



SOUTHWEST RESEARCH AND INFORMATION CENTER

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April 19, 2023

Ricardo Maestas
NMED
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

RE: Additional comments on WIPP Renewal Draft Permit

Dear Ricardo,

Southwest Research and Information Center (SRIC) provides these additional comments on the Renewal Draft Permit (AR 221218). The comments provide a basis for SRIC's **request for a hearing** and to facilitate the negotiation process that is required by 20.4.1.901. A.4 NMAC. These comments are in addition to previous comments that SRIC has made regarding the renewal application and process. AR 200514, AR 210624, AR 211001.40, AR 220424, AR 220628, AR 220728. All of those comments must be considered as part of SRIC's submission.

As an initial matter, SRIC strongly opposes many of the changes proposed by the Permittees in their Redline/Strikeout (RLSO) revised Renewal Application (AR 220321). SRIC supports some of the conditions proposed by NMED in the Renewal Draft Permit, though in some cases, SRIC suggests improvements in the conditions. In addition, SRIC proposes other changes and conditions that should be incorporated into the Renewal Permit.

Brief Relevant Background

SRIC has been actively involved with WIPP since the project was announced in 1972. That involvement included supporting WIPP's regulation under the Hazardous Waste Act (HWA) for more than 30 years. Because of the substantial amount of radioactive and hazardous (mixed) waste, the state has clear legal authority to regulate WIPP under the HWA.

Even before there was HWA regulatory authority, the original WIPP Authorization (PL 96-164, § 213) provided "the right of the State of New Mexico to comment on, and make recommendations with regard to, the public health and safety aspects of such project before the occurrence of certain key events identified in the agreement." § 213(b)(2)(A). Further, the DOE Secretary is required "to receive, consider, resolve, and act upon comments and recommendations made by the State of New Mexico." § 213(b)(2)(B).

The Consultation and Cooperation (C&C) Agreement was a provision in that WIPP Authorization and was signed by New Mexico Governor Bruce King and Secretary of Energy

James B. Edwards on July 2, 1981, as part of a settlement of the State's lawsuit in Federal District Court of New Mexico, (Civil Action No. 81-0363 JB) in a Stipulated Agreement in which DOE agreed that the C&C Agreement is "binding and enforceable" on the State and DOE. AR 880401, Article XI.B (page 17 of PDF).

Additionally, the WIPP Land Withdrawal Act (LWA, Public Law 102-579, as amended) provides that the C&C Agreement remains valid and in effect. § 21.

The C&C Agreement incorporates a staged process, which included the parties' agreement upon the scope and dimensions of the "full WIPP." AR 880401, Working Agreement, Article IV.F.6(e) (page 29 of PDF). DOE in the Renewal Application seeks to expand WIPP beyond the agreed scope and dimensions, violating the rights of members of the public, who are beneficiaries of the C&C Agreement. Such provisions are unlawful and cannot be included in the Permit.

The 1979 WIPP Authorization Act also establishes the limits of DOE's authority to apply funds of the United States to the WIPP project, which limits include the determination of the scope and dimensions of WIPP through consultation and cooperation with the State. Expenditure of funds for expansion beyond the scope and dimensions of the agreed-upon WIPP project violates the Appropriation Clause of the United States Constitution:

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law;

U.S. Const., Art. I, § 9, Cl. 7. Such expenditures for WIPP expansion of the underground Hazardous Waste Disposal Units (HWDUs) and using more than the four shafts are unlawful and injure SRIC and its supporters.

SRIC strongly disagrees with the Permittees' Technical Incompleteness Determination Response that: "The Consultation and Cooperation Agreement (C&C Agreement) (AR 880501) has no current role in DOE's present or future plans for the WIPP Project." AR 220709, #14. (The correct AR number is 880401).

While the Permittees want to disregard the C&C Agreement, it remains binding law. If the Permittees were complying with the C&C Agreement, they would not be proposing WIPP expansion in numerous changes in the Permit. Such provisions are unlawful and injure SRIC and its supporters and cannot be included in the Renewal Permit.

1. Major provisions of the Renewal Application and Renewal Draft Permit are opposed by SRIC, are likely unlawful, and cannot be included in the Renewed Permit.

A. Operational Lifetime/Closure Date

The original Permit Application repeatedly stated that the Disposal Phase during which time WIPP receives and emplaces waste "is expected to last 25 years." AR 950517 at 8, AR 960524 at 73 of PDF. In Response to Comments, the applicants stated: "the application ...is based on filling the entire repository over a period of 25 years." (emphasis supplied).

Consequently, the original Permit included provisions that the WIPP Disposal Phase is expected to be for 25 years. Attachment I-1d; Attachment I-1d(2); Attachment J1, page J1-3; Attachment O, page O-5.

Thus, waste would be shipped to WIPP and emplaced into the Underground HWDUs for 25 years. Closure of the facility was expected to require 10 years. The Post-Closure period is 30 years, as provided by 20.4.1.500 NMAC (incorporating 40 CFR §264.110(b)). Of course, WIPP remains a very hazardous facility for thousands of generations into the future.

The 2010 Permit Renewal left those Disposal Phase provisions unchanged. Attachment B, page B-6; Attachment G-1d; Attachment G-1d(2); Attachment H1, page H1-3. During that renewal process, the Permittees never proposed an extension of that Disposal Phase lifetime. Those Disposal Phase provisions remain in the current Permit.

Closure by 2024 was not only expected, but some New Mexicans relied on that date in making major health and economic decisions based on that end of waste disposal operations. AR 211111 at 28-34.

However, in the present Renewal Application, the Permittees proposed to eliminate those provisions and not include any closure date.

SRIC repeatedly objected to that change on May 18, 2020 (AR 200514) and April 30, 2021 (AR 210424) and pointed out those proposed changes as a technical deficiency. In the Technical Incompleteness Determination (AR 220513), NMED agreed that the proposed change was technically incomplete and asked the Permittees propose an operating period closure date. at #1.

In response (AR 220626), the Permittees stated that they do not believe that there is a regulatory requirement to provide the expected year of final facility closure. SRIC strongly disagrees, and NMED certainly has authority to require such a date.

The Permittees further stated: “Based on the potential category waste stream inventory estimates in the 2021 ATWIR, final facility closure could begin no earlier than CY 2083.” at 2.

The Renewal Draft Permit incorporates the Permittees’ proposed deletions in Attachment B, page 12; Attachment G-1d; and Attachment G-1d(2). The 25-year time period language remains in Attachment H1, page H1-6, but is changed to state that the time period “was” assumed in the original Permit.

However, neither the Renewal Application, nor the Renewal Draft Permit provides the basis or the need for the WIPP Disposal Phase to continue beyond June of 2031, since the last HWDU is Panel 12 with that Anticipated Earliest Closure Date. Table G-1.

Closure by 2024 was not only expected, but some New Mexicans *relied* on that date in making major health and economic decisions based on that end date for waste disposal operations. AR 211111 at 28-34.

SRIC opposes the Renewal Draft Permit provisions that eliminate the 2024 closure date. SRIC opposes the Renewal Draft Permit that has no explicit and effective closure date.

B. Repository Footprint

The WIPP underground design was to accommodate the legal capacity of 6.2 million feet³ of defense transuranic (TRU) waste. That WIPP design is included in the 1980 WIPP Final Environmental Impact Statement (FEIS), the 1990 Supplemental FEIS (SEIS-I), the 1997 Disposal Phase Final Supplemental EIS (SEIS-II), the C&C Agreement and documents required by it, and the WIPP Permit.

The 1980 FEIS described the design of WIPP to manage 6.2 million feet³ of defense transuranic (TRU) waste (AR 801001, Vol. 1 at 2-17), which required four shafts to the underground disposal area (at 3-13, 8-16) of approximately 100 acres (at 8-16). The resulting 1981 WIPP Record of Decision (ROD) stated that WIPP is “designed to retrievably emplace approximately 6.2 million cubic feet of contact-handled TRU waste and as much as 250,000 cubic feet of remotely handled TRU waste in a mined repository.” 46 Fed. Reg. 9163, AR 180121.02.

The 1990 SEIS-I confirmed the design with four shafts and 100 acres of underground disposal area, “designed to hold 6.2 million ft³ of CH TRU and 250,000 ft³ of RH TRU waste.” The underground panels were reconfigured from north (as in the FEIS) to south. (AR 900102, Vol. 1 at 2-8; Figure 2.4). That change of orientation to the south was adopted based upon studies required by the C&C Agreement, and was recommended by the Environmental Evaluation Group and State of New Mexico.

The 1997 Disposal Phase Final SEIS-II again stated that there were four shafts and that panel 1 (already mined) and seven additional panels plus panels 9 and 10 “would be necessary to accommodate the 175,600 cubic meters (6.2 million cubic feet) of TRU waste permissible under LWA.” AR 971019 at 2-15, Figure 2-4.

The C&C Agreement also calls for four shafts: Exhaust and Waste Shafts. Art. VII, Key Events C.6 (exhaust shaft, waste shaft), C.7 – ventilation supply and service (later renamed Salt Handling), and air intake shaft (WA 1988 E.1).

As part of the C&C Agreement, DOE agreed to the Working Agreement, which focuses on a key DOE document, namely, the Safety Analysis Report (SAR), which “constitutes the most comprehensive document concerning WIPP both in general and specifically as related to public health and safety as well as other matters.” AR 880401, Art. III.A. DOE agreed to provide the SAR to the State in compliance with its obligations under the C&C Agreement. The SAR repeatedly describes and depicts the WIPP design of four shafts and eight underground panels for the total volume capacity.

The disposal area (see Figures 4.1-3) provides space for $6.2 \times 10^6 \text{ ft}^3$ ($1.76 \times 10^5 \text{ m}^3$) of TRU waste material in TRU waste containers. Total disposal volume is $5.95 \times 10^6 \text{ ft}^3$ ($1.69 \times 10^5 \text{ m}^3$) of CH TRU waste, and $250 \times 10^3 \text{ ft}^3$ ($7.08 \times 10^3 \text{ m}^3$) of RH TRU waste.

AR 970410, at 4-35.

Thus, DOE was only fulfilling its commitment in those documents in its original Application for a WIPP Permit which incorporates the WIPP design of four shafts (A-2), Figures A2-1 and A2-2, and up to ten panels to dispose of the legal capacity of 175,564 meters³ of waste. Robert Kehrman, Permittees' witness at the permit hearing, explained how the waste volume limit determined the volume of the repository:

A. The facility is laid out to have eight panels, starting with 1, 2, 3, 4, 5, 6, 7, 8. If, in fact, eight panels is insufficient for us to reach the capacity mandated by the Land Withdrawal Act, we also have available for disposal these areas between the panels. We refer to these—or will refer to these as “panels 9 and 10,” should it be necessary to use them.

Permit Hearing Transcript, Feb. 22, 1999, at 81.

The WIPP design of four shafts and eight+two underground panels within 100 acres was sufficient to dispose of the legal TRU-waste capacity—6.2 million feet³ of defense TRU waste—operating for no more than 25 years.

SRIC opposes expanding that underground design to include the new shaft (which approval is also on appeal in the NM Court of Appeals (A-1-CA-40030)), and Panels 11 and 12. See further discussion in #2 below about Panels 11 and 12. Consequently, SRIC opposes Figures M-43 and M-44 and other text and figures that show the new shaft.

C. Maximum Allowed or Required Capacity

As a “pilot plant,” WIPP was always to have a capacity limit, and it would not be the only repository. As discussed in 1.B. above, the 1980 FEIS had a capacity limit, and did the resulting ROD, and the 1990 SEIS-I.

In the C&C Agreement Modification in 1987, DOE agreed that the WIPP capacity limit was 6.2 million cubic feet. AR 880401, Article VI.E.

The LWA incorporated that C&C Agreement capacity and clearly states:

“CAPACITY OF WIPP.—The total capacity of WIPP by volume is 6.2 million cubic feet of transuranic waste.” AR 180706.03, § 7(a)(3).

The capacity limit in the C&C Agreement and LWA was the *maximum* allowed capacity. But neither the C&C Agreement nor the LWA *require* that 6.2 million cubic feet of TRU waste be emplaced at WIPP. Indeed, the LWA allows DOE to close WIPP with less than 6.2 million cubic feet of waste emplaced. Further, either EPA or the State of New Mexico has the authority to order WIPP to close with less than 6.2 million cubic feet of waste emplaced.

SRIC rejects and opposes Permit provisions that are based on the WIPP Disposal Phase requiring 6.2 million cubic feet of waste being emplaced.

D. Volume of Record (VOR)

As shown in 1.B. above, even before WIPP opened in 1999, the basis for the WIPP underground design and volume capacity was based on the outer container or the size of the gross internal volume of the container. That was the waste volume size used in the original Permit Application, the original Permit in 1999, and the Permit Renewal in 2010. SRIC documented that reality during the VOR permit modification process and will not repeat that detail in these comments. AR 1801017, AR 181129.

Importantly, the Panel capacities and the number of panels and rooms needed are based on the outer container size. The Permit does not prohibit using dunnage drums or using less than the Panel volume capacity, as the Permittees have done. But there is no basis to “reward” mismanagement of panel capacity by providing for “replacement” panels.

The LWA Waste Volume should be deleted from Table 4.1.1, from the definitions 1.5.22, and from Attachment B, page 12, and all other places where it is used in the Permit.

Alternatively, the Renewal Permit could allow the Permittees to continue to report the LWA Waste Volume, but should clearly state that the allowed and enforceable capacity limit is the TRU Mixed Waste Volume.

2. NMED’s proposed conditions.

SRIC appreciates and supports NMED using its regulatory authority to include proposed changes/conditions to the Parts and Attachments. The December 20, 2022 Fact Sheet lists 25 such topics. AR 221220 at 7-11. SRIC has specific comments and suggested changes to various conditions. In the following, SRIC uses the Topic numbers from the Fact Sheet.

#7 Siting Another Repository. SRIC strongly supports having such a condition in the Permit. Since the August 14, 1972 announcement by the federal government’s Atomic Energy Commission that New Mexico would be considered for a pilot plant, WIPP was to be the first, but not only, repository.

Congress affirmed that first, but not only, repository requirement in laws in 1979, 1982, 1987, and 1992. The original WIPP authorization of 1979 stated that WIPP is “for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States.... § 213(a)

The Nuclear Waste Policy Act (NWPA) of 1982 authorized “the siting, construction and operation of repositories.” § 111(b)(1). The law stated that the provisions did not apply to “certain repositories,” referring to WIPP. § 8(c).

The NWPA Amendment Act of 1987 redirected the first repository site work to the Yucca Mountain site. § 160(a). That law also required new congressional authorization for a second repository. § 161(a).

The WIPP Land Withdrawal Act of 1992 limited WIPP's capacity and specifically banned "high-level radioactive waste or spent nuclear fuel" from WIPP. § 12. Thus, those wastes would go to other repositories.

The Consultation and Cooperation Agreement provided for the limited mission of the original authorization. Article VI.

The WIPP Permit in 1999 limited WIPP to contact-handled TRU waste. Module I.A. Numerous other limitations, including the capacity volume, were included.

The WIPP Renewal Permit in 2010 maintained capacity limits and other limitations.

Despite those historic facts, laws and agreements, WIPP is still the nation's only deep geologic repository.

On April 8, 2022, Governor Michelle Lujan Grisham wrote to Secretary Granholm about the WIPP petition that people from throughout New Mexico had signed. The Governor specifically mentioned the request that "DOE develop a new disposal site in a state other than New Mexico." AR 220403.

The June 24, 2022 response to the Governor's letter signed by Under Secretary for Nuclear Security Jill Hruby and Senior Advisor for Environmental Management William I. White did not address the issue of another repository. AR 220625.5.

Additionally, on May 17, 2022, during an Alliance for Nuclear Accountability meeting with representatives from five other states with transuranic waste, Don Hancock asked Mr. White what the plan was for another TRU waste repository. He replied that there was no plan.

On April 4, 2023, at a Town Hall Forum at the Santa Fe Convention Center, Don Hancock quoted from the NMED Condition for Another Repository in the Renewal Draft Permit and asked Mr. White and Dr. Hruby whether they would agree to that Condition. Mr. White's response was that DOE had until April 19 to file its comments.

Thus, the facts are that DOE is not using its authority to site another TRU waste repository or a repository for spent fuel and high-level waste that could also dispose of TRU waste. New Mexico can act to catalyze such necessary DOE action by including such a condition in the Renewal Permit.

SRIC's suggests the following revised language to the Permit Section:

2.14.3 Repository Siting Annual Report:

The Department of Energy (DOE) shall submit an annual report summarizing its progress toward siting another geologic repository for transuranic waste in a state other than New Mexico. The annual report shall summarize the steps the DOE has taken toward siting such a geologic repository in another state and the report shall

include documentation supporting the summary. Such documentation ~~may~~ shall include: with what disposal regulations another repository shall comply; consent-based or other siting process, timeline and milestones for identifying possible sites for another repository; National Environmental Policy Act actions, congressional authorizations and budget appropriation requests; communications with EPA and other federal agencies or Congress about activities to establish another repository; land acquisition(s); state and public engagement activities; feasibility studies; ~~and~~ design, construction, and operation plans; and plans, timelines, and milestones for independent technical expert reviews of the activities related to establishing another geologic repository for TRU waste.

In addition, add to 1.14.2. Contents of Information Repository

11. The Annual Report to Establish Another Geologic Repository for TRU Waste submitted pursuant to Permit Section 2.14.3.

Further, SRIC supports NMED accepting public comments on the Annual Report and considering enforcement measures should the Annual Report not show significant progress. Of course, the State also other enforcement powers.

#11 Panels 11 and 12. SRIC strongly opposes Panels 11 & 12. SRIC's previous comment (AR 211001.40) regarding the Permit Modification Request (PMR) for the two panels has been incorporated by reference. Additionally, as discussed in I.B above, those new panels are contrary to the approved repository footprint.

Moreover, when those two panels are included in the Renewal Draft Permit Table 4.1.1, the calculated Maximum TRU Mixed Waste Capacity is 6,569,200 ft³/ 186,000 m³ of CH waste plus 138,950 ft³/3,935 m³ of RH waste. The total of 6,708,150 feet³ and 189,935 meters³ of waste significantly exceeds the 6.2 million feet³, 175,564 meters³ capacity limit. There is no basis in the C&C Agreement and LWA to allow such volumes in the Permit.

Thus, Panels 11 and 12 should not be included in the Renewal Permit. SRIC does not object to the typographic change to footnote 2 of Table 4.1.1.

In addition to removing Panels 11 and 12 from Table 4.1.1, they should be removed from Table 4.4.1, Table 4.5.2.1, Table 4.6.3.2, Attachment A2 in numerous places, Attachment B in several places, Table G-1, Table J-3, Figures M-43 and M-44, and any other places.

#1 Closure. As discussed in 1.A above, SRIC opposes the Renewal Draft Permit removal of the 2024 closure date, explicitly and by eliminating the 25-year Disposal Phase timeframe. SRIC opposes the Draft Permit that has no explicit and effective closure date. SRIC opposes a closure date of no earlier than 2083 for WIPP; the Renewal Permit must explicitly reject that date. SRIC further states that the Permittees' proposal for no closure date is unlawful.

Regarding the Draft Permit Section 6.5.2 Final Facility Closure, SRIC does not agree that the additional language of "When the Permit term has expired" provides necessary specificity about

a closure date. For example, that same terminology could remain unchanged in any future permit renewal so that there is effectively no closure date. If NMED expects final closure to commence no later than the end of the 10-year term in 2034, it should state that specific date.

SRIC has the same comment/objection to the additional language in Attachment G Introduction, Attachment G Section G-1d, and Attachment H1 Introduction. SRIC does not object to the NMED strikeout change in the Attachment H Introduction. Numerous provisions related to the Disposal Phase in Attachment G should be maintained from the current Permit, and the changes proposed in the Renewal Application and Renewal Draft Permit should not be incorporated into the Permit.

Additionally, the Fact Sheet states: “The closure date of WIPP is tied to the Permit term of ten years and capacities in Permit Part 4, Table 4.1.1. This proposed change will require the Permittees to make a case for Permit Renewal at the end of the Permit term. This Permit term allows the State and the public to require an accurate inventory of waste awaiting clean-up around the United States, including Los Alamos National Laboratory, for emplacement at WIPP.”

The Renewal Draft Permit provision does not include that requirement. There is no requirement for the Annual Transuranic Waste Inventory Report (ATWIR) to provide an “accurate inventory.” In fact, the current ATWIR does not provide an accurate inventory, as it does not include the TRU Mixed Waste volumes. “As directed by the DOE/CBFO, the CH- and RH-TRU waste volumes presented throughout this report are consistent with the LWA TRU Waste Volume methodology described in the policy.” AR 230102 at 19. Moreover, the current ATWIR inventory, using the LWA volumes shows that the emplaced, planned, and potential waste are approximately 171,000 m³. at 45. That is more than the capacity limit even using the LWA calculation and likely 30 percent or more above TRU Mixed Waste volumes that should be the enforced capacity limit.

The Renewal Draft Permit should be modified to require that the ATWIR use the TRU Mixed Waste volume for emplaced, planned, potential, and projected waste volumes.

To provide an accurate inventory, the Renewal Permit should require that the Comprehensive Inventory Database (CID) be publicly available. The CID is the data source for the ATWIR and includes data on waste emplaced at WIPP, waste projected to be generated through Calendar Year 2033 (WIPP-bound waste), waste that may not meet regulatory requirements (Potential waste), and waste that is projected to be generated from Calendar Years 2033 through 2083 (Projected waste). See 3.D. below.

#8 Public Participation. SRIC agrees with the NMED proposed changes to Permit Section 1.15.2. SRIC strongly supports incorporating pre-submittal meetings into the third subsection as being necessary, since the Permittees have discontinued that long-standing practice. SRIC also strongly supports the addition of subsection 7, as such Community Forums and Open Houses could improve public understanding and interaction with the Permittees. SRIC also encourages both DOE and SIMCO high-ranking officials to participate in those forums as well as other interactions with representatives of non-government organizations as was done for many years.

#4 Suspension of Waste Shipments. SRIC supports the new condition in Attachment C, Section C1-d related to suspension of waste shipments. SRIC understands that there is some concern about the vagueness of the language “(4) based on any allegation of noncompliance.” In negotiations, SRIC would seriously consider more specific language. For example, the provision could relate to documented evidence of noncompliance or temporary suspension during investigations of possible noncompliance.

#2 Permit Revocation. SRIC agrees that the State of New Mexico and New Mexicans should clearly state our objection to increasing or changing the capacity limit in the WIPP Land Withdrawal Act. Changing the capacity limit in the C&C Agreement also is unacceptable.

However, SRIC is concerned about the lack of specified regulatory authority for the condition as stated in the Renewal Draft Permit. Section 74-4-4.2.D of the HWA provides that the Secretary may “revoke any permit” for six enumerated reasons. But none of those reasons regards action by the U.S. Congress.

The Hazardous Waste Regulations, 20.4.1.900 NMAC (incorporating 40 CFR §270.41) provides for “revocation and reissuance of permits.” 40 CFR §270.41(b) includes three reasons for revocation and reissuance, but congressional action is not specified.

Section 74-4-4.2.H of the HWA requires “an opportunity for a public hearing” prior to a ruling on revocation. SRIC notes that the procedural requirements for a public hearing on a revocation would take longer than the “30 calendar days” specified in the condition. The provision could be modified to require that a notice of revocation for cause be issued within 30 days.

Additionally, SRIC does not support revoking the WIPP Permit without reissuing the Permit with final closure conditions, among other provisions. Absent any Permit, the Permittees could potentially not be required to comply with closure provisions necessary to protect public health and the environment.

Thus, SRIC proposes the following revision to Permit Section 1.3.1:

A Notice of Revocation and Reissuance for Cause~~This Permit~~ shall be **issued** ~~revoked~~ within 30 calendar days if the Land Withdrawal Act (Pub. L. 102-579, as amended) volumetric disposal limit for TRU waste of 6.2 million cubic feet at the WIPP facility is increased or otherwise changed by the U.S. Congress.

SRIC also is very willing to discuss revocation and reissuance conditions during negotiations, including because of violations of some major provisions of the Permit regarding closure date, capacity limit, or because of future accidents, or other changes.

#3 Prioritization and Risk Reduction of New Mexico waste. SRIC agrees that the State should emphasize the need for prioritization of legacy transuranic waste buried at the Los Alamos National Laboratory (LANL) because such waste endangers public health and the environment. SRIC notes that DOE has acceded to prioritization concerns of other states, including Idaho and South Carolina, related to WIPP shipments without providing any notice to the State or the

public. SRIC believes that the State can demonstrate the endangerment of public health and the environment from the transuranic waste stored in the ground at LANL. SRIC also supports NMED using its permitting authority over LANL to require remediation.

However, until NMED requires that buried wastes at LANL have a priority for removal, prioritizing LANL waste could actually incentivize DOE to have newly generated waste at LANL be the priority to meet the condition.

Additionally, as discussed above, the ATWIR is not currently accurate so it should not serve as the basis for certifying sufficient disposal capacity. The Renewal Draft Permit should be modified to require that the ATWIR use the TRU Mixed Waste Volume for emplaced, planned, potential, and projected waste volumes.

SRIC proposes that the provision should be modified:

4.2.1.4 Prioritization and Risk Reduction of New Mexico Waste

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.10.k), within 15 days of publishing the Annual Transuranic Waste Inventory Report (ATWIR), the Permittees shall certify to the NMED that there is sufficient ~~disposal~~ TRU Mixed Waste Volume capacity in permitted HWDUs to dispose of all of the New Mexico generator/storage site waste, detailed in this report. The report shall contain the underlying calculations and data to validate the certification. Public access to the Comprehensive Inventory Database (CID) shall be provided to assist in verification of the calculations and data. While this permit remains in effect, the Permittees shall prioritize the emplacement of stored TRU mixed waste at WIPP from the clean-up activities of waste generated prior to 1999 at the Los Alamos National Laboratory (LANL). The ~~On an~~ annual certification shall provide that ~~basis~~, the volume of stored TRU mixed waste emplaced in a HWDU from the LANL will ~~must~~ exceed the volume of stored TRU mixed waste from all other individual generator sites or provide the basis of why such volume emplacement cannot be accomplished.

3. SRIC's additional conditions.

A. Pits

At the time of the C&C Agreement in 1981, plutonium pits for nuclear weapons were being manufactured at the Rocky Flats Plant. Plutonium contaminated materials from the pit manufacturing process had been generated at Rocky Flats since 1952. Significant amounts of that plutonium-contaminated waste were shipped to the Idaho National Laboratory (INL), starting in 1954. The DOE 1981 Record of Decision stated:

By approximately 1990 all existing waste stored at INEL will have been removed to WIPP, and the WIPP facility would be in a position to receive and dispose of TRU waste from other defense waste generating facilities.

Thus, the priority was on shipping legacy waste at INL to WIPP, not waste at Rocky Flats.

Of course, at the same time the pits themselves were being produced for nuclear weapons at Rocky Flats, but they were not classified as waste and were not to be disposed at WIPP. Disposal of plutonium pits was not included in the WIPP Authorizations of 1979 and 1992, nor in the C&C Agreement. Pits were not proposed by DOE as acceptable for disposal at WIPP in the 1999 WIPP Permit proceeding or the 2010 Permit Renewal. Thus, the Renewal Permit should state that such waste is not acceptable in Permit Section 2.3.3. SRIC suggests:

2.3.3.11 – Plutonium Pits

Plutonium Pits are not acceptable at WIPP.

- **Waste Stream SR-CH-PP or any similar waste stream from Proposed NNSA Pit Production Mission is not acceptable at WIPP.**
- **Waste Stream LA-MHD01-Pits or any similar waste stream is not acceptable at WIPP.**

Waste Stream SR-CH-PP is included in the current ATWIR, but has no waste. Waste Stream LA-MHD01-Pits is included in the current ATWIR, but has no waste.

B. “Surplus Plutonium”

At the time of the C&C Agreement and the DOE Record of Decision in 1981, there had been no declaration of “surplus plutonium,” so such waste was not considered for disposal at WIPP. During the congressional debate about the LWA from 1987 to 1992 there was never any consideration of WIPP receiving such waste, which was only first declared by President Clinton in 1994.

Thus, “surplus plutonium” was not included in the WIPP Authorizations of 1979 and 1992, nor in the C&C Agreement. It was not considered in the 1999 WIPP Permit proceeding or the 2010 Permit Renewal. Thus, such waste should not be allowed at WIPP, and the Permit should provide that such waste as not acceptable in Permit Section 2.3.3.

SRIC suggests:

2.3.3.12 – Declared “Surplus Plutonium”

Wastes that were declared as Excess Plutonium in Presidential Declarations in 1994 and 2007 as Pits; Pits, Metal, and Oxide; ZPPR Fuel; or Used Fuel are not acceptable at WIPP. Waste Streams SR-KAC-HET-2 and SR-KAC-PuOx-2 are not acceptable at WIPP.

C. “Diluted” Plutonium waste

The Rocky Flats Plant was closed in 1989. Thereafter, DOE, the State of Colorado, and the public discussed, among other things, what to do with the waste, buildings, and materials, including what levels of contamination would be allowed in the soil, what waste would remain at

the site, what materials and wastes would be shipped to WIPP or other locations by 2006 when shipments of materials and waste offsite was to be completed.

During that time annual Congressional appropriations expressly addressed – and prohibited – disposal at WIPP of “concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category on the date of enactment.” Such provisions were included in Public Law 105-245, § 308, enacted on October 7, 1998. Similar provisions were included in PL 106-60. § 315; PL 106-377 § 309; PL 107-66 § 308; PL 108-7 § 312; PL 108-137 § 310; PL 108-447 § 314; PL 109-103 § 309. That provision of PL 109-103 was continued by PL 110-5 § 104.

Thus, those plutonium concentrated wastes, whether at Rocky Flats or Savannah River Site, were clearly prohibited for disposal at WIPP. DOE is now attempting to bring that waste, or waste with similar concentrations of plutonium, to WIPP, despite the past congressional prohibitions. The prohibition should be included in the revised Renewal Draft Permit in Permit Section 2.3.3. SRIC suggests:

2.3.3.13 – Concentrations of plutonium in excess of 20 percent by weight

TRU wastes with concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category are not acceptable at WIPP.

D. WWIS/CID

Permit Section 2.3.1.7 provides for public access to the WIPP Waste Information System (**WWIS**) Database. But the timeframe for container and shipment information to be made available is not specified. The Permittees have decided that data will be available 14 days after container emplacement in the WIPP Repository. <https://wipp.energy.gov/WDSPA>

There is no basis for such a delay in making the data public, since the data are entered into the WWIS immediately. Further, there are cases of significant public interest in the information and a two-week delay is inappropriate.

Thus, SRIC suggests the following revision to the second paragraph of Permit Section 2.3.1.7:

2.3.1.7. WIPP Waste Information System (WWIS) Database

Beginning on December 31, 2005, the Permittees instituted a public database containing certain information from the WWIS. The Permittees shall continue to provide such public access through the WIPP Home Page at <<http://www.wipp.energy.gov>>. **Data shall be current within three days of a shipment arriving at WIPP.**

4. Other provisions of Renewal Draft Permit that should be revised.

A. “all,” “every,” “each”

The Renewal Application eliminates the words “all,” “every,” and “each” dozens of times. The explanation was to: “Ensure accuracy and enhance the readability of the Renewal Application.”

SRIC disagrees that all of the changes ensure accuracy; in some cases it would eliminate accuracy. Most of those deletions have been in the Permit since 1999, and it is inappropriate to eliminate all of them. SRIC suggests that all deletions of “all,” “every,” and “each” be removed from the Renewal Draft Permit. After the Renewal Permit becomes effective, the Permittees could submit a class 1 PMR to address appropriate changes to those provisions.

In the recent Panel 8 VOC PMR, SRIC and many members of the public understood room dimension language to be clear, but NMED decided it was “imprecise.” AR 220208 at 6. Thus, SRIC supports significant scrutiny to the preciseness and enforceability of all Permit provisions.

B. Maintain provision related to WIPP Records Archive.

The Renewal Application proposed to eliminate the last sentence of the third paragraph of Attachment Section E-1. The reason stated was: “Remove unnecessary detail that does not support a Permit requirement and is not required by the New Mexico Hazardous Waste Regulations.”

SRIC objects to the deletion. The provision in the current Permit should be maintained because ensuring the long-term storage, retrievability, and availability of archived records is necessary and should be required.

C. Acknowledge the reality of the February 2014 accidents

The February 5, 2014 underground fire and February 14, 2014 radiation and chemical release have dramatically affected the operation of WIPP. More than nine years after the accidents, WIPP still is not operating at the levels before the accidents. The Permittees also want to use the accidents as a basis to expand WIPP facilities, including the new shaft and additional panels, and the lifetime of the facility and resulting elimination of a definite closure date.

In the Renewal Application the Permittees deleted the following sentence that has always been in the Permit: “The facility is expected to require no decontamination at closure because any waste spilled or released during operations will be contained and removed immediately.” Permit Section G-1a(1). The stated reason for the deletion: “Remove unnecessary detail that does not support a Permit requirement and is not required by the New Mexico Hazardous Waste Regulations.” The deletion also is in the Renewal Draft Permit.

SRIC objects to removing the sentence, and supports the following revised sentence to ensure completeness and accuracy.

The facility may require decontamination during the Disposal Phase and at closure because of releases in February 2014 or subsequent releases for which immediate removal is not possible.

In the Renewal Application the Permittees also modified the discussion of the “Start Clean – Stay Clean” operating philosophy in Permit Attachment G-1e(2)(c). The stated reason for the change: “Provide clarification, ensure accuracy, and enhance the readability of the Renewal Application.”

SRIC objects to that language in the Renewal Draft Permit and supports the following revised sentences to ensure completeness and accuracy.

The operating philosophy of the WIPP Project, which is described as “Start Clean – Stay Clean,” was intended to provide for minimum need for decontamination at closure. Decontamination during the Disposal Phase and at closure is needed because of releases in February 2014.

D. Delete Permit Section C-0b AK Sufficiency Determination (AKSD)

This provision is not being used, so it should be deleted as unnecessary and unduly complicated. References to such AKSD should be deleted throughout the revised Renewal Draft Permit.

E. Panel 7 Final Volumes

The Renewal Draft Permit includes no amounts for Panel 7 Final CH TRU Mixed Waste Volume and Final LWA RH TRU Volume. Subsequently, on March 24, 2023, NMED approved the Permittees’ proposed amounts. AR 230312. Presumably, the revised Renewal Draft Permit would include those amounts as well as other class 1 provisions that have been incorporated into the Permit, including the new co-permittee.

SRIC objects to the Final CH TRU Mixed Waste Volume and Final LWA RH TRU Waste Volume amounts for Panel 7 because the volume calculations are not accurate. The volumes shown do not include the volumes of the 10 containers of contaminated equipment in Panel 7, Room 6, with emplacement dates of April 13, 2017 and October 19, 2017. The equipment container numbers are: WISD52H007C, WISD52H008C, WISD52H125, WISD52Z003WTMA, WISD74H026, WISD74U002A, WISD74U008, WISD74U039, WISD74U124, and WISD74U125. Those wastes constitute many cubic meters of waste that should be counted to the volume limits.

SRIC believes that the calculations of the volumes of those 10 containers should be subject to discussions with the Permittees, NMED and other parties.

5. Other issues that should be resolved

Almost two years ago, SRIC stated that “the Permit Renewal process is the appropriate venue for NMED, the Permittees, and the public to discuss the *problems of the past decade and to address all upcoming waste management needs and minimize the number of permit modifications that will be required over the next 10 years.*” AR 210624. *emphasis in original.*

Among the things that should be resolved to minimize future permit modifications are the Above Ground Storage and Excluded Waste PMRs.

On September 29, 2016, the Permittees submitted the Class 3 PMR for a Concrete Overpack Container Storage Unit. AR 160917. SRIC and members of the public strongly objected to the PMR. No further action has been taken on the PMR. SRIC believes that the Permittees should withdraw the PMR and state that they have no intention of submitting a PMR for such a facility during term of the renewal.

More than 10 years ago, the Permittees submitted a Class 2 PMR to Modify the Excluded Waste Provision. AR 160917. SRIC and members of the public strongly objected to the PMR. On July 2, 2013, NMED issued its determination that the PMR would be considered under Class 3 requirements. AR 130710. SRIC believes that the Permittees should withdraw the PMR and state that they have no intention of submitting a PMR for such a change in the Excluded Waste Provision (Permit Section 2.3.3.8) during term of the renewal.

Thank you very much for your careful consideration of, and your response to, these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is written in a cursive style with a large initial "D".

Don Hancock