



**BILL RICHARDSON**  
GOVERNOR

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**

*Hazardous Waste Bureau*  
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**RON CURRY**  
SECRETARY

October 17, 2006

**RE: SPECIFIC RESPONSE TO COMMENTS, CLASS 3 MODIFICATION REQUEST  
WIPP HAZARDOUS WASTE FACILITY PERMIT  
EPA I.D. NUMBER NM4890139088**

Dear Interested Person:

On October 16, 2006, New Mexico Environment Department (NMED) Secretary Ron Curry took final administrative action on a Class 3 permit modification request (PMR) to the Waste Isolation Pilot Plant (WIPP) Hazardous Waste Facility Permit. The Department of Energy Carlsbad Field Office and Washington TRU Solutions LLC (the Permittees) submitted this PMR to the NMED Hazardous Waste Bureau in the following documents:

- Consolidated Response to NOD, Class 3 Permit Modifications (Section 311, RH, etc.), Letter Dated 4/29/05, Rec'd 4/29/05
- Comments on Consolidated Response to NOD, Class 3 Permit Modifications (Section 311, RH, etc.), Letter Dated 6/9/05, Rec'd 6/10/05
- Response to September 1, 2005 NOD, Letter Dated 9/22/05, Rec'd 9/23/05

The Draft Permit proposed to allow the receipt, management, and disposal of remote-handled (RH) transuranic (TRU) mixed waste at WIPP; make significant changes to the TRU mixed waste characterization program; create a new TRU mixed waste confirmation program in response to Section 310 of Pub. L. 108-447; increase the storage capacities in the Waste Handling Building and Parking Area Container Storage Units; increase the disposal capacities in the underground HWDUs, or panels, for TRU mixed waste; and change the method for demonstrating that the underground disposal rooms comply with the environmental performance standards for volatile organic compounds in response to Section 310 of Pub. L. 108-447. NMED issued the Draft Permit on November 23, 2005 for a 60-day public comment period, which was subsequently extended an additional 30 days until February 22, 2006. During this initial public comment period, NMED received written specific comments from a total of 32 individuals and organizations.

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In response to public comments expressing opposition to the Draft Permit and requesting a public hearing, and in an effort to resolve issues giving rise to the hearing requests, NMED convened a series of meetings between March 9 and May 3, 2006 with the Permittees and those who both opposed the Draft Permit and requested a hearing. These meetings were held pursuant to 20.4.1.901A(4) NMAC. Participants at the meetings included NMED; the Permittees; Southwest Research and Information Center (**SRIC**); Concerned Citizens for Nuclear Safety (**CCNS**); Citizens for Alternatives to Radioactive Dumping (**CARD**); the New Mexico Attorney General's Office (**AGO**); and other individuals who participated by telephone. As a result of the negotiations during these meetings, NMED, the Permittees, the AGO, and SRIC agreed to changes to the Draft Permit related to waste characterization, the volume of waste stored and disposed of at WIPP, the acceptance of remote-handled waste, and expanded public notification of specific permit activities. This culminated in a modified document subsequently referred to as the "Draft Permit as Changed." CCNS and CARD agreed to some of these changes, but preserved their rights to challenge specific areas of disagreement at the public hearing.

A public hearing on the Draft Permit was held in two sessions: one in Carlsbad from May 31 through June 6, 2006, and the second in Santa Fe from June 7 through June 9, 2006. The hearing afforded interested members of the public multiple opportunities to present non-technical oral comment. Approximately 194 persons offered public comment during the hearing; 160 during the Carlsbad component of the hearing, and 34 in Santa Fe. Also, because the initial public comment period was automatically extended to the close of the public hearing, NMED received additional written specific comments from a total of 36 individuals and organizations.

This PMR was evaluated and processed by NMED in accordance with the requirements specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(c)). You are receiving this mailing because you provided public comment on the Draft Permit and/or Draft Permit as Changed.

The following three attachments are enclosed: Attachment 1 lists all commenters; Attachment 2 incorporates NMED's specific response to all comments; and Attachment 3 incorporates NMED's general responses to summarized comments. Further information on this administrative action may be found on the NMED WIPP Information Page at <http://www.nmenv.state.nm.us/wipp/>.

Thank you for your participation by submitting comments on these permit modification requests. Please contact Steve Zappe at (505) 428-2517 or [steve\\_zappe@nmenv.state.nm.us](mailto:steve_zappe@nmenv.state.nm.us) if you have further questions or need additional information.

Sincerely,

*Original signed by*

James P. Bearzi

Chief

Hazardous Waste Bureau

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Attachments

cc: Cindy Padilla, NMED  
Chuck Noble, NMED OGC  
John Kieling, HWB  
Steve Zappe, HWB  
David Moody, DOE/CBFO  
Richard Raaz, Washington TRU Solutions LLC

Attachment 1  
Commenter List

**Comments Received by NMED on WIPP Permit Modification**

**Draft Permit on Consolidated PMR, Section 311 & RH (Issued November 23, 2005)**

	<u>Receipt Date</u>	<u>Author</u>	<u>Organization/Citizen</u>	<u># Pages</u>	<u>Request for Hearing</u>	
A	1	11/29/05	Thomas French	Citizen	1	No
B	2	12/7/05	John Tyson	Citizen	1	No
C	3	12/12/05	* Alfred Brooks	Oak Ridge Env. Justice Committee	1	No
D	4	12/12/05	* Lee Cheney	CNIC	1	Yes
E	5	12/27/05	Norman Mulvenon	ORR LOC	2	No
F	6	12/27/05	* Tom Johnsen	Citizen	1	No
G	7	1/4/06	* Beverly Jaeger	Citizen	1	No
H	8	1/10/06	* Patricia Putnam	Citizen	1	No
I	9	1/17/06	John Picaro	Citizen	1	No
J	10	1/17/06	* Kerry Trammell	Oak Ridge SSAB	2	No
K	11	1/19/06	* David Moody/Richard Raaz	CBFO/WTS	104	No
L	12	1/23/06	* Beth Enson	Citizen	1	Yes
M	13	1/23/06	* Kiersten Figurski	Citizen	1	Yes
N	14	1/23/06	Bonnie Bonneau	Citizen	1	Yes
O	15	1/24/06	Joseph Peterson	PECOS Management Services	5	No
P	16	1/31/06	* Ed Larson	Citizen	1	No
Q	17	1/26/06	Julie Reinhart-Sutherland	Citizen	1	Yes
R	18	1/30/06	Rebecca Perry-Piper	Citizen	2	No
S	19	2/3/06	Aanya Adler-Freiss	Citizen	2	Yes
R	20	2/13/06	Rebecca Perry-Piper	Citizen	12	Yes
T	21	2/13/06	Judy Kaul	Citizen	1	No
U	22	2/15/06	* John Tanner	Coalition 21	1	No
V	23	2/20/06	* Ron Smith, Sr.	Citizen	1	No
K	24	2/21/06	David Moody/Richard Raaz	CBFO/WTS	1	Yes
K	25	2/22/06	* David Moody/Richard Raaz	CBFO/WTS	12	No
W	26	2/22/06	Connie Root Pronobis	Citizen	1	No
X	27	2/22/06	Monique Evans-Jule	Citizen	1	No
Y	28	2/22/06	* Don Hancock/ Joni Arends/ Lindsay Lovejoy	SRIC/CCNS	12	Yes
Z	29	2/22/06	* Janet Greenwald	CARD	1	Yes
AA	30	2/22/06	* Richard Hayes Phillips	Citizen	3	Yes
AB	31	2/22/06	* Ben Walker	Citizen	6	No
AC	32	2/22/06	* Stephen Farris	NM AGO	4	Yes
AD	33	2/22/06	* Becky Peirce	Citizen	1	No
AE	34	2/22/06	* EM Murphy	Citizen	1	No
AF	35	2/22/06	* Judith Murphy	Citizen	1	No
				Total Pages =	189	
				32 commenters		

\* denotes electronic comment received

## Comments Received by NMED on WIPP Permit Modifications

### Draft Permit As Changed

		<u>Receipt Date</u>	<u>Author</u>	<u>Organization/Citizen</u>	<u># Pages</u>
A	1	5/24/06	Maureen Wright	Citizen	1
B	2	5/26/06	Bonnie Bonneau	Citizen	1
C	3	5/26/06	Glenn Yocum	Citizen	1
D	4	6/1/06	John Tyson	Citizen	1
E	5	6/2/06	Sue Dayton, et al	Various citizen groups	4
F	6	6/5/06	Carmen Luna	Citizen	1
G	7	6/5/06	Charles Powell	Citizen	1
H	8	6/5/06	Dan Gips	Citizen	1
I	9	6/5/06	Ellen Robinson	Citizen	1
J	10	6/5/06	Floy Barrett	Citizen	5
J	11	6/5/06	Floy Barrett	Citizen	1
K	12	6/5/06	James and Jean Genasci	Citizen	1
L	13	6/5/06	James Channell	Citizen	1
M	14	6/5/06	Maria DeLourdes	Citizen	1
N	15	6/5/06	Patricia Jones	Citizen	1
O	16	6/5/06	Penelope McMullen	Loretto Community	2
P	17	6/5/06	Peter Neils	Citizen	1
Q	18	6/5/06	Robert Anderson	Citizen	1
R	19	6/5/06	Sally Alice Thompson	Citizen	5
S	20	6/5/06	Stan Serafin	Citizen	1
T	21	6/5/06	Thomas Lockwood	Citizen	1
U	22	6/5/06	Vernon Asbill	NM State Senator	1
V	23	6/6/06	Rebecca Perry-Piper	Citizen	12
W	24	6/8/06	Antoinette Fox	Citizen	1
X	25	6/8/06	Lynne Buck	Citizen	1
M	26	6/8/06	Maria DeLourdes	Citizen	1
Y	27	6/8/06	Marina Day	Citizen	1
Z	28	6/8/06	Martha Ramirez	Citizen	1
AA	29	6/8/06	Molly Smallett	Citizen	1
AB	30	6/8/06	Rita Surdi	Citizen	1
AC	31	6/8/06	Sasha Pyle	Citizen	9
AD	32	6/9/06	Anthony Moss	Citizen	1
AE	33	6/9/06	Donna Arthur	Citizen	1
AF	34	6/9/06	Fred Williamson	Citizen	1
AG	35	6/9/06	Joni Arends	CCNS	9
AH	36	6/12/06	Jo Ann Rasmussen	Citizen	1
AI	37	6/12/06	S. Diaz	Citizen	1
AJ	38	6/13/06	Dorelen Bunting	Citizen	1
		<hr/>			
			36 commenters	Total Pages =	77

<b>Oral Public Comments – Non-Technical Public Hearings<sup>1</sup></b>	
<b>Author</b>	<b>Corresponding Numbers<sup>2</sup></b>
Mike Reynolds	5.31-1
Glenn Frintz	5.31-2
Alberto Salcido	5.31-3
Steve Hendley	5.31-4
Luis Renteria	5.31-5
Judy Lowe	5.31-6
Valerie Jo Murrill	5.31-7
Denise Madrid Boyea	5.31-8
Karen Farrell	5.31-9
David Shoup	5.31-10
Elva Farrell	5.31-11
Tommy Barnett	5.31-12
Joey Gonzalez	5.31-13
Darrin McGilvray	5.31-14
Don George	5.31-15
Lisa Atwood	5.31-16
Brian Fox	5.31-17
Michael Bird	5.31-18
Cliff Stroud	5.31-19
Mike Currier	5.31-20
Don Kidd	5.31-21
Bill McInroy	5.31-22
James Williams	5.31-23
Trey Greenwood	5.31-24
Jay Jenkins	5.31-25
Mary A. Perry	5.31-26
Kenneth Licklitter	5.31-27
John Beasley	5.31-28
Judy Knox	5.31-29
Don Reed	5.31-30
Richard Aguilar	5.31-31
Michael Richmann	5.31-32
Mickie Compton	5.31-33
David Kessel	5.31-34
Ned Elkins	5.31-35
Lydia DeMiguel	5.31-36
Joseph Leyva	5.31-37
Jeff Neal	5.31-38
Rhonda Kidd	5.31-39
Jackie Hadzic	5.31-40
Brad Nesser	5.31-41
Jack Knittel	5.31-42
Frank Witt	5.31-43
Matt LeRoch	5.31-45
Joe Epstein	6.1-46
Edgar Lyon	6.1-47
Norman Whitlock	6.1-48
Mansour Akbarzadeh (also testified on June 5, 2006)	6.1-49
Luis Camero	6.1-50
Judy Jones	6.1-51
James Coleman	6.1-52
James Conca	6.1-53
Judith Wright	6.1-54
Jack Hayes	6.1-55
Bryan Howard	6.1-56
Mike Dunagan	6.1-57
Richard Pond	6.1-58
Linda Ramirez	6.1-59
Marsha Beekman	6.1-60
Mike Carriaga	6.1-61
Russell Leach	6.1-62
Steve Massey	6.1-63

skipped 5.31-44

<b>Oral Public Comments – Non-Technical Public Hearings<sup>1</sup></b>	
<b>Author</b>	<b>Corresponding Numbers<sup>2</sup></b>
Carl Manganaro	6.1-64
Rich Arimoto	6.1-65
David Schoep	6.1-66
Melissa Suggs	6.1-67
Pattie Burns	6.1-68
Melvin Vuk	6.1-69
Joe Calderon	6.1-70
Keith Gardner	6.1-71
Wanda Durham	6.1-72
Tim Burns	6.1-73
Lisa Price	6.1-74
Mark Edwards	6.1-75
Kim Greer	6.1-76
Sarah Hernandez	6.1-77
Ellen Harkness	6.1-78
Art Chavez	6.1-79
Meg Milligan	6.1-80
Russ Sorenson	6.1-81
Jeffrey Diamond	6.1-82
Bill St. John	6.1-83
Tom Goff	6.1-84
Pam Hester	6.1-85
Ron Head	6.1-86
Bryan Marshall	6.1-87
Dawn Higgins	6.1-88
Jerry Golden	6.1-89
Virginia Gregory	6.1-90
Joe Gant	6.2-91
Keith Nelson	6.2-92
Dan Standiford	6.2-93
Dan Foley	6.2-94
Douglas Steffen	6.2-95
Bill Allen	6.2-96
Sherri Smith	6.2-97
Tom Fabian	6.2-98
Dwayne Davis	6.2-99
Richard Riddle	6.2-100
Tom Carlson	6.2-101
Tim Hedahl	6.2-102
Bob Prentiss	6.2-103
Darrold Haug	6.2-104
Marcus Gutierrez	6.2-105
Tammie McCullough	6.2-106
Carlyne Leos	6.2-107
Bertha Cassingham	6.2-108
Richard Davies	6.2-109
Betty Egbom	6.2-110
Janis Jordan	6.2-111
Marian Borkowski	6.2-112
John Heaton	6.2-113
Bob Forrest	6.2-114
Norbert Remppe	6.2-115
Roger Nelson	6.3-116
Brenda Buttrey	6.3-117
Tony Herrell	6.3-118
Martha Gonzales	6.3-119
Richard Bodette	6.3-120
Miranda Darcy	6.3-121
Leslie Aragon	6.5-122
Karen Day	6.5-123
Scott Burns	6.5-124
John Benjamin	6.5-125
Mark Maciha	6.5-126



<b>Oral Public Comments – Non-Technical Public Hearings<sup>1</sup></b>	
<b>Author</b>	<b>Corresponding Numbers<sup>2</sup></b>
Lia Barnett	6.5-127
Monica Harris	6.5-128
Wayne Hatfield	6.5-129
Judy Freisinger	6.5-130
Will Anne Ricer	6.5-131
Bill Barlett	6.5-132
Doug Evans	6.5-133
Steven Castro	6.5-134
Terry Frye	6.5-135
Gary Dill	6.6-136
Anne Dean	6.6-137
Adan M. Rodriguez	6.6-138
Cathie Murray	6.6-139
Robert Turner	6.6-140
Roxanne Lara	6.6-141
Ray Battaglini	6.6-142
Lana Steven	6.6-143
Steve McCutcheon	6.6-144
Alisa Cass	6.6-145
Ken Britt	6.6-146
Brad Day	6.6-147
Manuel Molina	6.6-148
Jef Lucchini	6.6-149
Gloria Munoz	6.6-150
Kevin Richardson	6.6-152
Mary French-Jones	6.6-153
Greg Haston	6.6-154
Lupe Armendariz	6.6-155
R. D. Gross	6.6-156
Jon Haag	6.6-157
Christy Box	6.6-158
Bill Weston	6.6-159
George Holmes	6.6-160
Kathryn Jones	6.6-161
Adele Zimmermann	6.7-162
Deeanza Rouybal	6.7-163
Mark Schinnerer	6.7-164
Carroll Leavell	6.7-165
Kathleen Sisneros	6.7-166
Justin McGreath	6.7-167
Sasha Pyle	6.7-168
Lisa Boeke	6.7-169
Christy Bourgeois	6.7-170
Scott Kovac	6.7-171
Jeffrey Plant	6.7-172
Bill Lattin	6.7-173
Janet Berry	6.7-174
Janet Greenwald (also gave public testimony on June 8, 2006)	6.7-175
Roberto Villarreal	6.8-176
Marlene Perrotte	6.8-177
Julie Sutherland	6.8-178
Marilyn Hoff	6.8-179
Marion Wasserman	6.8-180
Dee Finney	6.8-181
Sheri Kotowski	6.8-182
Joni Arends	6.8-183
Deborah Reade	6.8-184
Bob Aly	6.8-185
Hildegard Adams	6.8-186
Therese Graham	6.8-187
Rosamund Evans	6.8-188
Miguel Pacheco	6.9-189

skipped 6.6-151

<b>Oral Public Comments – Non-Technical Public Hearings<sup>1</sup></b>	
<b>Author</b>	<b>Corresponding Numbers<sup>2</sup></b>
John Witham	6.9-190
Kalliroy Matsakis	6.9-191
Johnny Harper	6.9-192
Richard Johnson	6.9-193
Sarah Moore	6.9-194
Catherine Montano	6.9-195

<sup>1</sup>Total of ~193 public comments. Note that several individuals appeared at more than one public hearing. The additional dates are listed in parentheses after the names when

<sup>2</sup>Please note that for the non-technical public hearings, identification numbers were not used on the matrix. Therefore, the date and a sequential numbers were used.

Attachment 2  
Specific Response to Comments

Written Comments on the Draft Permit  
Written Comments on the Draft Permit as Changed  
Non-Technical Oral Public Comments on the Draft Permit as Changed

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

Note: Commenters may appear in more than one comment subject depending on the number of issues addressed by the commenter, and some commenters submitted different comments on different dates. Those names appearing in more than one comment subject are marked by an asterisk (\*).

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
N/A	1	11/29/05 1/04/06 1/09/06 1/13/06 1/23/06 1/23/06 1/23/06  1/31/06 1/26//06  2/3/06  2/13/06  2/13/06 2/22/06  2/22/06	T. French (1) B. Jaeger (7) P. Putnam (8) J. Picaro (9) B. Enson (12) K. Figurski (13) B. Bonneau (14)* E. Larson (16) J. Reinhart-Sutherland (17)* A. Adler-Freiss (19) R. Perry-Piper (20)* J. Kaul (21) C. Root-Pronobis (26)* M. Evans-Jule (27)* J. Greenwald, CARD (29)* R. Phillips (30)* B. Pierce (33) E. Murphy (34) J. Murphy (35)	General Opposition to the Draft Permit	A number of commenters voiced general opposition to the Draft Permit for various reasons, including: <ul style="list-style-type: none"> <li>◆ lack of public support;</li> <li>◆ distrust in the hearing and permitting process;</li> <li>◆ the overall reduction in characterization requirements will not improve health and safety of the environment and populous;</li> <li>◆ acceptance of RH or additional types of other waste;</li> <li>◆ the Permit would promote nuclear material production elsewhere in the U.S.;</li> <li>◆ opposes nuclear material generation, transport, and disposal;</li> <li>◆ actions make New Mexico a National Sacrifice Zone;</li> <li>◆ believes that the proposal is a ploy to allow higher level waste into the repository by reducing characterization requirements thus promoting acceptance of inappropriate waste.</li> </ul>	NMED appreciates and considers all public comment. No response is necessary to this group of comments.

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
N/A	2	12/07/05 12/12/05  12/27/05  1/17/05  2/15/06 2/20/06	J. Tyson (2) A. Brooks; Oak Ridge Environmental Justice Committee(3) N. Mulvenon, OAK Ridge CAP (5)* K. Trammell, Oak Ridge Site Specific Advisory Board (10) J. Tanner, Coalition 21 (22) R. Smith (23)	General Support for the Draft Permit	A number of commenters voiced general support for the Draft Permit, for various reasons including: <ul style="list-style-type: none"> <li>◆ The need to increase waste disposal capacity to further alternative energy development;</li> <li>◆ Facilitates remediation at other sites;</li> <li>◆ WIPP's safety and effectiveness has been demonstrated and is better than other potential sites;</li> <li>◆ Permit would allow removal of RH waste from sites such as Oak Ridge and reduces risk to residents;</li> <li>◆ WIPP mined salt formation is stable.</li> </ul>	NMED appreciates and considers all public comment. No response is necessary to this group of comments.
N/A	3	12/12/05 1/23/06 1/23/06 1/23/06 1/26/06 1/30/06 2/3/06 2/21/06  2/22/06	L. Cheney, CNIC (4) B. Enson (12)* K. Figurski (13)* B. Bonneau (14)* J. Reinhart-Sullivan (17)* R. Perry-Piper (18)* A. Adler-Freiss (19)* D. Moody & R. Raaz, CBFO/WTS (24)* D. Hancock, J. Arends, L. Lovejoy, SRIC/CCNS (28)* S. Phillips (30)* S. Ferris, AG (32)*	Request for Public Hearing	Several commenters requested a public hearing regarding the draft permit to obtain public comment and input.	In response to this comment, the NMED Secretary granted a public hearing in an order dated February 24, 2006. The public hearing was held between May 31 and June 9, 2006 in Carlsbad and Santa Fe, NM.

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
Module II, Attachment B	4	12/27/05  1/19/06	N. Mulvenon, OAK Ridge CAP (5)* D. Moody & R. Raaz CBFO/WTS (11)*	Supports Confirmation at WIPP	Commenters voiced support of performing confirmation at WIPP. Supporting arguments included: <ul style="list-style-type: none"> <li>◆ The Permittees can demonstrate a “path back” for non compliant waste as current CH permit allows this for other waste without explicit path identification;</li> <li>◆ Options are available for prohibited (i.e., liquid) waste transport including NRC exemptions or amendments.</li> </ul>	Prior to the hearing, the Permittees withdrew their request to allow shipment of waste containers to WIPP prior to performing waste confirmation.
Module II Attachment B1	5	12/27/05	T. Johnson(6)	Footnote, Table B1-8 is poorly worded.	Footnote “a” to Table B1-8 is poorly worded as it is unclear what the consequences would be upon repackaging if the waste did not fit into one of the package groups.	NMED believes that the footnote as worded clearly specifies a path forward for any waste that does not fit into a specified group; no revisions are necessary.
Module III, Attachment M1	6	1/19/06	D. Moody & R. Raaz, CBFO/WTS (11)*	Retention of storage capacity	The commenter believed that NMED’s disapproval of confirmation at WIPP had the consequence of removing needed on-site storage capacity, and proposed permit revisions to re-establish the capacity and a combination of storage and holding areas.	The Permittees withdrew their request to allow shipment of waste containers to WIPP prior to performing waste confirmation. Additional surge storage is an element of the Draft Permit as Changed, and one with which the commenters agree.

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
Module II, Attachment B, B1-B3	7	1/19/06	D. Moody & R. Raaz, CBFO/WTS (11)*	Opposition to inclusion of radiography and visual examination requirements for generator/storage sites.	The commenters opposed inclusion of radiography and visual examination requirements for the generators because this would be performed by the Permittees under confirmation. If radiography/VE requirements for generators are retained, the commenters believed that the Permittees should have the opportunity to use these data in lieu of performing confirmatory radiography and/or visual examination. Also, commenters proposed removal of independent replicate scans and independent observations pertinent to radiography and visual examination.	These comments have been addressed to the commenters' satisfaction in the Draft Permit as Changed.
Module I	8	1/19/06	D. Moody & R. Raaz, CBFO/WTS (11)*	Supports Alternative Dispute Resolution Process	The commenter supported the alternative dispute resolution process in general, but proposed changes to clarify the proposed procedure and "ensure consistency" with state laws and other provisions	These comments have been addressed to the commenters' satisfaction in the Draft Permit as Changed.
Module I	9	2/22/06	B. Walker (31)*	Opposes Alternative dispute resolution	The commenter believed that the dispute resolution process proposed is inconsistent with RCRA, and segregates NMED staff from "the secretary" in the decision making process.	NMED included dispute resolution as part of its efforts to continue expanded public participation as mandated under its program authority delegated from EPA. About half of the RCRA permits and most of the consent orders issued by NMED include some form of dispute resolution. The dispute resolution process also ensures that any decision by the Department that was disputed by the Permittees would be clearly documented in the administrative record. As a result of negotiations, NMED included a revised dispute resolution process in the Draft Permit as Changed that included an e-mail notification component to ensure full public disclosure of all aspects of any dispute arising from NMED decisions

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
						<p>regarding audit reports and AK sufficiency determinations.</p> <p>The dispute resolution process serves to integrate, not segregate, NMED by ensuring authorities within NMED who will make final determinations (e.g., Cabinet Secretary) are considering information supplied by both parties, including NMED staff, in a transparent manner. No modifications to the Draft Permit as Changed were made based upon this comment.</p>
Module III	10	2/22/06	B. Walker (31)*	Parking Area changes	The commenter questioned various changes in the draft permit pertinent to the Parking Area, questioning whether the proposed changes offer sufficient parking for activities presented in the draft permit.	Prior to the hearing, the Permittees withdrew their request to perform confirmation at WIPP so much of the additional storage originally designated for this activity is no longer required. Additional surge storage is an element of the Draft Permit as Changed, and one with which the Permittees agree.
Module II, Attachment B, B4, and B6	11	2/22/06	B. Walker (31)*	Certification Audits	The certification audits should include the AK Sufficiency Determination Process.	Audits are performed by the Permittees to assess generator/ storage site characterization capabilities, and include evaluation of the AK process. The AK Sufficiency Determination Request contents are specified in the permit (Attachment B4), as well as the Permittees' review criteria (Attachment B). The Permittees must prepare a standard operating procedure that will be used to review the requests, and NMED will have access to this procedure. Therefore, NMED does not believe it necessary to include a separate generator/storage site AK Sufficiency Determination Process evaluation as part of the Audit Certification Process.



Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
Various	12	1/19/06	D. Moody & R. Raaz, CBFO/WTS (11)*	Proposes various changes to the permit to clarification terms and ensure consistency with state law.	<p>The commenter proposed several modifications to the draft permit, including but not limited to the following general categories:</p> <ul style="list-style-type: none"> <li>◆ Verification, confirmation, and characterization terminology use</li> <li>◆ RH/CH waste Storage/staging area and volume considerations, including container management and movement</li> <li>◆ Waste characterization process clarifications and changes</li> </ul>	These concerns have been addressed to the commenters' satisfaction in the Draft Permit as Changed.
Modules I, II, III, IV	13	1/24/06	J. Peterson, Pecos Management (15)	Offered several technical comments regarding draft permit contents that generally concur with the draft permit changes	<p>The commenter offered several technical comments concerning the draft permit:</p> <ul style="list-style-type: none"> <li>◆ Concurs that the permit should be enacted to bring the permit into compliance with the LWA</li> <li>◆ Equivalency of RH/CH characterization methods is scientifically valid but the VE process is not fully defined (opening of opaque containers)</li> <li>◆ Concur with at-WIPP confirmation and probability that the Permittees will obtain necessary NRC agreements to ship discovered prohibited containers back to generator</li> <li>◆ Concur with container storage area changes so long as distance between containers is sufficient to reduce radiation exposure and if the areas have reinforced covers for tornado protection</li> <li>◆ Agree with increased waste volumes in panels and related reporting</li> </ul>	<p>The existing permit already fully complies with the Land Withdrawal Act, as does the proposed Draft Permit as Changed. Attachment B specifies that conservative assumptions be made if non-transparent containers are identified (i.e., assume containers are liquid filled).</p> <p>No response is necessary with respect to concerns regarding confirmation at WIPP, container storage areas, panel waste volumes, and dispute resolution. All these concerns expressed by the commenter were included in the Draft Permit as Changed, as posted on the NMED WIPP web site. See also response to comments numbers 9, 12, etc.</p> <p>Closed panel monitoring is not addressed in the permit modification request, and so is not relevant to this proceeding.</p>

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
					<ul style="list-style-type: none"> <li>◆ Believes that dispute resolution should be revised to allow third party dispute resolution</li> <li>◆ Consider continued monitoring of closed panels</li> </ul>	
Module II, III	14	2/22/06	D. Moody & R. Raaz, CBFO/WTS (25)*	CNS 10-160B shipping cask for RH waste	The commenters provided additional technical information identifying the CNS 10-160N shipping cask as a mechanism by which prohibited items would be returned to the WIPP (if found during at-WIPP confirmation)	Prior to the hearing, the Permittees withdrew their request to allow shipment of waste containers to WIPP prior to performing waste confirmation, so consideration of alternative shipping mechanisms for returning non-compliant waste is no longer required.
Modules I, II, III, IV, Attachment B-B7, D, E, F, H2, M1, M2, N, O	15	2/22/06	C. Root-Pronobis (26)* M. Evans-Jule (27)* D. Hancock, J. Arends, L. Lovejoy, SRIC/CCNS (28)* J. Greenwald, CARD (29)* B. Walker (31)* S. Ferris AG (32)*	Opposed specific technical and legal elements of the draft permit	<p>Commenters offered the following comments related to opposition of draft permit contents (not all commenters addressed every element):</p> <ul style="list-style-type: none"> <li>◆ Reduction in characterization requirements for each container is opposed, and maintenance of 100% sampling and analysis is endorsed because the request does not demonstrate that the current permit is deficient and retention of the current program is necessary to protect human health and the environment;</li> <li>◆ The technical basis of the AK Sufficiency determination has not been presented;</li> <li>◆ The elimination of headspace gas sampling undermines the ability to accurately assign hazardous waste number;</li> <li>◆ Allowance of RH waste was opposed (maintenance of RH waste prohibition was endorsed);</li> <li>◆ If RH waste is allowed, it should be characterized using the same current methods used for</li> </ul>	Pursuant to 20.4.1.901.A.4 NMAC, NMED, in conjunction with the applicants, convened negotiations with entities that requested a hearing on and expressed opposition to the Draft Permit. These negotiations occurred from March through May, 2006, and culminated in the Draft Permit as Changed as well as a stipulation that the parties agreed to the Draft Permit as Changed, with some exceptions. All concerns expressed in these comments have been addressed and agreed upon by many of the commenters in the Draft Permit as Changed, as posted on the NMED WIPP web site. Issues addressed and resolved during the negotiation include the reduction of characterization requirements (e.g., headspace gas), AK sufficiency determination contents and evaluation criteria, acceptance and characterization of RH waste, storage and handling of RH waste at the WIPP facility, surface/subsurface storage and disposal capacities, validation of the 7% confirmation value, dispute resolution, and VOC monitoring. NMED notes that some participants continued to oppose

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
					<p>CH waste and all should undergo VE;</p> <ul style="list-style-type: none"> <li>◆ Safe storage and handling of RH waste at WIPP was challenged;</li> <li>◆ Increases in surface and subsurface waste storage and disposal capacity are opposed;</li> <li>◆ Origin of 7% confirmation value was questioned, including the statistical basis for the value;</li> <li>◆ Opposed Draft Permit based on incorrect legal justification for the draft permit;</li> <li>◆ Dispute Resolution is unnecessary and inappropriate;</li> <li>◆ Typographical and editorial changes should occur throughout the draft permit (Attachment B), including heavier scrutiny of changes pertaining to the words “shall” and “must”;</li> <li>◆ A more robust VOC sampling and monitoring program should be initiated.</li> </ul>	acceptance of RH waste at the conclusion of negotiations.
N/A	16	2/22/2006	J. Greenwald, CARD (29)*	Extension of public comment period	The commenter requested an extension of the public comment period.	As a result of the Secretary’s February 24, 2006 order granting a public hearing, the comment period was automatically extended through the close of the hearing, on June 9, 2006, pursuant to 20.4.1.901.A.6 NMAC.
Module I	17	2/22/06	R. Phillips (30)*	Establishment of upper limit surface dose rate	The commenter endorsed the establishment of an upper surface dose rate for RH waste within the permit.	Module I, Section I.D.2 was revised to include a maximum surface dose rate of 1,000 rem per hour, consistent with and subordinate to the legal limit imposed by the federal WIPP Land Withdrawal Act, Pub. L. 102-579.
Module II, Attachment B-B7	18	2/22/06	B. Walker (31)*	Technical basis for proposed characterization	The commenter stated that the proposed method in the draft permit does not meet the requirements in 40	The proposed characterization methodology comports with requirements established under RCRA,

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
				approach	CFR 264.13 mandating that a detailed chemical and physical analysis (analysis being actual chemical or destructive examination) be obtained for a representative portion of the waste.	as adopted by NMED in 20.4.1.500 NMAC. The permit modification allows the use of AK and/or representative sampling and analysis to characterize waste. RCRA regulations (40 CFR 264.13) do not mandate characterization of each container so long as the characterization process obtains sufficient information (either through acceptable knowledge, sampling and analysis, or a combination of both) to safely manage and dispose of waste. The Draft Permit as Changed includes an acceptable knowledge sufficiency determination process that is more stringent than the minimum required under RCRA because the process includes a review and concurrence by NMED and a public notification provision.
Module II, Attachment B	19	2/22/06	B. Walker (31)*	DQO establishment	The draft permit establishes no real DQOs, just qualitative statements.	The DQOs presented in the Draft Permit as Changed are supported by quantitative information, and represent the Permittees' intended objectives with respect to each characterization methodology. The DQOs were discussed in permit negotiations held between NMED, stakeholders, and the Permittees from March through May 2006, and any language addressing these DQOs were made with full agreement of the negotiating parties.
N/A	20	2/22/06	D. Hancock, J. Arends, L. Lovejoy, SRIC/CCNS (28)* S. Ferris (32)*	Technical and Legal basis of the permit	The commenters believe that the technical and legal basis for the permit modification must be well established, including why the current approach is technically insufficient.	The commenters participated in the permit negotiations held between NMED, stakeholders, and the Permittees from March through May 2006. The Draft Permit as Changed and the stipulation on the Draft Permit as Changed reflect that no issues remained at the end of negotiations pertaining to the technical and legal

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
						basis for the permit modifications, although some parties to the agreement filed exceptions to the stipulation preserving their right to object, oppose, or propose alternative language.
Module II, Attachment B and B4	21	2/22/06	D. Hancock, J. Arends, L. Lovejoy, SRIC/CCNS (28)* S. Ferris (32)* B. Walker (31)*	AK Sufficiency Determination	The commenters believed that the Permittees have not demonstrated that a sufficient Acceptable Knowledge Sufficiency Determination can be made, including establishment of AK Sufficiency criteria.	The AK Sufficiency Determination Request contents are specified in the permit (Attachment B4), as well as the Permittees' review criteria (Attachment B). The Permittees must prepare a standard operating procedure that will be used to review the requests, and NMED will have access to this procedure. The AK Sufficiency determination process was addressed during permit negotiations held between NMED, stakeholders, and the Permittees from March through May 2006. The Draft Permit as Changed and the stipulation on the Draft Permit as Changed reflect that no issues remained at the end of negotiations pertaining to the AK Sufficiency process.
	22	2/22/06	S. Ferris (32)*	RH waste storage and disposal	The commenter believed that the Permittees must demonstrate that the storage and disposal of RH waste will be maintained in a manner that protects human health and the environment.	The storage and disposal of RH waste was addressed during permit negotiations held between NMED, stakeholders, and the Permittees from March through May 2006. The Draft Permit as Changed and the stipulation on the Draft Permit as Changed reflect that no issues remained at the end of negotiations pertaining to RH waste storage and disposal for the commenter. By executing the stipulation with no exceptions, the commenter is satisfied that RH waste will be managed in a manner that safeguards human health and the environment.
	23	2/22/06	C. Root-Pronobis (26)*	Opposes confirmation at	Confirmation at WIPP is opposed (confirmation at generator sites only)	Prior to the hearing, the Permittees withdrew their request to allow

Module	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
			M. Evans-Jule (27)* D. Hancock, J. Arends, L. Lovejoy, SRIC/CCNS (28)* S. Ferris AG (32)*	WIPP	was endorsed).	shipment of waste containers to WIPP prior to performing waste confirmation.

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

Note: Commenters may appear in more than one comment subject depending on the number of issues addressed by the commenter. Those names appearing in more than one comment subject are marked by an asterisk (\*).

Index Number	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
060526	1	6/1/06	John Tyson	Support of Class 3 modification to WIPP permit	Approves of the modification request because it facilitates needed nuclear waste storage. The excess cost of the hearing process is of concern, but the approved changes will result in better utilization of funds.	NMED appreciates and considers all public comment. No response is necessary to this comment.
060527 060607 060608 060609  060610 060611  060612 060613	2	5/24/06 6/5/06 6/5/06 6/5/06  6/5/06 6/5/06  6/5/06 6/5/06	Maureen Wright Peter Neils Ellen Robinson Maria DeLourdes* Den Gips Thomas Lockwood Floy Barrett* Anthony Moss	Transport of RH waste will cause disparate impact on those living along route	Transport of RH waste will cause disparate impact on those living along route.	Section 5.8 of Volume II of the WIPP Final Supplemental Environmental Impact Statement, dated September, 1997, addressed Environmental Justice issues with respect to risks from the transportation of TRU mixed waste. The study concluded that potential high and adverse impacts from routine transportation would not be likely to disproportionately affect minority or low-income. There is no disparate impact resulting from the transportation of RH TRU mixed waste to WIPP, and further study is not required. NMSA 1978 Section 74-4A-1A (2003) states that "Except as specifically preempted by federal law, the state transportation commission shall have the exclusive authority within New Mexico." The State Highway and Transportation Department issued regulations designating the preferred routes for the transport of radioactive materials to WIPP. 18.20.9 NMAC. NMED does not have authority to designate the transportation routes of radioactive waste being transported to the WIPP facility, or to prohibit such transportation

Index Number	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
						With the exception of RCRA manifesting requirements, NMED has no regulatory authority over the transportation of mixed transuranic wastes from the waste generators to WIPP.
060531 060614 060615 060616  060617 060626 060627 060628	3	5/26/06 6/5/06 6/5/06 6/5/06  6/9/06 6/8/06 6/8/06 6/8/06	Glenn Yocum Charles Powell Carmen Luna Robert Anderson Fred Williamson Molly Smallett Rita Surdi Antoinette Fox	Environmental justice	RH waste will unfairly impact minorities and low-income individuals.	NMED met the requirements under the Governor's Executive Environmental Justice Order during the development of the Draft Permit as Changed to utilize available environmental and public health data to evaluate any potential incremental adverse impacts to low-income communities and communities of color from the management of mixed RH transuranic wastes. NMED used these data and other information to establish the environmental performance standards in the Draft Permit as Changed that ensure that there are no unacceptable risks from the management of the hazardous components of the mixed transuranic wastes disposed of at WIPP. Because there are no adverse human health or environmental impacts at the WIPP facility boundary, there cannot be any disparate impacts to any particular segment of the public beyond the facility boundary.
060536 060537 060538  060539 060618 060619 060619 060621	4	6/13/06 6/5/06 6/5/06  6/2/06 6/5/06 6/5/06 6/5/06 6/12/06	Dorelen Bunting Floy Barrett* Sally Alice Thompson No name Stan Serafin Jean Genasci James Genasci S. Diaz	Request to complete and fully consider a disparate impact study for communities along WIPP route and surrounding	The commenters expressed the need for a disparate impact study to be completed and fully assessed.	See response to comments 2 and 3, above.



Index Number	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
060622 060623 060624  060625  060631		6/8/06 3/8/00 6/8/06  6/12/06  6/9/06	Lynn Back Martha Ramirez Maria DeLourdes* Jo Ann Rasmussen Donna Arthur	WIPP		
060541 060620.7  060628.5	5	5/31/06 6/5/06  6/7/06	Edward Smith Patricia D. Jones Vernon D. Asbill	Supporting WIPP and its continued operation	WIPP has had a positive impact on the community of Carlsbad with its support of local projects, infrastructure, training, and contributions to many fundraising efforts. The overall positive impact to the local economy has been substantial, and while some may view its purpose as controversial, WIPP has always conducted itself with professionalism and has been an advocate for the protection of our environment.	NMED appreciates and considers all public comment. No response is necessary to this comment.
060606	6	6/5/06	James Channell	Unauthorized use of name on petition	The commenter did not authorize use of his name on the petition requesting a disparate impact study	NMED appreciates and considers all public comment. No response is necessary to this comment.
060620	7	6/5/06	Penelope McMullen	Comments on the Class 3 Modification Disposal of RH TRU waste at WIPP	<p>The commenter approved of characterization of waste at generator sites prior to WIPP shipment, examination of all contact-handled waste by radiography or VE unless AK is complete and accurate, and inclusion of new public notification requirements for audits, dispute resolution, etc.</p> <p>The commenter did not approve of expanded above ground storage capacities or inclusion of RH waste. However, if RH allowance is retained, the commenter approved of the following restrictions: reduction of total amount of RH allowed at WIPP by 39%, reduction of waste storage in the</p>	<p>The change in surface storage capacity presented in Module III is a result of lengthy negotiations among stakeholders, the Permittees and NMED. The storage requirements for mixed CH and RH transuranic waste in the Draft Permit as Changed are in compliance with RCRA regulations and are protective of human health and the environment.</p> <p>The permit conditions that decrease both the total RH canisters in underground HWDUs and RH waste storage capacity in the Hot Cell are the result of the negotiations between the Permittees and stakeholders, are in compliance with RCRA regulation, and are protective of human health and the</p>

Index Number	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
					Hot Cell, repackaging of all RH waste with most repackaging to take place at the generator site and only waste from small sites repackaged at WIPP.	environment.  The permit does not mandate that all RH waste be repackaged, although it is anticipated that most waste will be packaged or repackaged by the generator/storage sites before transport to WIPP. No RH waste will be packaged or repackaged at the WIPP because prior to the hearing, the Permittees withdrew their request to perform confirmation at WIPP.
060634.5	8	6/9/06	Sadaf Cameron	General opposition to the revised permit and WIPP	The commenter believes the disposal of RH waste will leave a negative legacy for current and future generations, and waste disposal is politically based. Commenter believes that acceptance of waste will promote nuclear weapons research and design.	See response to comments 2 and 3, above.  NMED appreciates and considers all public comment. No further response is necessary to this comment.
060635	9	6/9/06	Joni Arends	Comments on RH waste disposal at WIPP	The commenter provided several observations obtained during a tour of the WIPP complex on April 25, 2006. Concerns include: <ul style="list-style-type: none"> <li>• Lack of operational readiness of the RH Complex</li> <li>• Accident scenario involving release of waste by a grapple</li> <li>• Use of the Upper and Lower Hot Cells</li> <li>• Stability of Upper Hot Cell floor</li> <li>• Lack of accident response procedures that should be in the Contingency Plan</li> <li>• Dangers associated with lowering of filled Facility Canisters from the Hot Cell to the Transfer Cell</li> <li>• Use of Sumps in the RH complex</li> <li>• Health and safety of workers installing the Shielding Plate,</li> </ul>	NMED is satisfied that the Draft Permit as Changed adequately addresses these issues in a manner consistent with RCRA and is protective of human health and the environment. No further response is necessary to this comment.

Index Number	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
					requested hearing officer require a written procedure for installing the shielding plate in the final permit	
060620.5	10	6/6/06	Rebecca Perry-Piper	Final non-technical written public comment on WIPP draft permit	<p>The commenter requested that NMED not approve the revised permit unless the following concerns are addressed:</p> <ul style="list-style-type: none"> <li>• Use of WIPP for disposal of spent nuclear fuel should not be allowed</li> <li>• DOE's abandonment of its Office of Environment, Safety and Health is of concern</li> <li>• NMED should not issue non-emergency or emergency permits for waste storage</li> <li>• 100% headspace gas, VE and/or RTR should be initiated at both the generator site and the WIPP</li> <li>• RH waste disposal should not be allowed</li> <li>• Confirmation of only 7% of containers is too few (100% is advocated)</li> <li>• Low Level and other radioactive waste generated at various DOE facilities should not be disposed of at WIPP</li> <li>• Significant changes to the current waste characterization process are unacceptable</li> </ul> <p>If these concerns are not addressed, the commenter advocated shutting down WIPP and changing its status to a SuperFund site.</p>	<p>The 1992 WIPP Land Withdrawal Act (Public Law 102-579) allows RH transuranic wastes that meet specific characterization requirements and volume limitations to be disposed of at WIPP. The Draft Permit as Changed incorporates these requirements and limitations. Spent nuclear fuel, low level wastes, hazardous-only wastes are among those wastes that cannot, by law, be disposed in WIPP.</p> <p>Although NMED cannot preclude the use of emergency permits at any of its permitted facilities, such permits will only be issued if they are appropriate and necessary, and as consistent with RCRA regulations.</p> <p>The Draft Permit as Changed allows the use of AK and/or representative sampling and analysis to characterize waste destined for disposal at WIPP instead of the requirement in the current Permit to perform headspace gas analysis and RTR or VE on 100% of containers. RCRA regulations (40 CFR 264.13) do not mandate characterization of each container so long as the characterization process obtains sufficient information (either through acceptable knowledge, sampling and analysis, or a combination of both) to safely manage and dispose of waste. The Draft Permit as Changed includes an acceptable knowledge sufficiency determination</p>

Index Number	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
						<p>process that is more stringent than required under RCRA regulations because the process includes a review and concurrence by NMED and a public notification provision.</p> <p>No containers will undergo confirmation or testing at the WIPP, because prior to the hearing the Permittees withdrew their request to allow shipment of waste containers to WIPP prior to performing waste confirmation. The additional activities performed by the Permittees during confirmation are, in fact, more stringent than required under RCRA and are consistent with RCRA</p> <p>The comment related to changing WIPP's status to a Superfund site is unrelated to a RCRA hazardous waste permit. Only EPA has the authority to designate a Superfund site.</p>
060634 060631.5	11	6/8/06 6/8/06	Sasha Pyle Marina Day	Opposition to the WIPP site; waste characterization is inadequate	<p>RH-TRU waste is extremely dangerous. The high temperatures generated by the RH-TRU waste will greatly speed up the water influx, the corrosion and eventual dissolution of the barrels and engineered barriers, and then the formation of "radioactive slurry" that also contains dangerous decomposing organic elements and toxic chemicals. Because the facility is designed to collapse below ground, no technology exists to remediate escape of waste, or even to track it accurately. The acceptable knowledge standard is too weak.</p> <p>Do not want NM to become the nation's nuclear sacrifice zone. NMED</p>	<p>The impact of radioactive waste on facility performance is evaluated and approved by the U.S.EPA, Office of Radiation and Indoor Air. This EPA office recently approved DOE's Compliance Recertification Application for the WIPP, and the commenter is referred to this Agency for questions regarding WIPP performance assessment.</p> <p>The permit modification allows the use of AK and/or representative sampling and analysis to characterize waste. RCRA regulations do not mandate characterization of each container so long as the characterization process obtains sufficient information (either</p>

Index Number	Comment No.	Comment Date	Commenter Name	Comment Subject	Summary of Comment	NMED Response
					needs to take a long-term view of the hazards that WIPP poses.	<p>through acceptable knowledge, sampling and analysis, or a combination of both) to safely manage and dispose of waste. The Draft Permit as Changed includes an acceptable knowledge sufficiency determination process that is more stringent than the minimum required under RCRA because the process includes a review and concurrence by NMED and a public notification provision.</p> <p>NMED appreciates and considers all public comment. No response is necessary to the portion of this comment on nuclear waste management issues that are outside of the scope of RCRA.</p>

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

Note: Commenters may appear in more than one comment subject depending on the number of issues addressed by the commenter. Those names appearing in more than one comment subject are marked by an asterisk (\*).

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
None	NT.1	5/31/06	Mike Reynolds Glenn Frintz Albert Salcido Steve Hendley Luis Renteria Judy Lowe Valerie Jo Murrill Denise Madrid Boyea Karen Farrell David Shoup Elva Farrell Tommy Barnett Joey Gonzalez Darrin McGilvray Don George Lisa Atwood Brian Fox Michael Bird Cliff Stroud Mike Currier Don Kidd Bill McInroy James Williams Trey Greenwood Jay Jenkins Mary A. Perry Kenneth Lickliter John Beasley Jody Knox Don Reed Richard Aguilar Michael Richmann Mickie Compton David Kessel	General Support for WIPP	<p>A number of commenters supported the WIPP site, its continued operation, and the permit modification (RH-311). In support, they stated that WIPP is very safely operated and through WIPP, local and state emergency responders have learned how to deal with radiological substances. In addition, they stated that WIPP has benefited the Carlsbad area, including the fire department, police department, sheriff's office, state police, and medical center through training programs, grant writing, technology transfers, and resources.</p> <p>The safety of the facility and the openness of the facility to public questions were emphasized by several commenters. A number of commenters stated that when WIPP was first proposed, they were against it, but have since become supporters. One commenter noted that WIPP has been so safe local emergency responders consider a WIPP incident unlikely because WIPP has always operated safely and now has the experience to handle the new waste. Several commenters stated that money has not been an issue in making WIPP a safe place to work and handle waste. One commenter stated that the steelworkers at WIPP</p>	<p>NMED has jurisdiction over the hazardous component of the mixed transuranic (TRU) wastes that are managed and disposed of at WIPP and is obligated to ensure that the WIPP facility meets the requirements of 20 NMAC 4.1. NMED has no regulatory authority over the radiological component of these wastes. DOE, not NMED, is responsible for regulating emergency response personnel exposure to radiation.</p> <p>The Draft Permit as Changed meets all necessary RCRA preparedness and prevention and contingency plan requirements for the management of the hazardous component of the mixed TRU wastes at WIPP.</p>

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
		6/1/06	<p>Ned Elkins Lydia DeMiguel Joseph Leyva Jeff Neal Rhonda Kidd Brad Nesser Matt Leroch</p> <p>Joe Epstein Edgar Lyon Norman Whitlock Luis Camero Judy Jones James Coleman James Conca Judith Wright Jack Hayes Bryan Howard Mike Dunagan Richard Pond Linda Ramirez Marsha Beekman Mike Carriaga Russell Leach Steve Massey Carl Manganaro Rich Arimoto David Schoep Melissa Suggs Pattie Burns Melvin Vuk Joe Calderon Keith Gardner Wanda Durham Mark Edwards Kim Greer Sarah Hernandez Ellen Harkness Art Chavez Russ Sorenson Jeffrey Diamond</p>		<p>are capable of safely implementing any process the technical people develop.</p> <p>A number of commenters stated that the WIPP has brought economic development to the Carlsbad area through jobs and new businesses that would not have existed otherwise. In addition, WIPP has raised wages in the area by paying their own employees well. A number of commenters noted that WIPP has improved the quality of life in the area.</p> <p>Several commenters stated that WIPP is contributing to cleaning the environment by providing a solution for the disposition of defense-related transuranic waste that is currently stored around the country. WIPP is developing technologies for solving the nuclear waste problem that can be transferred to the commercial sector.</p> <p>Several commenters expressed support for WIPP based on the national need to reduce use of fossil fuels, their resulting emissions, and U.S. dependency on foreign oil. These commenters believe that this national issue can be addressed if both the nuclear industry and the facilities that support that industry have a national repository for nuclear waste.</p> <p>Many mentioned that WIPP employees have volunteered in the community, particularly with the</p>	<p>NMED appreciates and considers all public comment. No response is necessary to comments on economic issues that are outside of the scope of the Draft Permit as Changed.</p> <p>NMED appreciates and considers all public comment, but has no regulatory authority over the radiological component of these wastes.</p> <p>NMED appreciates and considers all public comment. No response is necessary to comments on energy policy issues that are outside of the scope of the Draft Permit as Changed.</p> <p>NMED appreciates and considers all public comment. No response is necessary to comments on education</p>

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
		6/2/06	Pam Hester Ron Head Bryan Marshall Dawn Higgins Jerry Golden Virginia Gregory  Joe Gant Keith Nelson Dan Foley Douglas Steffen Sherri Smith Tom Fabian Dwayne Davis Richard Riddle Tom Carlson Tim Hedahl Bob Prentiss Darrold Haug Bertha Cassingham Richard Davies Betty Egbom Janis Jordan Marian Borkowski Bob Forrest		schools and youth of the community. The project participants "put back" into both the community and the school district through scholarships, technical support, computer systems, and funding. One commenter noted that WIPP has also brought cultural diversity to Carlsbad.  One commenter stated that the WIPP site has done research on land reclamation/restoration, wildlife management, and wildlife habitat management that has been available to other agencies for use in the area and state.  A number stated that Carlsbad is a great place to live and that allowing the project to move forward is the right thing to do. The decision on the RH modification should be made based on the facts and not "on the emotional outcry of opposing activists."	and cultural issues that are outside of the scope of the Draft Permit as Changed.  NMED appreciates and considers all public comment. No response is necessary to comments on regional wildlife and land management issues that are outside of the scope of the Draft Permit as Changed.  NMED reviewed all relevant data provided by the Permittees pertaining to the proposed management of mixed RH TRU waste at WIPP in its permit modification request. NMED then agreed to the RH provisions in the Draft Permit as Changed because they are consistent with RCRA permit modification regulations.
		6/3/06	Brenda Buttrey Tony Herrell Martha Gonzales Richard Bodette Miranda Darcy		One commenter stated that there are many nuclear problems in NM and putting the waste below ground at WIPP is probably safer than leaving it exposed at the surface. The people putting the waste in the ground have baseline data available, so have recourse if problems develop in the future, where the average citizen does not.	The Draft Permit as Changed meets the environmental performance standards for the disposal of the hazardous component of mixed TRU wastes in the repository at WIPP.
		6/5/06	Leslie Aragon Karen Day Scott Burns John Benjamin Mark Maciha Lia Barnett Monica Harris Wayne Hatfield		One commenter noted that the modified draft permit does not compromise the safety or stability of	With the exception of RCRA manifesting requirements, NMED has no regulatory authority over the



Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
		6/6/06	Judy Freisinger Mansour Akbarzadeh* Will Anne Ricer Doug Evans* Steven Castro* Terry Frye  Gary Dill Anne Dean Adan M. Rodriguez Cathie Murray Robert Turner Roxanne Lara Ray Battaglini Lana Steven Steve McCutcheon Alisa Cass Ken Britt Brad Day* Manuel Molina Jeff Lucchini Gloria Munoz Kevin Richardson Mary French-Jones Greg Haston Lupe Armendariz R. D. Gross Jon Haag Christy Box Bill Weston George Holmes Kathryn Jones		the waste certified and shipped, the operation of the WIPP facility, or any transportation requirements.	transportation of mixed TRU wastes from the waste generators to WIPP.
		6/7/06	Deeanza Rouybal Mark Schinnerer Carroll Leavell* Justin McGeath			

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
		6/8/06 6/9/06	Lisa Boeke Christy Bourgeois  Therese Graham Johnny Harper*			
None	NT.2	5/31/06 6/2/06 6/5/06 6/7/06	Cliff Stroud Ned Elkins John Heaton  Bill Bartlett*  Carroll Leavell*	Environmental Justice Is Not an Issue	Several commenters considered environmental justice a ploy to slow down the permitting process, citing the example of a Hispanic town whose mayor has supported the WIPP project as proof that environmental justice is not an issue. The WIPP project has been responsible for boosting the economy and education of the area, contradicting the claims of environmental justice issues. Since WIPP was located in relation to the salt beds, environmental justice wasn't a factor in the location of the project. In addition, the "trickle down" economic effect has benefited even the most disadvantaged.	NMED met the requirements under the Governor's Executive Environmental Justice Order during the development of the Draft Permit and the Draft Permit as Changed to utilize available environmental and public health data to evaluate any potential incremental adverse impacts to low-income communities and communities of color from the management of mixed RH TRU wastes. NMED used these data and other information to establish the environmental performance standards in the Draft Permit as Changed that ensure that there are no unacceptable risks from the management of the hazardous components of the mixed TRU wastes disposed of at WIPP. Because there are no adverse human health or environmental impacts at the WIPP facility boundary, there cannot be any disparate impacts to any particular segment of the public beyond the facility boundary.
None	NT.3	5/31/06	Jackie Hadzic James Williams	More Should Be Done to Help the Hispanic Community	One commenter found that while there is an effort made to help the local Hispanic community, more could be done to raise the Hispanic community above the poverty level rather than focusing public outreach on highly educated people.  One commenter would like WIPP to help people find jobs once they graduate from school to retain young people in the community.	NMED appreciates and considers all public comment. No response is necessary to comments on education and economic development issues that are outside of the scope of the Draft Permit as Changed.

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
None	NT.4	6/7/06  6/8/06	Janet Greenwald* Marlene Perrotte  Janet Greenwald*	Environmental Justice Is an Issue	<p>One commenter stated that all the communities and counties along the transportation routes and at the site have incomes below the poverty level, high percentages of people of color, and poor health.</p> <p>One commenter stated that the United States has a policy of bargaining with people with few resources to do an economic exchange in return for waste disposal.</p>	<p>With the exception of RCRA manifesting requirements, NMED has no regulatory authority over the transportation of mixed TRU wastes from the waste generators to WIPP.</p> <p>See also response to comment NT.2.</p>
Modules III and IV	NT.5	5/31/06  6/1/06  6/2/06 6/3/06 6/6/06 6/7/06	Jeff Neal Jack Knittel Frank Witt Matt Leroch  Mansour Akbarzadeh* Tim Burns Meg Milligan Tom Goff  Bill Allen  Roger Nelson  Brad Day*  Carroll Leavell* Kathleen Sisneros	Supportive of RH TRU Waste Coming to WIPP	<p>Several commenters noted that it has always been understood that RH TRU waste would come to WIPP. Although the radiation levels are higher with RH waste than the waste WIPP has been handling, the process used to handle the waste is under control and protective.</p> <p>Several commenters noted that WIPP has always been very safety conscious with a state-of-the-art transportation system.</p> <p>Several commenters noted that the proposed modification will institute a good process for handling RH waste that is protective of human health and the environment and contains the necessary checks and balances to ensure that human health and the environment continue to be protected.</p> <p>Several stated that the modification needs to be approved quickly so that the RH waste can be emplaced. WIPP provides a stable environment for the waste while reducing exposure</p>	<p>The 1992 WIPP Land Withdrawal Act (Public Law 102-579) allows RH TRU wastes that meet specific characterization requirements and volume limitations to be disposed of at WIPP. The Draft Permit as Changed incorporates these requirements and limitations.</p> <p>With the exception of RCRA manifesting requirements, NMED has no regulatory authority over the transportation of mixed TRU wastes from the waste generators to WIPP.</p> <p>The Draft Permit as Changed meets all necessary and/or required RCRA container management, preparedness and prevention, and contingency plan requirements for the management of the hazardous component of the mixed TRU wastes at WIPP.</p> <p>The schedule for the permit modification process implemented by NMED for the Draft Permit as Changed complied with all applicable regulatory and statutory requirements with respect</p>

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
					and risk in the areas where the wastes are currently located. As a single location versus locations around the country, the WIPP site helps both environmentally and from a security standpoint. The risk of the RH waste is "essentially insignificant." The modification is "prudent and appropriate." One commenter noted that the permit modification eliminates risk to workers by eliminating unnecessary waste characterization activities.	to hearings, issuance of findings of facts and conclusions of law, and the hearing officer's determination.  NMED appreciates and considers all public comment. No response is necessary to comments on national security issues, which are outside of the scope of the Draft Permit as Changed.
Module II, Attachments B-B7	NT.6	6/8/06	Roberto Villarreal*	WIPP Waste Is Well Characterized	One commenter stated that chemical tests were performed on what would happen when different types of waste were placed into brine, so what will happen to the waste into the future is understood. The result of the testing was the understanding that brine dissolution does not make the waste mobile, instead immobile hydroxides and colloids are formed. Because the waste is already well known, spending further money to characterize it is unnecessary and wasteful. The commenter felt that the safest approach is to get the waste from the generator sites and transport it to WIPP for storage. The change in the permit is justified and based on sound science, so characterizing 7% of the headspace (instead of 100%) is justified.	The commenter refers to the STTP testing performed primarily to assess radiological characteristics of waste with respect to conditions that impact waste mobility. These tests were not performed to assess RCRA hazardous constituent mobility. NMED agrees that the waste characterization process in the Draft Permit as Changed is in compliance with RCRA and will adequately characterized waste emplaced at WIPP.
None	NT.7	6/5/06	Bill Bartlett*	RCRA Regulations Need to Be Changed	One commenter stated that the RH permitting process duration indicates that RCRA needs to be revised by Congress as it applies to WIPP. The hazardous materials component of the waste is not the primary risk at WIPP and the regulations should	Congress expressed its intent to subject WIPP to RCRA when it passed the 1992 WIPP Land Withdrawal Act (Public Law 102-579), which directs DOE to comply with a number of environmental laws and regulations, including the Solid Waste Disposal Act.

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
					allow DOE maximum flexibility to dedicate resources to operations and improving facility efficiency, and not to inflexible regulations.	NMED disagrees that the regulations do not allow flexibility. The successful negotiations among NMED, the Permittees and other interested parties that lead to the Draft Permit as Changed demonstrate that permit provisions can be changed to increase flexibility and efficiency as long as human and health and the environment are protected.
Modules II, III, IV; None	NT.8	6/7/06  6/8/06  6/9/06	Adele Zimmermann Janet Berry  Marlene Perrotte* Julie Sutherland Marilyn Hoff Marion Wasserman Dee Finney Sherri Kotowski* Joni Arends Hildegard Adams  Miguel Pacheco John Witham Kalliroi Matsakis Richard Johnson Sarah Moore Catherine Montano	General Opposition to the WIPP	Several commenters felt that the law guaranteed that only low-level radioactive waste would be transported to and stored at WIPP, but that guarantee is not being respected. They expressed concern that the shipping containers are only certified for low-level waste and are not safe for RH waste. These commenters don't want the rules changed midway through the game.  Several commenters stated that WIPP is not a good thing for future generations or the environment. One commenter expressed concern that NM would be the "nuclear sacrifice zone" of the United States. Another noted that NM relies on tourism and the state is being branded as a nuclear waste dump, making people hesitant to visit.	The WIPP facility has always been intended for disposal of TRU waste, not low level waste. The commenters may be confusing CH TRU with "low level" waste, and RH TRU with "high level" waste. Congress has always intended that both CH and RH TRU waste be disposed of at WIPP. The disposal at WIPP of waste that was ever managed as high level waste or waste from specific tanks identified in the Permit is prohibited. Changing this prohibition would require a Class 3 permit modification request that would include extensive public comment and hearing opportunities. The State of New Mexico remains committed to prohibiting the disposal of high level wastes at WIPP.  NMED appreciates and considers all public comment. No response is necessary to comments on national nuclear waste issues, which are outside of the scope of the Draft Permit as Changed.

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
					<p>Several commenters felt that the people who are generating these wastes should be responsible for disposal and should not be permitted to send it to other states. The long-term consequences of waste disposal need to be resolved. Having a place like WIPP does not mean the United States can continue indefinitely with nuclear generators and nuclear weapons.</p> <p>One commenter stated that permitting RH waste to be disposed at WIPP means that nuclear waste will come to NM from every state in the United States, and the thousands of waste shipments will be vulnerable to accident and terrorist attack. The commenter felt that RH waste is deadly and permitting its disposal at WIPP will start up the nuclear industry again.</p> <p>One commenter noted that reusing waste containers and cutting back on inspections may save money, but are not safe practices. The transportation trucks should have their own fueling stations and rest stops instead of being allowed to sit in public areas.</p> <p>One commenter provided approximately 1,500 postcards in opposition to RH waste being</p>	<p>NMED appreciates and considers all public comment. No response is necessary to comments on national nuclear waste issues, which are outside of the scope of the Draft Permit as Changed.</p> <p>A limited number of DOE facilities will be shipping defense-related RH TRU wastes to WIPP. The maximum number of weekly shipments of RH TRU waste is estimated to be six.</p> <p>Containers that may be used by the Permittees for waste disposal are presented in the Permit. TRUPACT-II containers are transportation, not disposal containers, and are thus reused after ensuring that they are sound and uncontaminated. With the exception of RCRA manifesting requirements, NMED has no regulatory authority over the transportation of mixed TRU wastes from the waste generators to WIPP.</p> <p>NMED appreciates and considers all public comment, and evaluates all opposition statements in the context of the regulatory requirements for permit</p>

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
					<p>received at the WIPP. The commenter said that people have spoken out in opposition to WIPP for a long time, but are tired of not being heard.</p> <p>Several commenters do not believe that WIPP is prepared to handle RH waste, and want permit provisions allowing storage and disposal of RH waste at WIPP removed from the permit. Concerns were expressed with how containers are moved, emergency response as defined in the contingency plans, and worker health and safety.</p> <p>One commenter noted that the hazardous waste threat and the nuclear threat have been divided up so that commenters can't talk about both together, and the DOE has "unlimited funds" to convince the public that there is no problem. In addition, NM has a number of possible sources of nuclear material beyond WIPP that are contaminating the land and impacting the people. WIPP scientists and Congress have no integrity and the project driver is money rather than safety.</p> <p>Several commenters said that DOE should be cleaning up the nuclear contamination already in NM before bringing more waste into the state. NM is accepting an unfair burden in taking this waste. Nuclear weapons need to stop being produced and nuclear power plants need to be decommissioned. Money should be</p>	<p>modifications.</p> <p>The Draft Permit as Changed meets all necessary RCRA container management, preparedness and prevention and contingency plan requirements for the management of the hazardous component of the mixed TRU wastes at WIPP.</p> <p>NMED appreciates and considers all public comment. No response is necessary to comments on national nuclear waste issues, which are outside of the scope of the Draft Permit as Changed.</p> <p>NMED appreciates and considers all public comment. No response is necessary to comments on national nuclear waste issues, which are outside of the scope of the Draft Permit as Changed. NMED agrees that cleanup of radioactive contamination at other sites in New Mexico (e.g., Los Alamos National Laboratory) should receive high priority from DOE.</p>

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					<p>spent on monitoring people's health and the environment instead of on producing more weapons. Nuclear waste encapsulation should be explored further.</p> <p>One commenter stated that public comments are a guise to make it look as though the public has input, but they really don't. Independent scientists concede that the salt beds at the WIPP site will not contain the waste for the mandated time period. The barrels will corrode and dissolve and create a dangerous slurry of toxic chemicals. The permit modifications set a dangerous precedent and NMED needs to put the safety of the state first.</p>	<p>NMED has determined that the salt beds will be more than effective to contain waste under RCRA requirements. Salt encapsulation and gas generation were taken into account when designing the approved panel closure system.</p>
Module IV	NT.9	6/7/06  6/8/06	Janet Greenwald*  Sherri Kotowski* Bob Aly* Rosamund Evans	Opposition to the WIPP Location Based on Site Geologic Conditions	<p>Several commenters stated that there are karstic features around WIPP and karst is not allowed in relation to nuclear facilities of any kind. They claimed there is brine water under the WIPP site and believe the claim that a caliche layer prevents the brine from sinking is incorrect. These commenters believe that once WIPP is abandoned, the site will fill up with water that will rise to the level of the karst. Eventually, the radioactive water could overflow into the Pecos and move into Texas and Mexico. In addition, the people of Carlsbad do not have baseline health data available, although that was requested.</p> <p>One commenter noted that the geology at WIPP is unstable, resulting in an unstable environment for</p>	<p>NMED concluded, during the initial permit process, that there was "no scientific evidence" to indicate that karst formations are located within the 16 square mile WIPP boundary.</p> <p>NMED disagrees that WIPP is geologically unstable. NMED agrees that although eventual salt</p>



Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
					containment of the waste at WIPP.	encapsulation will take place, this does not mean that the WIPP is "unstable", as the salt is behaving as predicted.
Module II, Attachments B-B7	NT.10	6/7/06	Sasha Pyle Scott Kovac Jeffrey Plant*	NMED Needs to Be Protective	<p>Several commenters said that the current version of the permit is better than previous versions, but the final version needs to retain language that is protective of NM. Waste characterization should not be short-cut, as what is in each barrel needs to be known for the future.</p> <p>Several commenters said that acceptable knowledge is a flawed system as the generator site records are not complete. We have a responsibility to the future to be protective and follow the safest guidelines. The only people in favor of the project are those who have benefited economically, which is a short-sighted view.</p> <p>One commenter said that WIPP is an environmental issue, rather than an economic one, and NMED needs to keep that in mind and make a conservative decision on the permit.</p>	The permit modification allows the use of AK and/or representative sampling and analysis to characterize waste. RCRA regulations do not mandate characterization of each container so long as the characterization process obtains sufficient information (either through acceptable knowledge, sampling and analysis, or a combination of both) to safely manage and dispose of waste. The Draft Permit as Changed includes an acceptable knowledge sufficiency determination process that is more stringent than the minimum required under RCRA regulations because the process includes a review and concurrence by NMED and a public notification provision.
None	NT.11	6/7/06	Jeffrey Plant*	Opposed to Transportation of Waste	One commenter claimed to have documentation of trucks stopping for long periods in areas where the regular population is present.	With the exception of RCRA manifesting requirements, NMED has no regulatory authority over the transportation of mixed TRU wastes from the waste generators to WIPP.
None	NT.12	6/1/06 6/2/06 6/5/06	Lisa Price Bill St. John Dan Standiford Norbert Rempe Bill Bartlett* Doug Evans*	Transportation of Waste Not an Issue	Several commenters said that the material is being transported in containers that are virtually indestructible, making the chances of any radioactive release "basically zero." The containers being used and to be used for RH waste have been tested and are very safe. WIPP has	With the exception of RCRA manifesting requirements, NMED has no regulatory authority over the transportation of mixed TRU wastes from the waste generators to WIPP.

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
		6/8/06	Roberto Villarreal*		<p>shown that the waste can be transported and handled safely. Other chemicals are transported on the roads daily that pose greater risks to human health and the environment.</p> <p>Several commenters said that the highways are much safer (i.e., larger, better maintained) since the WIPP project. In addition, while transportation of WIPP materials is not a concern based on the safety record of the facility, transport of other materials (e.g., liquid petroleum gas) through Carlsbad should be a concern. Roads are much safer than before WIPP. WIPP trucks are safer than other vehicles as they are regularly inspected while they travel.</p> <p>One commenter stated that release scenarios related to transportation of the materials are highly unlikely, and have essentially no dose consequences to the public.</p>	
None	NT.13	6/2/06  6/7/06	Marcus Gutierrez Tammie McCullough Carlyne Leos  Bill Lattin	Shipping Containers	<p>Several commenters said that the TRUPACTS and the 72B containers are thoroughly tested and are safe.</p> <p>Another commenter said that high level waste is not the same as RH waste and RH waste will be transported in RH 72 B transportation casks, or the CNS 10-160B waste transportation cask. The casks are NRC certified and have been thoroughly tested.</p>	With the exception of RCRA manifesting requirements, NMED has no regulatory authority over the transportation of mixed TRU wastes from the waste generators to WIPP
Module IV	NT.14	6/9/06	Johnny Harper*	WIPP Site Characterization Is Sufficient	Karst is not an issue at the WIPP site.	NMED agrees that no information has been provided as part of the permit modification or comment process that would change NMED's original

Module	Comment No.	Testimony Dates	Commenters Name	Comment Subject	Summary of Comment	NMED Response
						determination that karst is not an issue at the WIPP facility.

Attachment 3  
General Response to Comments

# NMED GENERAL RESPONSE TO COMMENTS ON DRAFT PERMIT BASED UPON CLASS 3 MODIFICATIONS TO WIPP HAZARDOUS WASTE FACILITY PERMIT

## Background

To provide a context for the New Mexico Environment Department's (NMED's) general response to the comments submitted on the Waste Isolation Pilot Plant (WIPP) Draft Permit and the underlying Permit Modification Request (PMR), NMED summarizes below the significant agreements reached during negotiations on the Draft Permit. These agreements addressed many of the comments on the Draft Permit submitted through February 22, 2006:

- Use of a single waste analysis plan for both contact-handled (CH) and remote-handled (RH) transuranic (TRU) waste:
  - Detailed criteria for characterizing TRU waste using acceptable knowledge (AK) of the waste generation processes alone, or in conjunction with sampling and analysis.
  - NMED review of all relevant documentation if characterization is done using AK alone.
  - Reduced frequency for chemical sampling and analysis.
  - Requirement to perform visual examination or radiography on 100% of RH waste containers.
- New waste confirmation activities (in addition to RCRA-required characterization activities) to be performed by the Permittees prior to shipment of waste containers to WIPP.
- Acceptance of RH waste for storage and disposal at WIPP.
- Increased storage capacities in the Waste Handling Building and Parking Area Container Storage Units, with options for additional temporary increases due to factors beyond the Permittees' control.
- Increased capacities for CH and RH waste disposal in the underground.
- A dispute resolution provision related to NMED review of AK information and audit reports.
- Expanded public notification of specific Permittee actions via e-mail:
  - Submittal of AK information for NMED review.
  - Submittal of audit reports.
  - Dispute resolution activities.
  - Notification of temporary increases in storage capacity.

As a result of the negotiations during these meetings, NMED, the Permittees, the Attorney General's Office (AGO), and Southwest Research and Information Center (SRIC) agreed to changes to the Draft Permit related to waste characterization, the volume of waste stored and disposed of at WIPP, the acceptance of RH waste, and expanded public notification of specific permit activities. This culminated in a modified document subsequently referred to as the "Draft Permit as Changed." Two participants in the negotiations, Concerned Citizens for Nuclear Safety (CCNS) and Citizens for Alternatives to Radioactive Dumping (CARD) agreed to some of these changes, but preserved their rights to challenge specific areas of disagreement at the public hearing.

## Item 1 – General Comments

**Comments:** Many commenters expressed general statements of opposition to the issuance of the Draft Permit. Among the more common sentiments expressed were the belief that the Permit

would promote nuclear material production elsewhere in the U.S; general opposition to nuclear material generation, transport, and disposal; the belief that such actions would make New Mexico a “National Nuclear Sacrifice Zone”; the belief that the proposal to accept RH TRU waste is a ploy by DOE to allow high-level waste into the repository by reducing characterization requirements; a perceived lack of public support for WIPP in general or the modification request specifically; and distrust of the permit modification or public hearing process.

Many other commenters expressed general statements of support for the issuance of the Draft Permit. Among the more common sentiments expressed were the need to increase nuclear waste disposal capacity to further alternative energy development; the revised permit would facilitate cleanup at other DOE sites; WIPP’s safety and effectiveness has been demonstrated and is better than other potential sites; the modification would allow removal of RH waste from sites such as Oak Ridge National Laboratory and reduce risk to nearby residents; and the opinion that the WIPP mined salt formation is stable.

**Response:** NMED appreciates the time and effort reflected in the many public comments that were submitted, and continues to encourage public participation in the ongoing WIPP permit modification process. NMED considers all public comment, and the Department gives due consideration and weight deemed appropriate to each public comment. NMED has not incorporated some public comments in the final Permit because they do not deal with the specific issues under consideration in the Permittees’ request or the Draft Permit as Changed, or because they are outside NMED’s regulatory scope.

## **Item 2 – Specific Comments**

**Comment 2.1 – Confirmation Activities at WIPP:** Several commenters supported the Permittees’ request to perform confirmation activities at WIPP, waiting until waste had been shipped from the generator/storage site and was received at WIPP. Supporting arguments suggested that any prohibited items discovered during confirmation could be returned to the generator/storage site and wouldn’t be stranded at WIPP. Other commenters opposed confirmation activities at WIPP, for two primary reasons: the potential that waste with prohibited items (and therefore unacceptable for storage or disposal at WIPP) would not be identified until after the waste had already arrived at WIPP, and no clear plan for returning the waste to the generator/storage site (because transporting waste with prohibited items would likely violate the TRUPACT-II certificate of compliance).

**Response:** This provision in the Draft Permit was rendered moot when the Permittees withdrew their request to allow shipment of waste containers to WIPP prior to performing waste confirmation, so no further response is required. As described in the Draft Permit as Changed, all waste will be subject to confirmation prior to shipment to WIPP.

**Comment 2.2 – Dispute Resolution:** Several commenters believed that the dispute resolution process proposed in the Draft Permit, which had not been requested by the Permittees in their PMR, was either a dangerous practice that would tend to segregate NMED staff from the politically appointed Secretary in the decision making process or was unnecessary.

**Response:** NMED included dispute resolution as part of its efforts to continue expanded public participation as mandated under its program authority delegated from EPA. About half of the

RCRA permits and most of the consent orders issued by NMED include some form of dispute resolution. The dispute resolution process also ensures that any decision by the Department that was disputed by the Permittees would be clearly documented in the administrative record. As a result of negotiations, NMED included a revised dispute resolution process in the Draft Permit as Changed that included an e-mail notification component to ensure full public disclosure of all aspects of any dispute arising from NMED decisions regarding audit reports and AK sufficiency determinations.

**Comment 2.3 – Reduction of Waste Characterization Requirements:** Many commenters opposed reduction in characterization requirements for each container, and endorsed maintenance of the current permit's requirement of 100% sampling and analysis of volatile organic compounds (VOCs) in headspace gas because the PMR did not demonstrate that the current permit is deficient. These commenters generally believed retention of the current program is necessary to protect human health and the environment. Some commenters stated that elimination of headspace gas sampling would undermine the ability to accurately assign hazardous waste numbers. Some believed that if sampling and analysis of each drum was reduced, a more robust VOC sampling and monitoring program should be initiated in the repository to compensate for this reduction.

**Response:** The only significant reduction in waste characterization in the Draft Permit as Changed is the headspace gas sampling requirement, which is based upon the RCRA standard philosophy of representative sampling. NMED believes the Permittees will still be able to assign hazardous waste numbers to waste streams based upon AK and representative sampling of either headspace gas (for debris waste streams) or solids (for homogeneous and soil/gravel waste streams). The other prior function of headspace gas sampling was to provide a measure of redundancy in ensuring that hazardous VOC emissions from the repository were protective of human health and the environment. The existing permit has always required monitoring of VOC emissions from the repository as a whole. The Draft Permit as Changed includes a new disposal room-based VOC monitoring program that provides additional detail regarding these emissions from individual disposal rooms that adequately compensate for eliminating the requirement to perform headspace gas sampling on all waste containers prior to disposal.

**Comment 2.4 – Reliance Upon Acceptable Knowledge to Characterize Waste:** One commenter believed that the proposed waste characterization method in the draft permit did not meet the regulatory requirements in 40 CFR §264.13. Several other commenters believed that an adequate technical basis for the "AK Sufficiency Determination" process has not been presented. Several commenters believed that knowledge of the waste generation process for many waste streams and containers was insufficient to adequately characterize the waste, particularly for older waste streams and containers.

**Response:** The Draft Permit as Changed allows the use of AK and/or representative sampling and analysis to characterize waste. RCRA regulations (40 CFR §264.13) do not mandate characterization of each container so long as the characterization process obtains sufficient information (either through acceptable knowledge, sampling and analysis, or a combination of both) to safely manage and dispose of waste. The Draft Permit as Changed includes an extensive list of required AK information that must be compiled to support any request to perform waste characterization that does not include chemical and/or physical sampling and analysis. The Draft Permit as Changed includes an AK sufficiency determination process that is more stringent than the minimum required under RCRA because the process includes a review and concurrence by

NMED and a public notification provision. NMED will not concur with any AK Sufficiency Determination request for which AK information is inadequate.

**Comment 2.5 – General Opposition to Remote Handled TRU Waste:** Many commenters opposed allowing WIPP to receive RH TRU waste, or they endorsed maintaining the current RH waste prohibition in the Permit. Many commenters challenged the ability of WIPP to safely transport, receive, store, manage, and dispose of RH TRU waste. These comments generally expressed concerns related to the risks associated with higher surface dose rates of RH TRU waste or with radiation exposure in the event of an accident involving an RH TRU waste container. Some of these commenters stated that if RH waste were to be allowed, it should be characterized using the methods used for CH waste in the current permit and that all containers of RH TRU waste should undergo visual examination to confirm their contents.

**Response:** Congress clearly intended WIPP to receive and dispose of RH TRU waste as specified in the 199 WIPP Land Withdrawal Act (Public Law 102-579), which stipulates characterization requirements and volume limitations for RH TRU waste. The Draft Permit as Changed incorporates these requirements and limitations. The Draft Permit as Changed also makes RH and CH TRU wastes subject to the same characterization requirements, with the added requirement that 100% of RH TRU waste containers must undergo visual examination or radiography.

NMED has jurisdiction over the hazardous component of TRU mixed wastes that are managed and disposed of at WIPP, and is obligated to ensure that WIPP meets the requirements of 40 CFR Part 264. The Draft Permit as Changed meets all necessary RCRA preparedness and prevention and contingency plan requirements for the management of the hazardous component of TRU mixed waste at WIPP. NMED has no regulatory authority over the radiological component of these wastes. DOE, not NMED, is responsible for regulating emergency response and personnel exposure to radiation.

Some commenters may confuse RH TRU with “high-level” waste. Congress specifically prohibited high-level waste and spent nuclear fuel at WIPP in the Land Withdrawal Act. The disposal at WIPP of TRU waste that was ever managed as high level waste or waste from specific tanks identified in the Permit is prohibited. Changing this prohibition would require a Class 3 permit modification request that would include extensive public comment and hearing opportunities. The State of New Mexico remains committed to prohibiting the disposal of high level wastes at WIPP.

**Comment 2.6 – Storage and/or Disposal Capacities:** Several commenters opposed any increase in surface waste storage and subsurface waste disposal capacity, questioning whether such increase was necessary based upon WIPP’s past experience or whether the increased storage or disposal volume could be safely managed by WIPP.

**Response:** The final storage and disposal capacities specified in the Draft Permit as Changed resulted from agreement reached by all participants in the negotiations and reflect the compromises made between the Permittees and the other participants. The Draft Permit as Changed implements the concept of “surge storage” for the Parking Area Unit and the Waste Handling Building Unit that establishes a baseline capacity for storage that can be exceeded if certain criteria (generally beyond the Permittees’ control) are met, and includes notification to an e-mail list of interested persons if surge storage is invoked. Once the criteria are no longer met,



storage capacities revert to baseline capacities. NMED believes the Draft Permit as Changed ensures safe management and storage of both CH and RH TRU mixed waste.

The Draft Permit as Changed also imposes limits on disposal capacities for both CH and RH TRU mixed waste. It provides for limited increases to those disposal capacities as minor modifications requiring NMED approval and Permittee notification to the e-mail list of interested persons. It also allows the Permittees to seek a larger increase in disposal capacity through the usual permit modification process that includes opportunity for public comment prior to NMED action on the request. Again, NMED believes the Draft Permit as Changed ensures safe management and disposal of both CH and RH TRU mixed waste.

**Comment 2.7 – Environmental Justice Issues:** NMED received a significant number of written comments on environmental justice concerns on the Draft Permit as Changed. These concerns included the belief that the transport of RH waste would have a disparate impact on those living along the WIPP transportation route. Many commenters believed that the population along these transportation routes was primarily comprised of minority, low-income, elderly, or otherwise disadvantaged individuals. Many of these commenters also believed there was a need for a disparate impact study to be completed by either NMED or the Permittees and subsequently fully assessed by NMED before RH waste could be approved for shipment, storage, or disposal at WIPP.

**Response:** NMED met the requirements under the Governor's Executive Environmental Justice Order during the development of the Draft Permit as Changed to use available environmental and public health data to evaluate any potential incremental adverse impacts to low-income communities and communities of color from the management of mixed RH TRU wastes at WIPP. NMED used these data and other information to establish the environmental performance standards in the original permit decision in 1999, and the Draft Permit as Changed was reviewed to ensure that there would be no new unacceptable risks from the management of the hazardous components of the mixed RH TRU wastes that would be stored at or disposed of at WIPP. Because there are no adverse human health or environmental impacts at the WIPP facility boundary, there can be no disparate impacts to any particular segment of the public beyond the facility boundary and a disparate impact study is unwarranted.

With the exception of RCRA manifesting requirements, NMED has no regulatory authority over the transportation of mixed TRU wastes from the generator/storage sites to WIPP. Therefore, it is outside of NMED's regulatory purview in issuing the Draft Permit as Changed to evaluate potential disparate impacts from transportation of RH TRU waste to WIPP.