

September 19, 2018

Ricardo Maestas
New Mexico Environment Department (NMED)
2905 Rodeo Park Drive East, Building 1
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via email

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

The undersigned four organizations, representing thousands of New Mexicans, submit the following requests and objections for your immediate response, because of the short timeframes for the negotiations and for the issuance of a Notice of Public Hearing. We will be submitting additional comments on or before September 20.

Request for Public Hearing and Negotiations

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

Objections to NMED's planned schedule for negotiations

The four organizations oppose NMED's plans to start negotiations on Monday, September 24, because that schedule does not provide adequate notice to the many parties that are requesting a public hearing, nor adequate time for parties to read and analyze all of the comments submitted by September 20 and prepare for the negotiations. In the most recent WIPP class 3 modification – Public Notice No. 18-01 of February 22, 2018 – requests for a public hearing were due and received by April 23, 2018. Negotiations were scheduled and conducted with NMED, the Permittees, and all of the parties that had requested a public hearing – Southwest Research and Information Center (SRIC), Concerned Citizens for Nuclear Safety (CCNS), Nuclear Watch New Mexico (NWNM) – from July 31 to August 2. The negotiations were held more than 95 days after the hearing requests were due and received. Here, NMED is proposing negotiations within four days after the date that hearing requests are due even though the Draft Permit is much more controversial than the previous Panel Closure modification. Secretary Tongate's June 1, 2018 decision to Elevate the request to Class 3 stated: "there is significant public concern and the complex nature of the proposed change requires the more extensive procedures of a Class 3 modification." Page 2. Further, several times more parties requesting a public hearing than in the case of the Panel Closure Draft Permit.

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

Thus, the four organizations are being prejudiced by not having adequate time to prepare for the negotiations. CARD's representative has a conflicting schedule on September 24 and throughout the week. SRIC's representative has a long scheduled meeting on Wednesday, September 26,

and he will not be able to participate in negotiations on that date. Thus, those organizations could be deprived of the ability to “attempt to resolve the issues giving rise to the opposition,” as provided by 20.4.1.901. A.4 NMAC.

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

The four organizations request that at least thirty (30) days be provided from September 20 until the start of negotiations so that all participants can read and analyze all of the comments received by parties requesting a public hearing and prepare for the negotiations, including making any necessary adjustments in their schedules so that they can participate, if they so desire. The four organizations also request that the notice of public hearing should be delayed until after the negotiations are held, when a revised draft permit could be issued for the hearing.

Objections to NMED’s planned public hearing schedule and location

At the September 17 meeting, the Permittees and four organizations were informed by NMED that the Notice of Public Hearing on the Draft Permit would be issued on Saturday, September 22 for a public hearing on Tuesday, October 23 in Carlsbad. At that time, SRIC strongly objected to the location of the hearing being outside of Santa Fe and that the large majority of people of the State interested in the Draft Permit in Albuquerque and Santa Fe would be deprived of the opportunity to attend the hearing and provide public comment. Further, that hearing schedule is unnecessarily rushed, with no basis being provided for such an expedited schedule.

The public hearings on the original WIPP Permit were held in Santa Fe for 19 days from February 22 to March 26, 1999. Non-technical oral public comment hearing was held in Carlsbad on March 9. For the Permit Renewal, public hearings were held in Santa Fe on August 9 and 10, 2010, and non-technical public comment hearing was held in Carlsbad on August 16. SRIC believes that those precedents should be followed for the Draft Permit. The technical testimony should occur in Santa Fe with public comment hearing in Carlsbad. The four organizations suggest that the schedule for the hearing should not be issued for October 23. Instead, the timing of the hearing should be part of the negotiations, but should not occur on October 23 in Carlsbad unless it is for non-technical public comment. The technical testimony should be in Santa Fe and held at a later date.

Thank you for your careful consideration of and prompt response to our requests and objections.

Sincerely,

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