

**New Mexico Environment Department
Response to Public Comments
on the March 29, 2024 WIPP
Class 2 Permit Modification Request
June 25, 2024**

On March 29, 2024, the U.S. Department of Energy (DOE) and Salado Isolation Mining Contractors LLC (SIMCO), (together the “Permittees”), submitted a Class 2 Permit Modification Request (PMR) [WIPP Facility Administrative Record (AR) 240318] to the New Mexico Environment Department (NMED), requesting to revise the Resource Conservation and Recovery Act (RCRA) Hazardous Waste Facility Permit (Permit) for the Waste Isolation Pilot Plant (WIPP) which contained two items entitled: 1) Addition of Four New Shielded Containers and 2) Revise Site Recertification Audit Scheduling from Annual to Graded Approach.

The Permittees published a public notice [AR 240402] on April 2, 2024, that commenced a 60-day public comment period which ended on June 3, 2024. This document is the NMED response to written public comments received on this PMR, as required by 20.4.1.901.A.9 NMAC.

[Table 1](#) of this document lists entities and persons who commented on the PMR.

[Table 2](#) summarizes the comments received and contains the NMED’s responses thereto.

Written comments submitted to NMED [AR 240601.01 – 240601.08] and other documents related to the final action, including the redline strikeout (RLSO) versions of affected Permit Parts and Attachments, can be found on the NMED WIPP News webpage at the following link: <https://www.env.nm.gov/hazardous-waste/wipp/> .

Note: The Commenter ID in Table 1 corresponds to the Administrative Record (AR) number that identifies the comment in the Hazardous Waste Bureau’s WIPP [Facility Record Index](#). An individual comment, and any WIPP Facility record, may be found by searching for its AR # in [Facility Records](#), both links accessed on the above referenced webpage.

Table 1: List of Public Commenters

Commenter ID/AR #	Commenter	Organization, if applicable	Date of Letter
240601.01	Cynthia Kruger	Carlsbad Technical Assistance Contract (CTAC)	4/17/2024
240601.02	Jason Biesecker		4/17/2024
240601.03	Rick Lopez, Mayor	City of Carlsbad	4/23/2024
240601.04	JJ Chavez, Mayor Pro-tem	City of Carlsbad	5/15/2024
240601.05	Kyle Marksteiner	Carlsbad Mayor's Nuclear Task Force	5/25/2024

Commenter ID/AR #	Commenter	Organization, if applicable	Date of Letter
240601.06	Don Hancock	Southwest Research and Information Center (SRIC)	5/31/2024
240601.07	Scott Kovac	Nuclear Watch New Mexico (NWNM)	6/3/2024
240601.08	Steve Zappe		6/3/2024

Table 2: Summaries of Public Comments and NMED Responses

NMED Response Number/ Topic Area	Commenter ID/AR #	Public Comment	NMED Response
R1 In Support	240601.03 240601.04 240601.05	Commenters were in support of the PMR. These commenters support the addition of the four types of Shielded Containers and the Graded Approach to Audits. Stated reasons for support include benefits to operations, safety across the complex, flexibility in the process, increasing the types of waste that can be emplaced and saving tax-payer dollars while maintaining waste acceptance criteria.	Comments noted.
R2 PMR Process	240601.06 240601.08	Commenters reference the PMR process, noting that a draft PMR was not available for the pre-submittal meeting on March 20, 2024, and should be available for future meetings. In addition, commenter Zappe mentions areas which would “improve the outcome of these Permit-related hybrid meetings.” Zappe also states the importance of recording the online session for public meetings to make available to the public to allow review of statements made by the Permittees.	NMED agrees as to the importance of the pre-submittal meeting and its beneficial influence on the comment process. NMED further agrees that a draft version of the PMR should be available before these meetings to enable substantive comment and discussion during the meeting. NMED concurs with commenter Zappe on other suggestions to improve meetings and on the suggestion to post a recording of meetings on the DOE WIPP webpage.
R3 Safety	240601.03 240601.04 240601.05 240601.06	Commenters mention various safety issues as areas of concern. Some draw attention to envisioned safety benefits from the proposed containers, while others point to areas of safety concern, specifically the “up-	Safety of the WIPP facility is a priority for NMED. Numerous regulatory entities conduct audits, surveillances, and inspections at the WIPP facility on a periodic basis in order to ensure the safety of the

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	240601.07 240601.08	righting” procedure, overpacking of shielded containers, and concerns around wording in the graded approach description in the PMR that could increase “the risk to the Permittee’s ability to determine whether the sites’ waste characterization programs are compliant with the WAP.” (Zappe)	facility and compliance with the Permit. See responses below for responses to specific safety concerns. NMED has modified proposed PMR language to ensure the language related to the graded approach to audits is clarified in the Permit. See R14.
R4 Legacy Waste	240601.06	Commenter Hancock mentions legacy waste in terms of the Legacy TRU Waste Disposal Plan incorporated in the Renewal Permit at Permit Part 4, Section 4.2.1.5. Hancock states, “SRIC believes that the Permittees should state whether or not the priority for use of shielded containers is for legacy RH waste.”	While legacy RH waste may be packaged in new shielded containers, the amount and/or priority for use with legacy waste is unknown at this time. The plan for new shielded containers preceded the addition of the Legacy TRU Waste Disposal Plan in the Permit.
R5 RH Waste in Panel 8	240601.06	Commenter Hancock mentions the need for more information on RH waste volumes to be emplaced in Panel 8.	Currently, estimates of RH waste volumes to be disposed in Panel 8 are not known. However, the addition of four new shielded containers will enable generator/storage sites to have more options for the shipment of this waste.
R6 Height of Shielded Containers	240601.06	Commenter Hancock notes a discrepancy in the listed height of container SC-55G2. The Safety Evaluation Report (SER) (included in Appendix E of the PMR), a Nuclear Regulatory Commission (NRC) document, lists the height as 45.15 inches in a table but as 45.75 inches on another page of the SER. In the PMR, the height is listed as 45.75 inches.	The height of container SC-55G2 is 45.75 inches. The incorrect height in the NRC SER was a typographical error.
R7 Purpose/Need of Shielded Containers	240601.05 240601.07	Commenters give background information on the need for shielded containers and request information on why the containers are needed.	RH emplacement in boreholes (the only other process for RH waste emplacement aside from shielded containers) has not been operationally possible since the borehole emplacement machine

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		<p>Commenter Marksteiner provides information on the difficulties encountered with the emplacement of RH waste in boreholes.</p> <p>Commenter Kovac requests more information on “the purpose and need of the proposed new containers.”</p>	<p>was contaminated in the 2014 radiological release. The addition of the four new shielded containers will allow a greater range of RH waste to be emplaced while the facility is without a borehole emplacement machine. The new shielded containers are needed to emplace RH waste at WIPP and provide more options for generator/storage sites to package this waste.</p> <p>More details on the need for the new shielded containers can be found on pdf page 10 of 134 of the PMR.</p>
<p>R8 Operational Effects of Shielded Containers</p>	<p>240601.05 240601.07</p>	<p>Commenters discuss how adding the new shielded containers could affect the waste disposal process.</p> <p>Commenter Kovac states the need for the PMR to address volume, operational time, and budgetary issues associated with the addition of the new shielded containers.</p> <p>Commenter Marksteiner raises the historic difficulties associated with borehole RH emplacement and notes the benefits to efficiency that the new shielded containers will provide.</p>	<p>Since shielded containers are emplaced in interstitial spaces (void spaces created by the placement of containers of different sizes within a panel), little additional space, if any, is required. The process of shielded container emplacement takes less time than borehole emplacement and is comparable to the time taken in other Contact Handled (CH) waste container emplacement, providing beneficial operational effects.</p>
<p>R9 Operational Effects of the Graded Approach to Audits</p>	<p>240601.06 240601.07 240601.08</p>	<p>Commenters mention issues surrounding a move to a Graded Approach to Audits. Commenter Zappe suggests new language to clarify the process. Commenter Kovac asks for clarification as to why the Graded Approach is needed and how it will affect the budget. Commenter Hancock notes that given Argonne National Laboratory’s (ANL) status as the “primary site</p>	<p>NMED has taken steps to ensure that this new approach to audits will be implemented incrementally and that proposed language in the PMR is clarified. See response R14.</p> <p>NMED will evaluate the need to keep ANL on a one-year schedule when NMED receives the audit</p>

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		using the existing shielded containers," it should be on a one instead of two-year Audit schedule.	<p>schedule annually with an accompanying risk-based graded approach to audit scheduling.</p> <p>The graded approach is needed to allocate resources efficiently and to ensure audits are scheduled at generator/storage sites using a risk-based graded approach. A further benefit is the anticipated addition of more assessments and surveillances of operations at the WIPP facility by members of the audit team from the Carlsbad Technical Assistance Contract (CTAC).</p>
R10 Up-righting Shielded Containers	240601.05	Commenter Marksteiner notes that two of the four proposed shielded containers require "up-righting" in the unloading process and states that, "this up-righting process is new to CH waste operations and should be carefully introduced."	The process by which laterally shipped units (SC-30G3 and SC-55G2) will be rotated 90 degrees to upright for emplacement is being referred to as "up-righting". This process is mentioned on pdf page 13 of 134 of the PMR and is said to be similar to that used to upend Ten Drum Over Packs (TDOPs) with the TDOP upender already in the Permit.
R11 Overpacking Shielded Containers	240601.06	Commenter Hancock states that SRIC noted, "...numerous concerns about the first shielded container PMR in 2012." And has "...continuing concerns about the safety of the shielded containers... especially if there is a need to overpack a shielded container. A breach of a shielded container could result in waste greater than 200 millirem per hour, for which there is no overpack available or approved for use in the Permit."	In the submitted shielded container PMR of 2012 [AR 120705], the Permittees indicated, "In the unlikely event that shielded containers have surface contamination or container integrity issues which may require decontamination/ repair/ patch/ overpacking, the Permittees may overpack the shielded container into a standard waste box or ten drum overpack." The Permittees have stated that this also holds true for the four new shielded containers in discussions with NMED. Permit Attachment A1, Section A1-1d(4) describes the process for addressing any shielded containers not in adequate condition.

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<p>R12 Financial Issues</p>	<p>240601.05 240601.07</p>	<p>Commenters mention financial issues: Commenter Marksteiner points to savings of taxpayer dollars and states that an in-depth cost benefit analysis is not possible; Commenter Kovac requests more detail on how the shielded containers and the graded approach to Audits will “affect the budget.”</p>	<p>From a budgetary standpoint, the cost of shielded containers is borne by generator/storage sites. The RCRA regulations do not consider economic factors in the review and processing of RCRA permit modification requests. However, NMED notes that efficiencies in managing RH waste may outweigh the cost of the containers, and generator/storage sites build cost/benefit analyses into their business plans when deciding on purchasing containers for shipment of their waste to WIPP.</p>
<p>R13 Weight of Facility Transfer Vehicle</p>	<p>240601.07</p>	<p>Commenter Hancock points to a discrepancy between listed capacities of Facility Transfer Vehicles in the PMR. Table A2-1 on page B-11 of the PMR shows a change from 26,000 to 30,000 lbs. for the listed weight capacity of these vehicles, and Table A1-2 on page B – 9 lists capacity at 30,000 lbs.</p>	<p>The weight capacity for Facility Transfer Vehicles is 30,000 lbs. The 26,000 lb. capacity originally listed in Table A2-1 on page B-11 of the PMR was a typographical error in the Permit. This discrepancy has had no safety implications.</p>
<p>R14 NMED-Modified Permit Language for Graded Approach to Audits</p>	<p>240601.01 240601.02 240601.08</p>	<p>Commenter Zappe suggests more specific language than that proposed in the PMR concerning Graded Approach to Audits.</p> <p>Commenters Kruger and Biesecker suggest adding Idaho National Laboratory-Central Characterization Program (INL-CCP) to the list of sites to be considered for two-year audits and take care to distinguish INL-CCP, a very small quantity generator, from the Advanced Mixed Waste Treatment Project (AMWTP).</p>	<p>NMED-modified Language: NMED concurs with commenter Zappe’s Permit language changes and has largely incorporated them to provide more specificity. NMED-modified Permit language can be found in the redline strikeout (RLSO) for Permit Attachment C6, Section C6-1 and is distinguished from PMR proposed language by yellow highlighting.</p> <p>NMED-modified Language: NMED concurs that INL-CCP should be added to the list of sites that may be considered for two-year audits due to the small quantity of waste generated. This should not be</p>

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			<p>confused with AMWTP, also in Idaho, which will continue to be audited annually. NMED-modified Permit language can be found in the redline strikeout (RLSO) for Permit Attachment C6, Section C6-1 and is distinguished from PMR proposed language by yellow highlighting.</p>