The Fact Sheet does not discuss why the change is needed, nor has NMED stated why the modification is needed.

In its first 19+ years of operations – March 26, 1999 to September 15, 2018 – based on Permit calculations, WIPP has emplaced 93,856 cubic meters of contact-handled (CH) waste and 641 cubic meters of remote-handled (RH) waste, for a total of 94,497 cubic meters, or less than 54 percent of the 6.2 million cubic feet (175,564 cubic meters) volume capacity limit. The request and the Fact Sheet do not specifically discuss that fact, nor address why any change in the capacity limit or a “Volume of Record” is needed now or at any time in the future since waste emplacement will not approach the capacity limit for years or even decades into the future.

SRIC's conclusion is that the reason for the request now is because it is part of the Department of Energy (DOE) efforts to expand WIPP for several missions that are also not allowed by the LWA.

- High-Level Tank Waste. The permittees proposal for bringing high-level tank waste resulted in the Excluded Waste Permit Section 2.3.3.8 in 2004. Nevertheless, the *Final Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington*, DOE/EIS-0391, November 2012, continues to include WIPP as a reasonable alternative disposal site. Further, DOE's current Notice of Preferred Alternative states:
“DOE's preferred alternative is to retrieve, treat, package, and characterize and certify the wastes for disposal at the Waste Isolation Pilot Plant (WIPP) in

Carlsbad, New Mexico, a geologic repository for the disposal of mixed TRU waste generated by atomic energy defense activities.”

<https://www.energy.gov/sites/prod/files/EIS-0391-FEIS-NoticeofPreferredAlternative-2013.pdf>

- Greater-Than-Class C Commercial Waste. *Final Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste*, DOE/EIS-0375 states that WIPP is the preferred geologic disposal alternative and that the “WIPP Vicinity” is a reasonable alternative for Intermediate-Depth Borehole disposal, Enhanced Near-Surface Trench disposal, and Above-Ground Vault disposal. https://www.energy.gov/sites/prod/files/2017/02/f34/EIS-0375-FEIS_NOA-DOE-2016.pdf
- West Valley Commercial Waste. *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*, (DOE/EIS-0226), states that WIPP is the preferred alternative for disposal of its commercial TRU waste. Because of SRIC’s objections to the FEIS, DOE has deferred a TRU waste disposal decision, but has not changed that alternative. <https://www.gpo.gov/fdsys/pkg/FR-2005-06-16/pdf/05-11882.pdf>
- Elemental Mercury storage. *Final Long-Term Management and Storage of Elemental Mercury Environmental Impact Statement Supplemental Environmental Impact Statement*, DOE/EIS-0423-S1 states that WIPP is a reasonable alternative for elemental mercury storage. <https://www.energy.gov/sites/prod/files/2013/09/f3/EIS-0423-S1-FEIS-Summary-2013.pdf>
- Surplus Weapons Plutonium. The National Academy of Sciences currently has a panel examining DOE’s proposal to bring 34 metric tons or more of surplus weapons plutonium to WIPP. <http://dels.nas.edu/Study-In-Progress/Disposal-Surplus-Plutonium/DELS-NRSB-17-03?bname=nrsb>
- Surface storage at WIPP. On September 29, 2016, the permittees submitted a Class 3 Modification Request for Addition of a Concrete Overpack Container Storage Unit. SRIC has strongly objected to the request as being contrary to the LWA, among other things.

The permittees desire to expand WIPP, including for missions contrary to federal laws (for some of the expansions even DOE admits are contrary to the LWA), does not meet the regulatory need requirement. The modification is not needed, and NMED must deny the request and not approve the Draft Permit.

Approving the “Volume of Record” also inevitably leads to expanding the physical underground footprint beyond panels 1-8 and 10. Such an expansion must be approved by NMED through permit modification processes that have not occurred. Such proposed physical expansion must be part of request and Draft Permit for the “Volume of Record.”

SRIC's conclusion regarding why NMED is rushing to approve the Draft Permit, including providing a negotiation schedule that is designed to not resolve the issues and scheduling the Permit Hearing in Carlsbad on October 23, is that the state administration wants to approve the Draft Permit by the time its term expires on December 31, 2018. Such a result would be contrary to federal and state laws, violate numerous permitting regulations, and not protect public health and the environment for present and future generations.

Gross internal container volume is the historic practice of calculating TRU waste volume
Even before WIPP opened in 1999, the waste volume is measured by the size of the gross internal volume of the container, as included in the Permit. To support the WIPP Permit application and other requirements, DOE published a WIPP Transuranic Waste Baseline Inventory Report (WTWBIR) in June 1994. Revision 2 (DOE/CAO-95-1121) included all DOE TRU waste. Page xi. The document calculated all waste volumes in "Final Waste Form," which was the gross internal container volume. In their Permit Application, the permittees included the gross internal container volume amounts, which were incorporated into the original Permit and remain in the current permit. Section 3.3.1.

In their modification request, the permittees admit: "At the time the Permittees prepared the Part B Permit Application, the WIPP LWA limit and the HWDU limit were considered to be the same." Page 7. Moreover, the Permittees have supported the original Permit with WIPP capacity limits based on those gross internal container volumes, Permit modifications with WIPP capacity limits based on those gross internal container volumes, and the Permit renewal with WIPP capacity limits based on those gross internal container volumes. The permittees have not previously stated that there is a reason for a second measurement regarding the capacity limit. There is no basis in the AR to change the capacity limit, nor any reason to add the proposed new Section 1.5.22. Land Withdrawal Act TRU Waste Volume of Record.

Here again, Steve Zappe's comments on pages 3-4 regarding DOE Order 5820.1 and overpacks (AR 180402) are compelling evidence about the Permit and the historical practice. The Permittees have provide no credible, different evidence in the AR.

Numerous other official DOE documents use the gross internal container volume to calculate TRU waste volumes. For example, the calculation for the total volume of legacy TRU waste planned for disposal is approximately 131,000 cubic meters, based on container volumes. See page 13 of: https://www.energy.gov/sites/prod/files/2014/03/f8/Roadmap_Journey_to_Excellence_2010.pdf

The *Annual Transuranic Waste Inventory Report* continues to use the "final form" volumes from the earlier *Baseline Inventory Reports*, though it also uses other terms, including "the volume the waste container occupies in the repository" or "payload container volume" or Contact-Handled "outer container volume," which are the same as the gross internal container volume of the Permit. See, for example, Page 18 of the current 2017 Inventory. http://www.wipp.energy.gov/library/TRUwaste/DOE-TRU-17-3425_Rev_0.pdf (SRIC has consistently objected to the calculated RH volume amounts, and DOE has annually provided RH volumes based on gross internal container volume.)

Moreover, WIPP has used those container volumes in the Permit in its operating contracts, including with co-permittee Nuclear Waste Partnership (NWP). The original NWP contract from 2012 included Programmatic Goal 3: “Complete disposition of 90 percent of the legacy transuranic waste by the end of fiscal year 2015” from the *Roadmap for EM’s Journey to Excellence*, cited above. Page C-3 of:

http://www.wipp.energy.gov/library/foia/NWP_M&OContract/NWP_M&O_Contract.pdf

Not only goals, but performance awards (bonuses) have been provided based on container volumes.

Clearly, gross internal container volumes have consistently been used for calculating the WIPP legal capacity limit, as well as for numerous other reasons. The modification request does not discuss that plethora of documents, nor why those documents should now be considered inaccurate or non-dispositive. The AR inappropriately excludes those documents. The documents must be included in the AR, and they must be considered in determining whether to approve the Draft Permit. The conclusion must be that there is no legal or technical basis to change the Permit capacity limits, which are those provided by the LWA.

DOE and Co-Permittee Nuclear Waste Partnership (NWP) have not demonstrated that they can reliably operate WIPP and correctly calculate capacity limits

As already discussed, federal laws establish WIPP’s volume capacity that is based on gross internal container capacity and do not allow DOE to establish the volume limit or how to calculate such capacity. Moreover, DOE and NWP have demonstrated that they cannot comply with all of the other provisions of the Permit, nor always properly operate the facility.

On February 5, 2014, a fire caused evacuation of 84 underground workers and shut down waste emplacement, which resulted in numerous reports, including from a DOE Accident Investigation Board. <http://www.wipp.energy.gov/Special/AIB%20Report.pdf>

NMED determined that there were numerous permit violations associated with the fire.

Administrative Compliance Order HWB-14-21 (December 6, 2014).

<https://www.env.nm.gov/wipp/documents/141214.6.pdf>

On February 14, 2014, a radiation release occurred at WIPP, which resulted in waste emplacement being suspended for almost three years, until January 2017. Numerous reports were done, including two reports from a DOE Accident Investigation Board.

https://www.energy.gov/sites/prod/files/2014/04/f15/Final%20WIPP%20Rad%20Release%20Phase%201%2004%2022%202014_0.pdf and

<https://www.energy.gov/sites/prod/files/2015/04/f21/WIPP%20Rad%20Event%20Report%20Phase%202%2004.16.2015.pdf>

NMED determined that there were numerous permit violations associated with the radiation release. Administrative Compliance Order HWB-14-21 (December 6, 2014).

<https://www.env.nm.gov/wipp/documents/141214.6.pdf>

Clearly, the Permittees have shown that they cannot operate the facility safely at all times and have had numerous and significant permit violations.

Even with the clear permit volume calculation requirements, DOE has not always correctly reported panel emplacement volumes to NMED. On August 8, 2011, the Permittees submitted a Class 1 modification to revise Table 4.1.1 to reflect final waste volumes in Panel 5.

http://wipp.energy.gov/Library/Information_Repository_A/Class_1_Permit_Modifications/Class_1_Revision_of_Table_4.1.1_and_Table_G1.pdf

The Permittees erroneously reported the RH volume as “5,403 ft³ (153 m³).” NMED did not accept those volumes and corrected them on November 9, 2011:

“NMED changed the final volume for remote-handled (RH) waste in Panel 5 to 8,300 ft³ (235 m³) to maintain consistency with the calculations used to report the RH volume for Panel 4. In their submittal, the Permittees reported the RH volume based on the volume of the containers within the RH canisters emplaced in Panel 5. The corrected RH volume is based on the volume of the RH canisters (264 canisters * 0.89 m³ per canister = 235 m³).”

http://wipp.energy.gov/Library/Information_Repository_A/Class_1_Permit_Modifications/Revised_Permit_11-2011.pdf

In the TID Response (AR 180706), the Permittees include Table 1, which includes a column of “LWA VOR VOLUME (m³)”. However, several of the volumes are not traceable to publicly available sources – nor are any sources provided in the TID Response. NMED and the public cannot rely on those volumes. Even if they erroneously are assumed to be valid currently, they are not binding on the Permittees in the future, nor enforceable by NMED. In contrast, the existing container volumes are based on publicly available information, and enforceable by NMED.

Allowing DOE or the Permittees to determine accurate calculations of the waste emplaced at WIPP is inappropriate, based on that history and other incidents and permit violations since 1999.

The Permittees explanations for the request are incomplete and inaccurate

As discussed in SRIC’s April 3, 2018 comments (AR 180402, SRIC Comments at 7-9), DOE did not accurately cite from their own environmental impact statements (AR 180121 and 180706, among other documents).

On page 8, the request includes a quotation from page 3-8 of the September 1997 *Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement*, DOE/EIS-0026-S-26. The request then states: “As stated in the SEIS-II, containers would be totally full.”

Obviously, as discussed on pages 4-5, in passing the LWA in 1992, Congress did not rely or “focus” on the SEIS-II that was issued five years later.

Moreover, the discussion regarding the SEIS-II is not true, accurate, and complete. The SEIS-II also states:

“the waste volumes used for the SEIS-II analyses are estimates of “emplaced waste volumes” (the volumes of the containers that TRU wastes would be emplaced in), not actual waste volumes inside the containers, except as noted. DOE recognizes that virtually all containers would contain some void space and that some

containers may be only partially filled (for instance, to meet limits on weight or thermal power for transportation). ” Page 2-9.

The SEIS-II also states:

“With the RH-TRU waste volume limit at WIPP of 7,080 cubic meters (250,000 cubic feet), the volume disposed of was calculated using the capacity of the waste containers rather than the volume of the waste within the containers.” Pages A-13 and 14.

The permittees’ very selective use of citations from the SEIS-II is not “true, accurate, and complete.” The quoted selection is highly misleading in light of other statements in the document. The assertion that the SEIS-II stated that “containers would be totally full” is clearly false and cannot be relied upon to support the request or the Draft Permit.

NMED has the authority to deny the request and not approve the Draft Permit

In addition to determining that the Class 2 modification request is considered using Class 3 procedures, as the NMED Secretary determined on June 1, 2018, the Secretary also has authority to deny the request and not approve the Draft Permit, pursuant to 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(c)(6)). The Hearing Officer should recommend denial of the Draft Permit, and NMED should not approve the request and Draft Permit.

Draft Permit Provisions

Part 1 – SRIC opposes proposed Sections 1.5.21. TRU Mixed Waste RCRA Volume and 1.5.22. Land Withdrawal Act TRU Waste Volume. Both provisions are contrary to law. The Permit has always included definitions of waste permitted in Sections 1.5.6. TRU Waste and 1.5.7 TRU Mixed Waste.

Part 3 – SRIC opposes proposed Section 3.3.1.8. Shielded Container*. The first addition – “and an outermost container volume of 7.4 ft³ (0.21 m³)” – is contradicted by the last sentence – “Shielded containers may be overpacked into standard waste box or ten drum overpack.” The outermost container volume is not 7.4 ft³ if overpacked in a SWB or TDOP.

SRIC does support adding an additional sentence to Section 3.3.1.8: “The volume will be calculated based on the gross internal volume of the outermost container.”

Part 4 – SRIC opposes Table 4.1.1. The column “Final LWA TRU Waste Volume” is not a legal term that can be incorporated into the Permit. The changes to footnote 2 and new footnotes 3 and 4 are unacceptable because they are contrary to the law and the provisions that have always been in the Permit. There also is no need to change the column headings for “Capacity” and “Volume.” SRIC does not object to the change in RH volume in Panel 6, though we would note that such changes previously have been approved as class 1 modifications.

Part 6 – SRIC opposes the proposed changes in Section 6.5.2 because they are unnecessary. SRIC opposes the proposed changes in Section 6.10.1 because they incorporate provisions that are not consistent with longstanding provisions of the Permit. They proposed changes also in effect incorporate volume calculations that are not current with federal laws. Further, the Draft Permit

proposed changes in Section 6.10.1 do not incorporate changes made by the Panel Closure that were negotiated by SRIC and others with the Permittees and NMED, and approved by the NMED Secretary on September 7, 2018. A revised Draft Permit must be issued to incorporate those changes.

Attachment A1 – SRIC opposes the changes to “TRU mixed waste volume” from “volume of waste” on page A1-6 because the new term restricts calculation of waste to TRU mixed waste, whereas the Permit has always stated and included all waste, whether purely radioactive or mixed as covered by the Permit. SRIC does not object to the editorial changes on pages A1-7, A1-26, A1-27 (though we object to those changes not being indicated in the left margin), but we would note that a class 3 modification is not necessary for such modifications.

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, which is contrary to law, as noted above. SRIC objects to the change on page A2-6, line 39, because the change restricts calculation of waste to TRU mixed waste, whereas the Permit has always stated and included all waste, whether purely radioactive or mixed waste.

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. The proposed changes on pages B-23 and B-24 restrict calculation of waste to TRU mixed waste, whereas the Permit has always stated and included all waste, whether purely radioactive or mixed waste.

SRIC does support changing the Process Design Capacity on page B-8: 175,564,600 m³

On page B-22, SRIC does support the following changes:

“Approximately 120,000 cubic meters (m³) of the 175,564,600 m³ of WIPP wastes is categorized as debris waste.”

“During the Disposal Phase of the facility, which is expected to last 25 years, the total amount of waste received from off-site generators and any derived waste will be limited to 175,564,600 m³ of TRU waste of which up to 7,079,800 m³ may be remote-handled (RH) TRU mixed waste. For purposes of this application, all TRU waste is managed as though it were mixed. Waste volume is reported as the gross internal volume of the outermost container.”

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.

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, which is contrary to law, as discussed above. Further, the Draft Permit proposed changes do not incorporate the Panel Closure changes that were negotiated by SRIC and others with the Permittees and NMED, and approved by the NMED Secretary on September 7, 2018.

Attachment H – SRIC objects to the Draft Permit change on page H-5, 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.

Attachment H1 – SRIC objects to the Draft Permit changes on page H1-3, because they would incorporate the WIPP Volume of Record waste measurements, which are contrary to laws, as discussed above. SRIC does support the following change to the sentence on page H1-3:

“This waste emplacement and disposal phase ~~will~~ **may** continue until the regulated capacity of the repository of ~~6,200,000~~ **6.2 million** cubic feet (~~ft3~~) (175,564~~88~~ cubic meters) (**m3**) of TRU and TRU mixed waste has been reached, and as long as the Permittees comply with the requirements of the Permit.”

Attachment J – SRIC objects to the changed footnote 2 on page J-3, because they use the LWA Volume, which is contrary to law and refers to proposed Table 4.1.1, which includes changes which are contrary to law, as discussed above.

In summary, NMED should follow past practices and regulatory requirements for the permitting process, including the schedule for and conduct of negotiations and public hearing schedule and locations. NMED should follow federal laws and state authorities and deny the modification request and the Draft Permit.

Thank you very much for your careful consideration of these comments and all others received.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is fluid and cursive, with the first name "Don" and last name "Hancock" clearly distinguishable.

Don Hancock

cc: John Kieling

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: NWNM WIPP VOR Comments
Date: Thursday, September 20, 2018 4:43:10 PM
Attachments: [NWNM_WIPP_VOR_Class_3_comments_9-20-18.pdf](#)

-----Original Message-----

From: Scott Kovac <scott@nukewatch.org>
Sent: Thursday, September 20, 2018 4:16 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Cc: Jay Coghlan <jay@nukewatch.org>
Subject: NWNM WIPP VOR Comments

Ricardo,
Nuclear Watch NM respectfully submits our comments on the WIPP Volume Of Record Permit Modification Request.

Please reply as to the readability and receipt of our comments.

Thank you,
Scott

~~~~~  
Scott Kovac  
Operations and Research Director  
Nuclear Watch New Mexico  
903 W. Alameda #325  
Santa Fe, NM, 87501  
505.989.7342 office & fax  
[www.nukewatch.org](http://www.nukewatch.org)





September 20, 2018

Mr. Ricardo Maestas  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505  
[Ricardo.maestas@state.nm.us](mailto:Ricardo.maestas@state.nm.us)

RE: WIPP "Volume Reduction" PMR

Dear Mr. Maestas:

**Nuclear Watch New Mexico** (NukeWatch) seeks to promote safety and environmental protection at nuclear facilities; mission diversification away from nuclear weapons programs; greater accountability and cleanup in the nation-wide nuclear weapons complex; and consistent U.S. leadership toward a world free of nuclear weapons.

We strongly oppose the "Volume Reduction" Permit Modification Request (PMR) that the Waste Isolation Pilot Plant (WIPP) permittees submitted on August 6, 2018, according to the public notice. The Land Withdrawal Act does not support it. And the need is not proven.

### **Request for Public Hearing and Negotiations**

For the reasons stated in its comments on April 3 and the comments that follow, NukeWatch opposes the Draft Permit and requests a public hearing. Further, and prior to any notice of public hearing, pursuant to 20.4.1.901. A.4 NMAC and NMED practice regarding past class 3 modifications and the permit renewal hearing, NukeWatch requests that NMED, the Permittees, NukeWatch, and other parties conduct negotiations to attempt to resolve issues.

### **Objections to NMED's Planned Schedule for Negotiations**

While there are many problems with the request, we'll start with our objections to NMED's planned schedule for negotiations. NukeWatch opposes NMED's plans to start negotiations on Monday, September 24, which does not provide adequate notice to the many parties that are requesting a public hearing, nor adequate time for parties to read all of the comments submitted by September 20 and prepare for the negotiations. In the most recent class 3 modification – Public Notice No. 18-01 of February 22, 2018 – requests for a public hearing were due and received by April 23, 2018. Negotiations were scheduled and conducted with NMED, the Permittees, and all of the parties that had requested a public hearing – Southwest Research and Information Center (SRIC), Concerned Citizens for

Nuclear Safety (CCNS), Nuclear Watch New Mexico (NWNM) – from July 31 to August 2. The negotiations were held more than 95 days after the hearing requests were due and received. These negotiations eliminated the need to have a hearing.

Here, NMED is proposing negotiations within five days after the date for hearing requests are due even though the Draft Permit is much more controversial than the previous Panel Closure modification and even though there are many more parties requesting a public hearing than in the case of the Panel Closure Draft Permit.

The proposed schedule will have the effect of excluding some parties from the negotiations because of the short notice. In fact, NMED and the Permittees were informed at a meeting in Santa Fe on September 17 that there were objections to that negotiation schedule and that some parties would be excluded. NukeWatch is aware of more than a dozen organizations that will be requesting a public hearing that have not been notified by NMED of the proposed negotiation schedule. Thus, they will be provided with even less notice and opportunity to prepare for the negotiations.

Thus, NukeWatch is being prejudiced by not having adequate time to prepare for the negotiations. Since NukeWatch's representative has a long scheduled conference out of the country starting on Wednesday, September 26, he will not be able to participate in negotiations that date or after that date for two weeks. Thus, NukeWatch could be deprived of the ability to "attempt to resolve the issues giving rise to the opposition," as provided by 20.4.1.901. A.4 NMAC.

Other parties may be deprived of all opportunity to participate in the negotiations because of the unnecessarily rushed schedule. They will have no opportunity to meet with NMED, the Permittees, and other parties attempt to resolve the issues, as provided by 20.4.1.901. A.4 NMAC.

NukeWatch requests that at least 30 days be provided from September 20 until the start of negotiations so that all participants can read all of the comments received by parties requesting a public hearing and prepare for the negotiations, including making any necessary adjustments in their schedules so that they can participate, if they so desire. NukeWatch also believes that the notice of public hearing should be delayed until after the negotiations are held.

### **Objections to NMED's Planned Public Hearing Schedule and Location**

On September 17, the Permittees, SRIC, CCNS, NukeWatch, and Citizens for Alternatives to Radioactive Dumping (CARD) were informed by NMED that the Notice of Public Hearing on the Draft Permit would be issued on Saturday, September 22 for a public hearing on Tuesday, October 23 in Carlsbad. At that time, NukeWatch strongly objected to the location of the hearing being outside of Santa Fe and that the large majority of people of the State interested in the Draft Permit in Albuquerque and Santa Fe would be deprived of the opportunity to attend the hearing and provide public comment.

The public hearings on the original WIPP Permit were held in Santa Fe for 19 days from February 22 to March 26, 1999. Non-technical oral public comment hearing was held in Carlsbad on March 9. For the Permit Renewal, public hearings were held in Santa Fe on August 9 and 10, 2010, and non-technical public comment hearing was held in Carlsbad on August 16.

NukeWatch believes that those precedents should be followed for the Draft Permit. The technical testimony should occur in Santa Fe with public comment hearing in Carlsbad. NukeWatch suggests that the schedule for the hearing should be part of the negotiations, but should not occur on October 23 in Carlsbad unless it is for non-technical public comment. The technical testimony should be in Santa Fe and held at a later date.

### **Objections to the Draft Permit – It Violates the Law**

The Permittees have not shown in the Administrative Record a need for, or their legal authority for, the proposed “Volume of Record” or for the substantial WIPP expansion that the changes would allow. NMED has not shown in the Administrative Record how the Draft Permit protects public health and the environment or fulfills the State’s legal authorities.

Our specific objections include that the Draft Permit and the modification request are contrary to the requirements of the two primary federal laws that specifically govern the Waste Isolation Pilot Plant (WIPP). Those laws are the WIPP Authorization (Public Law 96-164, Section 213 of 1979) and the WIPP Land Withdrawal Act (LWA, Public Law 102-579 of 1992). Those laws provide specific requirements and limitations on WIPP and specific authorities to the State of New Mexico. Many provisions of the Draft Permit are inconsistent with those legal requirements. For example, that the legal limit of 6.2 million cubic feet of defense transuranic waste is based on the waste volume being measured by the size of the gross internal volume of the container, as has always been included in the Permit. 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.

The request seeks to very significantly change the way the volume of waste is measured in order to substantially increase the capacity. Since before WIPP opened in 1999, the waste volume measured was that of the outer container. That measurement has always been included in the WIPP Permit, and that way that has reported to Congress how much waste disposed at WIPP. The proposed new measurement of the volume of waste inside container results in “reducing” the amount of waste in WIPP by more than 930,000 cubic feet. The effect would be to immediately increase WIPP’s capacity by that amount. Such an expansion of capacity is a clear attempt to circumvent the WIPP Land Withdrawal capacity of 6,200,000 cubic feet. Section 7(a)(3). Such a major change is unacceptable and apparently contrary to law. We ask you to deny the request.

The Permittees have not shown in the Administrative Record a need for, or their legal authority for, the proposed “Volume of Record” or for the substantial WIPP expansion that the changes would allow. NMED has not shown in the Administrative Record how the Draft Permit protects public health and the environment or fulfills the State’s legal authorities.

#### WIPP Authorization - Public Law 96-164, Section 213

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. Congress has maintained those legal requirements and constraints for the last 39 years. Additionally, Congress has not changed the authorization in subsequent nuclear waste laws.

In 1982, Congress passed the Nuclear Waste Policy Act (NWPA) of 1982 (Public Law 97-425), “to provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes.” The law did not apply to WWP because the facility was authorized as being exempt from Nuclear Regulatory Commission (NRC) licensing, while any repository only for high-level defense waste would be licensed by the NRC. Section 8(b)(3).

In 1987, Congress amended the NWPA to designate a single high-level waste and spent fuel repository, and discussed whether that facility should be WIPP, but again determined that WIPP would not be that facility, and instead designated Yucca Mountain, Nevada as the repository.

In 1992, Congress passed, and President George H.W. Bush signed, Public Law 102-579 that established many requirements for WIPP, including that it was subject to the Solid Waste Disposal Act. Section 9(a)(1)(C). It’s also known as the WWP Land Withdrawal Act (LWA).

The LWA clearly states:

“CAPACITY Of WIPP. —The total capacity of WIPP by volume is 6.2 million cubic feet of transuranic waste.” Section 7(a)(3).

Thus, Congress determined that WIPP was to demonstrate safe disposal of a limited amount of TRU waste, not more than the capacity, and not all TRU waste. ***Congress recognized that the limit was based on gross internal container volumes***, which the request does not discuss.

This permit modification request ignores those legal requirements and states that the capacity limit: “constrains the DOE 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.

NMED cannot approve a Permit modification that is contrary to the LWA. NMED is well aware of the LWA. In its written Direct Testimony Regarding Regulatory Process and Imposed Conditions for the original permit, the “Statutory Background” began with the WWP Authorization and LWA. Page 1 of 9. NMED’s permit writer testified extensively about the LWA. Hearing, p. 2586-26 17.

***The WIPP Permit has always incorporated the LWA and the capacity limit.*** The definition of the facility is:

“The WIPP facility comprises the entire complex within the WIPP Site Boundary as specified in the WIPP Land Withdrawal Act of 1992, Pub. L. 102-579 (1992), including all contiguous land, and structures, other appurtenances, and improvements on the Permittees’ land, used for management, storage, or disposal of TRU mixed waste.” Original (1999) Permit Module LD.2, now Section 1.5.3.

Further, the LWA capacity limit always has been incorporated into the WIPP Permit. The limit was included in the Permittees’ Part A application, Original Permit Attachment O, now Attachment B. The capacity limit also is now included in Table 4.1.1, Attachment B, Attachment G1, Attachment G1c Attachment H1, and Table J3. ***Until submittal of this request, the permittees have never publicly opposed the capacity limit, measured by gross interior container volume, being in the Permit.***

Although the permittees apparently do not want to comply with the WIPP legal capacity limits, NMED must ensure compliance with the federal law and cannot approve a Permit modification that is contrary to federal laws. Indeed, the history of the Permit includes occasions when the permittees strongly objected to the Permit including provisions that they deemed contrary to legal requirements.

In November 1999, the permittees sued NMED in federal and state courts regarding several provisions of the original WIPP Permit, including the financial assurance conditions, that were alleged to be contrary to federal law. On August 9, 2000, the NMED Secretary withdrew the financial assurance conditions because of changed federal law that prohibited such contractor financial assurance requirements. In 2003-2005, there was a prolonged permit modification process regarding Energy and Water Development Appropriations Acts “Section 310 and 311” requirements, in which because of federal law changes, NMED agreed to certain waste characterization and related requirements to be included in the Permit.

NMED has a practice and obligation to ensure that provisions of the Permit must comply with federal law. This current request is contrary to the intent and specific provisions of laws, and NMED must deny this request.

### **General Comments – This Request Is Not Needed**

The New Mexico Hazardous Waste Act (HWA) and its regulations, 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(b)(1)(iii)(B)), require a request to “explain[s] why the modification is needed.” The request includes a section 3 purportedly to explain the need (pages 6-11), but the explanation is grossly inadequate and does not explain why the modification is needed.

In its first 19 years of operations — March 26, 1999 to March 26, 2018 — less than 55 percent of that 6.2 million cubic feet (175,564 cubic meters) volume capacity limit has been emplaced at WWP. The request does not specifically discuss that fact, nor address why any change in the capacity limit nor a “Volume of Record” is needed now or at any time in the future since the existing gross internal container volume limits are adequate for years or even decades into the future.

NukeWatch’s conclusion is that the reason for the request now is because it is part of the Department of Energy (DOE) efforts to expand WIPP for several missions that are also not allowed by the LWA. The permittees desire to expand WIPP, including for missions contrary to federal laws (for some of the expansions even DOE admits are contrary to the LWA), does not meet the regulatory need requirement. The modification is not needed, and NMED must deny the request.

A quick look at the August 6, 2018 Final Fact Sheet shows the flimsiest of reasons for this PMR. It states (Pg. 2):

This modification proposes to distinguish how the Permittees calculate final TRU mixed waste volumes for the purposes of reporting and for comparing such volumes to the maximum hazardous waste disposal unit capacities prescribed by Permit Part 4, Table 4.1.1, *Underground HWDUs*, so that capacities in the Permit, which are limited by the physical volume of each mined HWDU, are not exceeded.

So, this PMR is to keep track of the waste in the HWDUs. This is already being done, and any change is not needed. The Fact Sheet continued (Pg. 2):

This Modification also proposes to distinguish between TRU mixed waste RCRA volume and Land Withdrawal Act (“**LWA**”) TRU waste volume.

These two volumes were invented by the Permittees as a way to have two sets of books. Why count something once, when you get paid to count it twice?

### **Gross Internal Container Volume of the Outermost Container Is The Historic Practice Of Determining The Capacity Limit**

Even before WIPP opened in 1999, the waste volume is measured by the size of the gross internal volume of the outermost container, as included in the Permit. To support the WIPP Permit application and other requirements, DOE published a WIPP Transuranic Waste

Baseline Inventory Report (WTWBIR) in June 1994. Revision 2 (DOE/CAO-95-1 121) included all DOE TRU waste. (Page xi) The document calculated all waste volumes in "Final Waste Form," which was the gross internal container volume. In their Permit Application, the permittees included the gross internal container volume amounts, which were incorporated into the original Permit and remain in the current permit. (Section 3.3.1)

In their modification request, the permittees admit: "At the time the Permittees prepared the Part B Permit Application, the WIPP LWA limit and the HWDU limit were considered to be the same." (Page 7) The permittees have not previously stated that there is a reason for a second measurement regarding the capacity limit. There is no basis to change the capacity limit, nor any reason to add the proposed new Section 1.5.22. - Land Withdrawal Act TRU Waste Volume of Record.

Not only is the WPP capacity limit appropriately based on those gross internal container volume of the outermost container, that is the way that DOE has reported to Congress how much waste is disposed at WIPP. In the annual budget requests to Congress, the volume of waste disposed at WIPP is reported as the gross internal container volumes of the outermost container.

Thus, DOE has been reporting to Congress each year about the amount of waste emplaced at WIPP compared with the LWA and Permit capacity limit. Those amounts are the same. The modification request provides no explanation of why that historic practice should be changed.

Clearly, gross internal container volumes have consistently been used for calculating the WIPP legal capacity limit, as well as for numerous other reasons. The modification request does not discuss that plethora of documents, nor why those documents should now be considered inaccurate or should be changed. There is no legal basis to change the Permit capacity limits, which are those provided by the LWA.

### **General Comments – Lack of Concern For Connected Actions**

A major problem with this PMR is the lack of consideration of connected actions and cumulative effects. A federal agency cannot segment proposed actions into small pieces to avoid looking at the big picture. Connected actions must be considered together and not be sneaked in separately. An agency should analyze "connected actions" and "cumulative actions" in one document. DOE has hacked the proposed expansion of WIPP into little PMR pieces.

Agency "connected actions" are those actions that are tied to other actions, cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for justification. The proposed Volume Reduction PMR would not stand alone.

“Cumulative actions” are those that when viewed with other actions proposed by the agency have cumulatively significant impacts. Regulations are directed at avoiding segmentation, wherein the significance of the environmental impacts of an action as a whole would not be evident if the action were to be broken into component parts and the impact of those parts analyzed separately.

The Carlsbad Field Office should think of this proposed PMR expansively and aim to include rather than exclude connected activities. The proposed Volume Reduction PMR is actually a small part of the larger plan to expand WIPP.

- DOE must do a big Class 3 PMR for expansion of WIPP.
- Here’s a list coming regulatory items that be considered together as connected actions to expand WIPP:
  - New shaft
  - New filter building
  - Revised training
  - Updates and efficiencies
  - Excluded waste prohibition
  - Addition of concrete overpack aboveground storage
  - Panel closure redesign
  - Additional waste disposal panels
  - Others

Safe operations of the WIPP site and along the transportation routes should be the focus – not expansion.

### **Specific Comments – The Word “Clarify” Must Be Removed From the Title**

The August 6, 2018 fact sheet gives the title of this PMR as, ***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.*** This PMR clarifies nothing. As a matter of fact, this PMR muddles the current volume reporting system that has been in place since before WIPP opened. 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 to clarify things. This confusing narrative may be accepted by some people unfamiliar with the administrative record for the Permit, but is easily dismissed when considering the facts and including information conveniently left out by the Permittees.

### **Specific Comments – Permit Part 1 – The New Definitions Must Be Removed**

Permit Part 1 states -

1.5.21. TRU Mixed Waste RCRA Volume



“TRU Mixed Waste RCRA Volume (**TRU Mixed Waste Volume**)” means the gross internal volume of the outermost disposal container of TRU mixed waste pursuant to waste volumes in this Permit. For purposes of this Permit, all TRU waste is managed as though it were mixed. This volume is tracked and reported by the Permittees relative to the authorized maximum capacities in Permit Part 4, Table 4.1.1.

#### 1.5.22. Land Withdrawal Act TRU Waste Volume

“Land Withdrawal Act TRU Waste Volume (**LWA TRU Waste Volume**)” means the volume of TRU waste inside a disposal container. This volume is tracked and reported by the DOE internally relative to the WIPP Land Withdrawal Act total capacity limit of 6.2 million ft<sup>3</sup> (175,564 m<sup>3</sup>) (Pub. L. 102-579, as amended). For informational purposes, the LWA TRU Waste Volume is included in Table 4.1.1.

The Permittees attempt to create two new definitions in the Permit:

1. TRU Mixed Waste RCRA Volume; and
2. Land Withdrawal Act TRU Waste Volume

There is no basis for the Permittees to now propose two new definitions for how disposal waste volume should be calculated. Instead, NMED should take this opportunity to explicitly state in the Permit what has been historically understood to constitute waste container volume.

The Permittees are redefining terms at their convenience. For example, all the TRU waste at WIPP is managed as mixed waste, therefore, the second definition should be “Land Withdrawal Act TRU Mixed Waste Volume”. Why was “Mixed” left out of this definition? It would be the exact same waste as “TRU Mixed Waste RCRA Volume”.

These definitions create a false dichotomy by pitting “bad” RCRA volumes (outer or overpack container volume) against the mythically “correct” LWA waste volumes (supposedly the inner container volume, particularly for overpacked containers). However, they are all the same volume based upon the gross internal volume of the outermost container.

We find it disturbing that Land Withdrawal Act TRU Waste Volume means “the volume of TRU waste inside a disposal container.” At the very least this definition should mention an inner container volume and should be based on an inner container volume. Do the Permittees mean that only the waste in a stand-alone drum be counted? This is a serious omission and must be corrected.

The Permittees attempt to limit the Permit’s concern with waste volume solely to the volume of waste disposed of in Underground Hazardous Waste Disposal Units (HWDUs) or Panels by removing all references to the maximum repository capacity of 6.2 million cubic feet. Does this remove NMED’s authority to regulate the 6.2 million cubic foot capacity?

Clearly, the Permittees are happy to limit individual Hazardous Waste Disposal Units (HWDUs or Panels) without limiting the total number of HWDUs or Panels. This is a backdoor way to increase the capacity of WIPP.

The Permittees attempt to allow the DOE to “track and report” the LWA VOR separately from the Permit. The Permittees must provide details of DOE's plan or mechanism to track and report waste volumes pursuant to the LWA. Please clarify if DOE will use fill factor or inner container volumes. Explain how and when the plan will be implemented. Also, please clarify if the action will be retroactive. Provide the conversion factors or calculations that will be used to convert RCRA volume to LWA volume. DOE must clarify to whom or what organization the LWA volume and additional information mentioned above will be reported to, and how this will be documented. Provide details, if any, regarding regulatory oversight. Provide a list of regulatory agencies or organizations who oversee the WIPP Permittees.

The September 1997 SEIS-II (p. 8) states, “the volume of the drum or cask is used, as if the drum or cask were full without void space.” Since at least 1982, DOE has carefully studied and estimated the inventory of retrievably stored and newly generated waste potentially destined for WIPP. Although rarely stated explicitly in the record, DOE’s historic method for estimating the volume of TRU and TRU mixed waste stored in containers at generator/storage sites relies on counting containers and using the internal gross volume of the disposal container.

Thus, it is clear that assuming “the drum or cask were full without void space” is simply a conservative assumption to ensure bounding results from any modeling analyses performed and is not a realistic expectation. Everybody involved in the original permit application process understood that few waste containers would ever 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.

### **Specific Comments – Permit Part 3**

Section 3.3.1.8 on Shielded Containers states:

Each shielded container contains a 30-gallon inner container with a gross internal volume of 4.0 ft<sup>3</sup> (0.11m<sup>3</sup>) and an outermost container volume of 7.4 ft<sup>3</sup> (0.21 m<sup>3</sup>). Shielded containers contain RH TRU mixed waste, but shielding will allow it to be managed and stored as CH TRU mixed waste. For the purpose of this Permit, shielded containers will be managed, stored, and disposed as CH TRU mixed waste, but will be counted towards the RH TRU mixed waste volume limits associated with RH TRU mixed waste. Shielded containers may be overpacked into standard waste box or ten drum overpack.

Because it is lead, would the outer shielding of a shielded container count as RCRA waste or LWA waste? This is another example of the lack of detail that should cause this PMR to be denied.

#### **Specific Comments – Permit Part 4**

Table 4.1.1 - Underground HWDUs Footnote 4 states:

Final LWA TRU Waste Volume is calculated based on the volume of TRU waste inside a disposal container. The volume listed here is tracked and reported by the DOE internally pursuant to the WIPP Land Withdrawal Act total capacity limit of 6.2 million ft<sup>3</sup> (175,564 m<sup>3</sup>) of TRU waste (Pub. L. 102-579, as amended) and is included here for informational purposes. A link to the LWA TRU Waste Volume is posted on [www.wipp.energy.gov](http://www.wipp.energy.gov).

Once again, there is no mention of the volume of an inner container, which there must be. Is the intent of this PMR to count the waste volume as the total volume of the inner container, or not? This must be stated. But even more disturbing is the statement that the WIPP Land Withdrawal Act total capacity limit of 6.2 million ft<sup>3</sup> (175,564 m<sup>3</sup>) 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?

#### **Conclusion**

The permit modification request seeks to very significantly change the way the volume of waste at WIPP is measured in order to substantially increase the facility’s capacity. Since long before WIPP opened in 1999, the waste volume is measured by the size of the outer container. That measurement has always been incorporated into the WIPP Permit, and it is that way that DOE has reported to Congress how much waste is disposed at WIPP. The proposed new measurement of the volume of waste inside a container results in “reducing” the amount of waste in WIPP by more than 930,000 cubic feet. The effect would be to immediately increase WIPP’s capacity by that amount. Such an expansion of WIPP’s capacity is a clear attempt to circumvent, not comply, with the WIPP Land Withdrawal Act capacity limit of 6,200,000 cubic feet. Such a major change is unacceptable, apparently contrary to law, and the PMR should be denied.

All proposed changes in the PMR related to striking or modifying the 6.2 million ft<sup>3</sup> limit should be denied.

For these reasons and more, Nuclear Watch NM requests a hearing on this permit modification request.

Sincerely,  
Scott Kovac  
Nuclear Watch New Mexico

**From:** [Maestas, Ricardo, NMENV](#)  
**To:** [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)  
**Subject:** FW: WIPP Public Comment - Draft Permit Mod for VOR  
**Date:** Thursday, September 20, 2018 4:43:21 PM  
**Attachments:** [2018\\_09\\_20\\_16\\_13\\_17.pdf](#)

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**From:** Cathrynn Brown <c.brown.nm55@gmail.com>  
**Sent:** Thursday, September 20, 2018 4:18 PM  
**To:** Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>  
**Subject:** WIPP Public Comment - Draft Permit Mod for VOR

Hello Ricardo,

Please see my letter attached.

My thanks,

Cathrynn Brown

--

Cathrynn N. Brown  
State Representative, District 55  
Carlsbad, Artesia, Loving, Malaga & Otis

Mail: P.O. Box 3072  
Carlsbad, NM 88220-8813  
Phone: (575) 706-4420  
E-Mail: [c.brown.nm55@gmail.com](mailto:c.brown.nm55@gmail.com)



State of New Mexico  
**House of Representatives**  
Santa Fe

**CATHRYNN N. BROWN**

R - Eddy  
District 55

**COMMITTEES:**  
Judiciary  
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September 20, 2018

Mr. Ricardo Maestas  
New Mexico Environment Department  
2905 Rodeo Park Drive East – Building 1  
Santa Fe, NM 87505

E-Mail: [ricardo.maestas@state.nm.us](mailto:ricardo.maestas@state.nm.us)

RE: Draft Permit Issued on August 6, 2018 by NMED  
Pertaining to WIPP Volume of Record

Dear Mr. Maestas,

Please consider this my public comment regarding the draft permit identified above.

It is my understanding that NMED has elevated the U.S. Department of Energy's request for a permit modification pertaining to the WIPP volume of record (VOR) to a Class 3. I still very strongly support NMED's granting of this permit modification and will refrain from restating my reasons in this letter, as I wrote to you on this matter during an earlier comment period.

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. Public meetings around the state have been well attended, and the VOR plan has been clearly articulated and discussed. Stakeholders have asked questions and received answers to those questions, and everyone who wanted to submit public comments has had ample opportunity to do so. I do not see a justification for going to a hearing and believe that such a step would be not only duplicative but would result in unnecessary delay and expense. In the event NMED does decide to add a hearing, I request that the hearing be held in Carlsbad, the city closest to WIPP.

Sincerely,

*Cathryn-Novich Brown*

Cathrynn Novich Brown

**From:** [Maestas, Ricardo, NMENV](#)  
**To:** [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)  
**Subject:** FW: WIPP Draft Permit  
**Date:** Thursday, September 20, 2018 5:07:37 PM

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**From:** Joan Robins <1robins@swcp.com>  
**Sent:** Thursday, September 20, 2018 4:45 PM  
**To:** Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>  
**Subject:** WIPP Draft Permit

Dear Project Manager Maestas,

I am writing regarding the NM Environment Department approving a permit modification that would say the WIPP repository is 1/3 full instead of half full. The change definitions would increase the transuranic waste which is a bad idea. It was calculated correctly before and should not be changed to accomodate more waste.

Sincerely,

Joan Robins

3565 Rio Grande NW

Albuquerque, NM 87107

**From:** [Maestas, Ricardo, NMENV](#)  
**To:** [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)  
**Subject:** FW: Reade & CCNS Comments re: proposed WIPP VOR  
**Date:** Thursday, September 20, 2018 5:10:04 PM  
**Attachments:** [f Reade CCNS Class 3 WIPP VOR Comments 9-20-18.pdf](#)  
[2018-updatev3-SE-ThreatsMap\\_13x19-1.pdf](#)

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-----Original Message-----

From: Joni Arends <jarends@nuclearactive.org>  
Sent: Thursday, September 20, 2018 4:47 PM  
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>; Deborah Reade <reade@nets.com>  
Subject: Reade & CCNS Comments re: proposed WIPP VOR

Good afternoon,

Please find attached the comments of Deborah Reade and CCNS about the proposed WIPP Volume of Record permit modification. Please contact us with any questions or comments you may have.

Sincerely,

--

Joni Arends, Executive Director  
Concerned Citizens for Nuclear Safety  
P. O. Box 31147  
Santa Fe, NM 87594-1147  
505 986-1973  
[www.nuclearactive.org](http://www.nuclearactive.org)

**Concerned Citizens for Nuclear Safety**  
P. O. Box 31147  
Santa Fe, NM 87594-1147  
(505) 986-1973  
[www.nuclearactive.org](http://www.nuclearactive.org)

**Deborah Reade**  
117 Duran Street  
Santa Fe, NM 87501  
(505) 986-9284  
[reade@nets.com](mailto:reade@nets.com)

September 20, 2018

By email to: [Ricardo.Maestas@state.nm.us](mailto:Ricardo.Maestas@state.nm.us)

Mr. Ricardo Maestas, WIPP Project Manager  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building One  
Santa Fe, NM 87505-6303

Re: Public Comments about Class 3 Draft Permit  
TRU Mixed Waste Disposal Volume Reporting for the  
Waste Isolation Pilot Plant (WIPP)

Dear Mr. Maestas:

Deborah Reade, as an individual, and Concerned Citizens for Nuclear Safety (CCNS), a 30-year old non-governmental organization based in Santa Fe, New Mexico, provide the following general and specific public comments about the above-referenced Class 3 Draft Permit. Reade and CCNS oppose the proposed Volume of Record (VOR) Class 3 Draft Permit, and respectfully request a public hearing be held.

Further, and prior to any notice of public hearing, pursuant to 20.4.1.901.A.4 NMAC and New Mexico Environment Department (NMED) past practices regarding past Class 3 permit modification requests (PMRs) and the permit renewal hearing, we request that NMED, the Permittees (Department of Energy (DOE) and Nuclear Waste Partnership, LLC (NWP)), Reade, CCNS, and other parties conduct negotiations to attempt to resolve issues.

### **GENERAL COMMENTS**

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 to allow the public to fully understand and present technical testimony



upon which the Secretary of the Environment Department would make a final determination approving or disapproving the permit.

These comments focus on the preliminary documents reviewed by the public to provide informed public comments to NMED. To ensure we are working from the same page, and there has some confusion on the parties' part, we provide the 20.1.4 NMAC definitions for these essential documents in the hearing process, along with the Hearing Record and Record Proper.<sup>1</sup>

## SPECIFIC COMMENTS

**1. NMED Did Not Provide a Draft Permit Based on the Current Version of the WIPP Permit for Public Review and Comment.** The August 6, 2018, Fact Sheet states, "The foundation for the draft Permit is the current Permit as of June 2018." p. 2.

The June 2018 Permit is not the current Permit. On July 31, August 1 and 2, 2018, negotiations were held about the Panel Closure PMR and Draft Permit, resulting in an agreement between the Parties (NMED, Permittees, Southwest Research and Information Center (SRIC), CCNS, and Nuclear Watch NM) to change language in the Permit.

In the Department's rush to move the VOR process forward, the most current Permit was not used to provide the public with the current Permit. This matter is further complicated by the fact that the Panel Closure negotiations resulted in changes to the same permit sections as those in the draft VOR permit. For example, Attachment G *Panel Closure*, and Attachment H *Post-Closure Plan*.

Further, neither the Public Notice, nor the Fact Sheet revealed that the proposed changes are indicated on a previous iteration of the permit – not the current iteration based on the changes negotiated for the Panel Closure.

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<sup>1</sup> **Draft Permit** means a document prepared by the Division indicating the Division's proposed decision

**Administrative Record** means all public records used by the Division in evaluating the application or petition, including the application or petition and all supporting data furnished by the applicant or petitioner, all materials cited in the application or petition, public comments, correspondence, and as applicable, the draft permit and statement of basis or fact sheet, and any other material used by the Division to evaluate the application or petition. 20.1.4.7.A.2 NMAC.

**Hearing Record** means the Record Proper and the written transcript or recorded tape of the public hearing, including all exhibits offered into evidence, whether or not admitted. 20.1.4.7.A.14 NMAC.

**Record Proper** means the Administrative Record and all documented filed by or with the Hearing Clerk. 20.1.4.7.A.19 NMAC.

NMED did not provide a provide “a document prepared by the Division indicating the Division’s proposed decision to issue, deny, or modify a permit. 20.1.4.7.A.9 NMAC. For this reason alone, the Draft VOR Permit must be retracted, repaired with the proposed modifications on the current version of the Permit, and then released for public review and comment.

This is a fatal flaw in the Draft Permit. Nevertheless, we have not taken the time to make specific comments about the language inaccuracies, inconsistencies, and incompleteness of the Draft VOR Permit because it is not based on the most current Permit.

**2. Where is the Administrative Record posted?** We have been unable to find an electronic copy of the Administrative Record (AR).

**3. The Administrative Record Index** is incomplete and inaccurate to allow the public to fully understand and present technical testimony upon which the Secretary of the Environment Department would make a final determination approving or disapproving the draft permit. For example, the four-page AR Index does not include the Permittees’ certificate of publication.

Further, public comments are grouped together at AR Index 180316 – 180405. These comments are not individually listed as those at AR Index 180209 – 180309. It is unclear what the distinction exists between the two groups.

We note that the extensive technical comments of Steve Zappe and SRIC were inserted into the group AR Index listing.

It is confusing why the Permittees submitted the proposed 1991-1992 U.S. House and Senate legislation (H.R. 2637 and S. 1671) into the AR. AR Index 180706. Why did they not submit the Public Law 102-579, the Waste Isolation Pilot Plant Land Withdrawal Act? What language is found in the proposed legislation that was not incorporated into P.L. 102-579 that the Permittees want to use to support their PMR?

This is but one example of the absence of important historical documents in the AR. Cf. the draft VOR Permit AR Index to that for the 1998 public hearing for the initial Draft Permit. The AR is incomplete for the public to understand whether the Permittees have the authority to even propose double counting the waste.

**4. Where are the confidential documents/file stored? Where is the AR Index for the confidential documents/file?**

**5. NMED has not provided equal access or information to Spanish speaking members of the public.**

New Mexico is one of a few states in the U.S. where distinct minority racial groups constitute the majority of the population. In the state, 35.7% of the population speaks a language other than English in the home. NMED is a recipient of federal funds from the Environmental Protection Agency (EPA) and therefore is not allowed to discriminate in any of its programs. EPA Low English Proficiency (LEP) Guidance states that recipients of federal funds must assess LEP service needs at a programmatic level, not only on a project-by-project basis.

There is also a large interest in the WIPP project throughout the state and facility transportation is routed near and through many communities in the state. Therefore NMED must provide Spanish translation of vital documents not only for the local area, but also for those affected throughout the state by its programs. Limiting the public process almost entirely to English, as has been done with this proposed modification, will create disparate effects or impacts for most New Mexico communities and will foreclose a meaningful opportunity for LEP community members to participate in the public process.

NMED has had extensive discussions with EPA and the public about the difficulties that LEP Spanish speakers have participating equally in the public processes for permitting facilities; therefore, NMED is well aware of these problems. In January 2017, NMED signed a Resolution Agreement with EPA on this matter and has created implementing policies on this matter. However, although the public notices on this modification have been translated into Spanish, that is the entire information available for the LEP Spanish speaking community about this modification.

Even the Fact Sheets have not been translated nor have any portions of the Draft Permit, the AR Index or of the AR itself been translated into Spanish. Although NMED is not required to translate the entire Record or Draft Permit into Spanish as they are lengthy, enough should be translated or summarized and translated so that LEP Spanish speakers can understand the modification, can fully and equally participate in the public process, and can provide public comment. With such a small amount of information available to them, no meaningful participation is possible.

As part of their implementing policies, NMED has retained an interpreter to help with questions from LEP Spanish speakers and to provide equal access to information that has not been translated. However, none of the public materials, including the English and Spanish Public Notices nor the English Fact Sheets inform the public that this interpreter is available or how to contact them. Ironically, information is provided for persons with disabilities on how to receive assistance and this paragraph is immediately before the paragraph that states that NMED does not discriminate. NMED have not met

their Civil Rights Act Title VI obligations with this modification and continue to discriminate against LEP Spanish-speakers.

NMED must describe how it will make corrections and provided the needed documents in Spanish.

## **6. The NMED's Public Involvement Plan (PIP)**

As discussed at the September 17, 2018 meeting between the Environment Department, the Permittees, CCNS, SRIC, Nuclear Watch NM, and Citizens for Alternatives to Radioactive Dumping (CARD) to discuss the draft Permit, we reiterate the following:

Section VI. EJSCREEN Summary. We question the Department's inadequate use of a 15-mile radius of the WIPP facility in its preliminary screening. A 15-mile radius does not even include the City of Carlsbad, NM. In fact, the WIPP release in February 2014 extended beyond Clovis – more than 100 miles north of WIPP. Because it's impossible to know in what direction winds will be blowing if there is a future release, the PIP should extend at least 100 miles in all directions around the site. WIPP's extremely poor safety record and their lack of confidence that they have fixed the problems with their safety culture (public statements have WIPP officials talking of being on a "safety journey") indicate there is still a high likelihood of a future release of both radioactive and hazardous materials. The PIP and the AR do not provide documentation to support the use of an arbitrary 15-mile radius.

Further, the EJSCREEN was not used to conduct a preliminary screening of the WIPP transportation routes. Because the draft VOR Permit, if approved, would result in an almost 30 percent increase in waste volume, increased transportation would be required. There is no indication in the EJSCREEN description about whether increased transportation was even considered.

Lack of compliance with 40 C.F.R. §270.10 (j). 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. This information is necessary also to calculate whether or not there could be disparate impacts on "environmental justice" communities in the local area or along the transportation routes. The increase in diesel emissions alone could be enough to cause a disparate impact on some communities along the transportation routes. Nevertheless, we can't know this until the exposure information has been provided. The application for the proposed modification is incomplete without this information.

On January 19, 2018 NMED signed a Resolution Agreement with EPA where they agreed to:

...ensure that all permit applications contain necessary components as required by 40 C.F.R. §270.10, including Section (j) related to "exposure information," and necessary follow-up will be taken to ensure protection of human health and the environment.

Yet NMED has not made sure that the application for this modification contains these components, nor have they done the necessary follow-up to ensure protection of human health and the environment.

Southeastern New Mexico continues to have the highest cancer mortality – by far – in the entire state. *Please see the attached Sacred Trust map that shows the WIPP plume and included the Centers for Disease Control and Prevention map of cancer mortality.* Understanding the effects of increasing facility transportation and the other increased risks from this modification on this very vulnerable population is critical to understanding if this modification will be protective of human health and the environment.

Section X. Public Notices. Some newspapers in southeastern New Mexico publish in Spanish. The Department should take note of when such publication occurs so that the Spanish-speaking communities could be notified of opportunities to participate in these matters.

Section XIII. Public Information Meetings. It may be that the public information meetings may need to be moved to the early evening timeframe.

**7. Lack of Transparency for Counting and Reporting VOR by Permittees.** *See Section 1.5.22 of the draft VOR Permit.* The Permittees have proposed the creation of a self-regulating smoke screen. The Fact Sheet states,

The [Land Withdrawal Act] LWA [transuranic] TRU waste volume will be tracked and reported by DOE so that the total capacity limit for TRU waste is not exceeded pursuant to the WIPP Land Withdrawal Act. p. 2.

*See also* Section 1.5.22 of the Draft VOR Permit:

This volume is tracked and reported by the DOE internally relative to the WIPP Land Withdrawal Act total capacity limit of 6.2 million ft<sup>3</sup> (175,564 m<sup>3</sup>) (Pub. L. 102-579, as amended).

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.

**8. Permit Attachment A2, p. A2-6 of 51.** We explicitly state that we do not support the proposed language change under "Underground Hazardous Waste Disposal Units (HWDUs)," which removes the repository limits for CH and RH TRU wastes.

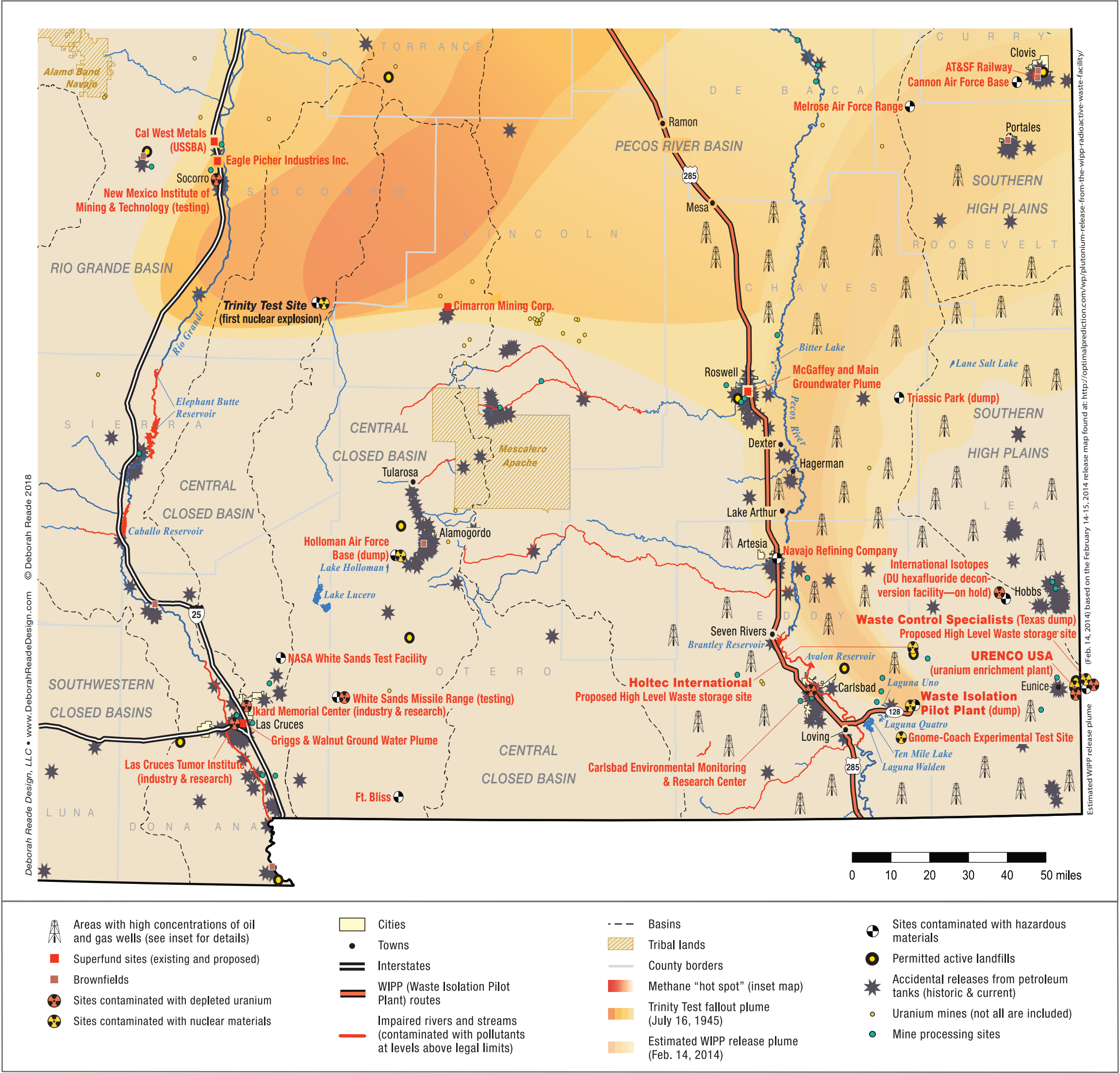
**9. Attachment N. Post Closure Plan.** We object to the proposal that the volatile organic compounds (VOC) monitoring program will begin after completion of closure of the first underground hazardous waste disposal unit. Neither NMED nor the Permittees have provided the necessary information, data and analysis to support such a change.

Thank you for your careful consideration of our comments. Please contact us with any questions or concerns.

Sincerely,

Deborah Reade

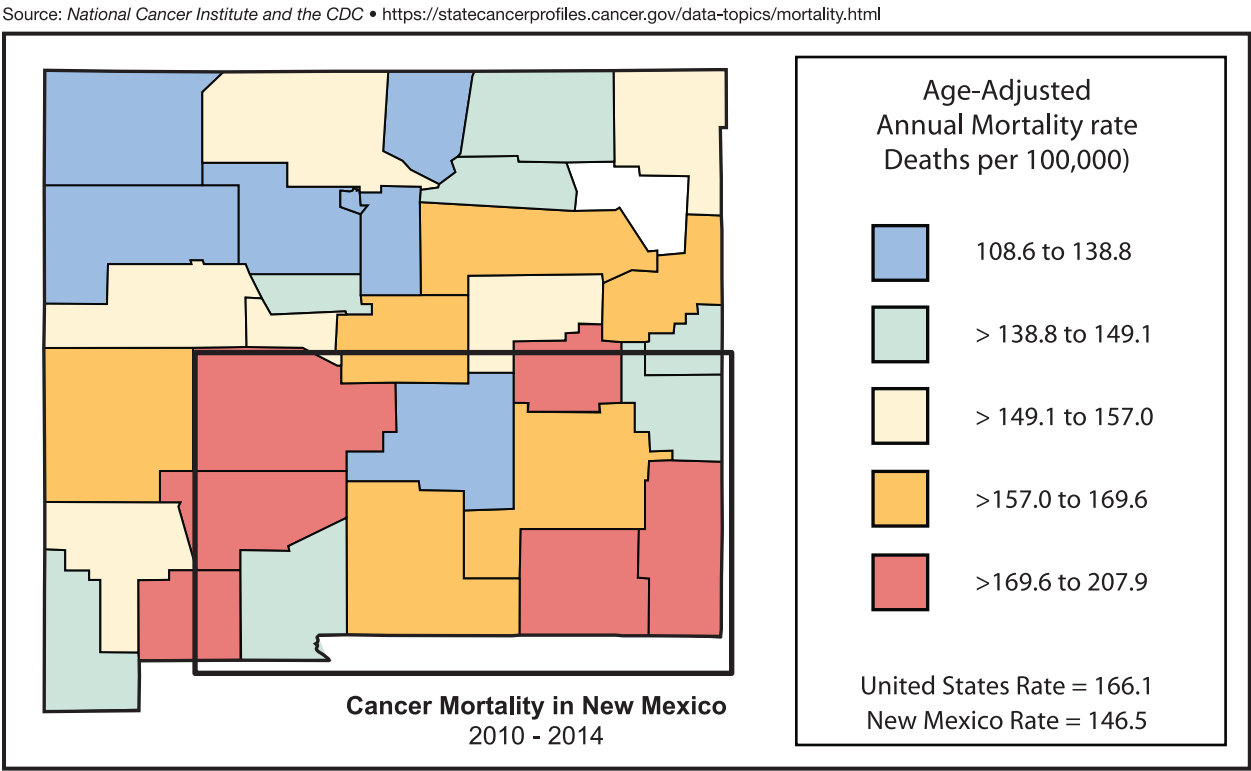
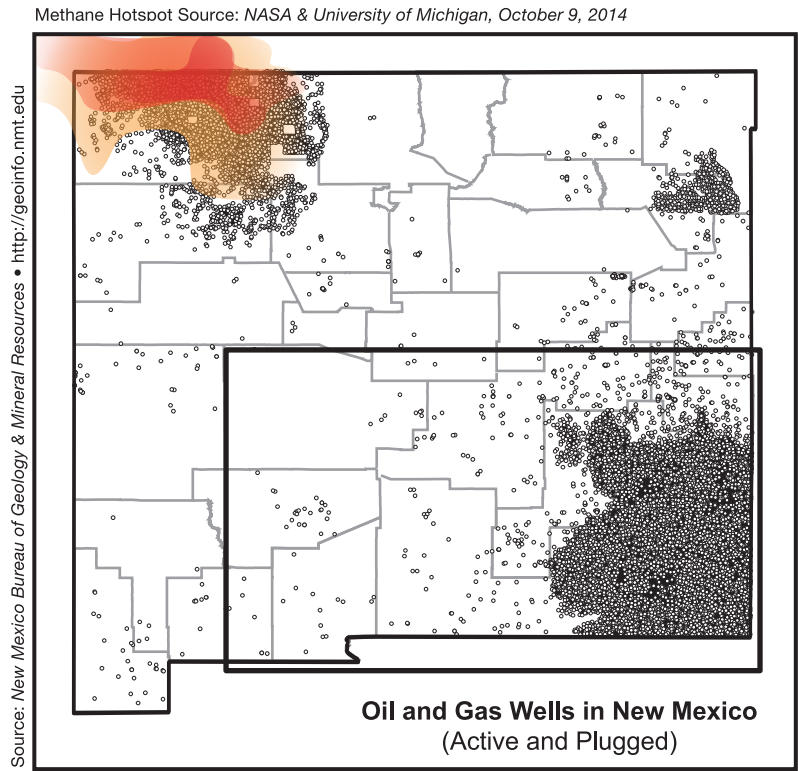
Joni Arends, Executive Director  
Concerned Citizens for Nuclear Safety



## WATER, AIR AND LAND: A SACRED TRUST

The uses of water, air and land are diverse in New Mexico and will change dramatically with climate change. For caretakers of this sacred trust, this map offers a bird's eye view of the health of our environment in southeastern New Mexico. It documents primarily the energy-related sources of pollution, though in New Mexico other polluting factors are also at work. This map does not cover *abatement sites*, *solid waste facilities* and *voluntary remediation sites*, among other things. Also, this map shows major water basins only.

Credits: We are grateful for initial project funding from the *Mercy Sisters - Northeast Community* and for additional project funds from the *New Mexico Community Foundation* in 2013. Maps created by Deborah Reade, *Deborah Reade Design*. Research by *Concerned Citizens for Nuclear Safety*, *Deborah Reade Design*, *Multicultural Alliance for a Safe Environment*, *Partnership for Earth Spirituality*, and *New Mexico Interfaith Power and Light*. Research and data interpretation by *Carlos Bustos*, Resource Consultant and GIS Specialist. For more information, references, additional credits and action you can take to protect water, air and land, please visit [www.SacredTrustNM.org](http://www.SacredTrustNM.org), [www.earthspirituality.org](http://www.earthspirituality.org), [www.masecoalition.org](http://www.masecoalition.org), and [www.nuclearactive.org](http://www.nuclearactive.org).



**From:** [Maestas, Ricardo, NMENV](#)  
**To:** [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)  
**Subject:** FW: Comments on August 6, 2018 WIPP Draft Permit  
**Date:** Thursday, September 20, 2018 5:10:17 PM  
**Attachments:** [Zappe Comments on Aug 2018 WIPP Draft Permit.pdf](#)

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-----Original Message-----

From: Steve Zappe <steve\_zappe@mac.com>  
Sent: Thursday, September 20, 2018 4:59 PM  
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>  
Cc: Kieling, John, NMENV <john.kieling@state.nm.us>  
Subject: Comments on August 6, 2018 WIPP Draft Permit

Hi, Ricardo -

Attached are my comments on the August 6, 2018 draft Permit regarding the Permittees' Volume of Record PMR (although it appears you're not calling it that anymore)... I guess it's "clarify TRU mixed waste disposal volume reporting" or something like that.

I am also requesting a hearing, and will need to be kept up on what's happening, since things seem to be on a fast track.

Let me know when all public comments are available online. You can contact me by email or phone. Thanks!

Steve  
505-660-0353



Steve Zappe  
60 La Pradera  
Santa Fe, NM 87508

Mr. Ricardo Maestas  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505

September 20, 2018

Ricardo,

I am submitting comments on the August 6, 2018 draft Permit (**draft Permit**) issued by the New Mexico Environment Department (**NMED**) for the Waste Isolation Pilot Plant (**WIPP**) Hazardous Waste Facility Permit (**Permit**). The draft Permit is based upon the January 31, 2018 Class 2 permit modification request (**PMR**), "Clarification of TRU Mixed Waste Disposal Volume Reporting," submitted by the US Department of Energy (**DOE**) Carlsbad Field Office and Nuclear Waste Partnership (**Permittees**), which was subsequently elevated after the close of the previous comment period by the NMED Secretary to be processed as a Class 3 modification.

I am also requesting a public hearing as specified in the August 6, 2018 public notice and fact sheet on the draft Permit. I have included my request at the end of my comments, and have provided all required information for a complete request

I oppose NMED's draft permit for the same reasons given in my comments submitted on April 3, 2018 on the Permittees' January 31, 2018 Class 2 PMR, which I incorporate by reference for purposes of this comment period for the draft Permit. These additional comments on the draft Permit may expand on my previous comments, but should not be viewed as replacing or eliminating them. From my review of the draft Permit, it appears that there have been no significant changes from the language proposed in the PMR, with the exception of some minor wordsmithing by NMED and a few edits proposed by the Permittees in their July 12, 2018 response to NMED's June 27, 2018 Technical Incompleteness Determination (**TID**) that have been incorporated.

I found the "Basis for the Draft Permit" portion of the final Fact Sheet (20.4.1.901.D(2)(c) NMAC) issued on August 6, 2018 to be less than helpful, as it failed to identify any NMED-imposed conditions and language that were different from the original PMR and whether those changes were based on public comment on the Class 2 PMR, the Permittees' responses to the TID, or NMED's whim. Thus, the public was left with the task of comparing the PMR with the draft Permit on a line-by-line basis and trying to determine the source of any difference. NMED must come prepared to the hearing to identify and justify all agency-imposed changes from the PMR, as well as the basis for their full support of the modifications proposed by the Permittees.

In my comments below, I will provide reasons why I oppose this draft Permit and recommend that the NMED Secretary deny it, and instead have the Permit either remain in the unmodified state in which it existed at the time of the hearing, or be changed in a manner consistent with my April 3, 2018 comments already in the administrative record.

### **1. Proposed Permit Section 1.5.22, “Land Withdrawal Act TRU Waste Volume,” is vague and unenforceable**

NMED has incorporated the definition from the Class 2 PMR with some minor editorial changes, but the definition remains vague, unenforceable, and unsuitable for inclusion in the Permit. As written, it states,

“ ‘Land Withdrawal Act TRU Waste Volume (LWA TRU Waste Volume)’ means the volume of TRU waste inside a disposal container. This volume is tracked and reported by the DOE internally relative to the WIPP Land Withdrawal Act total capacity limit of 6.2 million ft<sup>3</sup> (175,564 m<sup>3</sup>) (Pub. L. 102-579, as amended). For informational purposes, the LWA TRU Waste Volume is included in Table 4.1.1.”

As mentioned in my April 3 comments (p 9, item #3), all containers in Permit Section 4.3.1 are “disposal containers,” yet the Permittees and NMED have failed to include any clarifying language in the draft Permit to explain how to understand what “the volume of TRU waste inside a disposal container” means or how it is calculated. Further, while it may be deduced from the PMR and the response to the TID that NMED and the Permittees may intend the term “disposal containers” to include a larger universe of “containers” (e.g., “authorized containers per the WIPP WAC”) than in Permit Section 4.3.1, there are no criteria in the draft Permit to determine compliance. Hence, the definition in Permit Section 1.5.22 is useless and must be rewritten to eliminate all uncertainty and confusion.

### **2. Volume calculations for certain containers in TID response are unverified**

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, the containers listed below have no volume calculations available in the record:

- 12-in Standard Pipe Overpack Container (POC)
- Type S100 POC
- Type S200-A POC
- Type S200-B POC
- Type S300 POC
- Criticality Control Overpack
- NS15 Neutron Shielded Canister
- NS30 Neutron Shielded Canister

The calculations to verify the volume of these containers must be provided in the record.

### **3. The DOE management policy identified in the TID response must be made publicly available before any action is taken on the draft Permit**

NMED has consented to remove all enforceable references to the WIPP LWA total capacity limit of 6.2 million ft<sup>3</sup> of TRU waste from the draft Permit, and DOE is promising to create a management policy outside of the Permit that “will establish the methodology for implementing a tracking method” for this capacity limit. Apart from the vagueness and uncertainty over the definition of LWA TRU waste volumes discussed above, DOE is not proposing to have this management policy undergo any external regulatory review or oversight, and to date it has not been made available to the public. DOE’s attempt to provide details on how their plan or mechanism would track and report waste volumes pursuant to the LWA is unsatisfactory.

For example, the TID response to NMED’s question #1 uses the following terms, sometimes interchangeably, sometimes not:

- “waste containers”
- “those that are overpacked” (presumably called “overpacked waste containers”)
- “those that are... direct loaded (presumably called “direct-loaded waste containers”)
- “innermost waste container”
- “approved containers”
- “authorized containers”
- “overpack containers” (presumably a container overpacking another container)

Unfortunately, with imprecise language, this can lead to unintended consequences. Consider this statement (TID response 1.a, p. 1):

“The policy will distinguish between two categories of waste containers: Those that are overpacked and those that are not overpacked (i.e., direct loaded). The DOE will consider the volume of TRU waste to be the volume of the innermost waste container being disposed of for overpacked containers.”

Where is this “innermost waste container”? Is it the overpacked container, or is it inside the overpacked container, which is then in the overpack container holding everything else? This is not an unlikely scenario... a standard pipe overpack can be direct loaded with “Solids, large objects (e.g., metal cans containing waste).”<sup>1</sup> Can a can be an “innermost waste container being disposed of for overpacked containers”? It conjures up images of a Russian nesting doll. If this language is supposed to represent the clarity of thinking by DOE in preparing their management policy, I am doubtful that it will be any better than the vague language in the original Class 2 PMR itself.

The proposed DOE Management Policy, or at least an intelligible draft of it, must be placed into the record and made publicly available before any further action is taken on the draft Permit.

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<sup>1</sup> CH-TRAMPAC Document, Revision 4, December 2012, Table 2.9-9 – Standard Pipe Overpack: Material Content Forms Authorized for Transport, p. 2.9-9,  
<https://www.energy.gov/sites/prod/files/2015/04/f22/CH-TRAMPAC.pdf>

#### **4. Table 4.1.1 as proposed in the draft Permit is incomplete**

NMED has proposed to slightly modify Table 4.1.1, Underground HWDUs, in the draft Permit from how it was proposed in the PMR. Besides changing one of the two column headings (“Maximum **TRU Mixed Waste** Capacity” and “Final **TRU Mixed Waste Volume**”), NMED has added a new column with the heading “**Final LWA TRU Waste Volume**.” This new column is apparently intended to report in the Permit, for “informational purposes,” the final LWA volumes of CH and RH TRU waste in each Panel after closure. However, there are no final LWA volumes reported in the table for Panels 1 through 6, and the table is thus incomplete. NMED should either calculate the values themselves, or the Permittees must provide them to NMED for inclusion in the draft Permit for completeness. The Permittees provided a summary number in the Class 2 PMR (p. 9, pdf p. 13), so a means of calculation by individual Panel should not be difficult. If NMED intends to approve the draft Permit, I object to this column being left blank.

In addition, the volumes in “Final TRU Mixed Waste Volume” and “Final LWA TRU Waste Volume” should be totaled at the bottom of the table, as I specified in my April 3, 2018 comments (Recommended Action, Item 7, p. 14-15). Although my comment was applicable to the existing “Final Waste Volume” column, the same rationale holds true for the proposed “Final LWA TRU Waste Volume” column as well.

#### **5. The Permittees are breaking their long-term pledge to manage all TRU waste in the same manner**

During the initial application by DOE for a hazardous waste permit at WIPP in 1995, it was important to NMED that all waste managed, stored, and disposed of at WIPP be uniformly regulated by that permit. This was important because of DOE’s history of self-regulation (see following comment #6) and the potential for two different “classes” of waste (in this case, non-mixed TRU waste regulated under 40 CFR §§191 and 194 by EPA and mixed TRU waste regulated under 40 CFR §§260 to 270 by NMED) to be managed, stored, and disposed of at WIPP in different and potentially incompatible ways.

During negotiations in the development of the RCRA Part B Permit Application, DOE and their M&O contractor agreed to the following language, as included in the RCRA Part B Permit Application (specifically, in the RCRA Part A Application, XII.PROCESS-CODES AND DESIGN CAPACITIES (continued)) and incorporated in the first draft Permit issued May 15, 1998 (pdf p. 1842)<sup>2</sup>

*“For purposes of this application, all TRU waste is managed as though it were mixed.”*

Through all revisions of the Permit since then, up to and including the most current version of the WIPP Permit at the time of these comments, that language has remained unchanged. During that time, the RCRA Part A Permit Application has gone from Amendment #7

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<sup>2</sup> NMED, Hazardous Waste Facility Draft Permit, Waste Isolation Pilot Plant, EPA No. NM4890139088, May 15, 1998, [https://hwbdocuments.env.nm.gov/Waste\\_Isolation\\_Pilot\\_Plant/980543.pdf](https://hwbdocuments.env.nm.gov/Waste_Isolation_Pilot_Plant/980543.pdf)

(signed by George Dials and Joseph Epstein on May 29, 1996)<sup>3</sup> to #32 (signed by Todd Shrader and Bruce Covert on June 12, 2017).<sup>4</sup>

One other thing has remained nearly unchanged on the Part A Permit Application during this time – the maximum volume of waste specified under “Process Codes and Design Capacities” for Process Code “X04 Geologic Repository,” expressed in cubic meters.

- For Amendment #7, May 29, 1996, the Process Design Capacity states, “175,600 TOTAL (54,064 in ten years)” for 10 Process Total Number of Units
- For Amendment #32, June 12, 2017, the Process Design Capacity states, “175600.00” for 10 Process Total Number of Units

However, this has been replaced in the draft Permit with Process Design Capacities expressed for each individual HWDU, and the LWA total capacity limit has been removed.

For over 20 years, the WIPP LWA total capacity limit of 6.2 million ft<sup>3</sup> (175,600 m<sup>3</sup>) of TRU waste has been enshrined in the Permit.<sup>5</sup> 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:

- Waste volume subject to regulation under the Permit will be calculated in the same manner as has been done since at least 1994 (and possibly as early as 1982) in the annual Integrated Data Base Reports, Transuranic Waste Baseline Inventory Reports, and Annual Transuranic Waste Inventory Reports by DOE.
- Waste volume subject to DOE’s unique interpretation of the LWA limit will be calculated in new, different, and more liberally construed way that is inconsistent with at least 24 years of precedent.

## **6. The Permittees have made a weak case for their “mandate” to self-regulate at WIPP with respect to the LWA total capacity limit**

The Permittees, through the authority vested in the DOE Secretary, bluntly asserted in the PMR (p. 10) that they alone have the responsibility to redefine how waste volume is calculated

“The changes proposed in this PMR are appropriate because it is DOE’s responsibility to manage the waste in a manner that assures that the mission of the WIPP facility is fulfilled. Congress has authorized the DOE to regulate TRU waste under its control.”

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<sup>3</sup> ibid. Note that dates of other Part A Submittals are referenced under the XIX. Comments: “Additional data were submitted on Jul 9 1991; November 12, 1992; January 29 1993; March 2, 1995; May 26, 1995; and April 12, 1996. Part A originally signed on January 18, 1991, and submitted on January 22, 1991.” The January 1991 Part A was submitted after NMED received authorization from EPA to regulate mixed waste.

<sup>4</sup> NMED, Hazardous Waste Facility Permit, Waste Isolation Pilot Plant, EPA No. NM4890139088, March 2018, Attachment B, [https://hwbdocuments.env.nm.gov/Waste\\_Isolation\\_Pilot\\_Plant/180300/180300\\_WIPP\\_Permit\\_PDF/Attachment\\_B\\_03-2018.pdf](https://hwbdocuments.env.nm.gov/Waste_Isolation_Pilot_Plant/180300/180300_WIPP_Permit_PDF/Attachment_B_03-2018.pdf)

<sup>5</sup> See Zappe April 3, 2018 comments, pp 6-7, for discussion of NMED’s intent in retaining the LWA limit in the Permit.

They cite Section 203(a)(8)(G) of the Department of Energy Organization Act (Pub. L. 95-91, August 4, 1977; 42 U.S.C §7133(a)), which in context says:

*SEC. 203. (a) There shall be in the Department eight Assistant Secretaries... The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:*

*... [omitted for brevity]*

*(8) Nuclear waste management responsibilities, including—*

*(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;*

*(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;*

*(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;*

*(D) the establishment of facilities for the treatment of nuclear wastes;*

*(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;*

*(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and*

***(G) the promulgation of such rules and regulations to implement the authority described in this paragraph, [emphasis added]***

*except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.*

DOE further claims in the PMR (p. 10):

*“This mandate... would include the development of a method by which the DOE tracks the TRU waste volume that has been disposed against the WIPP LWA total capacity limit.”*

It can be agreed that Congress, in 1977, vested the management responsibilities and authorities in the newly minted Department of Energy, and particularly related to the management of nuclear waste, as specified in Section 203(a)(8) of the DOE Organization Act. For example, the establishment of WIPP clearly falls within the purview of DOE as specified in Section 203(a)(8)(C).

However, it is much less convincing for DOE to claim a “mandate” to redefine how waste volumes are calculated. Note again this key portion of Section 203(a)(8):

*(G) the promulgation of such rules and regulations to implement the authority described in this paragraph*  
***except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.***  
*[emphasis added]*

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. Let's consider first DOE's resistance to external regulation under RCRA, and then to each of these two subsequent laws.

#### DOE resistance to external regulation

From the beginning of the Manhattan Project until the mid-1970s, DOE and its predecessor agencies were not subject to external regulation. However, by the time DOE became operational on October 1, 1977, RCRA had already been in effect for nearly a year after enactment on October 21, 1976 (Pub. L. 94-580, 42 U.S.C. §6901 *et seq.*). RCRA not only predates DOE, but it specifically grants authority and functions to the Environmental Protection Agency (**EPA**) and authorized states. Any additional functions granted to DOE must be conferred explicitly by law, and not extrapolated from the responsibilities listed in Section 203(a)(8) identified above.

Even though the original language in RCRA regarding the application of Federal, State, and Local law to Federal facilities was implemented in Sec. 6001, DOE was unwilling to allow application of RCRA regulations to its nuclear production and weapons facilities. For example, DOE took the position in 1984 that §1006(a) of RCRA [42 U.S.C. §6905(a)], which provides that RCRA does not apply to "activit[ies] ... subject to... the Atomic Energy Act of 1954 ... except to the extent such application (or regulation) is not inconsistent with the requirements of such Act[.]" exempted its Atomic Energy Act (**AEA**) facilities from all RCRA regulation.<sup>6</sup>

DOE reiterated this position in *Legal Environmental Assistance Foundation v. Hodel*, 586 F. Supp. 1163 (E.D. Tenn. 1984) when it argued that the Y-12 Plant at Oak Ridge was totally excluded from RCRA regulations. However, the court concluded that application of RCRA to Y-12 was not inconsistent with the AEA. The restriction upon RCRA found in 42 U.S.C. §6961 merely clarified the Congressional intent to exclude nuclear wastes from coverage

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<sup>6</sup> Olson, Theodore B., "Application of the Resource Conservation and Recovery Act to the Department of Energy's Atomic Energy Act Facilities," Memorandum Opinion for the Assistant Attorney General, Land and Natural Resources Division, February 9, 1984, <https://www.justice.gov/file/23586/download>



by RCRA. The AEA still provided exclusive regulation of nuclear wastes.<sup>7</sup> This decision established the precedent for other states to require DOE's compliance with applicable hazardous waste laws at all of its nuclear production and weapons facilities.

Even with DOE grudgingly conceding to external regulation, another issue arose in the aftermath of this decision – the inability of both state and federal regulators to effectively enforce environmental laws against federal polluters such as DOE.<sup>8</sup> Note that the following discussion is an evaluation of DOE as a federal entity, and is not intended to target the administrative record related to WIPP. However, I have included this discussion to highlight the ongoing tendency of DOE in general, and in their PMR and this draft Permit specifically, to chip away at external regulation in favor of self-regulation.

From the mid 1980s into the early 1990s, there were three factors hampering state and federal enforcement at DOE facilities:<sup>9</sup>

1. Considerations of ***national security and secrecy*** regarding weapons production contributed to keeping environmental neglect by federal facilities out of sight. A study conducted by the congressional Office of Technology Assessment showed that DOE noncompliance with RCRA resulted from a "history of emphasizing the urgency of weapons production for national security, to the neglect of health and environmental considerations...; and decades of self-regulation, without independent oversight or meaningful public scrutiny."<sup>10</sup>
2. DOE's ***history of self-regulation*** and its inability to perform meaningful oversight of its own facilities, coupled with a Department of Justice position that EPA could not sue another federal agency in court, resulted in the general concern that EPA could not effectively enforce RCRA at federal facilities.<sup>11</sup>
3. ***Sovereign immunity*** claims by the federal government successfully blocked states' efforts to take enforcement action at DOE facilities, particularly by challenging state authority to assess civil penalties for past environmental liability. In *Department of Energy v. Ohio*, 503 U.S. 607 (1992), the US Supreme Court upheld DOE's position that "Congress has not waived the National Government's sovereign immunity from liability for civil fines imposed by a State for past violations of... RCRA."<sup>12</sup>

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<sup>7</sup> Legal Environmental Assistance Foundation v. Hodel, April 13, 1984,

<https://law.justia.com/cases/federal/district-courts/FSupp/586/1163/1903257/>

<sup>8</sup> Nelson D. Cary, "Primer On Federal Facility Compliance With Environmental Laws: Where Do We Go From Here?," 50 Wash. & Lee Law Review 801 (1993), p. 803,

<https://scholarlycommons.law.wlu.edu/wlulr/vol50/iss2/15/>

<sup>9</sup> McMichael, Susan M., "RCRA Permitting Deskbook," Environmental Law Institute, 2011. Excerpt available at [http://lscdesignva.com/graphics/books/RCRA\\_Permitting\\_Handbook.pdf](http://lscdesignva.com/graphics/books/RCRA_Permitting_Handbook.pdf) (relevant pages 7-9), and Table of Contents available at [https://www.eli.org/sites/default/files/book\\_pdfs/rcra\\_dbook\\_toc.pdf](https://www.eli.org/sites/default/files/book_pdfs/rcra_dbook_toc.pdf).

<sup>10</sup> U.S. Congress, Office of Technology Assessment, Complex Cleanup-the Environmental Legacy of Nuclear Weapons Production, OTA-O-484, p. 15, <https://www.princeton.edu/~ota/disk1/1991/9113/9113.PDF>

<sup>11</sup> McMichael, at p. 8.

<sup>12</sup> Department of Energy v. Ohio, 503 U.S. 607 (1992), <https://supreme.justia.com/cases/federal/us/503/607/>



## Federal Facility Compliance Act

In light of the foregoing factors and growing concerns over the fate of mixed waste, Congress enacted the FFCA to amend the Solid Waste Disposal Act (**SWDA**), and specifically portions of RCRA, that clarified provisions concerning the application of certain requirements and sanctions to Federal facilities.<sup>13</sup> It brought all federal facilities into compliance with applicable federal and state hazardous waste laws, specifically waived federal sovereign immunity under those laws, and allowed the imposition of fines and penalties for violations of those laws and their implementing regulations through a variety of mechanisms, such as administrative orders, civil penalties, and civil actions. The FFCA also required DOE to submit an inventory of all its mixed waste to the EPA and authorized states, and to develop site treatment plans for those mixed wastes.

For example, consider this portion of RCRA in 42 U.S. Code in §6961, “Application of Federal, State, and local law to Federal facilities” as amended and reaffirmed by the FFCA:

*(a) In general*

*Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government*

*(1) having jurisdiction over any solid waste management facility or disposal site, or*

*(2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste*

*shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges...*

I will parse out this legal requirement to make it clear to whom it applies and under what circumstances it applies:

***Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government***

- This means the Department of Energy

***having jurisdiction over any solid waste management facility or disposal site***

- This means the WIPP facility

***or engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste***

- This means disposal of TRU mixed waste at WIPP

***shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for***

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<sup>13</sup> An excellent overview of the FFCA by the DOE Office of Health, Safety and Security is available at <https://public.ornl.gov/sesa/environment/policy/ffca.html>. It provides an “historical” perspective leading up to its enactment and the mixed waste requirements, and is reproduced as an attachment to these comments.

***permits or reporting** or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), **respecting** control and abatement of solid waste or **hazardous waste disposal** and management **in the same manner**, and to the same extent, **as any person is subject to such requirements...***

- This means that the DOE **is subject to**, and **must comply with**, State (and Federal) requirements the same as any ordinary person is subject to those requirements. This specifically includes complying with requirements for permits (such as applying for and complying with the WIPP Permit) and reporting (such as waste quantities, types, and disposal location) with respect to hazardous (in this case, TRU mixed) waste disposal.

The Permittees believe that their PMR, and NMED's draft Permit, complies with this portion of the law, because they insist that the Permit limit its focus on the quantity of waste disposed of solely to the underground Hazardous Waste Disposal Units (**HWDUs**), and not have any regulatory concern with a repository limit. I'll come back to the Permittees' belief momentarily.

#### WIPP Land Withdrawal Act

Following the Waste Isolation Pilot Plant Authorization Act (Pub. L. 96-164, December 29, 1979) by nearly 13 years, the WIPP LWA provided for, among other things, the withdrawal and reservation of federal lands for the purposes of developing WIPP and the establishment of management responsibilities for the withdrawal area. However, for the purposes of this draft Permit, the more relevant provisions of the WIPP LWA were intended to accomplish the following:

1. Establish EPA disposal regulations
2. Address test phase activities and disposal operations, including TRU waste limitations
3. Establish the legal framework within which DOE **is subject to**, and **must comply with**, environmental laws and regulations with respect to WIPP

Specifically, LWA Section 9, "Compliance with Environmental Laws and Regulations," states in relevant part:

*(a) IN GENERAL.—*

*(1) APPLICABILITY.— Beginning on the date of the enactment of this Act, **the Secretary shall comply with respect to WIPP, with—***

*(A) the regulations issued by the Administrator establishing the generally applicable environmental standards for the management and storage of spent nuclear fuel, high-level radioactive waste, and transuranic radioactive waste and contained in subpart A of part 191 of title 40, Code of Federal Regulations;*

*(B) the Clean Air Act (40 U.S.C. 7401 et seq.);*

*(C) **the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);***

*(D) title XIV of the Public Health Service Act (42 U.S.C. 300f et seq.; commonly referred to as the "Safe Drinking Water Act");*

*(E) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);*

*(F) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);*  
*(G) all other applicable Federal laws pertaining to public health and safety or the environment; and*  
*(H) all regulations promulgated, and all permit requirements, under the laws described in subparagraphs (B) through (G).*

...  
*(d) SAVINGS PROVISION.— The authorities provided to the Administrator and to the State pursuant to this section are in addition to the enforcement authorities available to the State pursuant to State law and to the Administrator, the State, and any other person, pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Clean Air Act (40 U.S.C. 7401 et seq.). (emphasis added)*

Note the use of two contrasting responsibilities identified in this section laying out the legal and regulatory framework for WIPP:

1. "... the Secretary **shall comply** with respect to WIPP, ..."
2. "The **authorities provided to the Administrator and to the State** pursuant to this section..."

It is clear within the context of the WIPP LWA that the State was specifically delegated authority over provisions of the SWDA and RCRA. Thus, with respect to environmental laws at WIPP, the Administrator (EPA) and the State (NMED) are the regulators of environmental laws, regulations, and permits under their specific authority, and the Secretary (DOE) is the regulated entity.

#### FFCA and WIPP LWA considered together

Consider now both laws, signed by the President in October 1992.

Another provision of the FFCA was to direct the DOE to develop specific reports dealing with mixed waste inventories and treatment technologies, as specified in 42 U.S.C. §6939c, "Mixed waste inventory reports and plan":

##### *(a) Mixed waste inventory reports*

*(1) Requirement - Not later than 180 days after October 6, 1992, the Secretary of Energy shall submit to the Administrator and to the Governor of each State in which the Department of Energy stores or generates mixed wastes the following reports:*

- (A) A report containing a national inventory of all such mixed wastes, regardless of the time they were generated, on a State-by-State basis.*
- (B) A report containing a national inventory of mixed waste treatment capacities and technologies.*

Beginning as early as 1982, DOE annually issued waste inventory reports, including TRU and mixed TRU waste potentially destined for WIPP. My April 3, 2018 comments (p. 2, pp. 10-11) described how DOE adapted this existing inventory process to satisfy the FFCA requirement to generate reports containing a national inventory of all mixed waste. The

first annual report fulfilling the FFCA requirement<sup>14</sup> established the precedent for reporting mixed waste volumes as the gross internal volume of the disposal container:  
*...Waste volume is reported in cubic meters (m<sup>3</sup>) and generally reflects the amount of space occupied by the waste and its container.*

Although I am unable to locate the initial report of mixed waste treatment capacities and technologies, I am aware that DOE historically designated all mixed TRU waste for disposal at WIPP (which had been constructed by 1992 but was not yet permitted to accept waste) in their inventory of mixed waste treatment/disposal technologies.

At the same time, the WIPP LWA established TRU waste limitations on disposal operations at WIPP. LWA Section 7(a) states,

*(a) TRANSURANIC WASTE LIMITATIONS.—*

*(1) REM LIMITS FOR REMOTE-HANDLED TRANSURANIC WASTE.—*

*(A) 1,000 REMS PER HOUR.— No transuranic waste received at WIPP may have a surface dose rate in excess of 1,000 rem/s per hour.*

*(B) 100 REMS PER HOUR.— No more than 5 percent by volume of the remote-handled transuranic waste received at WIPP may have a surface dose rate in excess of 100 rem/s per hour.*

*(2) CURIE LIMITS FOR REMOTE-HANDED TRANSURANIC WASTE.—*

*(A) CURIES PER LITER.— Remote-handled transuranic waste received at WIPP shall not exceed 23 curies per liter maximum activity level (averaged over the volume of the canister).*

*(B) TOTAL CURIES.— The total curies of the remote-handled transuranic waste received at WIPP shall not exceed 5,100,000 curies.*

***(3) CAPACITY OF WIPP.— The total capacity of WIPP by volume is 6.2 million cubic feet of transuranic waste. (emphasis added)***

There is no other regulatory program specified in Section 9 of the LWA that expresses or regulates disposal capacity (i.e., volume) in cubic meters/feet than RCRA.

So, to summarize these facts as presented:

1. DOE has a history of resisting external regulation, particularly hazardous waste
2. RCRA (as amended and reaffirmed by the FFCA) in 42 U.S. C. §6961 says that DOE is subject to, and must comply with, State requirements (including any requirement for permits or reporting), respecting hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements;
3. WIPP LWA affirms the State's authority over RCRA at WIPP, as well as DOE's role as the regulated entity;
4. FFCA required DOE to submit a national mixed waste inventory report, which established the precedent for how TRU waste volume is measured and reported; and

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<sup>14</sup> Integrated Data Base Report for 1993 (DOE/RW-0006, Rev 9, March 1994) (*view and download individual pages*), <https://hdl.handle.net/2027/ien.35556023491582>

5. WIPP LWA established a total disposal capacity of 6.2 million cubic feet of TRU (and mixed TRU) waste.

Yet the Permittees assert in their PMR narrative, and again in the TID response, a somewhat different perspective:

**“The reporting of disposed waste volumes is required by several regulatory drivers, such as RCRA, the LWA, 40 CFR 194, and DOE Orders.** Each of these requires volume reporting for different purposes. For example, **RCRA requires volume reporting to determine how much waste is put into the WIPP facility relative to the volumes in Table 4.1.1,** which are limited by the physical volume of each mined HWDU, while **the LWA requires the volume to be reported relative to the total capacity limit of 6.2 million ft<sup>3</sup> (175,564 m<sup>3</sup>) of TRU waste; 40 CFR Part 194 requires the reporting of the volume of waste** and also information regarding material parameter waste estimates and radionuclides for purposes of comparison to the input data used in the Compliance Certification Application; and **DOE Orders require estimates relative to transportation and operational safety.”** (Class 2 PMR, p. 2, pdf p. 6)

“Because several regulatory requirements are implemented at the WIPP facility, it is important to distinguish between these requirements since they are subject to different regulatory authority. For example, the authority for overseeing RCRA at the WIPP facility has been granted to the NMED by the Environmental Protection Agency, and **the authority for management, tracking, and reporting the LWA TRU waste volume has been granted to the DOE by Congress.”** (Class 2 PMR, p. 9, pdf p. 13)

**“[The] Department of Energy/Carlsbad Field Office [is r]esponsible for implementing the laws issued by Congress. For example, WIPP Land Withdrawal Act of 1992...”** (TID response, Attachment 1, “Agencies that Oversee the Permittees,” pdf p. 15)

Although DOE clearly has responsibilities for implementing laws and authorities “granted by Congress” in general, it seems DOE may be conveniently ignoring one of their primary responsibilities to **be subject to** and **comply with** key provisions within the WIPP LWA, and instead is reverting back to self-regulation. Unfortunately, I will have to address the fallacies in these three statements later at the public hearing to be held on this draft Permit.

The timing of the FFCA’s enactment (just three weeks prior to enactment of the WIPP LWA on October 30, 1992) leaves no doubt as to who is the regulator and who is the regulated entity. The FFCA amended the Solid Waste Disposal Act (**SWDA**) (42 U.S.C. 6901 et seq.), which includes RCRA. The LWA in Section 9(a)(1)(C) and (H) requires DOE to comply with the SWDA and RCRA, and with all regulations promulgated, and all permit requirements, under the SWDA and RCRA. The LWA in Section 9(a)(2) explicitly identifies the State of New Mexico as the recipient of DOE’s biennial environmental compliance reports with respect specifically to the SWDA and, by inference, RCRA. Finally, so that there is no further

doubt as to whom Congress intended to delegate authority over RCRA at WIPP, LWA Section 14 states:

**SEC. 14. SAVINGS PROVISIONS.**

(a) ...

(b) **EXISTING AUTHORITY OF EPA AND STATE.**— **No provision of this Act may be construed to limit, or in any manner affect, the Administrator's or the State's authority to enforce, or the Secretary's obligation to comply with—**

(1) the Clean Air Act (42 U.S.C. 7401 et seq.);

(2) **the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)**, except that the transuranic mixed waste designated by the Secretary for disposal at WIPP is exempt from the land disposal restrictions described in section 9(a)(1); or

(3) any other applicable clean air or hazardous waste law. (emphasis added)

NMED is on solid ground to enforce the LWA total capacity limit of 6.2 million ft<sup>3</sup> of TRU waste in the Permit based upon its authority and the long-standing presence of the requirement in the Permit since the DOE was ordered in 1994 to submit a RCRA Permit application reflecting disposal operations at WIPP. It has been included in every Part A Permit Application since then to the present day, with the exception of the PMR that led to this draft Permit.

Likewise, the FFCA inventory requirement is particularly relevant to this draft Permit. The FFCA in Section 3021(1)(A) required DOE to submit, within 180 days of enactment, “A report containing a national inventory of all such mixed wastes, regardless of the time they were generated, on a State-by-State basis.” Section 3021(2)(B) and (C) specify two requirements for this report, namely:

“(B) **The amount of each type of mixed waste currently stored at each Department of Energy facility in each State, set forth separately by mixed waste that is subject to the land disposal prohibition requirements of section 3004 and mixed waste that is not subject to such prohibition requirements.**

“(C) **An estimate of the amount of each type of mixed waste the Department expects to generate in the next 5 years at each Department of Energy facility in each State.**” (emphasis added)

DOE generated an “Interim Mixed Waste Inventory Report” within the 180 day deadline. The next inventory report incorporating requirements for the FFCA was the previously cited Integrated Data Base Report for 1993 (published March 1994) that first articulated the assumption for reporting waste amount by volume.

Finally, DOE makes this claim in the PMR with respect to the 1977 DOE Organization Act (PMR, p. 10):

“The changes proposed in this PMR are appropriate because it is DOE’s responsibility to manage the waste in a manner that assures that the mission of the WIPP facility is fulfilled. Congress has authorized the DOE to regulate TRU waste under its control.”

Yes, “Congress authorized the DOE to regulate TRU waste under its control,” but that was 1977, and DOE has not presented any evidence that Congress has granted them “any additional functions than those already conferred by law” since then. DOE has been given no explicit “responsibility” to redefine waste volume for WIPP. They made their choice nearly 25 years ago in response to the FFCA requirement to report waste amounts using specific assumptions, and the LWA sealed their fate by requiring DOE to comply with RCRA at WIPP. NMED is the undisputed RCRA regulator for WIPP, and NMED should have clearly and without reservation rejected the idea of two different definitions for waste disposal volumes at WIPP, especially when one of the definitions eliminates NMED’s enforcement authority. In issuing the draft Permit, NMED has failed to do this, and is proposing to abdicate their legal authority in order to appease DOE’s preference for self-regulation.

## **7. NMED has not justified issuance of this draft Permit, and in doing so has ignored the full administrative record and history of the WIPP Permit**

The published index to the administrative record for this draft Permit<sup>15</sup>, 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.

In addition to Appendix D1 from the May 1995 RCRA Part B Permit Application, Rev 6, proposed and added to the administrative record at the request of the Permittees, the entire Rev 6 application must be added to the administrative record, along with the following documents:

- The May 15, 1998 Draft Hazardous Waste Facility Permit, Volumes 1-4, including the public notices and all fact sheets
- DOE’s comments on the Draft Permit (5/28/98, 8/14/98)
- The November 13, 1998 Revised Draft Hazardous Waste Facility Permit Volumes 1 – 4, including the public notice and all fact sheets, and NMED response to comments on the Draft Permit
- DOE Comments on the Revised Draft Permit (12/22/98)
- NMED response to comments on the Revised Draft Permit (1/18/99)
- Transcripts from the public hearing on the Revised Draft Permit
- Report of the Hearing Officer (9/9/99)
- DOE and NMED comments on the Hearing Officer’s Report on the Revised Draft Permit
- Secretary’s Final Order (10/27/99)
  
- The April 27, 2010 Draft Renewal Permit, including the public notice and all fact sheets
- DOE Comments on Draft Renewal Permit (5/25/10)

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<sup>15</sup> NMED, Index to the Administrative Record, August 6, 2018, <https://www.env.nm.gov/wp-content/uploads/2016/05/Admin-Record-Index-Draft-Permit-August-2018.pdf>

- The June 4, 2010 public notice on the hearing
- Transcripts from the public hearing on the Revised Draft Renewal Permit
- DOE Comments on Revised Draft Renewal Permit (7/15/10)
- Report of the Hearing Officer 10/26/10)
- DOE and NMED comments on the Hearing Officer's Report
- Secretary's Final Order (10/30/10)

My intent in seeking these documents is to demonstrate that the applicants/Permittees never contested or objected to the inclusion of the WIPP LWA total capacity limit of 6.2 million ft<sup>3</sup> of TRU waste in the application or the Permit, and that they never challenged NMED's authority to ensure compliance with that limit under RCRA, the New Mexico Hazardous Waste Act, or the WIPP Hazardous Waste Facility Permit.

By failing to include any of these documents in the administrative record for this draft Permit, NMED has demonstrated either a remarkable lack of interest in the administrative history of the WIPP Permit, or a deliberate intent to ignore it as a means of approving the current draft Permit. At a minimum, NMED must defend its decision to issue the draft Permit with the intent to approve based upon a complete administrative record. Simply issuing the draft Permit with a few changes and no explanation is unacceptable.

### **8. The Permittees have not adequately explained the role of overpacking in their justification for seeking this PMR**

In TID response to Question #6, the Permittees reiterate their argument first introduced in the Class PMR regarding the assumption that containers would be full (citing SEIS-II page 3-8):

*While the LWA and C&C Agreement include limits on the volume of TRU waste that can be emplaced, there is considerable uncertainty concerning how much of a container's volume is made up of TRU waste and how much is void space. Many of the containers would include a great deal of void space, particularly for RH-TRU waste; the actual volume of waste in a drum or cask, therefore, may be much less than the volume of the drum or cask. For the purposes of analyses in SEIS-II, the volume of the drum or cask is used, as if the drum or cask were full without void space.*

I've already commented on how I believe this quote is taken out of context in my April 3, 2018 comments (see pp. 2-4, including footnotes). The same SEIS II states:

*TRU waste inventory estimates, as used throughout SEIS-II, embody many conservative assumptions to ensure bounding analyses of maximum, reasonably foreseeable impacts.*

Thus, conservative assumptions for modeling analyses do not equate to real life expectations. But DOE continues to express surprise in their TID response:

*"... That is to say, the containers, as they existed at the generator/storage site, or as they were anticipated to be generated in the future, were full. Therefore, the container volumes defined the estimated waste volume. **However, what the DOE did not anticipate was the need to overpack numerous containers prior to***



**shipping.** This overpacking did not increase the volume of TRU waste to be disposed, but it did impact how much space needed to be excavated and how much container volume needed to be permitted because overpacking introduces a significant amount of void space. It is this void space, introduced as the result of overpacking, that the DOE is accounting for by implementing the CBFO management policy regarding the VOR.”

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 (except for undocumented volumes of previously unspecified “authorized” overpacked containers – see my comment #2 above). Using this limited information, I was able to construct a spreadsheet based upon the container types in TID response Table 1 and attempt to match these containers with information available in the WDS/WWIS Public Access System<sup>16</sup> as of September 12, 2018. I have attached a printout of this spreadsheet to my comments, and present these conclusions based upon a review of the information contained on it.

1. My numbers generally agree with the volume differences reported in the PMR. The Permit volume is 95,731 m<sup>3</sup> versus the LWA VOR volume of 69,075 m<sup>3</sup>, or a ratio of LWA VOR vs. Permit volume of 72%.
2. Three specific overpack containers are responsible for 98.6% of this volume reduction:
  - a. TDOP with 10 55-gallon drums  
6511 emplaced, volume reduction 15,626 m<sup>3</sup> (58.6% of reduction)
  - b. SWB with 4 55-gallon drums  
6229 emplaced, volume reduction 6,478 m<sup>3</sup> (24.3% of reduction)
  - c. 55-gallon drum with a 12-in Standard POC  
25,980 emplaced, volume reduction 4,188 m<sup>3</sup> (15.7% of reduction)

Obviously, these containers were not overpacked at WIPP for container condition reasons specified in the Permit (e.g., severe rusting, apparent structural defects, leaking). Some of them could have been overpacked at generator sites for these reasons, but it is more likely such containers would have been repackaged instead of overpacked.

Which leads to the question... what led to the high number of these particular overpack configurations to be used, and is it really true that *“the DOE did not anticipate... the need to overpack [these] numerous containers prior to shipping?”* I’m not a shipping and packaging expert by any means, but I find it difficult to believe that DOE was unaware of their waste inventory that **required** shipping in the 12-in standard POC configuration due to transportation restrictions, particularly at Rocky Flats. That inventory was well known for a long time and was some of the earliest waste disposed of from Rocky Flats at WIPP, beginning in July 1999. It was also considered a direct loaded 55-gallon drum containing a POC, and never thought of as an “overpack” in DOE’s waste inventory reports, in contrast to the manner it was presented in the PMR.

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<sup>16</sup> WDS/WWIS Public Access System available at <http://wipp.energy.gov/WDSPA>

Although I'm uncertain why SWBs were overpacked in such a large numbers, I'm relatively certain the large volume of waste overpacked in TDOPs was for purposes of "payload management," with the first emplacement in early 2003. Payload management may have been "unanticipated" when the Permittees first submitted their application for a disposal permit back in 1995, but it was a conscious decision by DOE to develop and implement it.<sup>17</sup> This was done in order to dispose of containers that, on their own, failed to meet the TRU alpha activity concentration requirement of the LWA (*"containers shall contain more than 100 nCi/g of alpha-emitting TRU isotopes with half-lives greater than 20 years"*), but may meet the requirement if overpacked with other containers from the same waste stream and the average TRU alpha activity concentration of all overpacked containers meets the requirement.

This has the effect of allowing many individual "low activity" containers, unable to meet the requirement on their own, being overpacked with a few "high activity" containers so that on average, they all meet the concentration requirement. This has a double impact on overall disposal volume:

1. Containers that otherwise were ineligible for disposal were disposed in a TDOP, and
2. TDOPs, containing only 10 drums, occupied the space of 14 55-gallon drums.

I recall viewing data from the WWIS back in 2003 and finding TDOPs emplaced holding nine "low activity" drums and a single "high activity" drum, all occupying the space that could have instead held 14 drums that all met the TRU alpha activity concentration on their own.

The Permittees must explain how their decisions with respect to overpacking have impacted the volume of waste emplaced at WIPP, and explain the circumstances under which these three configurations (TDOP with 10 55-gallon drums; SWB with 4 55-gallon drums; and 55-gallon drum with a 12-in Standard POC) are either required or optional for transportation and/or disposal.

## **Request for Public Hearing**

In light of my comments, I am requesting a public hearing on the draft Permit as specified in the public notice and fact sheet, both issued on August 6, 2018:

*Requests for a public hearing shall provide: (1) a clear and concise factual statement of the nature and scope of the interest of the person requesting the hearing; (2) the name and address of all persons whom the requestor represents; (3) a statement of any objections to the draft Permit, including specific references to any conditions being modified; and (4) a statement of the issues which the commenter proposes to raise for consideration at the hearing.*

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<sup>17</sup> DOE 2016. Transuranic Waste Acceptance Criteria for the Waste Isolation Pilot Plant. DOE/WIPP-02-3122. July 2016. <http://www.wipp.energy.gov/library/wac/WAC.pdf>. In particular, see "3.3.3 TRU Alpha Activity Concentration", pp. 34-35, and "Appendix E, Payload Management of TRU Alpha Activity Concentration", pp. 10-102.

(1) Nature and scope of interest of person requesting the hearing:

I am a private citizen with extensive knowledge of and experience with the WIPP Permit. I am particularly interested in maintaining the clarity of the existing roles of regulator (NMED) and regulated entity (DOE and their contractor, referred to as the Permittees) in the Permit.

(2) Person(s) whom the requestor represents:

I am representing myself with no other persons. My name and address are provided on the cover page to these comments.

(3) Objections to the draft Permit:

I object in total to all conditions proposed for change in the draft Permit, as stated in these comments as well as in my April 3, 2018 comments, and instead recommend the adoption and substitution of modifications as enumerated on pages 13-15 of those earlier comments. I also object to the conclusions drawn from the existing limited administrative record by the Permittees and, by inference through the issuance of the draft Permit, the conclusions of NMED.

(4) Issues proposed for consideration at the hearing:

- a) The administrative record for this draft Permit is relatively incomplete, in that it includes limited documents related to issuance of the original Permit in 1999 nor its renewal in 2010, among other things, that would provide context for the changes proposed in the draft Permit.
- b) DOE has not demonstrated, based upon the record, that Congress delegated to them sole authority to determine compliance with the LWA volume limits.
- c) DOE has not demonstrated, based upon the record, their authority to change long-established precedent on how waste volumes of containers disposed at WIPP are calculated.
- d) The Permittees are effectively abandoning their long-standing commitment that "all TRU waste is managed as though it were mixed."
- e) NMED has provided no reason, based upon the record, for issuing this draft Permit. Specifically, NMED has not demonstrated, based upon the WIPP Permit's administrative history, why it should abdicate responsibility for WIPP's compliance with the LWA volume limits after nearly 20 years.
- f) The Permittees have not acknowledged their direct responsibility for the waste management policies at WIPP that created their current waste volume dilemma.

In requesting a public hearing, I also wish to be included in any negotiations to resolve the issues I have raised in my comments, as provided in 20.4.1.901.A(4) NMAC.

Finally, having participated in the September 17, 2018 meeting with the Permittees, NMED, and representatives of four citizen groups, I object to NMED's plan to issue a public notice of hearing within a day or two of the comment deadline and before an opportunity to hold negotiations to resolve issues raised in public comments.

Please feel free to contact me if you have any questions or seek clarification about my comments. I can be reached at (505) 660-0353 or by email at [steve\\_zappe@mac.com](mailto:steve_zappe@mac.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Zappe". The signature is fluid and cursive, with the first name "Steve" and last name "Zappe" clearly distinguishable.

Steve Zappe

Attachments

## Federal Facility Compliance Act Summary

DOE Office of Health, Safety and Security



## Federal Facility Compliance Act

### "Historical" Perspective

Before the passage of the Federal Facility Compliance Act (FFCA), the federal government maintained that it was not subject to administrative and civil fines and penalties under solid and hazardous waste law because of the doctrine of "sovereign immunity." The State of Ohio challenged the federal government's claim of sovereign immunity in *Ohio v. the Department of Energy* (DOE). In this case, the U.S. Circuit Court of Appeals found in favor of the State (June 11, 1990) stating that the federal government's sovereign immunity is waived under both the Clean Water Act's (CWA's) sovereign immunity provision and the Resource Conservation and Recovery Act's (RCRA's) citizen suit provision (although not RCRA's sovereign immunity provision). The Circuit Court's decision was overturned by the Supreme Court on April 21, 1992, in *DOE v. Ohio*. The Supreme Court held that the waiver of sovereign immunity in RCRA and CWA is not clear enough to allow states to impose civil penalties directly, although penalties could be pursued in certain situations (i.e., where some type of court order had been issued and subsequently violated).

After the high court's ruling, many in Congress believed that there was a need to enact legislation that would bring federal facilities into the same legal framework as the private sector. The consensus among lawmakers was that there was a double standard in the United States by which the same government that developed laws to protect human health and the environment, and required compliance in the private sector, was itself not assuming the burden of compliance.

### Enactment of the Federal Facility Compliance Act

As a result, Congress enacted the FFCA (October 6, 1992, Pub. L. 102-386), which effectively overturned the Supreme Court's ruling. In the legislation Congress specifically waived sovereign immunity with respect to RCRA for federal facilities.

Under section 102, The FFCA amends section 6001 of RCRA to specify that federal facilities are subject to "all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature." These penalties and fines can be levied by EPA or by authorized states. In addition, the FFCA states that "the United States hereby expressly waives any immunity otherwise applicable to the United States." It should be noted that federal agents, employees, and officers are not liable for civil penalties, however, they are subject to criminal sanctions. No departments, agencies, or instrumentalities are subject to criminal sanctions.

Section 104 (1) and (2) require EPA to conduct annual RCRA inspections of all federal facilities. As part of the first inspection conducted under this authority, EPA is required to "conduct a comprehensive ground water monitoring evaluation," unless such an evaluation was conducted in the preceding 12 months. Authorized states are also given authority to conduct inspection of federal facilities for the purpose of enforcing compliance with the state hazardous waste program [section 104(3)].

Under section 104(4), the federal agency is required to reimburse EPA for reasonable service charges associated with conducting the inspections of its facilities. States are allowed to recover the costs of inspections under the authority granted in section 102(3). In the case of corrective action DOE can expect more frequent progress inspections by the regulator and that all eligible expenses incurred will have to be reimbursed. It should be noted that on an annual basis, EPA negotiates Interagency Agreements (IAGs) with other federal agencies, including DOE, for reimbursement for these costs. Once the IAGs are executed and processed, only a few basic steps must be followed to use and track these funds appropriately (EPA brochure, *Reimbursement Agreements for RCRA/FFCA Inspections at Federal Facilities*, April 1996)

### Mixed Waste

The FFCA was effective upon enactment on October 6, 1992, with the exception that "departments, agencies, and instrumentalities of the executive branch of the Federal Government" would not be subject to the sovereign immunity waiver until three years after enactment for violations of RCRA section 3004(j) "involving storage of mixed waste that is not subject to an existing agreement, permit, or administrative or judicial order, so long as such waste is managed in compliance with all other applicable requirements." Section 3004(j) forbids the storage of hazardous waste prohibited from land disposal unless the storage is for the purpose of accumulating such quantities as necessary to facilitate proper recovery, treatment, or disposal. After October 6, 1995, the waiver of sovereign immunity shall still not apply to DOE so long as the Department "is in compliance with both (i) a plan that has been submitted and approved pursuant to section 3021(b) of the Solid Waste Disposal Act and which is in effect and (ii) an order requiring compliance with such plan which has been issued pursuant to such section 3021(b) and which is in effect." The plan required under section 3021(b) is for the development of treatment capacities and technologies to treat all of the mixed wastes at each DOE facility.

Many DOE facilities are now subject to federal facility compliance agreements and other binding administrative clean-up orders. The FFCA will allow regulators to impose fines or penalties on federal entities that fail to meet milestones or deadlines contained in such agreements or orders. Penalties specified in the agreements will now be enforceable and may result in substantial financial penalties to noncompliant facilities.

Section 105 of the FFCA further amends RCRA by adding the new section 3021 mentioned above. This section, "Mixed Waste Inventory Reports and Plan[s]," provides the mechanism for fulfilling the requirements cited above by imposing several new reporting requirements on DOE related to mixed waste.

First, not later than 180 days after the date of enactment, the Secretary of Energy had to submit (1) reports containing a national inventory of mixed wastes on a state-by-state basis and (2) a national inventory of mixed waste treatment capacities and technologies to the EPA Administrator and the governors of states in which DOE stored or generated mixed wastes. The mixed waste inventory was to, among other things, describe each mixed waste type, list the amount currently stored, and estimate the amount of each type of mixed waste expected to be generated in the next five years at each DOE facility. Wastes that had not been characterized by sampling and analysis also had to be described. The inventory of treatment capacities and technologies was to contain an estimate of available treatment capacity for each waste described in the waste inventory, and provide information to support determinations that no treatment technology exists. DOE submitted its initial draft Mixed Waste Inventory Report to EPA and affected states for comment in April 1993. DOE published a notice of its availability on April 23, 1993 (58 FR 25822).

Second, the Secretary was directed to prepare and submit plans for developing treatment capacities and technologies for all facilities generating or storing mixed waste that are not subject to any permit, agreement, or order. Such plans were to include schedules for developing treatment capacity where treatment technologies exist and schedules for identifying and developing treatment technologies where none is currently available. These plans were to be reviewed and approved either by EPA or the states, depending on whether the state is authorized to regulate mixed waste. Upon approval of the submitted plans, EPA or the states were to issue orders requiring compliance with the plans. Plans were not required where agreements and orders were already in place.

According to a DOE Chief Financial Officer's Report - FY 1996:

*Currently, 32 of 35 Site Treatment Plans are approved and final orders are in place. Twenty-eight of these 35 Site Treatment plans were approved by October 6, 1995 [the deadline set in section 102(c) of the FFCAct], or shortly thereafter. For the remaining seven sites, the states and the DOE mutually agreed to continue negotiations during FY 1996. Four of these seven sites obtained approval and their final orders were in place in FY 1996. These final orders include consent orders and unilateral orders issued under state law and EPA compliance orders issued under the RCRA enforcement provisions. At the remaining three sites, the Argonne National Laboratory-East, the Brookhaven National Laboratory, and the Lawrence Livermore National Laboratory, the Site Treatment Plans are currently in various stages in the approval process (i.e., the states and the DOE are still negotiating or the state is completing state requirements for approval of the Site Treatment Plan).*

### **Federally Owned Treatment Works**

Section 108 of the FFCAct added a new section 3023, "Federally Owned Treatment Works," to Subtitle C of RCRA. This new section provides that if certain conditions are met, Federally Owned Treatment Works (FOTWs) are essentially exempted from RCRA regulation based on the domestic sewage exclusion to the definition of solid waste. For solid or dissolved materials entering an FOTW to be exempt from the solid waste definition, they must meet at least one of the following criteria:

- Materials must be subject to a pretreatment standard under section 307 of the CWA (provided the source is in compliance with established pretreatment standards).
- Materials not currently covered by a pretreatment standard must be subject to (and in compliance with) an EPA-promulgated pretreatment standard that would be applicable before October 6, 1999 (provided EPA has promulgated a schedule for establishing such a standard).
- Materials not covered under either of the above criteria must be treated in accordance with the applicable RCRA Land Disposal Restriction (LDR) treatment standards.
- The generator source is a household or a conditionally exempt small quantity generator generating less than 100 kilograms of hazardous waste, or less than one kilogram of acutely hazardous waste per month.

The purpose of this new section was to ensure similar treatment for both municipal Publically Owned Treatment Works (POTWs) and FOTWs.

### **Implementing Regulations**

On March 18, 1996 (61 FR 11089), EPA issued a technical revision to 40 CFR 22.37 to amend the administrative rules of practice to provide a federal department, agency, or instrumentality which is the subject of an administrative enforcement order, with the opportunity to confer with the EPA Administrator, as provided under the FFCAct.

This page was last updated on

## Volume Calculations Using WWIS Container Inventory



## Volume Calculations Using WWIS Container Inventory

| AUTHORIZED CONTAINER PER WIPP WAC<br>(from Permittees' TID response dated July 12, 2018) | LWA VOR<br>VOLUME (m³) | PERMIT CONTAINER<br>VOLUME (m³) | Percent of Permit<br>Container Volume | Number Containers<br>in WWIS | LWA TRU Volume<br>(m³) | TRU Mixed Waste<br>Volume (m³) | % of Disposal<br>Volume Change | Actual Volume<br>Reduction (m³) |
|------------------------------------------------------------------------------------------|------------------------|---------------------------------|---------------------------------------|------------------------------|------------------------|--------------------------------|--------------------------------|---------------------------------|
| 55-gallon drum DL                                                                        | 0.21                   | 0.21                            | 100.0%                                | 98205                        | 20623.1                | 20623.1                        | 100.0%                         | 0.0                             |
| 85-gallon drum DL                                                                        | 0.32                   | 0.32                            | 100.0%                                | 2                            | 0.6                    | 0.6                            | 100.0%                         | 0.0                             |
| 85-gallon drum OP with 55-gallon drum                                                    | 0.21                   | 0.32                            | 65.6%                                 | 5                            | 1.1                    | 1.6                            | 65.6%                          | 0.6                             |
| 100-gallon drum DL                                                                       | 0.38                   | 0.38                            | 100.0%                                | 34291                        | 13030.6                | 13030.6                        | 100.0%                         | 0.0                             |
| Shielded Container DL                                                                    | 0.11                   | 0.21                            | 52.4%                                 | 9                            | 1.0                    | 1.9                            | 52.4%                          | 0.9                             |
| Standard Waste Box DL                                                                    | 1.88                   | 1.88                            | 100.0%                                | 6899                         | 12970.1                | 12970.1                        | 100.0%                         | 0.0                             |
| Standard Waste Box OP with 4 55-gallon drums                                             | 0.84                   | 1.88                            | 44.7%                                 | 6229                         | 5232.4                 | 11710.5                        | 44.7%                          | 6478.2                          |
| Standard Waste Box OP with 3 85-gallon drums                                             | 0.96                   | 1.88                            | 51.1%                                 |                              | 0.0                    | 0.0                            |                                | 0.0                             |
| Standard Waste Box OP with 2 100-gallon drums                                            | 0.76                   | 1.88                            | 40.4%                                 |                              | 0.0                    | 0.0                            |                                | 0.0                             |
| Ten-Drum Overpack DL                                                                     | 4.5                    | 4.5                             | 100.0%                                | 26                           | 117.0                  | 117.0                          | 100.0%                         | 0.0                             |
| Ten-Drum Overpack OP with 10 55-gallon drums                                             | 2.1                    | 4.5                             | 46.7%                                 | 6511                         | 13673.1                | 29299.5                        | 46.7%                          | 15626.4                         |
| Ten-Drum Overpack OP with 6 85-gallon drums                                              | 1.92                   | 4.5                             | 42.7%                                 |                              | 0.0                    | 0.0                            |                                | 0.0                             |
| Ten-Drum Overpack OP with Standard Waste Box                                             | 1.88                   | 4.5                             | 41.8%                                 |                              | 0.0                    | 0.0                            |                                | 0.0                             |
| 12-in Standard Pipe Overpack Container (POC)                                             | 0.0488                 | 0.21                            | 23.2%                                 | 25980                        | 1267.8                 | 5455.8                         | 23.2%                          | 4188.0                          |
| Type S100 POC                                                                            | 0.00163                | 0.21                            | 0.8%                                  | 814                          | 1.3                    | 170.9                          | 0.8%                           | 169.6                           |
| Type S200-A POC                                                                          | 0.00691                | 0.21                            | 3.3%                                  | 0                            | 0.0                    | 0.0                            |                                | 0.0                             |
| Type S200-B POC                                                                          | 0.0137                 | 0.21                            | 6.5%                                  | 0                            | 0.0                    | 0.0                            |                                | 0.0                             |
| Type S300 POC                                                                            | 0.00269                | 0.21                            | 1.3%                                  | 51                           | 0.1                    | 10.7                           | 1.3%                           | 10.6                            |
| Criticality Control Overpack                                                             | 0.0128                 | 0.21                            | 6.1%                                  | 0                            | 0.0                    | 0.0                            |                                | 0.0                             |
| Standard Large Box 2                                                                     | 7.39                   | 7.39                            | 100.0%                                | 232                          | 1714.5                 | 1714.5                         | 100.0%                         | 0.0                             |
| RH Removable Lid Canister (DL)                                                           | 0.89                   | 0.89                            | 100.0%                                | 1                            | 0.9                    | 0.9                            | 100.0%                         | 0.0                             |
| RH Removable Lid Canister OP with 3 55-gallon drums                                      | 0.63                   | 0.89                            | 70.8%                                 | 700                          | 441.0                  | 623.0                          | 70.8%                          | 182.0                           |
| NS15 Neutron Shielded Canister                                                           | 0.195                  | 0.89                            | 21.9%                                 | 0                            | 0.0                    | 0.0                            |                                | 0.0                             |
| NS30 Neutron Shielded Canister                                                           | 0.351                  | 0.89                            | 39.4%                                 | 0                            | 0.0                    | 0.0                            |                                | 0.0                             |
| <b>Total as of 9/12/2018</b>                                                             |                        |                                 |                                       | <b>179955</b>                | <b>69074.5</b>         | <b>95730.7</b>                 | 72.2%                          | <b>26656.2</b>                  |
| 55 gal Solid/Vitrified                                                                   |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| 6-inch Pipe OP                                                                           |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| 55 gal 1-TRIP                                                                            |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| 55 gal Galvanized                                                                        |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| RH Canister OP                                                                           |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| SWB OP Galvanized Drums                                                                  |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| 85 gal Short                                                                             |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| 100 gal OP                                                                               |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| RH 30 gal                                                                                |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| 72-B Fixed Lid DL                                                                        |                        |                                 |                                       | 18                           |                        |                                |                                |                                 |
| 72-B Fixed Lid OP                                                                        |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| RH 55 gal                                                                                |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| RH 15 gal                                                                                |                        |                                 |                                       | 0                            |                        |                                |                                |                                 |
| Non-Container Matl                                                                       |                        |                                 |                                       | 100                          |                        |                                |                                |                                 |
| <b>WWIS Total as of 9/12/2018</b>                                                        |                        |                                 |                                       | <b>180073</b>                |                        |                                |                                |                                 |