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February 6, 2018

To: Ricardo Maestas
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505
Ricardo.maestas@state.nm.us

Dear Mr. Maestas:

The WIPP Permit Modification clarifying and distinguishing how waste is counted should clearly be a Class 2 Permit Modification. Counting physical waste versus counting total volume of an over pack, including substantial amounts of air, to meet the requirements for a Hazardous Waste Unit are volume counting processes for two very different purposes. The RCRA volume counting requirements for a Hazardous Waste Unit are for that specific unit and for all practical purposes the number of units under the Permit are unlimited and are intended to define the volume requirements of the unit. On the other hand, the "waste" volume for WIPP, as clearly stated in the Land Withdrawal Act, is a hard limit. That "waste" volume can be clearly determined by the inner container volume in any over pack, and it is routinely tracked by WIPP. In the PMR, pictures, schematics and volume difference calculations make it clear what the differences are between counting air and counting the waste in the inner containers.

This dual counting process is not complicated or requires any technical difficulty. Everyone knows the volume of every over pack and the volume of the inner containers.

This simple, uncomplicated, straight forward change in the PMR for dual counting meets every criteria to be considered as a Class II modification.

It would be tragic for waste at Los Alamos that meets the WIPP WAC to be left there because of WIPP being considered "full" due to counting air as waste and losing one-third of the waste volume capacity of WIPP.

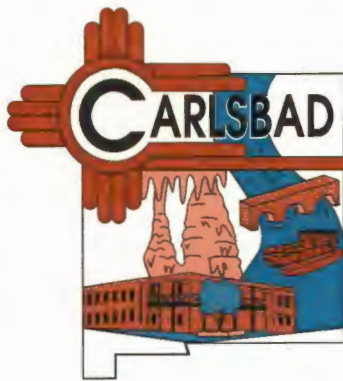
As a former State Representative, I've witnessed the introduction of many issues related to the WIPP permit and am confident this does not rise to the level requiring a Class 3 process.

This PMR should be considered as a simple, straight forward change in counting Class 2 permit modification to reflect the actual volume of waste.

Best regards,

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

John Heaton



DALE JANWAY

MAYOR

Post Office Box 1569
Carlsbad, NM 88221-1569
(575) 887-1191
1-800-658-2713
www.cityofcarlsbadnm.com

STEVE MCUTCHEON

CITY ADMINISTRATOR

February 12, 2018

To: Ricardo Maestas
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505
Ricardo.maestas@state.nm.us

Dear Mr. Maestas:

We appreciate the opportunity to comment on the proposed modification seeking clarification of transuranic (TRU) Mixed Waste Disposal Volume Reporting.

This proposed permit modification is easy to understand and is not technically complicated. It is simply a matter of using a common-sense dual approach to tabulating volume that addresses the issue of overpack containers. This PMR is appropriate as a Class 2 modification. Putting WIPP to its intended use, in the best way possible, is important to the nation and to the state.

This change will move WIPP's current LWA total from around 90,000 cubic meters of volume down to about 60,000 cubic meters.

It's also fair. WIPP uses overpack containers to package waste responsibly, sometimes because the original interior container is in poor condition. Counting the overpack volume against WIPP's total is effectively punishing the facility for being responsible.

We believe this proposed permit modification is sensible, reasonable and in the best interest of the project and the nation. Thank you for your consideration.

Sincerely,

Carlsbad Mayor Dale Janway

COUNCILORS

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WESLEY CARTER

Ward 4

WANDA N. DURHAM
DICK DOSS



County of Eddy
State of New Mexico

February 22, 2018

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

Via: Ricardo.maestas@state.nm.us

Dear Mr. Maestas:

On behalf of the Eddy County Board of Commissioners, I am writing you in support of the proposed WIPP Permit Modification. The WIPP Permit Modification clarifies and distinguishes how waste is counted and should be considered a Class 2 Permit Modification.

This proposed modification uses a dual approach to tabulating volume of the overpack containers that is simple and easily understood. Using this common-sense tabulation of volume would reduce the current Land Withdrawal Act (LWA) total volume from approximately 90,000 cubic meters to approximately 60,000 cubic meters, thus increasing the waste volume capacity of WIPP by one-third.

We do appreciate WIPP packaging transuranic (TRU) mixed waste responsibly. Using the overpack containers provides the best protection and safety for the citizens of Eddy County and our great State of New Mexico. WIPP should not be penalized for providing protection and safety and their volume capacity overstated by tabulating "air waste" of the overpacks in the total volume capacity.

The Eddy County Board of Commissioners respectfully requests that the WIPP Permit Modification be considered as a Class 2 permit modification in tabulating the actual volume of waste.

Thank you for your consideration and attention to this important request.

Sincerely,

A handwritten signature in blue ink that reads "Susan Crockett".

Susan Crockett
Commission Chairman
Eddy County Board of Commissioners

COMMISSIONERS

Susan Crockett, Chair
District 5

James Walterscheid, Vice Chair
District 1

Jonathan A. Henry, Member
District 2

Larry E. Wood, Member
District 3

Stella Davis, Member
District 4

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Assistant County Manager

Kenney Rayroux

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Gemma Ferguson
Assessor

Robin Van Natta
Clerk

John Caraway
Probate Judge

Mark Cage
Sheriff

Laurie Pruitt
Treasurer

Eddy County
Administration Complex
101 W. Greene Street
Carlsbad, NM 88220
575-887-9511(p)
575-236-1061(f)

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#); [McLean, Megan, NMENV](#)
Subject: FW: WIPP Volume of Record
Date: Wednesday, March 07, 2018 12:56:56 PM

From: Dave Sepich [mailto:dsepich@springtimesupply.com]
Sent: Tuesday, March 06, 2018 12:46 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP Volume of Record

Dear Mr. Maestas:

I have been familiar with WIPP operations since it was being constructed. I currently serve on the Mayor's Nuclear Task Force in Carlsbad, and have closely followed all activity at WIPP. As most people in Carlsbad, we have friends and relatives that help operate the site. We are completely confident in their ability to operate it safely.

After having review the proposed changes to the WIPP Volume of Record calculations, I am in complete support of calculating the waste based on the actual space the waste takes up, and not on the volume of the containers.

It is completely illogical to me to construct and operate a facility that the taxpayers have spent over \$50 Billion dollars on, only to utilize 60% of the volume. I know that if the majority of the people in the US knew what a huge waste of money this is, many politicians and bureaucrats would be run out of office.

By changing the way the waste volume is calculated the American People would get the real value from their hard earned tax dollars.

I appreciate your consideration:

Dave Sepich
801 ½ N. 8th St.
Carlsbad, NM 88220

575-361-3283

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#); [McLean, Megan, NMENV](#)
Subject: FW: WIPP Volume of Record
Date: Wednesday, March 07, 2018 12:57:23 PM
Importance: High

From: Sheri Stephens [mailto:sheristephens@eracarlsbad.com]
Sent: Tuesday, March 06, 2018 1:02 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>; Dave Sepich <dsepich@springtimesupply.com>
Subject: Fw: WIPP Volume of Record
Importance: High

Please see attached letter from Dave Sepich. I support this important change.

Sheri Stephens
1903 Mt. Shadow Drive
Carlsbad, NM 88220
575-361-6921 cell

From: [Dave Sepich](#)
Sent: Tuesday, March 06, 2018 1:03 PM
To: [amymbarnhart@hotmail.com](#) ; [Antiporta Mike](#) ; [Arlene Cooper](#) ; [Bill Waters](#) ; [Bob Yeager](#) ; [bozgreen@dunaganassociates.com](#) ; [Caraline Sepich](#) ; [cyeager@pvtnetworks.net](#) ; [Carolyn Stroble](#) ; [Cindy.Short@carlsbad.k12.nm.us](#) ; [Craig Stephens](#) ; [Dave Rogers](#) ; [Deanna Garringer](#) ; [Debra Hicks](#) ; [dgeorge@stoller.com](#) ; [Ernie Carlson](#) ; [Garth Goodey](#) ; [Gary Perkowski](#) ; [cavementech@gmail.com](#) ; [Jason Wyatt](#) ; [Jayann Sepich](#) ; [JERRY STANLEY](#) ; [Jill Holt](#) ; [jknox@lakeviewchristian.com](#) ; [Joe Brinninstool](#) ; [Kay Doss](#) ; [Leslie Heinsch](#) ; [Mark Schinnerer](#) ; [mikecurrier@hotmail.com](#) ; [Mike Garringer](#) ; [Sherri Stephens](#) ; [Sheryl Dugger](#) ; [Steve McCutcheon](#) ; [scrockett.springtime@gmail.com](#) ; [susan.scott@wipp.ws](#) ; [Tom Dugger](#) ; [Tracey Francis](#) ; [Jay Francis](#) ; [Jay Jenkins](#)
Subject: FW: WIPP Volume of Record

Dear friend and Carlsbad Citizen:

Wipp is seeking a permit modification to change the method of how the volume of waste is calculated when it is placed in the underground.

Currently and historically, the calculations were based on the volume of the container that it is in. Many of these containers have very small amount of actual waste, and lots of air.

We are trying to get NMED to allow a change to the calculation that would be based on the actual amount of waste that is in the container. By the current calculation, WIPP would be about half full. Using the actual volume of

waste calculation, WIPP would be one third full.

As you can see, this would extend the operating life of WIPP, and be much more responsible to the American Taxpayer who are paying for it. Having spent over \$50 billion in constructing and operating WIPP so far, It would be much more fiscally responsible to only calculate the actual waste. Paying that kind of money to bury AIR is a crime in my book.

Please take some time to send an email to Mr. Ricardo Maestas at NMED supporting this important change.

Feel free to utilize any part of my email below.

PS: There is a meeting from 5 to 7 tonight at the Skeen Whitlock building that NMED is having for public comment. There will be a short presentation about the modification and then they will have public comments.

Thanks

Dave Sepich

From: Dave Sepich [mailto:dsepich@springtimesupply.com]

Sent: Tuesday, March 06, 2018 12:46 PM

To: 'ricardo.maestas@state.nm.us' <ricardo.maestas@state.nm.us>

Subject: WIPP Volume of Record

Dear Mr. Maestas:

I have been familiar with WIPP operations since it was being constructed. I currently serve on the Mayor's Nuclear Task Force in Carlsbad, and have closely followed all activity at WIPP. As most people in Carlsbad, we have friends and relatives that help operate the site. We are completely confident in their ability to operate it safely.

After having review the proposed changes to the WIPP Volume of Record calculations, I am in complete support of calculating the waste based on the actual space the waste takes up, and not on the volume of the containers.

It is completely illogical to me to construct and operate a facility that the taxpayers have spent over \$50 Billion dollars on, only to utilize 60% of the volume. I know that if the majority of the people in the US knew what a huge waste of money this is, many politicians and bureaucrats would be run out of office.

By changing the way the waste volume is calculated the American People would get the real value from their hard earned tax dollars.

I appreciate your consideration:

Dave Sepich
801 ½ N. 8th St.
Carlsbad, NM 88220

575-361-3283



Virus-free. www.avast.com

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#); [McLean, Megan, NMENV](#)
Subject: FW: WIPP Volume of record
Date: Wednesday, March 07, 2018 12:57:47 PM

From: Jayann Sepich [mailto:jsepich@dhasaves.org]
Sent: Tuesday, March 06, 2018 1:10 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP Volume of record

Dear Mr. Maestas:

I was born in Carlsbad and have lived here most of my life and have a lot of friends and relatives that work at the WIPP site.

I am in complete support of calculating the waste based on the actual space the waste takes up, and not on the volume of the containers.

The manner in which the calculation is being made currently makes no sense. And more than that, since the taxpayers have spent over \$50 billion dollars on the WIPP site, it would be such a waste of that taxpayer money to only utilize 60% of its volume.

The only sensible thing to do is change the way the volume is calculated to accurately reflect the amount of waste that is being stored.

I appreciate your consideration:

Jayann Sepich
801 ½ N. 8th St.
Carlsbad, NM 88220

575-361-1931

Jayann Sepich

Co-founder, DNA Saves
575-361-1931

February 6, 2018

Mr. John Keiling,

Dear Mr. Keiling;

The State Permit Modification clarifying and distinguishing how waste is counted should clearly be a Class 2 Permit Modification. Counting physical waste versus counting total volume of an over pack, including substantial amounts of air, to meet the requirements for a Hazardous Waste Unit are volume counting processes for two very different purposes. The RCRA volume counting requirements for a Hazardous Waste Unit are for that specific unit and for all practical purposes the number of units under the Permit are unlimited and are intended to define the volume requirements of the unit. On the other hand, the "waste" volume for WIPP, as clearly stated in the Land Withdrawal Act, is a hard limit. That "waste" volume can be clearly determined by the inner container volume in any over pack, and it is routinely tracked by WIPP. In the PMR, pictures, schematics and volume difference calculations make it clear what the differences are between counting air and counting the waste in the inner containers.

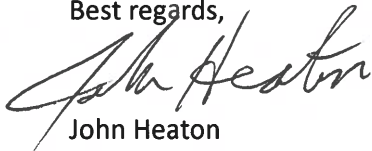
This dual counting process is not complicated or requires any technical difficulty. Everyone knows the volume of every over pack and the volume of the inner containers.

This simple, uncomplicated, straight forward change in the PMR for dual counting meets every criteria to be considered as a Class II modification.

It would be tragic for waste at Los Alamos that meets the WIPP WAC to be left there because of WIPP being considered "full" do our counting air as waste and losing one-third of the waste volume capacity of WIPP.

This PMR should be considered as a simple, straight forward change in counting to reflect the actual volume of waste.

Best regards,

A handwritten signature in cursive script, appearing to read "John Heaton".

John Heaton

102 S. Canyon
Carlsbad, NM 88220

NMED WIPP VOLUME OF RECORD PMR

MAYOR'S NUCLEAR TASK FORCE PRESENTATION

3-6-2018

BY: JOHN HEATON, CHAIR

VOLUME OF RECORD CALCULATION PMR

- STATE PERMIT FOR WIPP IS RCRA PERMIT (SOLID WASTE DISPOSAL FACILITY)
- SOLID WASTE FACILITIES REQUIRE A VOLUME OF WASTE DETERMINATION
- OUTER MOST CONTAINER BECAME THE VOLUME OF RECORD FOR RCRA PROVISIONS
- LAND WITHDRAWAL CAPACITY OF 175,000 CU M REFERS TO TRU WASTE CAPACITY
- THE CALCULATION OF RCRA VOLUME IS NOT THE SAME AS THE TRU WASTE VOLUME
- THEREFORE, THE PMR CLARIFIES DIFFERENCE OF RCRA VS LWA CALCULATION
- THERE IS NO RCRA LIMIT WHEREAS THERE IS A TRU WASTE LIMIT

PIPE OVERPACK COMPONENT

Primarily used for shipping larger amounts of fissile material (<200g)

Outer volume: 208-liter

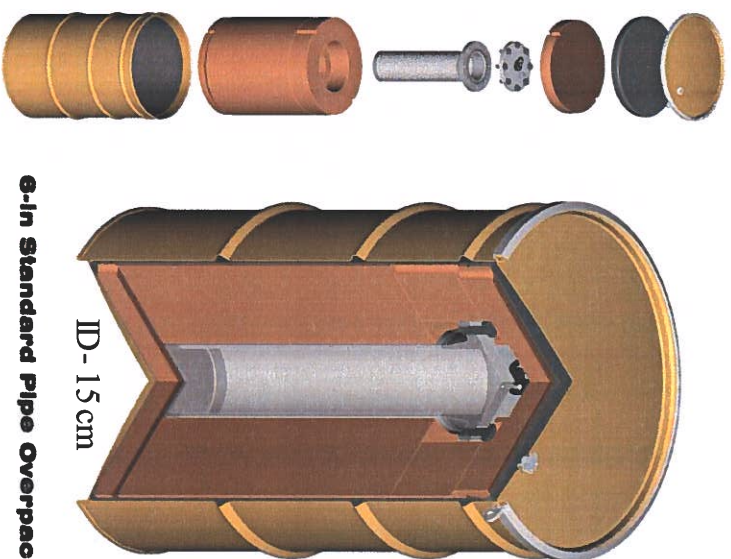
Inner volume: 50-liter

~26,000 emplaced

Outer volume: 5,224 m³

Inner volume: 1,250 m³

Difference: 3,974 m³



STANDARD WASTEBOX

Primarily used for over-packing 208-liter drums

Outer volume: 1.8 m³

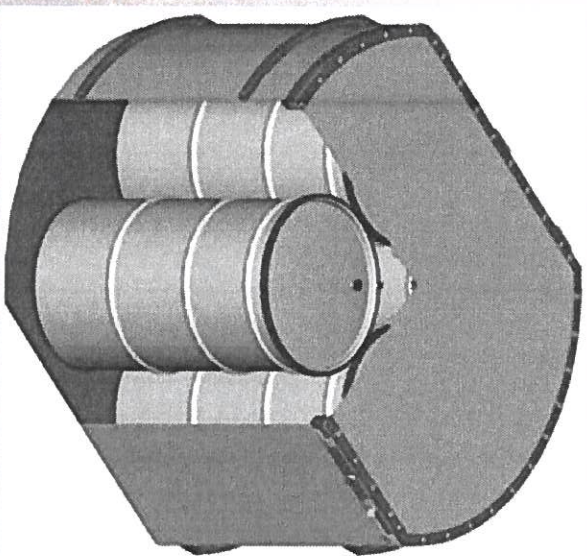
Inner volume : 0.8 m³
(four 208-liter drums)

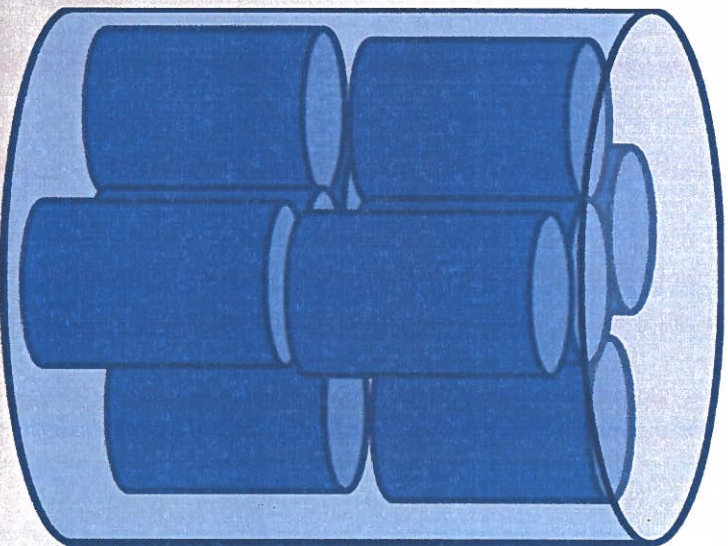
12,075 emplaced

Outer volume: 21,735 m³

Inner volume: 9,660 m³

Difference: 12,075 m³





TEN DRUM OVERPACK

Primarily used for overpacking 208-liter drums

Outer volume: 4.5 m³

Inner volume : 2.1 m³
(four 208-liter drums)

5,755 emplaced

Outer volume: 25,897 m³

Inner volume: 11,510 m³

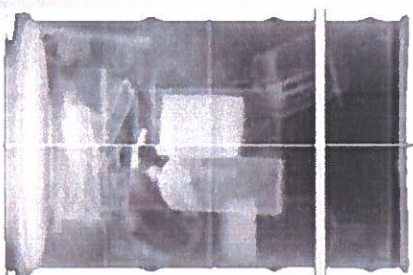
Difference: 14,387 m³

NON-WASTE VOLUMES FROM OVER-PACKING

	Emplaced Volume of Record	Inner Container Volume	Volume Capacity Used by non- waste volumes
TDOP	25,897	11,510	14,387
SWB	21,735	9,660	12,075
POC	5,224	1,250	3,974
			30,436

2 Disposal
Panels of Air

CONTAINER FILL FACTOR ESTIMATES NON-WASTE VOLUME

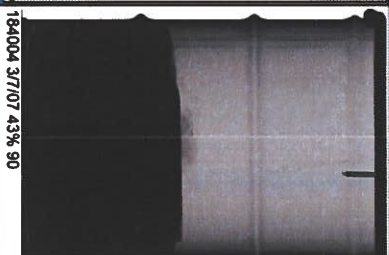


100%

- ☐ APPLICABLE TO DIRECT-LOADED CONTAINERS ONLY
- ☐ 37,800 M³ DIRECT LOADED CONTAINER VOLUME
- ☐ AVERAGE FILL FACTOR: 71%
- ☐ NON-WASTE VOLUME (AIR + BAG-OUT PLASTIC): 11,000 M³



43%



37%



32%



42%



184004 3/7/07 43% 80

A12740 01/27/2005 37% 0

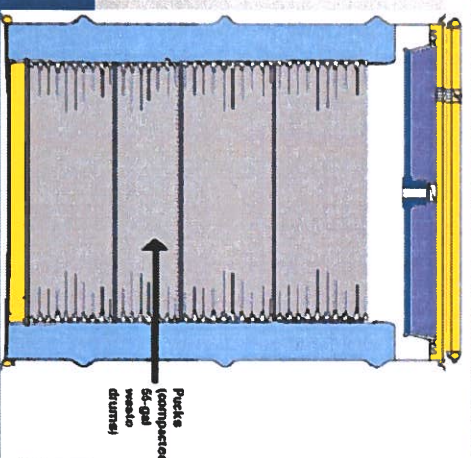
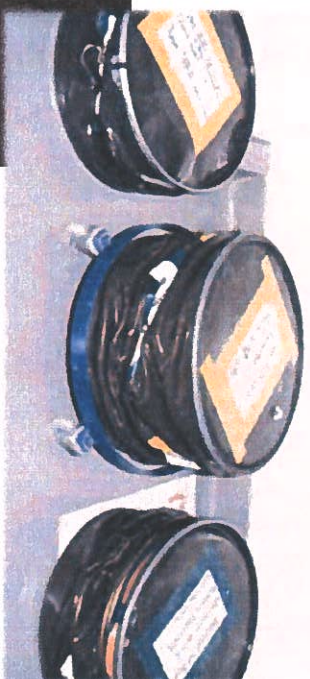
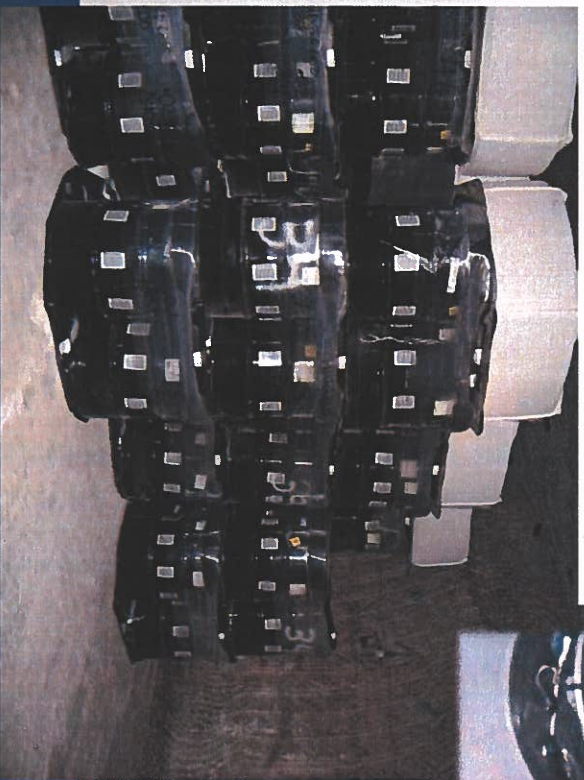
RH1-85-013 04/07/2004 32%

RH2-212A17092 01/24/2003 42%

AMWTP DRUMS FROM INL OPTIMIZE DISPOSAL SPACE

200 pounds of space at WTL

100% filled with super-
compacted 208-liter
thin-walled drum
“pucks”



safety ♦ performance ♦ cleanup ♦ closure

www.amwtp.com/INL

CONCLUSIONS

- ❑ Volume counting for a Hazardous Waste Unit very different than actual TRU Waste volume to meet Federal Land Withdrawal Act Limits
- ❑ Counting volume of a HWU for RCRA and the LWA TRU Waste Limits different
- ❑ Overpacks are for safety, transportation and handling purposes and NEVER intended to reflect inner containers waste content
- ❑ As described, counting very simple. Volume differences very clear.
- ❑ Records are very complete to enable report
- ❑ The simplicity and ease of understanding defines this as a Class II PMR
- ❑ It would be a shame for Los Alamos, as an example, to lose access to WIPP because we are counting air.



State of New Mexico
House of Representatives
Santa Fe



CATHRYNN N. BROWN

R - Eddy
District 55

1814 North Guadalupe Street
Carlsbad, NM 88220
Phone: (575) 706-4420
E-mail: cath@cathrynnbrown.com
c.brown.nm55@gmail.com

March 7, 2018

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

RE: WIPP Volume of Record

Dear Mr. Maestas,

The Waste Isolation Pilot Plant (WIPP) is located within my legislative district, and I greatly appreciate the important work that is accomplished there on a daily basis. By isolating transuranic (TRU) nuclear waste from the environment permanently and securely, WIPP serves the national interest. Congress specified a distinct mission and certain parameters within which WIPP shall operate, including the placing of a limit on total waste volume. Exactly how waste volume should be reckoned has been subject to debate and interpretation, and officials to date have chosen to take the easy path and simply measure by outer packaging. I think it's good that someone has finally "called the question," as this presents an opportunity for the New Mexico Environment Department to use logic and common sense to clarify what exactly "waste" volume means.

I strongly support the U.S. Department of Energy's application for a permit modification clarifying that void space is not factually or technically TRU waste. Common sense tells us that air is not transuranic waste; therefore, air should not be factored in waste volume. Since historical data and records exist to differentiate between TRU waste and void space (e.g., empty space occasioned by overpacking), it will not be hard to re-figure the actual TRU waste volume at WIPP.

It is a good government measure and makes economic sense to redeem space at WIPP by approving the requested Class 2 permit modification.

Sincerely,

Cathrynn Novich Brown

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#)
Subject: Fwd: Comments on the WIPP PMR
Date: Friday, March 09, 2018 8:00:02 AM

Sent from my Sprint Samsung Galaxy S7.

----- Original message -----

From: nicki <fog1957@yahoo.com>
Date: 3/9/18 7:43 AM (GMT-07:00)
To: "Maestas, Ricardo, NMENV" <Ricardo.Maestas@state.nm.us>
Subject: Comments on the WIPP PMR

Dear Mr Maestas,

At the permit change request meeting at the end of it , one of the officials from WIPP or Carlsbad spoke lightly saying this is not the camels nose getting under the tent...HE COULD NOT BE MORE WRONG or disingenuous for indeed WIPP is metaphorically speaking already a HERD of Nuclear camels under the tent...I strongly oppose the Permit Modification Request (PMR) submitted 1/31/18 according to public notice.

What the request calls a clarification is actually a VERY BIG SUBSTANTIAL CHANGE in the permit that is a sleight of hand to make it appear that the amount of TRU waste was reduced. by 26,362 meters this is disingenuous and dishonest. And follows a pattern of dishonesty with the public regarding the danger of Nuclear waste and what exactly is going on at WIPP. whose management changes frequently.. The change they seek denies reality that the entire "safe pack" is nuclear once drums of waste are in it - would you want your family playing in a safe pack that had been used to store Nuclear Waste Drums ? i wouldn't and we owe the people of New Mexico to err on the side of true safety when it comes to Nuclear waste.

Such a major change is unacceptable. and the PMR should be denied..

Alternatively the NMED must determine the request follow 3 modification procedures because the is significant public concern from me and many other New Mexicans...really the meeting wasn't advertised enough but that is another subject.

We know that the ultimate goal of the management of WIPP is to expand the room for the waste despite measuring the amount by the outer containers for decades they want this confusing unverifiable slight of hand. Creating tow systems all so they can expand mostly UNDER THE RADAR of the PUBLIC. NO attention paid to safety. ZERO. Instead they give us secrecy and fast confusing talk UNACCEPTABLE when it comes to NUCLEAR WASTE which is i remind you . FOREVER...

i reject their DOE and WIPP's attempt to hoodwink the public with the goal of expanding the panels underground especially this way- with a PMR that denies the real motivation.

To expand after the loss of panels in the ACCIDENT , the criticality of 2014. They may talk smoothly but they have a bad track record. WIPP has FAILED to fulfill its "Start Clean Stay Clean" mission. NMED should not allow such an expansion and unjustified and unneeded change in the permit.

sincerely,
Nicki Handler

4499 San Ignacio Rd # 3315
Santa Fe NM 87507
505 429 1545

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#)
Subject: FW: Written Comment in Support of DOE-NWP Class 2 Permit Modification for Clarification of TRU Mixed Waste Disposal Volume Reporting
Date: Monday, March 12, 2018 9:52:49 AM

From: Russell Hardy [mailto:rharry@nmsu.edu]
Sent: Friday, March 09, 2018 4:17 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Cc: Russell Hardy <rharry@nmsu.edu>; Chavez, Rick - RES <Rick.Chavez@wipp.ws>
Subject: Written Comment in Support of DOE-NWP Class 2 Permit Modification for Clarification of TRU Mixed Waste Disposal Volume Reporting

Good afternoon Ricardo, below is my public comment in support of the DOE-NWP Class 2 Permit Modification for Clarification of TRU Mixed Waste Disposal Volume Reporting.

I have attended two public meetings regarding this particular permit modification, one in Carlsbad on 3/6/18 and another in Santa Fe on 3/8/18. After hearing both presentations on this issue as well as the public comments and/or concerns raised at each meeting, I am in full support of the proposed permit modification as I believe it represents a relatively minor change to the permit by decoupling the method in which the volume of TRU Mixed Waste is being counted and reported under the Hazardous Waste Permit for RCRA purposes from the method that the Department of Energy proposes to report the volume of TRU waste disposed of in the WIPP with respect to the Land Withdrawal Act's (LWA) maximum capacity limitation.

In fact, other than a minor increase in the volume reported for nine containers previously disposed of in Panel 6, the method of calculating the volume for the Hazardous Waste permit is not being amended from the current approach – the DOE and their contractor (NWP) will continue to report the amount of TRU mixed waste disposed at the WIPP for RCRA purposes as the volume of the outer-most container – which includes air and wasted space within the overpack container. What is being changed is a decoupling from the permit in the way (method) that the DOE reports on TRU waste disposed with respect to the LWA by reporting this capacity as the volume of the innermost container. As you well know, the LWA specified a maximum capacity in terms of the amount of waste that can be disposed of within the WIPP as 6.2 million ft³ (175,564 m³) which was prescribed at the time based on the amount of waste thought to be in existence and/or generated in the future with respect to defense-related TRU waste. Some thirty or more years later, we now know that the amount of waste in the DOE complex will easily exceed this stated capacity. Therefore, by reporting the LWA capacity as the volume of the innermost container, the DOE can more accurately report the amount of actual waste disposed of in the WIPP (by excluding air) and, in doing so, can reduce the reported volume of waste previously disposed of in the WIPP by approximately one-third.

This change, if approved by the NMED, will allow the DOE to continue to meet its mission of safely disposing of TRU mixed waste by removing it from the biosphere and will have no negative impact on the WIPP repository, the environment, or the public. In all actuality, they should have been

reporting the TRU waste for the LWA this way from the beginning.

I realize that there will likely be considerable opposition to this proposed permit modification as many may feel that the DOE and NWP are attempting to increase the capacity of the WIPP or “cook the books” by employing two different counting methodologies, but in my opinion, they are simply trying to correct the permit to reflect what should have been done from the beginning and to better manage the limited space that they have to continue disposing of TRU mixed waste that is much better off in the WIPP repository rather than at the generator sites.

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

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](#); [Maestas, Ricardo, NMENV](#)
Subject: FW: Public Comments about Proposed WIPP Expansion – “Volume Reporting” Permit Modification Request
Date: Friday, March 16, 2018 9:46:17 AM

From: Mona Ruark [mailto:solserenity@gmail.com]
Sent: Friday, March 16, 2018 9:44 AM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Public Comments about Proposed WIPP Expansion – “Volume Reporting” Permit Modification Request

March 16, 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” Permit Modification Request - Changing the way waste is measured
Must be changed to Class 3 permit modification request

Dear Mr. Maestas:

I am very concerned about the proposed expansion of the amount of waste in the Waste Isolation Pilot Plant – a proposed 28% increase – all by changing the way waste is measured.

The proposed increase of 930,000 cubic feet requires the New Mexico Environment Department to deny the request and require the Department of Energy and its contractor, Nuclear Waste Partnership, to resubmit their request as a Class 3 permit modification request. This is a significant volumetric change requiring more scrutiny by the public and the Environment Department. Alternatively, the Environment Department must determine that the request will follow Class 3 permit modification request procedures.

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 with bonuses. To allow the proposed change, risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments. Please use your regulatory power to deny the request or require the Class 3 permit modification request procedures, which include an opportunity for a public hearing as well as the opportunity to cross-examine sworn witnesses.

Sincerely,
Mona Ruark
Santa Fe, NM 87507

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#); [McLean, Megan, NMENV](#)
Subject: FW: WIPP
Date: Monday, March 19, 2018 8:17:41 AM

From: Diana Baker [mailto:dianabaker105@gmail.com]
Sent: Friday, March 16, 2018 1:53 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP

March 16, 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” Permit Modification Request -
Changing the way waste is measured
Must be changed to Class 3 permit modification request

Dear Mr. Maestas:

As a former employee of Los Alamos National Laboratory, I am very concerned about the proposed expansion of the amount of waste in the Waste Isolation Pilot Plant – a proposed 28% increase – all by changing the way waste is measured.

The proposed increase of 930,000 cubic feet requires the New Mexico Environment Department to deny the request and require the Department of Energy and its contractor, Nuclear Waste Partnership, to resubmit their request as a Class 3 permit modification request. This is a significant volumetric change requiring more scrutiny by the public and the Environment Department. Alternatively, the Environment Department must determine that the request will follow Class 3 permit modification request procedures.

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 with bonuses. To allow the proposed change, risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments. Please use your regulatory power to deny the request or require the Class 3 permit modification request procedures, which include an opportunity for a public hearing as well as the opportunity to cross-examine sworn witnesses.

Sincerely,

Diana Baker

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#); [McLean, Megan, NMENV](#)
Subject: FW: WIPP
Date: Monday, March 19, 2018 8:39:42 AM

From: Nancy Williamson [mailto:nancywnm@gmail.com]
Sent: Friday, March 16, 2018 2:40 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP

Re: Public Comments about Proposed WIPP Expansion – “Volume Reporting” Permit Modification Request - Changing the way waste is measured
Must be changed to Class 3 permit modification request

Dear Mr. Maestas:

I am very concerned about the proposed expansion of the amount of waste in the Waste Isolation Pilot Plant – a proposed 28% increase – all by changing the way waste is measured.

The proposed increase of 930,000 cubic feet requires the New Mexico Environment Department to deny the request and require the Department of Energy and its contractor, Nuclear Waste Partnership, to resubmit their request as a Class 3 permit modification request. This is a significant volumetric change requiring more scrutiny by the public and the Environment Department. Alternatively, the Environment Department must determine that the request will follow Class 3 permit modification request procedures.

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 with bonuses. To allow the proposed change, risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments. Please use your regulatory power to deny the request or require the Class 3 permit modification request procedures, which include an opportunity for a public hearing as well as the opportunity to cross-examine sworn witnesses.

Sincerely,
Nancy Lee Williamson
San Lorenzo, NM 88041

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#); [McLean, Megan, NMENV](#)
Subject: FW: WIPP proposal
Date: Monday, March 19, 2018 8:40:05 AM

From: Andrew Gold [mailto:rosemount@cybermesa.com]
Sent: Friday, March 16, 2018 3:38 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP proposal

__March 16, 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

Dear Mr. Maestas:

I am very concerned about the proposed expansion of the amount of waste in the Waste Isolation Pilot Plant – a proposed 28% increase – all by changing the way waste is measured.

The proposed increase of 930,000 cubic feet requires the New Mexico Environment Department to deny the request and require the Department of Energy and its contractor, Nuclear Waste Partnership, to resubmit their request as a Class 3 permit modification request. This is a significant volumetric change requiring more scrutiny by the public and the Environment Department. Alternatively, the Environment Department must determine that the request will follow Class 3 permit modification request procedures.

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 with bonuses. To allow the proposed change, risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments. Please use your regulatory power to deny the request or require the Class 3 permit modification request procedures, which include an opportunity for a public hearing as well as the opportunity to cross-examine sworn witnesses.

Sincerely,
Andrew Gold
PO Box 355; Las Vegas, NM 87701

March 17, 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 for Proposed WIPP Expansion – “Volume Reporting” Class 2
Permit Modification Request - Changing the way waste is measured
Must be changed to Class 3 Permit Modification Request

Dear Mr. Maestas:

A proposed Class 2 Permit Modification by the Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, to change the way waste is measured at the Waste Isolation Pilot Plant (WIPP) would allow a 28% increase in the volume of waste housed at WIPP.

The proposed modification would expand the amount of waste allowed by more than 930,000 cubic feet and would retroactively reduce the measure of emplaced waste from 3,238,673 cubic feet to 2,307,708 cubic feet. This is a significant volumetric change that requires a higher level of scrutiny by the public and the New Mexico Environment Department. NMED should therefore deny the Class 2 Permit Modification request and require the permittees to resubmit their request as a Class 3 Permit Modification. Alternatively, NMED should determine that DOE's request will follow Class 3 permit modification request procedures.

Over the past 19 years of WIPP operations, DOE has measured and reported waste volumes at the WIPP site based on the volume of the containers. DOE contractors have been paid and have received bonuses based on the volume of the containers. During this same period, space for over 1,000,000 cubic feet of waste has been lost or forfeited at the WIPP site.

Changing the way waste is measured at the WIPP site would reward bad management practices by DOE and its contractor, while increasing the risk of accidents during transport and emplacement of a significantly larger volume of waste and enlarging the danger to public health, worker safety and the environment of New Mexico.

Please exercise your regulatory authority to protect the people and environment of New Mexico by requiring that Class 3 Permit Modification Request procedures be followed to evaluate this proposed change, with an opportunity for a public hearing and the opportunity to cross-examine sworn witnesses.

Thank you for your careful consideration of my comments.

Sincerely,

Laura Watchempino
P.O. Box 407
Pueblo of Acoma, NM 87034

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#); [McLean, Megan, NMENV](#)
Subject: FW: WIPP Expansion
Date: Monday, March 19, 2018 8:43:24 AM

From: Cletus [mailto:cletusjg3@suddenlink.net]
Sent: Sunday, March 18, 2018 2:05 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP Expansion

18 March, 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”
Permit Modification Request - Changing the way waste is measured
Must be changed to Class 3 permit modification request

Dear Mr. Maestas:

Please be very concerned about the proposed expansion of the amount of waste in the Waste Isolation Pilot Plant – a proposed 28% increase – all by changing the way waste is measured. We have to care about the land for our future Americans. No?

The proposed increase of 930,000 cubic feet requires the New Mexico Environment Department to deny the request and require the Department of Energy and its contractor, Nuclear Waste Partnership, to resubmit their request as a Class 3 permit modification request. This is a significant volumetric change requiring more scrutiny by the public and the Environment Department. Alternatively, the Environment Department must determine that the request will follow Class 3 permit modification request procedures.

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

Thank you for your careful consideration of my comments. Please use your regulatory power to deny the request or require the Class 3 permit modification request procedures, which include an opportunity for a public hearing as well as the opportunity to cross-examine sworn witnesses. I have relatives and friends in New Mexico, and it may affect my area too.

Sincerely,

Cletus G. Stein, Amarillo, TX



Virus-free. www.avast.com

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#); [McLean, Megan, NMENV](#); [Maestas, Ricardo, NMENV](#)
Subject: FW: Volume of Record Comments WIPP
Date: Wednesday, March 21, 2018 4:14:43 PM

From: Jay Jenkins [mailto:jjenkins@carlsbadnational.com]
Sent: Wednesday, March 21, 2018 4:06 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Volume of Record Comments WIPP

Please accept this email as my personal comment and recommendation to modify the calculation for disposing of waste at WIPP. The air in the containers should not count towards the volume limits regarding waste. I am in favor of changing the calculation to allow the facility to take on the waste that it was originally designed for and also in favor of expanding if possible.

Should you have any questions, I can be reached by email or phone 575-706-2873 or mail.

Jay Jenkins
1948 Pecos Highway
Carlsbad NM 88256

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: WIPP expansion
Date: Tuesday, April 03, 2018 8:53:13 AM

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

From: DeeFinney@zianet.com [<mailto:DeeFinney@zianet.com>]
Sent: Monday, March 26, 2018 4:39 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP expansion

Dear Sir, I am writing to express my serious concern about the expansion of the Waste Isolation Project in Southern NM. Please do not let NM continue to be sacrificed for the purpose of more low and high level radiation. As a public health nurse I am concerned about the cancer levels all over our state. We already have enough radiation from mining, weaponry, waste and now disposal. Please advocate for all those of us whom have little voice in the matter but are dealing with all the health issues related to this very toxic waste. I trust that sanity will prevail and the state will decide that we already have done our share for national security and there has to be another option and alternative site to bury waste other than expanding WIPP. Thank you, Dee Finney RN



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"
Permit Modification Request - Changing the way waste is measured
Must be changed to Class 3 permit modification request

Dear Mr. Maestas:

I am very concerned about the proposed expansion of the amount of waste in the Waste Isolation Pilot Plant - a proposed 28% increase - all by changing the way waste is measured.

The proposed increase of 930,000 cubic feet requires the New Mexico Environment Department to deny the request and require the Department of Energy and its contractor, Nuclear Waste Partnership, to resubmit their request as a Class 3 permit modification request. This is a significant volumetric change requiring more scrutiny by the public and the Environment Department. Alternatively, the Environment Department must determine that the request will follow Class 3 permit modification request procedures.

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 with bonuses. To allow the proposed change, risks the health and environment for all New Mexicans.

Thank you for your careful consideration of my comments. Please use your regulatory power to deny the request or require the Class 3 permit modification request procedures, which include an opportunity for a public hearing as well as the opportunity to cross-examine sworn witnesses.

Sincerely,

X-M Lee
PO Box 454
Ramah, NM 87321
3.22.2018

March 28, 2018

To: Ricardo Maestas

New Mexico Environment Department

Ricardo.maestas@state.nm.us

Dear Mr. Maestas:

My name is Edward T. Rodriguez, a lifelong resident of Carlsbad. I'm also Ward 1 member of Carlsbad's City Council who was recently elected Mayor Pro Tempore.

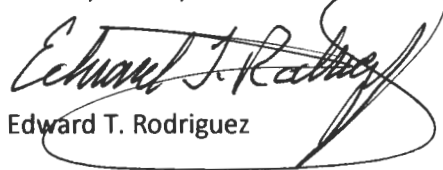
I, not only a citizen of Carlsbad, but as an elected official am grateful for the opportunity to comment on a subject as important to us as the Waste Isolation Pilot Plant and the proposed modification seeking clarification of transuranic (TRU) Mixed Waste Disposal Volume Reporting.

I believe the current permit has mistakenly allowed the overpack volume to count against WIPP's total waste contained. This modification deals with the issue of overpack containers, and even though I have no background the nuclear industry, it is easy to see that this modification of the formula used to calculate actual waste, is the right thing to do to maximize the effectiveness of the mission of WIPP. To consider the entire container in the calculation is like looking at a box of cereal and assuming it is full, top to bottom, when we all know it is not and must read the box to know how many ounces are in that box, regardless of it's size.

This permit modification is simply a way of making sure that the WIPP facility can continue its performance of duties, which are critically important to our entire nation, in the most productive and cost-effective manner possible.

I greatly encourage the New Mexico Environment Department to allow this proposal to move forward.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Edward T. Rodriguez", is written over a printed name. The signature is stylized with a large, looping flourish at the end.

Edward T. Rodriguez

March 28, 2018

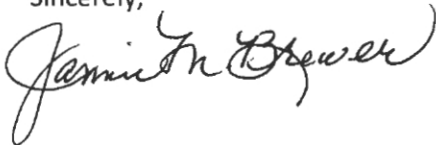
To: Ricardo Maestas
New Mexico Environment Department
Ricardo.maestas@state.nm.us

Dear Mr. Maestas:

Thank you for the opportunity to comment on this proposed Class 2 "Volume of Record" modification related to WIPP's permit with the state. As a citizen of Carlsbad, I support this proposal. The opinions of the residents of Carlsbad and southeastern New Mexico should always have the most weight when it comes to WIPP. As I understand this recommended switch, WIPP will continue to count both volumes- one based on the inner waste container and one based on the outer container, but the change would mean that the WIPP underground could be put to additional good use.

Currently, we are basically counting space between containers as volume, which was not the intended purpose. This change will help WIPP do its job and serve as a repository for defense-generated TRU waste. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Jamin N. Brewer". The signature is written in a cursive style with a large, stylized "J" and "B".

March 29, 2018

To: Ricardo Maestas
New Mexico Environment Department
Ricardo.maestas@state.nm.us

Dear Mr. Maestas and the New Mexico Environment Department:

We appreciate everything that you and the NMED do for WIPP. The permit modification process allows the public the opportunity to participate in a discussion about the future of WIPP, and I know the NMED is currently busy with several different important proposals.

I encourage you to approve of the "Volume of Record" proposal as a Class 2 permit modification. The explanation of this process is very simple – it is easy to picture a smaller container (with waste) being placed into a larger container. We have also had an opportunity to participate in the public discussion process in Carlsbad.

I understand that, if this state permit change is granted, WIPP Would continue to remain in compliance with the Land Withdrawal Act's TRU waste capacity limit. Thank you again for your consideration.

Sincerely,



Sharon Bentley
801 N Halagueno
Carlsbad, NM 88220

March 28, 2018

To: Ricardo Maestas
New Mexico Environment Department
Ricardo.maestas@state.nm.us

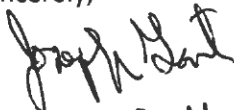
Dear Mr. Maestas:

As a resident of Carlsbad, I appreciate the opportunity to comment on the Class 2 proposed modification seeking clarification of transuranic (TRU) Mixed Waste Disposal Volume Reporting. While I do not have a technical background, the concepts of this proposal are very easy to picture and understand.

My understanding is that using overpack containers is a responsible way to package waste. WIPP should not be punished by having the volume of a larger container count against the Land Withdrawal Act TRU volume limit.

I encourage the New Mexico Environment Department to quickly approve of this proposal.

Sincerely,


211 W. Memorial
Carlsbad, NM
March 28, 2018

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: Permit Modification at WIPP
Date: Wednesday, April 04, 2018 9:05:36 AM

From: Noel Marquez [mailto:marquezarts@yahoo.com]
Sent: Tuesday, April 03, 2018 1:58 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Permit Modification at WIPP

Dear Ricardo,

As a resident of Eddy County I am seriously concerned about the continued burdens on our communities to allow the nuclear industry to continue giving us up as a nuclear waste dump area. The lesson at WIPP from the failed breach has not been a warning to a few elected officials in our area who continue to ignore our concerns that will affect the health of the very young and future generations in exchange for a few bad and desperate jobs.

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing.

Sincerely,

Noel V. Marquez
Resident of Eddy County

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: CCNS Public Comments - Proposed WIPP Expansion - Volume Reporting
Date: Tuesday, April 03, 2018 1:55:00 PM

From: Joni Arends [mailto:jarends@nuclearactive.org]
Sent: Tuesday, April 03, 2018 1:44 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: CCNS Public Comments - Proposed WIPP Expansion - Volume Reporting

April 3, 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”

Permit Modification Request - Changing the way waste is measured

Must be changed to Class 3 permit modification request

Dear Mr. Maestas:

Concerned Citizens for Nuclear Safety (CCNS), a 30-year old Santa Fe based non-governmental organization, is very concerned about the proposed expansion of the amount of waste in the Waste Isolation Pilot Plant – a proposed 28% increase – all by changing the way waste is measured.

The proposed increase of 930,000 cubic feet requires the New Mexico Environment Department to deny the request and require the Department of Energy and its contractor, Nuclear Waste Partnership, to resubmit their request as a Class 3 permit modification request. This is a significant volumetric change requiring more scrutiny by the public and the Environment Department. Alternatively, the Environment Department must determine that the request will follow Class 3 permit modification request procedures.

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 with bonuses. To allow the proposed change, risks the health and environment for all New Mexicans.

Thank you for your careful consideration of CCNS's comments. Please use your regulatory power to deny the request or require the Class 3 permit modification request procedures, which include an opportunity for a public hearing as well as the opportunity to cross-examine sworn witnesses.

Sincerely,

Joni Arends, Co-founder and Executive Director

Concerned Citizens for Nuclear Safety

P.O. Box 31147

Santa Fe, NM 87594-1147

505 986-1973

www.nuclearactive.org

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: Deny the "volume reduction" permit modification / WIPP
Date: Wednesday, April 04, 2018 9:05:46 AM

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

From: Ross Lockridge [<mailto:murlock@raintreecounty.com>]
Sent: Tuesday, April 03, 2018 1:45 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Deny the 'volume reduction' permit modification / WIPP

I too ask the New Mexico Environment Department to please deny the 'volume reduction' permit modification request.

This permit modification / amplification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires public participation / hearing processes.

Sincerely,

Ross Lockridge
POB 22
Cerrillos, NM 87010

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW:
Date: Tuesday, April 03, 2018 12:59:52 PM

From: Jade Cova [mailto:jadeco505@gmail.com]
Sent: Tuesday, April 03, 2018 12:40 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject:

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing.

Sincerely,

Lucille Cordova
829 Alvarado Dr SE
ABQ 87108

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: Volume increase request for WIPP
Date: Tuesday, April 03, 2018 1:27:50 PM

From: dave mccoy [mailto:dave@radfreenm.org]
Sent: Tuesday, April 03, 2018 1:04 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Volume increase request for WIPP

Dear Sir,

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing. New Mexico should not be the dumping ground for the US.

Sincerely,

Dave McCoy, Executive Director
Citizen Action NM
818 4489981

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: WIPP Public Hearing Request
Date: Tuesday, April 03, 2018 1:35:10 PM

From: Myrriah Gomez [mailto:myrriahg@unm.edu]
Sent: Tuesday, April 03, 2018 1:32 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP Public Hearing Request

Dear, Mr. Maestas:

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and, at the very least, requires a public hearing.

Sincerely,

Myrriah Gómez

Myrriah Gómez, Ph.D.
Assistant Professor, Honors College
The University of New Mexico
(505) 277-4315 (no voicemail)

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: Volume Reduction Permit
Date: Wednesday, April 04, 2018 8:37:57 AM

From: Kathleen Burke [mailto:kathleenmariaburke@yahoo.com]
Sent: Tuesday, April 03, 2018 4:59 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Volume Reduction Permit

Dear Sir,

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing.

Sincerely,
Kathleen Burke
228 Chama NE
Abq, NM 87108

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: Class 2 permit modification for WIPP, April 2018
Date: Wednesday, April 04, 2018 8:39:42 AM

From: Kathryn Albrecht [mailto:lapaz@zianet.com]
Sent: Tuesday, April 03, 2018 4:54 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: re: Class 2 permit modification for WIPP, April 2018

Dear Department:

I SAY: DO NOT APPROVE & PERMIT current modification request to HWFP for WIPP!!

- There are serious plans for all of the nation's commercial spent nuclear fuel to head to NM.
- WIPP has a major expansion in the works to allow even more radioactive waste into NM.

Today I ask you to join with others to stop a proposed major Waste Isolation Pilot Plant (WIPP) expansion. Officials at the WIPP are proceeding with a deluge of permit modifications to try to get as much weakening of the Hazardous Waste Permit as they can before 2019.

Because DOE is so far behind emplacing waste at WIPP, including because of the three-year shutdown from the 2014 radiation release, and they are running out of underground space, they want to change the way waste volume is measured. Since the 1970s, DOE has agreed that the amount of waste is the volume of the outer-most container. Now, DOE wants to estimate the amount of waste inside each container and use that lesser amount.

WIPP is now filling Panel 7 (of 10 originally proposed), which is about 70% of the space. But WIPP has only emplaced ~92,700 m³ of waste (about 53% of the 175,564 m³ allowed). DOE has "lost" more than 30,000 m³ of space by its inefficiency and contractor incompetence. Measuring the waste the proposed new way decreases the 'amount of waste' emplaced to date by ~26,000 m³.

The proposed modification is controversial and is part of a larger plan to expand WIPP, but is submitted as a Class 2 Permit Modification Request (PMR), which has lesser public input opportunities. The public has opposed WIPP expansion for years and decades. There is significant public concern and interest in the WIPP facility. This PMR should be a Class 3, which includes much more public input, a formal public hearing.

I SAY: DO NOT APPROVE & PERMIT!!

Sincerely,

Kathryn Albrecht

Trinity Test site vicinity and former Taos County downwinder of, respectively, WSMR &

LANL

87832-0422

--

Kathryn Albrecht
San Antonio, NM

"Do not be daunted by the enormity of the world's grief.
Act justly now. Love mercy now. Walk humbly now.
You are not obligated to complete the work,
but neither are you free to abandon it." - The Talmud



April 3, 2018

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

RE: WIPP "Volume Reduction" PMR

Dear Mr. Maestas:

Nuclear Watch New Mexico 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 January 31, 2018, according to the public notice. The Land Withdrawal Act does not support it. And the need is not proven.

While there are many problems with the request, there are two overriding reasons that NMED must either deny the request or determine to follow class 3 modification procedures, so that additional public comment is allowed and a public hearing would be held on a draft permit.

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. The proposed Volume Reduction PMR would not stand on alone.

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 on 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 proposed Volume Reduction PMR would not stand on alone.

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.

The permittees – U.S. Department of Energy (DOE) and Nuclear Waste Partnership – were told by numerous organizations before submitting the request, that the very substantial changes in the WIPP Permit are strongly opposed and there is significant public concern. By regulatory definition, such a request is a Class 3 modification. Nonetheless, the permittees submitted the request as a Class 2 modification. State regulations 20.4.1.900 NMAC (incorporating 40 CFR §270.42(b)(6)(i)(B) and (C)) provide that the NMED must deny the request or determine that the procedures for Class 3 modifications apply. Thus, NMED must take one of those two actions.

The 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.

We ask you to deny the request or determine to consider it under Class 3 modification procedures.

Sincerely,
Scott Kovac
Nuclear Watch New Mexico

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: NMED permit mod
Date: Wednesday, April 04, 2018 8:41:38 AM

From: Mike Swick [mailto:mswick47@gmail.com]
Sent: Tuesday, April 03, 2018 4:37 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: NMED permit mod

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

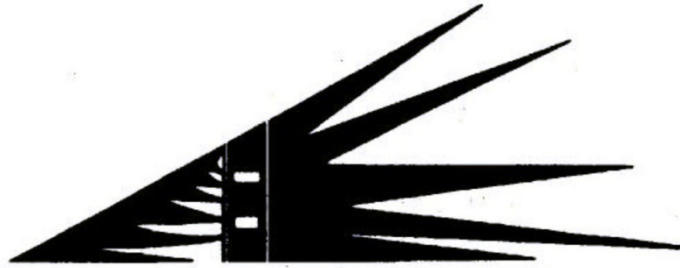
This is a big change for WIPP and at the very least requires a public hearing.

Sincerely,
Michael Swick

--

"The greatest form of sanity that anyone can exercise is to resist that force that is trying to repress, oppress, and fight down the human spirit."

Mumia Abu-Jamal



SOUTHWEST RESEARCH AND INFORMATION CENTER

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

April 3, 2018

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

via email

RE: Class 2 Modification Request – TRU Mixed Waste Disposal Volume
Reporting

Dear Ricardo:

Southwest Research and Information Center (SRIC) provides the following comments on the Class 2 permit modification request package that was submitted by the permittees on January 31, 2018, according to their public notice.

SRIC appreciates that the permittees provided a draft of the proposed request and that representatives of the permittees as well as NMED met with SRIC and other citizen group representatives on January 9, 2018. SRIC continues to believe that such pre-submittal meetings are useful and supports continuing that “standard” practice in the future.

However, given the strong objections to the modification request at the pre-submittal meeting and comments from SRIC and other groups’ representatives that the request was not properly a Class 2 modification, it is very disappointing that the permittees persisted in submitting any request or that it was not submitted as a Class 3 request.

NMED must deny the request because it violates federal laws

Pursuant to 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(b)(6)(i)(B)) and its historic practices, NMED may deny Class 2 modification requests. 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).

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. 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 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 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.

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. Congress recognized that the limit was based on gross internal container volumes, which the request does not discuss.

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. 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 WIPP Authorization and LWA. Page 1 of 9. NMED’s permit writer testified extensively about the LWA. Hearing, 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.

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 the request.

The request must be denied because it 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 WIPP. 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.

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.

Gross internal container volume 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 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 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 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. The modification request provides no explanation of why that historic practice should be changed.

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 should be changed. There is no legal basis to change the Permit capacity limits, which are those provided by the LWA.

NMED has the authority to deny the request, or alternatively consider it under Class 3 procedures
While SRIC strongly supports the decision to deny the request, pursuant to 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(b)(6)(i)(C)), NMED does have the authority to determine that Class 3 modifications procedures should be used.

Those Class 3 procedures are required if there is significant public concern or because of the complex nature of the proposed changes. Both of those reasons are currently present.

There is significant public concern, not only represented by SRIC and its supporters, but also by many other organizations and individuals that have commented on the request. As described above, the change also is complex, so much so that the permittees cannot explain why it is needed and why the historic practice of measuring the capacity based on gross internal container volume should not continue.

Moreover, other regulatory requirements do not permit the request to be considered as a Class 2 modification. “Class 3 modifications substantially alter the facility or its operations.” 20 NMAC 4.1.900 (incorporating 40 CFR 270.42(d)(2)(iii)). The change would substantially alter the facility’s waste capacity and therefore its operations in the future, and is a Class 3 request.

20 NMAC 4.1.900 (incorporating 40 CFR 270.42, Appendix I.F.1.a requires a Class 3 modification for changes “Resulting in greater than 25% increase in the facility’s container storage capacity” [with exceptions that do not apply to this request].

According to the request,

“...the volume of contact-handled TRU mixed waste disposed as of December 6, 2017, based on the outermost container volumes is 3,238,673 ft³ (91,709 m³) while the volume based on the innermost container volumes, which would more accurately reflect the LWA TRU waste volume of record, is 2,307,708 ft³ (65,347 m³).” Page 9.

Thus, the amount of waste now disposed would be reduced by 930,965 cubic feet (26,362 cubic meters). That is a more than 28.7 percent decrease in the measured amount of waste in the underground. Thus, the request proposes an increase of at least 28.7 percent of container storage capacity. Since the reduction would also apply to future waste volumes, the overall future increase would likely to be significantly more than that 28 percent. In either case, the request is a Class 3 modification.

Therefore, if the request is not denied, it must be a Class 3 request and subjected to those procedures, including additional public comment and an opportunity for public hearing. SRIC requests those procedures if the request is not denied. SRIC also requests a public hearing.

The request is not “true, accurate, and complete”

The permittees, through Todd Shrader, DOE WIPP Manager, and Bruce C. Covert, NWP Project Manager, state on the cover page of the submittal:

“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.”

As discussed above, the information is not “complete” when it comes to the annual budget requests to Congress, the Annual Waste Inventory Reports, other DOE reports, and WIPP contracts and performance bonuses. The request is not “true, accurate, and complete” in disclosing the increased facility container storage capacity that would result if the request were to be implemented. The statement on page 1 of the request is not true, accurate, and complete when it asserts that the Permit capacity “is not based on the LWA total capacity limit of 6.2 million cubic feet (ft³) (175,564 cubic meters (m³)) of TRU waste as authorized by Congress in the WIPP LWA of 1992 (Public Law 102-579 as amended by Public Law 104-201).” That assertion is not supported by adequate evidence in the request, especially when viewed in light of these comments.

In fact, 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 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.

Clearly, Congress understood that the capacity limits for the Test Phase (that did not occur and was removed from the law in 1996) and the facility were based on 55-gallon drums (or drum equivalents). For the permittees to not discuss that legislative history is not “true, accurate, and complete.”

Further, 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.”

However, the discussion of 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.

SRIC requests that, at a minimum, NMED admonish the permittees for stating that the request is “true, accurate, and complete,” when the principals should have known the submittal does not meet those standards. NMED action is necessary so that the permittees understand that untrue, inaccurate, and incomplete modification requests cannot be submitted in the future.

In summary, NMED has the authority to deny the request, and that is the appropriate decision. SRIC would object to NMED using its authority to proceed with the request under Class 3 procedures, but acknowledges NMED has that authority. If NMED so uses its authority, it should provide additional public comment opportunities and public discussions with the permittees about the request prior to proceeding to a draft permit or the notice of opportunity for public hearing.

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

April 3, 2018

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

RE: WIPP "Volume Reduction" PMR

Dear Mr. Maestas:

The undersigned groups, representing thousands of New Mexicans, strongly oppose the "Volume Reduction" Permit Modification Request (PMR) that the Waste Isolation Pilot Plant (WIPP) permittees submitted to the New Mexico Environment Department (NMED) on January 31, 2018.

While there are many problems with the request, there are two overriding reasons that NMED must either deny the request or determine to follow class 3 modification procedures, so that additional public comment is allowed and a public hearing would be held on a draft permit.

First, the permittees – U.S. Department of Energy (DOE) and Nuclear Waste Partnership – were told by numerous organizations before submitting the request, that the very substantial changes in the WIPP Permit are strongly opposed and there is significant public concern. By regulatory definition, such a request is a Class 3 modification. Nonetheless, the permittees submitted the request as a Class 2 modification. State regulations 20.4.1.900 NMAC (incorporating 40 CFR §270.42(b)(6)(i)(B) and (C)) provide that the NMED must deny the request or determine that the procedures for Class 3 modifications apply. Thus, NMED must take one of those two actions.

Second, the 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 before WIPP opened in 1999, the waste volume is measured by the size of the outer container. That measurement has always been included in 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 the WIPP Land Withdrawal Act capacity limit of 6,200,000 cubic feet. Section 7(a)(3). Such a major change is unacceptable, apparently contrary to law, and the PMR should be denied.

We ask you to deny the request or determine to consider it under Class 3 modification procedures.

Sincerely,

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

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

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

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

Dave McCoy
Citizen Action New Mexico
Albuquerque, NM
dave@radfreenm.org

Joe Zupan
Amigos Bravos
Taos, NM
jzupan@amigosbravos.org

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

Pat Leahan
Las Vegas Peace & Justice Center
Las Vegas, NM
lvpeacecenter@startmail.com

Sofia Martinez
Concerned Citizens of Wagon Mound & Mora County
Wagon Mound, NM
sofiam@unm.edu

Susan Gordon
Multicultural Alliance for a Safe Environment
Albuquerque, NM
sgordon@swuraniumimpacts.org

Edith Hood
Red Water Pond Road Community Association
Church Rock, NM
ediehood@yahoo.com

Bob Aly
Available Media, Inc.
Albuquerque, NM
room2@earthlink.net

Linda Evers
Post-1971 Uranium Workers Committee
Grants, NM
leversredfence@aol.com

Marlene Perrotte
Partnership for Earth Spirituality
Albuquerque, NM
marlenep@swcp.com

Noel Marquez
Alliance for Environmental Strategies
Lake Arthur, NM
marquezarts@yahoo.com

Marian Naranjo
Honor Our Pueblo Existence (HOPE)
Española, NM
mariann2@windstream.net

Robert Anderson, Ph.D.
Stop the War Machine
Albuquerque, NM
citizen@comcast.net

Jonnie Head
Bluewater Valley Downstream Alliance
Milan, NM
headjonnie@gmail.com

Karen Bonime
Water Groups
Albuquerque, NM
karenbonime@yahoo.com

Sanders Moore
Environment New Mexico
Albuquerque, NM
sanders@environmentnewmexico.org

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: deny permit reductionrequest
Date: Wednesday, April 04, 2018 9:02:33 AM

From: halima christy [mailto:ecosage7@gmail.com]
Sent: Tuesday, April 03, 2018 3:44 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: deny permit reductionrequest

signed,
Halima M Christy
Halima Christy, MA NTS CHT
www.psychesmind.com

“One does not become enlightened by imagining figures of light, but by making the darkness conscious.”
— **C.G. Jung**

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: WIPP waste modification
Date: Wednesday, April 04, 2018 9:02:46 AM

From: R Gardner [mailto:nmlady2000@hotmail.com]
Sent: Tuesday, April 03, 2018 3:30 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP waste modification

Dear Sir

As a concerned citizen of NM I am very unhappy and even dismayed about the modification of the waste increase of 25% at WIPP. Our state is home to much of the nuclear waste from the labs and bomb making activities. Currently there is an all out campaign to bring even more waste to WIPP and to our SE corner of NM with high level radioactive waste at Holtec across the Highway from WIPP. Please deny this increase of waste to our corner of NM. It is an assault to NM and to the future generations of New Mexicans. We do not want to be the nation's radioactive waste toilet.

Sincerely

Rose Gardner

Box514

1402 Ave A

Eunice NM 88231

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From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: WIPP Capacity Increase
Date: Wednesday, April 04, 2018 9:02:58 AM

From: Teva Gabis-Levine [mailto:teva.gabis.levine@gmail.com]
Sent: Tuesday, April 03, 2018 3:21 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP Capacity Increase

Dear Sir:

I ask that New Mexico Environment Department deny the 'volume reduction' permit modification request.

This permit modification would increase WIPP's capacity by 25%.

This is a massive increase in capacity, and at the very least requires a public hearing.

Sincerely,

Teva Gabis-Levine

Albuquerque, NM

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: Public Hearing needed
Date: Wednesday, April 04, 2018 9:03:10 AM

From: tonyacovin@aol.com [mailto:tonyacovin@aol.com]
Sent: Tuesday, April 03, 2018 3:21 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Public Hearing needed

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing.

Sincerely,

Tonya Covington
PO Box 40373
Albuquerque, NM 87196
505-610-5656

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: WIPP's Permit Modification
Date: Wednesday, April 04, 2018 9:03:25 AM

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

From: Marlene Perrotte [<mailto:marlenep@swcp.com>]
Sent: Tuesday, April 03, 2018 3:01 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP's Permit Modification

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing.

Sincerely,

Marlene Perrotte
1004 Major Avenue NW
Albuquerque, NM 87107

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: Permit modification request
Date: Wednesday, April 04, 2018 9:03:36 AM

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

From: Ilse Biel [<mailto:ilsebiel@icloud.com>]
Sent: Tuesday, April 03, 2018 2:59 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Permit modification request

Dear Mr. Maestas, I implore the NM Environmental Department to deny the “volume reduction” permit modification request. This permit modification would increase WIPP’s capacity by 25%. As this involves a substantive change for WIPP it requires a public hearing. Thank you and go well

Ilse Biel
816 Valencia Dr SE
Albuquerque NM 87108

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: WIPP volume reduction
Date: Wednesday, April 04, 2018 9:03:44 AM

From: Barb Singer [mailto:bsinger3000@gmail.com]
Sent: Tuesday, April 03, 2018 2:59 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: WIPP volume reduction

Dear Mr Maestas,

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing.

Sincerely,

Barbara Singer
2 Glory Lane
Estancia, NM 87016

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: Deny permit
Date: Wednesday, April 04, 2018 9:03:52 AM

From: Sayrah N [mailto:sayrahn@hotmail.com]
Sent: Tuesday, April 03, 2018 2:50 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Deny permit

To whom it may concern:

As a New Mexico resident, I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .
This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing.

Sincerely,

Sayrah Namaste
5516 Rosemont Ne
Albuquerque NM 87110

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: volume reduction permit
Date: Wednesday, April 04, 2018 9:04:04 AM

From: Judith Kidd [mailto:judkidd@msn.com]
Sent: Tuesday, April 03, 2018 2:41 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: volume reduction permit

To: New Mexico Environment Department

Please deny the volume reduction permit modification requested. We do not want add more toxics to our environment.

Judith Kidd

517 Odelia Rd NE Abq, NM 87102

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW:
Date: Wednesday, April 04, 2018 9:04:27 AM

From: Tina Cordova [mailto:tcordova@queston.net]
Sent: Tuesday, April 03, 2018 2:37 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: FW:

Mr. Maestas,

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing.

I lead an organization that represents people who have been negatively affected by the fallout that occurs after a nuclear explosion. The risk of more storage at WIPP only increases our chances of another nuclear fallout disaster such as the one we have been left to live with.

Sincerely,

TINA CORDOVA
Tualrosa Basin Downwinders Consortium
7518 2nd St. NW
Albuquerque, New Mexico 87107
Phone 505-897-6787
Fax 505-890-0157

April 3, 2018

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

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

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

Deny this permit request or require the entire Class 3 permit modification procedure

Dear Mr. Maestas:

I am concerned about the proposed massive expansion of the amount of waste allowed in the Waste Isolation Pilot Plant (WIPP) – a more than 25% increase – all by changing the way waste is measured. This is a sleazy way to increase waste volume that is not currently allowed in the permit.

WIPP has squandered the volume it was allowed through poor working procedures. But this is nothing new as WIPP has had for years, and continues to have, unbelievably poor work and safety records. They should not be rewarded for such poor behavior—especially since the site is still not safe. (Having the CEO at WIPP state that "Safety [at WIPP] is a journey," is an outright admission that WIPP is not currently safe.) A volume increase on this level also breaks promises made to the people of New Mexico when the WIPP project was begun. For these reasons alone the permit modification request must be denied.

If this were not enough, the huge size of the volume requested requires that the modification request, in its current form, be denied. This is a **significant** change in volume and NMED must be sure that the request follows all Class 3 permit modification procedures, and nothing less.

Finally, the project and the public process are being carried out in a discriminatory manner. There appears to be nothing said about non-discrimination, social concerns, environmental justice, or the disparate impacts of effects from normal operations and accidents on the large number of people of color and poor people in the surrounding area and along transportation routes.

Do the non-English speaking residents in the area and throughout our state have the same access to information about this modification as English speakers so they can participate

equally in this process? I don't think so. NMED is still not proceeding in an equal way on WIPP. In fact, NMED has *always* discriminated in the permitting process for WIPP, starting out by illegally refusing to address environmental justice issues at the original permit hearing. It seems that NMED's attitude has not improved all these years later.

I believe there will be negative effects from this increase in volume that will be felt disparately by communities of color around the site as well as throughout the state along the transportation routes. These are the same communities that are also not allowed equal access to information that English proficient people have. Because the risk is spread throughout the state, access to information must be available to *all* New Mexicans in whatever language they need.

In addition to the previous reasons for denying the modification, the application for modification is incomplete. Where have they analyzed risks from the increased volume both around the site and the risks from related transportation? We know that the transportation phase is already responsible for almost all of the negative health effects to the public from the entire project during normal operations. Since most of those health effects occur to the people working at rest stops along the highways and since most or many of those people are poor people of color, there is very likely a disparate and discriminatory impact on these members of the public from transportation. So where are these disparate impacts analyzed?

Exposure information is required by 40 C.F.R. §270.10j and adopted in New Mexico by N.M. Admin. Code 20.4.1.900, including information about potential releases from normal operations, accidental releases, or transportation-related releases; all potential pathways of human exposure. This also includes exposure information from things like truck emissions. The increase in such emissions (from the additional shipments for the increased volume) have been shown in other cases to cause disparate impacts. Where are the analyses of all of this? And where are the translations of these analyses along with other necessary translations of vital documents for the non-English speaking public?

Thank you for your careful consideration of my comments. Please use your regulatory power to deny the request or require the full Class 3 permit modification procedure with risk, impact and disparate impact analyses, appropriate translation of documents, and the opportunity for public comment and a public hearing.

Sincerely,
Deborah Reade
117 Duran Street
Santa Fe NM 87501
505-986-9284
reade@nets.com

From: [Maestas, Ricardo, NMENV](#)
To: [Biswell, David, NMENV](#)
Subject: FW: Don't Expand WIPP!!!
Date: Wednesday, April 04, 2018 9:05:27 AM

From: Cody Slama [mailto:cslama@unm.edu]
Sent: Tuesday, April 03, 2018 2:13 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>
Subject: Don't Expand WIPP!!!

Hello Mr.Maestas,

I ask the New Mexico Environment Department to deny the 'volume reduction' permit modification request .

This permit modification would increase WIPP's capacity by 25%.

This is a big change for WIPP and at the very least requires a public hearing.

Sincerely,
Cody Slama

Albuquerque, NM 87108

505-304-2051

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

April 3, 2018

Ricardo,

I am submitting comments on 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**) to the New Mexico Environment Department (**NMED**) for the Waste Isolation Pilot Plant (**WIPP**) Hazardous Waste Facility Permit (**Permit**). Please consider and provide responses to my comments when you deliberate whether to modify the permit as requested in the PMR.

The Permittees identify three main modifications in their PMR. These are:

- Create two new definitions in the Permit
 - TRU Mixed Waste Volume, and
 - Land Withdrawal Act TRU Waste Volume of Record (**LWA VOR**)
- 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
- Allow the DOE to "track and report" the LWA VOR separately from the Permit

In my comments below, I will provide reasons why I oppose this PMR and recommend that it only be approved with significant changes, or else be reclassified as a Class 3 PMR potentially subject to a public hearing.

1. The Permittees have put forth a misleading and incomplete narrative

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. 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.

DOE conveniently forgets their own history regarding waste container volumes

In providing a “brief chronology of the LWA limit” (pp. 7-8), the PMR ultimately implies that the LWA limit of 6.2 million ft³ of TRU waste is open to interpretation. A statement from the September 1997 SEIS-II (p. 8) that is presented out of context insinuates that in one situation, *“the actual volume of waste in a drum or cask, therefore, may be much less than the volume of the drum or cask,”* whereas in another situation, *“the volume of the drum or cask is used, as if the drum or cask were full without void space.”*¹

Since at least 1982, DOE has carefully studied and estimated the inventory of retrievably stored and newly generated waste potentially destined for WIPP². 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. As a specific example, consider this quote from the March 1994 Integrated Data Base Report for 1993 (DOE/RW-0006, Rev 9) Overview, Section 0.4 Waste Characteristics and Units Reported (page 5):

*“Principal characteristics reported for most radioactive wastes discussed in this report include volume, radioactivity, and thermal power. All characteristics are reported in metric units and, depending on the waste form, can be significant considerations in meeting the requirements for waste treatment, storage, and disposal. **Waste volume is reported in cubic meters (m³) and generally reflects the amount of space occupied by the waste and its container.**” (emphasis added)*

¹ The Permittees left out the context for the statement from SEIS-II on page 8 of the PMR. On page S-12 of SEIS-II, there is a text box entitled, “Conservatism of TRU Waste Volume Estimates.” The opening paragraph provides context:

“TRU waste inventory estimates, as used throughout SEIS-II, embody many conservative assumptions to ensure bounding analyses of maximum, reasonably foreseeable impacts. The following reflect some of the conservative assumptions.”

The cited assumption is then presented, along with others, followed by a concluding paragraph:

“While volume changes to the TRU waste inventory could reduce or increase the effects calculated in SEIS-II, the best estimates available have been used and conservative assumptions have been incorporated to ensure that the results would actually be less than those presented. A text box entitled “Factors to Consider in Combining Alternatives” (presented in Chapter 5) explains in more detail how the results would change as inventory volumes change.”

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.

² Readily available waste inventory reports were and continue to be issued documenting DOE’s waste volume estimates:

- “Integrated Data Base Report – Spent Fuel and Radioactive Waste Inventories, Projections, and Characteristics” (listed either as DOE/NE-0013 or DOE/RW-0006). Issued between 1982 and 1997.
- “WIPP Transuranic Waste Baseline Inventory Report” (**TWBIR**). Issued between 1994 and 2006.
- “Annual Transuranic Waste Inventory Report” (**ATWIR**). Issued annually beginning in 2008.

I will place this statement in historical context later in my comments, but will note here that this is the same assumption DOE continues to use today to create the Annual TRU Waste Inventory Reports, estimating waste volumes at generator/storage sites for a variety of purposes.

Similarly, the Permittees attempt to argue (PMR p. 9) that

“Experience with packaging waste at the generator/storage site has resulted in waste containers that are not full as assumed in the ROD. Generator/storage sites limit the amount of waste in a disposal container based on radiological and physical (e.g., weight) parameters. In some cases, smaller containers are placed into larger containers (referred to as overpacking) in order to deal with container integrity issues or to achieve more efficient shipping configurations. As more and more waste is packaged and shipped, the difference between the waste volume used to determine the ROD/C&C/LWA limits and the volume of the waste container increased such that it has reached the point where comparing disposed TRU mixed waste volume pursuant to the Permit limits no longer accurately reflects the authorized volume pursuant to the ROD/C&C/LWA.”

This argument is a false dichotomy, pitting "bad" Permit volumes (outer or overpack container volume) against the mythically "correct" volumes in the ROD/C&C/LWA (supposedly inner container volume, particularly for overpacked containers). However, there is no distinction among any of them – Permit, ROD, C&C, LWA – they are all the same volumes, originally based upon the gross internal volume of the outermost container. For evidence of this conclusion, consider DOE Order 5820.1, “Management of Transuranic Contaminated Material,” which DOE issued on September 30, 1982 (and now archived). Among other things, it provided a definition for waste container, which states:

*“Waste Container. The disposable containment vessel for waste materials, including any integral liner or shielding materials that are intended for disposal. In the case of contaminated, damaged, leaking, or breached containers, **any overpack shall be considered the waste container, and the original container shall be considered part of the waste.**”³ (emphasis added)*

³ As originally described in the 1995 RCRA Part B Permit Application, “overpacks would be used on damaged or otherwise contaminated drums, boxes, and canisters that it would not be practical to decontaminate.” (Glossary, page 18 of 29)

Sometime after the Permit was issued (date uncertain, but early- to mid-2000’s), the Permittees implemented a process called “payload management,” whereby waste containers from the same waste stream could be overpacked not because of waste container condition, but in order to manage TRU alpha activity concentration in a waste package. Waste containers belonging to the same TRU waste stream may be overpacked into a payload container (e.g., SWB or TDOP) as long as the TRU alpha activity concentration of the payload container exceeds 100 nCi/g, which is determined by summing the individual TRU alpha activity values of the individual waste containers and dividing by the sum of the individual net waste weights to determine the activity per gram for the payload container.

Regardless of whether a container is overpacked for container integrity issues or for payload management, the original (or overpacked) container(s) are considered waste, and the overpack container is considered the waste container for volume calculation purposes.

If the Permittees are successful in convincing NMED and EPA to accept individual internal container volume instead of overpack container volume as the “official” LWA volume of record, there may be an unintended

This definition was also included in early versions of the TRU Waste Acceptance Criteria (WAC) for WIPP (e.g., WAC Rev 3, January 1989). These two definitions – what constitutes waste volume and waste containers – had to be integral parts of the calculation in DOE's June 22, 1990 Record of Decision (55 FR 25689) stating, *"The WIPP is designed to dispose of 6.2 million cubic feet (ft³) of contact-handled (CH) TRU waste and 250,000 ft³ of remote-handled (RH) TRU waste in the mined repository over a 25-year operational life."*⁴ Similarly, the 1992 WIPP LWA total capacity limit of 6.2 million ft³ established just two years later must be understood in the same way:

- Overpacks are considered the waste container for disposal, and any overpacked containers are considered part of the waste.
- Waste volume is reported as the amount of space occupied by the waste and its container (i.e., gross internal volume of outermost container).

What can we conclude from DOE conveniently forgetting their own history regarding waste container volumes? **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. I will propose language later in my comments.

DOE conveniently forgets their own history regarding the original permit application and permit issuance

On p. 8 of the PMR, the Permittees state the following:

"When preparing the RCRA Part B Permit Application the Permittees made three fundamental assumptions regarding volume of waste:

- *As stated in the FEIS, ROD, C&C Agreement and LWA, the total amount of TRU waste to be disposed is 6.2 million ft³*
- *As stated in the SEIS-II, containers would be totally full*
- *The New Mexico Environment Department (NMED) would issue a Permit for the entire facility (i.e., all existing and future disposal units, all 10 panels described in the Part B Permit Application)"*

There is no debate with the first fundamental assumption. It is strictly a matter of law:

"The total capacity of WIPP by volume is 6.2 million cubic feet of transuranic waste." (WIPP LWA as amended, Section 7(a)(3))

consequence for DOE. EPA could determine that some internal containers used in payload management had been improperly disposed of, since many of the individual containers overpacked would have radioassayed below the LWA threshold of 100 nCi/g prior to overpacking and TRU alpha activity averaging.

⁴ In this PMR, the Permittees seem to have ignored the significance of historic statements such as this about WIPP being "designed to dispose of 6.2 million ft³ of CH TRU waste" coupled with "in 10 panels," because the Permittees' calculation of disposal inefficiency (PMR p. 9, December 6, 2017 comparison of CH disposal volumes using outer vs. inner container volumes) suggests that they would need a total of 13 or 14 panels to dispose of the 6.2 million ft³ allowed if using the new LWA VOR definition. This would imply (by the Permittees' logic) that the original designers of WIPP underestimated the space required to dispose of 6.2 million ft³ of waste by roughly 40%, which seems highly unlikely.

If the Permittees second “fundamental assumption” was that the waste “*containers would be totally full,*” they obviously haven’t reviewed their original permit application, which never states that assumption in any language. Neither does that “fundamental assumption” appear in any comments by the Permittees on the two draft Permits issued by NMED nor in any of their testimony as recorded in the Public Hearing Transcripts from 1999. Instead, the assumption was the definition of waste container volume used by DOE to estimate and report the inventory of TRU waste destined for WIPP, as noted in the previous section. Having been personally involved in the original WIPP Permit issuance, I can think of no person associated with the Permittees who ever publically stated that all containers managed, stored, and disposed of at WIPP would be full.

However, it’s the third “fundamental assumption” that is the most misleading, because it provides a premise for the Permittees to propose removing the LWA total capacity limit of 6.2 million ft³ from the Permit. I will demonstrate that the Permittees never really assumed NMED “*would issue a Permit for the entire facility (i.e., all existing and future disposal units, all 10 panels...*”

It is true that the WIPP RCRA Part B Permit Application (Revision 6 and subsequent revisions serving as the basis for the draft Permit) does appear to make this request. Chapter D, Facility and Process Information, Section D-10a(1) Description of Waste and Containment, states on p. D-53, lines 40-41:

“The DOE is requesting a permit to dispose of 6.2 million ft³ (175,600 m³) of CH and RH TRU mixed waste in the underground HWMUs designated as Panels 1 through 10.”

However, the PMR misstates what was actually requested in the Permit Application, as well as demonstrates a lack of understanding of the scope of RCRA permits. The Permit Application clearly stated in Chapter B, Facility Description, Section B-1 General Description, p. B-9, lines 1-17:

In this application the DOE is seeking a permit for the disposal of TRU mixed waste at the WIPP facility. Waste disposal will occur in the underground portion of the WIPP facility in areas designated as Panels 1 through 8. Each panel consists of seven rooms and two access drifts mined in a salt bed 2,150 ft (655 m) below the surface. The precise locations and descriptions of the TRU mixed waste units are given in Section B-1b. The underground disposal design capacity is for 6.2 million cubic ft (ft³) (175,600 cubic m (m³) of waste. If waste volumes disposed of in the eight panels fail to reach the stated design capacity, the DOE may choose to use the four disposal area access drifts for disposal; however, the DOE is only seeking to permit the construction of these areas at this time. A permit modification or future permit would be submitted describing the condition of those drifts and the controls exercised for personnel safety and environmental protection while disposing of waste in these areas.

For the ten year term of this permit, the DOE plans to dispose of up to 1,840,000 cubic ft (52,110 cubic m) of contact-handled (CH) waste and 69,000 ft³ (1,954 m³) of RH waste, in Panels 1 to 3 (see Figure B-2). Figure B-2a shows the disposal HWMUs

that may be covered by three successive permits. Construction of Panels 2, 3, 4, and the disposal area access drifts will begin during the term of the permit.

RCRA regulations limit the duration of a permit in 40 CFR §270.50(a), which states, “RCRA permits shall be effective for a fixed term not to exceed 10 years.” Thus, in an initial permit, it is not possible to grant approval for any activities (e.g., construction) beyond the term of the permit. The Permit Application reflects this understanding in requesting a permit for disposal of waste in Panels 1 to 3 and for construction of Panels 2, 3, 4, and the access drifts that will likely occur during the initial 10-year term. It is simply not possible to issue a permit for “*all existing and future disposal units, all 10 panels...*” as the “fundamental assumption” presumes.

There is no evidence in the administrative record for the original permit issuance (e.g., Permittees’ comments on the initial or revised draft Permits, testimony at the hearing, report of the Hearing Officer, etc.) that the Permittees objected to NMED limiting approval to activities anticipated to reasonably occur within the initial 10-year term of the Permit.

This suggests that the third “fundamental assumption” could be a knowingly misleading statement, and that it was possibly included in the PMR to establish the false premise that the Permit is only concerned with ensuring compliance with disposal volumes in permitted Underground HWDUs. Consider this statement on p. 9 of the PMR:

“When the Permit was issued by the NMED, the Permit did not authorize the proposed design capacity of the repository (i.e., all 10 panels). Instead, the NMED chose to authorize the facility on a unit-by-unit basis, as reflected by the capacities listed in Table 4.1.1. However, the reference to the LWA limits, either explicit or implicit, were not changed. Therefore, Section 7 of the Part A Permit Application should reflect the total maximum capacity of the permitted HWDUs shown in Table 4.1.1 since that is the current authorized capacity.”

To infer from the statement, “NMED chose to authorize the facility on a unit-by-unit basis,” that one must somehow conclude that NMED has no regulatory interest in the ultimate repository capacity is patently false. NMED recognized the limitations of the 10-year term of the Permit, and yet was able to retain language from the application to reflect both the 10-year and the long-term perspectives on the repository. Consider the following facts:

- The RCRA Part A Permit Application (submitted as Chapter A of the RCRA Part B Permit Application and included in Attachment O of the original Permit) lists the Process Design Capacity of the Subpart X (X04) Process Code as “175,600 m³ TOTAL (54,064 m³ in ten years)” for 10 units. The attached page to this application contains additional process information that clarifies the value (selected emphases added):

“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 175,600 m³ of TRU waste of which up to 7,080 m³ may be remote-handled (RH) TRU mixed waste. For purposes of this application, all TRU waste is managed as though it were mixed.”

“The process design capacity for the miscellaneous unit (composed of ten underground HWMUs in the geologic repository) shown in Section XII B3, 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...”

“During the ten year period of the permit, up to 52,110 m³ of CH waste and 1,954 m³ of RH waste could be emplaced in Panels 1 to 3. A fourth HWMU (Panel 4), plus disposal area access drifts (designated as Panels 9 and 10), will be constructed under this permit. These latter areas will not receive waste for disposal under this permit.”

This language has persisted in the Permit from its inception, and NMED intentionally included it to provide the bridge between the “ten year period of the permit” and “the Disposal Phase of the facility.” For the Permittees to now argue that an application that they have continually updated and regularly submitted to NMED for the past 20+ years is incorrect and even inappropriate is an astounding attempt to rewrite history.

- Table 4.1.1 (originally Table IV.A.1 in 1999) titled “Underground HWDUs” has evolved over time, but has always included the maximum capacity of CH and RH TRU mixed waste in each Panel, as well as the total authorized volume capacity for the 10-year term of the Permit. The footnotes were added as the table was revised, and the footnote regarding the “maximum repository capacity” was added as a reminder of the ultimate capacity of the repository as disposal approaches that limit. That footnote will likely be rendered moot during the next permit renewal term, when the panels approved for emplacement will likely achieve the 6.2 million ft³/175,600 m³ limit. At that time, the Total row for Maximum Capacity should in fact equal the LWA limit.
- Attachment G (originally Attachment I in 1999), Closure Plan, is written in part to anticipate the final facility closure and by necessity references the LWA total capacity limit of 6.2 million ft³ as the trigger to initiate final closure in Sections G-1 and G-1c as well as in Part 6, Sections 6.5.2 and 6.10.2.
- There are a few other instances in the Permit where the 6.2 million ft³ limit is mentioned (e.g., Table J-3, Underground Hazardous Waste Disposal Units; Attachment H1, Active Institutional Controls During Post-Closure), but these are pretty much informational in nature.

There is no need to remove any of these references to the LWA total capacity limit, and to do so in the manner proposed by the PMR would be highly detrimental to the regulatory oversight of WIPP by NMED, as will be discussed next.

DOE is attempting to self-regulate by redefining waste volume and removing LWA total capacity limits from the Permit

Although never clearly stated in the PMR, it appears that the Permittees' true intent in submitting this PMR and defining the LWA VOR is to exclude NMED from having any regulatory oversight and enforcement authority over determining when the Permittees have reached (or exceeded) the LWA total capacity limit of 6.2 million ft³ of waste, and thus determining when to initiate final repository closure. Consider what the Permittees are proposing in these following excerpts when describing the changes to be made to the Permit (p. 2) (selected emphases added to all quotes):

"The TRU waste VOR 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."

Later, on p. 3, they provide further information:

"The LWA TRU waste VOR will be tracked and reported by the DOE relative to the WIPP LWA TRU waste total capacity limit. The DOE will establish and implement a written policy to formalize the tracking and reporting of the TRU waste VOR. In this way, the tracking and reporting will be subject to the DOE Quality Assurance program which will assure consistent application of the policy. The DOE intends to make the status of the WIPP LWA TRU waste volume tracking results publicly available."

And why is this change needed? (p. 6):

"It is now apparent to the Permittees that it is inappropriate to associate the TRU mixed waste volume allowed by the Permit with the LWA TRU waste VOR because the volumes serve separate and distinct purposes... Furthermore, the association in the Permit constrains the permitting of future TRU mixed waste disposal capacity within the regulated unit. Therefore, a mechanism that is not associated with the Permit will be used by DOE to track and report the VOR pursuant to the LWA."

Finally, what has been the impact of this "constraint"? (pp. 8-9):

"The assumption that the Permit volume and the ROD/C&C/LWA volume are linked is not valid for the reasons stated [...], and language to this effect in the Permit constrains the DOE from achieving the goal of removing the inventory of TRU mixed waste from the generator/storage sites."

What are the takeaway points from these excerpts?

1. The process of tracking and reporting waste volumes relative to LWA limits will not be in the Permit
2. DOE will track and report these volumes
3. DOE will establish and implement a policy
4. DOE will publish the tracking results publicly
5. Equating Permit disposal volumes with LWA limits constrains the permitting of future disposal capacity and achieving the goal of cleaning up sites

What do these points mean in the real world?

1. By removing regulatory requirements related to LWA capacity limits from the Permit, NMED has no authority to enforce the LWA limit.
2. DOE claims they will “track and report” these volumes, but never states in the PMR to whom they will report. When asked at the March 8 public meeting on the PMR in Santa Fe, the Permittees stated they would report it “up the chain” ... in other words, it would be reported internally within DOE.
3. DOE promises to establish and implement a policy for tracking and reporting, but hasn’t provided anything further than what is vaguely stated in the PMR. Even the proposed definition of LWA VOR is unclear (“... means the volume of TRU waste inside a disposal container”). Seriously, what is that supposed to mean? **All containers** in Permit Section 4.3.1 are “disposal containers.” On the one hand, a reference to the Appendix C in the PMR implies that they intend to count the internal gross volume of the innermost container. On the other hand, it could be interpreted to mean they would multiply the internal gross volume of each waste container by the fill factor percentage recorded for each container in the WWIS, which would be an even smaller volume. Because the PMR doesn’t really commit to implement any explicit approach, it’s totally unpredictable what the Permittees might ultimately choose. It could even change with time, becoming more restrictive and excluding more and more void space inside each container, in direct contradiction to the clear statement of waste volume published by DOE in the 1980s and 1990s.
4. Publishing the tracking results does not equal accountability. When asked at the Santa Fe public meeting what recourse a party would have if there was a dispute over tracking results in the report, the Permittees stated that it would probably be up to the courts to decide. In this scenario, NMED would have no different standing than a private citizen because the entire process would be outside of the Permit.
5. Finally, “constraint” appears to be the crux of the issue, and perhaps the real reason the PMR was submitted. Historic methods of calculating the volume of emplaced waste in the Permit are constraining DOE from permitting future disposal capacity and achieving the goal of cleaning up sites because... they are running out of room and have more waste than they expected. The March 7, 2018 edition of the Carlsbad Current Argus reported on the PMR public meeting on March 6 in Carlsbad, and included a significant quote by Bob Kehrman, long-time regulatory expert for the Permittees, recently retired but now serving as a WIPP consultant, and the primary spokesperson for the Permittees at the public meeting. He is reported to have said:
...the change is necessitated by space being taken up at WIPP since the site’s first emplacements in 1999, defeating past assumptions as to the amount of waste being produced, and the volumes at which it could be disposed. “In the past, it looked like you had all this space,” he said. “Volumes keep growing, and we need to be more efficient.”

In other words, the Permittees are constrained simply because they have been too successful in emplacing TRU waste in the repository.

DOE has no “mandate” to self-regulate at WIPP with respect to the LWA total capacity limit

DOE firmly believes that they alone have the responsibility to redefine how waste volume is calculated, as stated in the 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.”

They cite Section 203(a)(8)(G) of the Department of Energy Organization Act (Pub. L. 95-91), which says:

(8) Nuclear waste management responsibilities, including—

(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.

DOE further claims (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.”

More than 40 years have passed since the DOE Organization Act was signed into law August 4, 1977, and the PMR acknowledges two other relevant laws – the 1979 WIPP Authorization Act and the 1992 WIPP Land Withdrawal Act – that were passed in later years. However, they fail to mention one extremely significant law that undercuts their claim of a mandate – the Federal Facility Compliance Act (**FFCA**) (Pub. L. 102-386, October 6, 1992), which brought all federal facilities into compliance with applicable federal and state hazardous waste laws, waived federal sovereign immunity under those laws, and allowed the imposition of fines and penalties. The law also required DOE to submit an inventory of all its mixed waste to the EPA and authorized states, and to develop a treatment plan for mixed waste.

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. So that there is no further doubt as to whom Congress intended to delegate authority over RCRA at WIPP, 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.

The FFCA inventory requirement is particularly relevant to this PMR. 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 Reorganization Act (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 a lot of water has passed under the proverbial bridge 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, and the LWA sealed their fate by requiring WIPP to comply with RCRA. There is no looking back, and there is no longer a “mandate,” especially for them to make up something drastically different now. NMED is the undisputed RCRA regulator for WIPP, and NMED should clearly and without reservation reject the idea of two different definitions for waste disposal volumes at WIPP, especially when one of the definitions eliminates NMED’s enforcement authority.

2. The PMR is improperly classified

The PMR states (p. 6), *“This PMR is a Class 2 modification pursuant to 20.4.1.900 NMAC (incorporating 40 CFR §270.42, Appendix I, Item A. General Permit Provisions, 4. Changes in frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee, b. other changes...2). This classification applies because the Permittees are proposing to change the procedure for reporting the volume of TRU mixed waste emplaced in the WIPP facility relative to the total capacity limit for TRU waste in the LWA and to clarify what volumes are reported pursuant to the Permit.”* The PMR also indicates changes to the Closure Plan that are a Class 1 modification requiring agency approval (Class 1*).

However, the Permittees apparently failed to take into account the overarching impact of these changes, specifically, that of eliminating NMED’s regulatory oversight and enforcement authority over a requirement of federal law (namely the LWA) that directly

pertains to the total disposal capacity of this specific RCRA facility. This type of change is not explicitly listed in 40 CFR §270.42 Appendix I, and thus would be more appropriately processed as an “other modification” under 40 CFR §270.42(d).

Although the PMR assures the reader (p. 1) that *“These changes do not reduce the ability of the Permittees to provide continued protection to human health and the environment,”* the changes would *eliminate* NMED’s ability to provide adequate regulatory oversight related to waste volume accountability, and thus its ability to determine the ultimate cessation of waste disposal activities at WIPP.

3. Modifying the WIPP Permit is the wrong way for DOE to achieve its goals

Redefining how waste volumes are calculated 19 years into the WIPP Permit is like attempting to move the goalposts in the fourth quarter of a football game when you’re behind... it can only be viewed as a desperate attempt to take an unfair advantage when the outcome isn’t favorable to you.

Consider this language from the WIPP Authorization Act (Pub. L. 96-164), Section 213(a):

*“Notwithstanding any other provision of law, **the Waste Isolation Pilot Plant is authorized** as a defense activity of the Department of Energy, administered by the Assistant Secretary of Energy for Defense Programs, **for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes** resulting from the defense activities and programs of the United States exempted from regulation by the Nuclear Regulatory Commission.*

The PMR readily admits that Congress limited WIPP to 6.2 million ft³ of TRU waste in the LWA, and, in the various RODs and the RCRA Part B Permit Application, DOE estimated that the disposal phase would last anywhere from 25 to 35 years. In other words, Congress did not grant DOE a blank check for a “research and development facility” to achieve what the PMR states (p. 9) is *“the goal of removing the inventory of TRU mixed waste from the generator/storage sites.”*

That did not inhibit DOE from seeking what may appear to be an easy solution, such as inappropriately requesting a minor (Class 2) modification to the WIPP Permit. Consider these statements at the March 6 Carlsbad public meeting on the PMR reported by the Carlsbad Current Argus and attributed to Roger Nelson, retired Chief Scientist for the DOE Carlsbad Field Office:

“This [redefining how volume is calculated] is the key to WIPP’s ability to expand the amount of waste that is out there. There’s more TRU waste out there than we assumed. There’s really no rational limit. The possible volume is essentially unlimited,” he said. “To unscientifically constrain it is stupid.” Nelson said... DOE officials should focus on regulatory adjustments to ensure WIPP can continue to expand as more and more waste is sent in from national laboratories across the country.

Rick Chavez, representing the Permittees at the same Carlsbad public meeting, is reported by the Current Argus to have said:

... the idea of redefining the federal waste calculations was considered for many years, but only after the plant was fully recovered from a 2014 radiological release and three-year cease in operations, was it the proper time to submit non-recovery-related modifications.

Chavez stated at the Santa Fe public meeting on March 8 that it was former Chief Scientist Roger Nelson who initially suggested redefining how waste volume is calculated as the solution back in the mid to late 2000s. While one may agree or disagree with Nelson's assertion that there is no rational limit to what WIPP could dispose of, there is a Congressionally mandated legal limit (regardless of how stupid it may seem to "unscientifically constrain it"). Under current law, WIPP will eventually reach the 6.2 million ft³ disposal limit and initiate final repository closure – that is a fact difficult for many WIPP supporters to accept. My impression of Roger Nelson from my past professional interactions with him was that he embodied the perspective of the "old guard DOE" who chafed at external regulation, and perhaps he was hoping that a PMR such as this would be a way to get back at NMED for his perception that WIPP had been "stupidly" overregulated by the State.

But in the end, attempting to expand the amount of waste eligible for disposal at WIPP by redefining how waste volume is calculated is the wrong approach. The State didn't establish the limit of 6.2 million ft³ at WIPP, Congress did through the LWA. The obvious solution to the concerns and constraints raised in the PMR is for DOE to seek an amendment to the LWA raising the volume limit in Congress, not attempt an inappropriate "regulatory adjustment" in the Permit. NMED should not be a partner in moving the goalposts.

Recommended action

NMED should not approve the PMR as submitted, and unless included in my comments below, none of the proposed changes should be incorporated into the Permit. However, because the PMR requested changes to specific sections of the WIPP Permit, NMED is able to make changes to those specific sections based upon public comment. Here are my suggested changes to the Permit as supported by my comments:

1. All proposed changes in the PMR related to striking or modifying the 6.2 million ft³ limit should be denied. However, in Attachment H1, *Introduction*, page H1-3, line 13, I suggest changing "regulated capacity of the repository of 6,200,000 cubic feet (175,588 cubic meters) of TRU and TRU mixed waste" to "regulated capacity of the repository of 6.2 million cubic feet (175,564 cubic meters) of TRU and TRU mixed waste" for consistency with the rest of the Permit.
2. Also for consistency, change the LWA total capacity limit expressed in m³ throughout the Permit to 175,564 m³ (the volume as proposed in the PMR and the most accurate conversion of 6.2 million ft³ to m³):
 - a. Attachment B, Hazardous Waste Permit Application Part A, page B-8, X04 Process Design Capacity, 175,600 to 175,564

- b. Attachment B, Hazardous Waste Permit Application Part A, page B-13, lines 14 and 19, 175,600 to **175,564**
- c. Attachment H1, Active Institutional Controls During Post-Closure, Section, Introduction, page H1-3, line 14: 175,588 to **175,564** (in addition to the change proposed in comment 1 above)
3. Modify the proposed change in the PMR in Part 3, Section 3.3.1.8 for shielded containers to eliminate unnecessary language as follows:

*3.3.1.8. Shielded Container**

*Each shielded container **has a gross internal volume of 7.4 ft³ (0.21 m³)** contains a ~~30-gallon inner container with a gross internal volume of 4.0 ft³ (0.11 m³)~~. 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 volume limits associated with RH TRU mixed waste. ~~Shielded containers may be overpacked into standard waste box or ten drum overpack.~~*

**"Shielded Container" refers to the container depicted in Figure A1-37.*

4. Modify the proposed change in the PMR in Part 6, Section 6.5.2, to instead reference the WIPP LWA with the final volume of TRU mixed waste as follows:

6.5.2. Final Facility Closure

*After receiving the final volume of TRU mixed waste **not to exceed 6.2 million ft³ [Pub. L. 102-579 (1992)]**, the Permittees shall remove...*

This construction is similar to that used elsewhere in the Permit (e.g., Permit Sections 1.5.1, 1.5.2, 1.5.3, 1.5.6, and 1.5.12)

5. Accept the proposed change in the PMR in Part 4, Table 4.1.1, to replace "7,500 ft³" with "**7,600 ft³**" and "214 m³" with "**215 m³**" in the RH TRU Waste Type for Panel 6.
6. The historic method for reporting volume (described in the Integrated Data Base Reports and DOE Order 5820.1) needs to be included in the Permit for clarity and to prevent future attempts to redefine it. However, simply creating a definition does not appear to be the best solution, as it would require multiple edits throughout the Permit. Instead, language should be inserted in the "Process – Codes and Design Capacities (continued)" page of the RCRA Part A Application (currently Permit Attachment B, page B-13). Suggested language follows:

*"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 m³** of TRU waste of which up to 7,080 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.**"*

7. Table 4.1.1 should summarize the Final Waste Volumes of CH and RH waste for all closed panels in the row for Total, in order to document the Permittees' progress toward reaching the permitted Total for the term of the Permit. I calculated the values for Panels 1 through 6 as 3,186,900 ft³ (90,246 m³) for CH TRU waste and 22,100 ft³ (626 m³) for RH TRU waste (using the updated values for Panel 6 with the change of volume for shielded containers).

If NMED is inclined to approve the underlying presumption in the PMR that there should be two distinct volume calculations – one for the Permit and a separate one outside of the Permit for the LWA – I strongly urge the department to instead reclassify this PMR as a Class 3 for the reasons stated above. I would likely request a hearing and be a party to such a hearing.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Zappe", with a stylized, cursive script.

Steve Zappe

Cited References and Web Links

Department of Energy Organization Act (Pub. L. 95-91, August 4, 1977)

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<https://www.currentargus.com/story/news/local/2018/03/07/wipp-volume-tracking-adjustment-could-ensure-nuclear-waste-plants-future/401517002/>

Class 2 Permit Modification Request "Clarification of TRU Mixed Waste Disposal Volume Reporting" (January 31, 2018)

[http://www.wipp.energy.gov/library/Information Repository A/Class 2 Permit Modifications/18-0308 Redacted enclosure.pdf](http://www.wipp.energy.gov/library/Information%20Repository/A/Class%202%20Permit%20Modifications/18-0308%20Redacted%20enclosure.pdf)

NO TO MORE WASTE AT WIPP!

I oppose the "volume reduction"
Permit Modification Request (PMR).

I ask NMED to deny that PMR.

If the PMR is not denied, it must
be a Class 3 PMR because there is
significant public concern. Further,
it would increase the WIPP capacity
by more than 25 percent. Any such
change requires a public hearing.

dianne stone

(name)

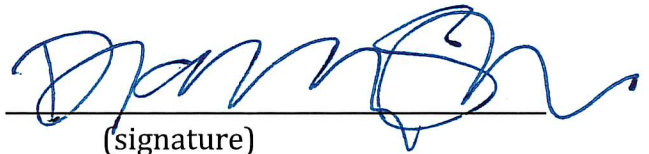
p.o. box 407

(address)

ARIZO Hondo NM

(city, state, zip)

87513



(signature)

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Jordan Anderson

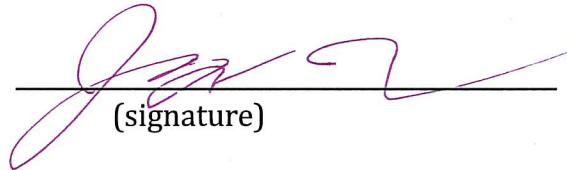
(name)

47048 Temple Ave NW

(address)

ABQ, NM 87114

(city, state, zip)



(signature)

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Create a Wilderness area!

Laura Aubert

(name)

621 Monroe St NE

(address)

Albuquerque, NM 87110

(city, state, zip)

Laura Aubert

(signature)

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Charlotte Clayton-Payne
(name)

420 Redondo Drive
(address)

Albuquerque, NM 87106
(city, state, zip)


(signature)

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Scott Cormack
(name)

420 Redondo Drive NE
(address)

Albuquerque, NM, 87106
(city, state, zip)

S. Cormack
(signature)

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Graciela Avila-Robinson
(name)

406 Conchas NE
(address)

Albuquerque, NM 87123
(city, state, zip)

Graciela Avila-Robinson
(signature)

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KAREN BONIME
(name)

715 Truman St. SE
(address)

Albuquerque, NM
(city, state, zip)

Karen Bonime
(signature)

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Bryson Montoya
(name)

4620 Vining Chavez Ave NW
(address)

Albuquerque, NM, 87114
(city, state, zip)

[Signature]
(signature)

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STEVEN ALEN
(name)

420 Redondo Dr NE
(address)

Albuquerque
(city, state, zip)


(signature)

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Eileen Shaughnessy

(name)

302 Dartmouth Dr. SE

(address)

Albuquerque, NM 87106

(city, state, zip)

E1 S

(signature)

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Charlene Blackledge

(name)

14200 Nambur Ave NE

(address)

Albuquerque, NM, 87123

(city, state, zip)



(signature)