

SOUTHWEST RESEARCH AND INFORMATION CENTER

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October 16, 2019

Ricardo Maestas
New Mexico Environment Department (NMED)
2095 Rodeo Park Drive, Building 1
Santa Fe, NM 87505

Via email: Ricardo.Maestas@state.nm.us

RE: WIPP Class 3 Excavation of a New Shaft and Associated Connecting Drifts

Dear Ricardo,

Southwest Research and Information Center (SRIC) provides the following comments on the Class 3 Permit Modification request, dated August 15, 2019. On February 2, 2018 and March 8, 2019, SRIC submitted comments related to the December 22, 2017 request for a class determination for the new shaft and underground drifts, which was withdrawn when the present request was submitted. Those comments and the permittees' determination request and information response should be included in the administrative record of this proceeding.

As NMED is well aware, SRIC is a non-profit organization based in Albuquerque, New Mexico that focuses on public education and involvement and public health and environmental justice. SRIC has been involved in WIPP permitting activities for more than 20 years, including being a party in the original permit proceeding, the permit renewal, dozens of permit modification requests, as well as numerous other activities related to public health and the environment.

1. NMED should deny the request, pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(c)(6)).

Those regulations state:

After the conclusion of the 60-day comment period, the Director must grant or deny the permit modification request according to the permit modification procedures of 40 CFR part 124. In addition, the Director must consider and respond to all significant written comments received during the 60-day comment period.

Further,

If the secretary decides the [modification] request is not justified, the permittee will be notified in writing explaining the reason for denial. Denial of request of modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. 20.4.1.901. B(4) NMAC.

Major reasons to deny the request include:

A. The new shaft is not needed.

20.4.1.900 NMAC (incorporating 40 CFR 270.42(c)(1)(iii)) requires that the request explain why the modification is needed.

The permittees first stated “need” for the new shaft is: “This modification is needed to add descriptive information regarding S#5 and connecting drifts into the Permit.” Request at 9. Clearly, that statement does not explain why the new shaft and associated drifts are needed. That an approved permit modification makes language changes is not a need and does not justify that any such modification is needed or that it protects public health and the environment.

The permittees then state: “The addition of S#5 and associated connecting drifts represents an upgrade to the UVS, and will provide a new intake and exhaust system capable of restoring full-scale, concurrent, mining, maintenance, and waste emplacement operations.” Request at 9. However, restoring such operations is being achieved without the new shaft and new drifts.

More than two years ago, the permittees informed NMED that: “The new filter building will supply additional air to the underground in order to achieve up to 540,000 actual cubic feet per minute (acfm) in filtration mode.”¹ That underground air flow rate would be in excess of the 425,000 cubic feet per minute ventilation rate in the facility when concurrent mining, maintenance, and waste emplacement operations could occur from the time of the issuance of the WIPP Permit in 1999 until February 5, 2014. The New Filter Building (NFB) can operate without the need of the new shaft and underground drifts. So the new shaft does not provide for the stated need for concurrent mining, maintenance and waste emplacement operations.

In its November 29, 2017, modification request for the NFB, the permittees stated: “The new UVFS and NFB increase the ventilation airflow to allow for safe concurrent work activities such as mining, waste disposal, and ground support maintenance, which is vital to the safety of the underground worker.”² Thus, the permittees justified the need for the NFB as providing the same concurrent mining, maintenance, and waste emplacement requirements that they now – inaccurately – state is the purpose of the new shaft and associated drifts.

NMED, in approving the request for the NFB, stated that the building would:

- Upgrade the Underground Ventilation Filtration System so that it will have sufficient ventilation capacity to support simultaneous mine maintenance, mining, and waste emplacement operation, the design of which serves three functions:
1. Provide sufficient airflow to the mine for personnel life-safety requirements;

¹ Notification of Planned Change to the Permitted Facility Regarding the Construction of a New Filter Building, Hazardous Waste Facility Permit, Number: NM4890139088-TSDF, June 9, 2017 at 1.

https://wipp.energy.gov/library/Information_Repository_A/Notification_of_Planned_Changes/17-1042_Redacted_Enclosure.pdf

² <https://hwbdocuments.env.nm.gov/Waste%20Isolation%20Pilot%20Plant/171112.pdf>, Item 2 at 9.

2. Direct and filter potentially contaminated air to mitigate the release of airborne contaminants; and
3. Incorporate sufficient redundancy to facilitate maintenance outages and filter changes with minimum impact on waste management activities;³

Indeed the existing Permit, which does not include shaft 5 and associated drifts, states: The Underground Ventilation Filtration System (**UVFS**) fans which are part of the New Filter Building (**NFB**) (Building 416) provide enhanced ventilation in the underground, sufficient to allow concurrent mining and waste emplacement while in filtration mode.⁴

In its FY 2020 Budget Request to Congress, DOE states:

The new underground ventilation system will support additional personnel and equipment underground and will allow mining dust to exit the Waste Isolation Pilot Plant underground in an unfiltered exhaust pathway. Together, these outcomes provide the capability for simultaneous underground activities, such as mining and waste emplacement, which significantly increases operational efficiency.⁵

Further, the Performance Measure in the Budget Request for the new ventilation system is: “Maintain concurrent mining, maintenance, and waste emplacement operations.”⁶

Thus, to both NMED and to Congress, DOE has reiterated that the new shaft is not required for the new ventilation system and that it is the new ventilation system, not the new shaft, that provides for concurrent mining, maintenance, and waste emplacement operations.

In summary, the purpose and need for concurrent mining, maintenance, and waste emplacement operations will be met by the NFB without the new shaft and associated drifts. Thus, the new shaft is not needed for the stated purpose. The request should be denied because the need has not been established.

B. The real purpose and need for the new shaft and associated drifts is WIPP expansion, specifically to expand the underground footprint of WIPP beyond the ten-panel design. SRIC pointed out this real need and purpose of the new shaft and associated drifts in its February 2, 2018 comments. Nothing in the request provides any response or refutation of those SRIC comments, because the permittees cannot refute the truth of those comments.

It is undisputed that the new shaft and connecting drifts have never been part of the WIPP design or Permit, even in the decades before the permit was issued in 1999. Thus, waste emplacement in Panels 1-8 and 10 do not require the new shaft and associated drifts.

³ <https://www.env.nm.gov/wp-content/uploads/2018/03/NMED-Response-Matrix-03-20-2018.pdf> at 1-2.

⁴ https://wipp.energy.gov/Library/Information_Repository_A/Searchable_Permit_NWP_Manager_Change_Sep_16_2019.pdf at A2-9.

⁵ https://www.energy.gov/sites/prod/files/2019/04/f61/doe-fy2020-budget-volume-5_0.pdf at 62.

⁶ Ibid., at 63.

There are two principal reasons that the permittees want to expand the underground footprint: (1) the historic mismanagement of the facility, including significantly underutilizing the permitted panel capacities, and (2) the goal of bringing more waste than the original design allows.

(1) Because of how WIPP has been managed and operated, the total capacity of 175,564 cubic meters of waste cannot be accommodated in the long-standing ten-panel design. SRIC has pointed out this deficiency many times for many years, including the December 5, 2011 (Class 2 Shielded Containers Comments, May 20, 2013 (Class 3 Modification Comments), and others. The shortfall in Panels 1-6 is more than 21,000 cubic meters. See Attachment 1 of Attachment 1.

Of course, the shortfall will further increase. In Panel 7, Room 7 has 393.7 cubic meters of waste, and further emplacement is prohibited. In Rooms 4 and 6, waste emplacement is prohibited. Thus, considerably less than the permitted capacity of 18,750 cubic meters will be emplaced on Panel 7. No waste will be emplaced in Panel 9. So even if Panels 8 and 10 were filled to capacity, the shortfall from the permitted capacity in the ten panels will exceed 30,000 cubic meters.

The Government Accountability Office's September 2017 report confirms that lack of capacity. "DOE does not have sufficient space at WIPP to dispose of all defense TRU waste."⁷

Thus, WIPP will either not be filled to more than approximately 80 percent of the underground design capacity limit or the underground footprint will be significantly expanded to allow more waste emplacement. It is important to note that the WIPP Land Withdrawal Act (LWA) does not require that 175,564 cubic meters of waste be disposed, but only that no more than that amount may be disposed.⁸

(2) While DOE does not admit in its request that a significant reason to expand the underground footprint is for waste that is not part of the transuranic waste legacy inventory included in the Baseline Inventory Report with the original permit application, other DOE documents do describe such wastes.

- High-Level Tank Waste. The permittees' proposal to bring high-level tank waste resulted in the Excluded Waste Permit Section 2.3.3.8 in 2004. Nevertheless, the *Final Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington*, DOE/EIS-0391, November 2012, continues to include WIPP as a reasonable alternative disposal site.⁹ Further, DOE's current Notice of Preferred Alternative states:

"DOE's preferred alternative is to retrieve, treat, package, and characterize and certify the wastes for disposal at the Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico, a geologic

⁷ PLUTONIUM DISPOSITION: Proposed Dilute and Dispose Approach Highlights Need for More Work at the Waste Isolation Pilot Plant. GAO 17-390, September 2017, at Highlights page. See detailed discussion on pages 32-44. <https://www.gao.gov/assets/690/686928.pdf>

⁸ Public Law 102-579 § 7(a)(3).

⁹ <https://www.hanford.gov/page.cfm/FinalTCWMEIS>

repository for the disposal of mixed TRU waste generated by atomic energy defense activities.”¹⁰

- Greater-Than-Class C Commercial Waste. *Final Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste*, DOE/EIS-0375¹¹ states that WIPP is the preferred geologic disposal alternative and that the “WIPP Vicinity” is a reasonable alternative for Intermediate-Depth Borehole disposal, Enhanced Near-Surface Trench disposal, and Above-Ground Vault disposal.¹²
- West Valley Commercial Waste. *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*, (DOE/EIS-0226),¹³ states that WIPP is the preferred alternative for disposal of its commercial TRU waste. Because of SRIC’s objections to the FEIS, DOE has deferred a TRU waste disposal decision, but has not changed that alternative.¹⁴
- Surplus Weapons Plutonium. The National Academy of Sciences currently has a panel examining DOE’s proposal to bring 34 metric tons or more of surplus weapons plutonium to WIPP.¹⁵

Also, in the Fiscal Year 2020 Budget Request to Congress, DOE states:

Consistent with the requirement in the FY 2018 NDAA and certified in the May 2018 Secretarial waiver, the MOX fuel approach was terminated and the subprogram will continue with the dilute and dispose strategy to fulfill the United States’ commitment to dispose of 34 metric tons of plutonium. The dilute and dispose strategy consists of blending plutonium with an inert mixture, packaging, and disposing of it in a geologic repository.¹⁶

Of course, WIPP is the only repository. Thus, WIPP expansion, including the underground footprint, is to compensate for the historic mismanagement of the facility that has not used the permitted capacity and to provide space for new wastes that were not included in the legacy waste inventory, for which WIPP is authorized and intended. Congress, DOE, and the public have known for decades that other repositories are necessary for geologic disposal of TRU wastes. But rather than pursuing other repositories and long-term on-site storage at waste generator sites, DOE wants to expand WIPP as the only repository. See Attachment 1.

NMED should not be complicit in those plans, which are contrary to the Permit, New Mexico-DOE Consultation and Cooperation Agreement, and WIPP LWA. The request must be denied, as the unstated need for expansion should not be supported by NMED or the State.

¹⁰ <https://www.energy.gov/sites/prod/files/EIS-0391-FEIS-NoticeofPreferredAlternative-2013.pdf> at 15385, c. 2.

¹¹ <https://www.energy.gov/em/downloads/final-environmental-impact-statement-january-2016>

¹² https://www.energy.gov/sites/prod/files/2017/02/f34/EIS-0375-FEIS_NOA-DOE-2016.pdf

¹³ <https://www.energy.gov/nepa/downloads/eis-0226-final-environmental-impact-statement>

¹⁴ <https://www.gpo.gov/fdsys/pkg/FR-2005-06-16/pdf/05-11882.pdf>

¹⁵ <http://dels.nas.edu/Study-In-Progress/Disposal-Surplus-Plutonium/DELS-NRSB-17-03?bname=nrsb>

¹⁶ <https://www.energy.gov/sites/prod/files/2019/04/f62/doe-fy2020-budget-volume-1.pdf> at 490.

C. The new shaft and associated drifts are not supported by adequate NEPA analysis.

While the regulations do not specifically require that class 3 permit modification requests be supported by National Environmental Policy Act (NEPA) document(s), the regulations do include the need to comply with other federal laws. 20.4.1.900 NMAC (incorporating 40 CFR 270.3).

In addition, the WIPP Land Withdrawal Act (LWA) requires that DOE comply with “all other applicable Federal laws pertaining to public health and safety or the environment.”¹⁷

One such law is NEPA. The request does not include any discussion of NEPA compliance. On November 7, 2017, DOE approved a Supplement Analysis (SA) for New Permanent Ventilation System.¹⁸ The SA states: “For the purposes of this SA, a New Filter Building (NFB) and a New Exhaust Shaft were evaluated together for potential cumulative impacts. The Proposed Action, the PVS, would involve the construction and operation of an NFB and a New Exhaust Shaft.”¹⁹ (emphasis added).

However, the new shaft is not a “new exhaust shaft.” The existing exhaust shaft will continue to be used and the new shaft would be another air intake shaft with no exhaust shaft functions. The request states: “Shaft #5 will be used as the primary air intake shaft for the underground repository.” at 1.

Thus, the SA does not provide adequate NEPA analysis of the new shaft #5 and associated drifts, including the need and intended uses. Because DOE issued an SA, which is not subject to public notice and comment, there was no opportunity for SRIC or other members of the public to comment on that document before it was issued.

However, NMED can and should deny the modification request, which is not supported by adequate NEPA documentation.

D. The new shaft may not adequately protect public health and the environment.

On August 27, 2019, the Defense Nuclear Facilities Safety Board (DNFSB) submitted a report to the DOE Secretary because WIPP officials had not adequately addressed safety problems with the new ventilation system that DNFSB had been raising for more than a year. While the report focuses primarily on the inadequate radiation protection aspects of the new ventilation system, it also raises concerns about the lack of integration between the new shaft and ventilation system:

The non-safety utility shaft project proposes fans to supply a total of 500,000 cubic feet per minute (cfm). SSCVS has the capacity to exhaust 540,000cfm. If utility shaft fans are not automatically shut down when the SSCVS fans stop, an imbalance in the underground air flow has the potential to up-cast unfiltered air from the contaminated circuit.²⁰

¹⁷ Public Law 102-579 § 9(a)(1)(G).

¹⁸ https://wipp.energy.gov/library/seis/DOE-EIS-0026-SA-11_Nov_2017.pdf

¹⁹ *Ibid.* at 10 of 25.

²⁰ <https://www.dnfsb.gov/sites/default/files/document/18841/Safety%20Issues%20Relating%20to%20the%20WIPP%20SSCVS%205B2019-100-037%5D.pdf> at 2.

In addition, the request states that some air from the new shaft would be exhausted through the Air Intake Shaft without volatile organic compound (VOC) monitoring. at 7. The request provides no technical evidence that there could not be air leakage and releases of unmonitored VOCs.

Further, the long-term purpose of the new shaft is to allow waste emplacement in new panels to the west of the existing underground footprint that would result in waste and VOCs moving through and being emplaced between the new shaft and the AIS. Thus, the design with no VOC monitoring cannot be approved, as it would not protect public health and the environment.

Thus, rather than enhancing worker safety, the new shaft may contribute to public health and environmental problems. NMED must deny the request because the permittees have not demonstrated that the new shaft and associated drifts adequately protect public health and the environment.

E. The permittees did not submit a “true, accurate, and complete” request, as required by regulations and as stated in the August 15, 2019 Cover Letter for the request. 20.4.1.900 NMAC (incorporating 40 CFR 270.11(d)(1)) requires that permit document be signed and certified as being “true, accurate, and complete.” On the contrary, the request does not disclose the real purpose and need for the new shaft and associated drifts.

The request refers to the FY 2019 Budget Request, but does not disclose the more recent FY 2020 Budget Request, which states:

The exhaust shaft has been renamed the utility shaft, which provides the best description for the multiple capabilities the shaft could be utilized for including: airflow, salt hoists, waste emplacement, material handling, transporting personnel and emergency egress. In addition, as design-engineering matured, it was determined that for usability and nuclear safety reasons, the new shaft would better serve as an intake shaft and that the existing air intake shaft would better be used as an exhaust shaft to provide for an unfiltered exhaust pathway for mining dust and supporting mine operations.²¹

The request neither describes why those other capabilities are needed nor includes any discussion of whether the current design facilitates all of those other capabilities. Once again, the request is not complete and accurate.

In the March 4, 2019 information response,²² the permittees state that future uses of the new shaft are not part of the request, nor are they precluded in future design changes. They also state that future disposal units are not part of the request. However, if the future disposal units were to be to the north or east of the current underground footprint, the new shaft would not be located to the west, as it has been. That the permittees are unwilling to admit such an obvious conclusion is another incompleteness and inaccuracy in the request.

²¹ https://www.energy.gov/sites/prod/files/2019/04/f61/doe-fy2020-budget-volume-5_0.pdf at 43.

²² https://wipp.energy.gov/Library/Information_Repository_A/Permit_Modification_Class_Determination_Requests_NMED_Responses/19_0210_Redacted.pdf

Therefore, the request should be denied because it does not accurately state the need for the new shaft and associated drifts, does not disclose the real purpose and need, is not supported by adequate NEPA analysis, does not demonstrate that the new shaft protects public health and safety, and is not true, accurate, and complete.

2. If NMED does not deny the request, it must issue an NOD for more information.

As established by the foregoing comments, all of the information that NMED needs is not provided in the request, and the request includes misinformation. However, if the request is not denied, before NMED can further process the request, the permittees must provide more information, including:

- Admitting that the new shaft and associated drifts are not needed for concurrent mining, maintenance, and waste emplacement operations.
- Discussing the actual purpose and need of the new shaft and associated drifts.
- Disclosing the capabilities of the new shaft, including how the design does not accommodate the additional requirements of “hoisting capability for personnel, materials, and salt.” Request at 1.
- Justifying the adequacy of the NEPA analysis in the SA-11 and what additional NEPA analysis will be done to support expanding the underground footprint and disposing of additional waste beyond that emplaced in Panels 1-10.
- Providing technical analysis that the new shaft and associated drifts would protect public health and the environment, including resolving the problems identified by the DNFSB.

Thus, NMED should deny the request. But if it does not do so, it must issue a Notice of Deficiency (NOD) to obtain the true, accurate, and complete information for the Department’s and the public’s consideration.

3. If not denied and if no NOD is issued, SRIC requests a Public Hearing and Negotiations.

These comments clearly demonstrate that NMED cannot proceed with the request as submitted. But if the request is not denied and no NOD is issued, SRIC again states that it opposes the modification and requests a public hearing.

SRIC specifically objects to each and every provision included in the request, except for three typographic and editorial additions on page B-9. SRIC does not object to changing the typographical error in the first paragraph on that page. SRIC also does not object to adding “standard” in the two places shown in the last full paragraph on the page. However, those changes can be made through class 1 modifications and in no way are a justification for NMED to move forward with the request.

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, SRIC requests that NMED, the Permittees, SRIC, and other parties conduct negotiations to attempt to resolve issues.

4. If NMED does not deny the request, it should postpone its consideration until after the permit renewal process.

The public concern and the gross deficiencies in the application indicate that if the request is not denied, the further modification process will be contentious and complex. For both NMED and the public, the time, effort, and cost of such a modification process will detract from the resources needed for the more important permit renewal process. Thus, if the new shaft modification request is not denied, SRIC renews its proposal of April 15, 2019 that further consideration of the request be postponed until after the conclusion of the permit renewal process. Attachment 2. A less desirable alternative would be to consider the request as part of the permit renewal process.

5. NMED should limit the permittees' activities related to the new shaft and associated drifts.

The permittees have an aggressive schedule to construct the new shaft and associated drifts (even though the schedule is much delayed from earlier plans), including providing financial incentives for co-permittee Nuclear Waste Partnership (NWP). SRIC is very concerned that activities already underway and planned future activities before the modification request might be adequately considered will prejudice the modification process. At some point, the permittees and others are likely to state that so much money and commitment has been made to the new shaft and associated drifts that NMED has no real choice but to approve the request. Such a situation would be totally unacceptable and contrary to the Hazardous Waste Act and its regulations.

The current FY 2020 Performance Evaluation and Measurement Plan (PEMP) for NWP includes a \$1,200,000 bonus fee for completing three specific activities related to the new shaft.²³ Those activities are to be accomplished by February 20, 2020; March 30, 2020; and July 10, 2020. SRIC does not agree that any of those actions should be undertaken without the modification request being approved, and we certainly do not agree that NWP should receive incentive fees for accomplishing such activities. The fees themselves provide incentives for NWP to advocate for a quick approval of the request, to the detriment of an adequate public participation process.

Therefore, SRIC urges NMED to inform the permittees that they should not undertake activities related to the new shaft and associated drifts before final action on the modification request. Further, the permittees should be informed that their schedule will not be allowed to compromise adequate public participation processes to consider the request.

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

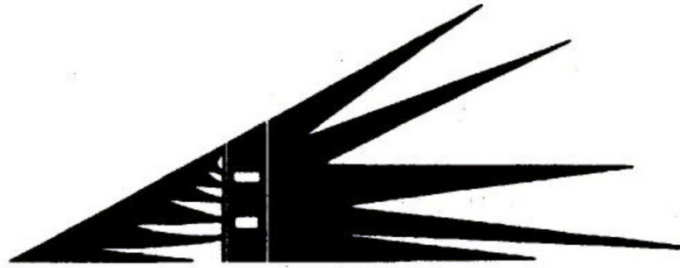
Sincerely,



Don Hancock

cc: John Kieling

²³ https://wipp.energy.gov/NWPpayments/NWP/FY20_PEMP_Rev_0.pdf at 12.



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September 30, 2019

Mr. Bobby St. John
PO Box 2078
Carlsbad, NM 88220

via email: infocntr@wipp.ws

RE: Draft CBFO Strategic Plan - DOE/CBFO-19-3605, Revision 0,

Dear Bobby,

Southwest Research and Information Center (SRIC) appreciates the issuance of the Draft Strategic Plan (DSP) for Public Comment, including the public meetings on September 10 and 12, 2019, and the public comment period. We look forward to a final Strategic Plan that addresses these comments and others that you receive. The Plan is an important document in describing how the Department of Energy (DOE) intends to operate WIPP and comply with legal requirements during the next five years and throughout the facility's lifetime. However, the DSP is inadequate in major respects, and the final Plan must be significantly revised, as described in the following comments.

1. The DSP violates major requirements of the WIPP Land Withdrawal Act, DOE-New Mexico Consultation and Cooperation Agreement, and WIPP Permit.

A. WIPP's Limited Mission.

The WIPP Land Withdrawal Act (LWA), Consultation and Cooperation (C&C) Agreement, and WIPP Permit are based on the fact that WIPP is the first of multiple geologic repositories and has a limited mission. The original WIPP authorization (Public Law 96-164, § 213(a)) states that WIPP is "to demonstrate the safe disposal of radioactive waste resulting from the defense activities and programs of the United States exempted from regulation by the Nuclear Regulatory Commission." The law specifically designates WIPP as a "pilot plant" and to "demonstrate the safe disposal." Both of those designations clearly indicate that WIPP is not the sole disposal site for all TRU waste. Congress has maintained those legal requirements and constraints for the last 40 years.

Additionally, Congress has not changed the authorization in subsequent nuclear waste laws. In 1982, Congress passed the Nuclear Waste Policy Act (NWPA) of 1982 (Public Law 97-425) with the primary purpose of developing other repositories. Congress amended the NWPA in 1987 to designate a single high-level waste and spent fuel repository, and discussed whether that facility should be WIPP, but again determined that WIPP would not be that facility, and instead designated Yucca Mountain, Nevada, as the repository.

The 1979 Authorization provided that the Secretary of Energy “shall seek to enter into a written agreement with the appropriate officials of the State of New Mexico, as provided by the laws of the State of New Mexico, not later than September 30, 1980, setting forth the procedures under which the consultation and cooperation required by paragraph (1) shall be carried out.” § 213(b). The C&C Agreement was signed on July 1, 1981. Article VI describes the limited mission for WIPP, as provided in the Authorization.

Thus, the Congress, the DOE, the State of New Mexico, and the public all understand that there are to be multiple geologic repositories, including for TRU waste, as there are no plans to stop making TRU waste in 2050 or thereafter. To the contrary, the DSP describes WIPP as “the only repository for defense-related TRU waste.” at 10. Consequently, DOE appears to propose a “WIPP Forever” plan that includes no further repositories, nor improved on-site storage at other sites.

Revisions needed: The Plan must include a discussion of WIPP’s limited mission and its relation to requirements and plans for other repositories. Also, the Mission on page 7 should be revised to be: “Provide safe, compliant, and efficient characterization, transportation, and disposal of defense TRU waste as the first geologic repository.” The Vision on page 7 should be revised to be: “Enable a nuclear weapons future by providing safe and environmentally-responsible defense TRU waste management.” The statement on page 10 should be revised to indicate that WIPP is the first repository for defense-related TRU waste and describe how DOE intends to identify sites and operate additional defense-related TRU repositories.

B. Capacity Limit.

It is uncontested that the LWA limits the facility to up to 6,200,000 cubic feet (175,564 cubic meters) of defense transuranic (TRU) waste. LWA § 7(a)(3), DSP at 9 & 21, C&C Agreement at Article VI.E, WIPP Permit at Attachment B and other provisions.

It is contested as to how that volume limit is calculated, as documented in the WIPP Permit Modification approved by the New Mexico Environment Department (NMED) on December 21, 2018 and on appeal in the New Mexico Court of Appeals Case No. A-1-CA-37894. SRIC believes that the law requires the historic practice of calculating the waste limit based on outer container volume. The new DOE second way of calculating is by inner container volume, which has the purpose of allowing approximately 30 percent more waste than the legal limit. For example, as of September 21, 2019, the volume of waste emplaced by outer container is 97,002.11 cubic meters and by inner container is 68,677.57 cubic meters, or 29.2 percent less.

<https://www.wipp.energy.gov/general/GenerateWippStatusReport.pdf>

The DSP metric in Goals 2 and 4 is numbers of shipments, not waste volume, which is the appropriate legal metric. However, the shipment numbers provided in the DSP would result in waste volume that exceeds the capacity limit. The amount of waste as of September 21, 2019 is the result of 12,589 shipments. Thus, by outer container volume, shipments average 7.71 cubic meters and by inner container volume, shipments average 5.46 cubic meters.

The DSP estimates that in Fiscal Years 2020-2024 WIPP will receive 2,436 shipments. at 18. Those shipments would be expected to bring 18,781 cubic meters of waste based on outer container volume. The plan for 616 shipments per year from FY 2025 to FY 2050 totals 16,016

shipments. At outer container average volume of 7.71 cubic meters, those shipments bring 123,483 cubic meters of waste. Adding those amounts, by FY 2050, WIPP would have 239,266 cubic meters [97,002 + 18,781 + 123,483] based on outer containers, or 63,702 cubic meters and 26.6 percent more waste than allowed by the LWA and C&C Agreement.

Revisions needed: The Plan must include the appropriate metric of volumes of waste based on outer and inner container volumes. The Plan must clearly show how those waste volumes comply (or not) with the LWA, C&C Agreement, and the WIPP Permit.

C. Operational Lifetime.

The DSP correctly states that WIPP's originally planned operational lifetime was 25 years. at 8. Since WIPP opened in 1999, the Permit includes numerous provisions related to the 25-year operational lifetime and that the Disposal Phase ends by 2024. Furthermore, the Nuclear Waste Partnership (NWP) contract, signed on April 20, 2012, provides: "...the Contractor is expected to facilitate all activities to ship and receive waste to complete the disposition of 90 percent of legacy transuranic waste by the end of fiscal 2015."

https://wipp.energy.gov/library/foia/NWP_M&OContract/Section_C.pdf at C-3.

However, the DSP states that WIPP's operational lifetime must be until at least 2050, which is "the estimated duration needed to emplace the existing defense TRU waste inventory." at 5. The fact that the 2014 radiation release prevented waste shipments for three years and is expected to result in reduced waste emplacement for several more years in no way adequately explains the more than doubling of the facility's operational lifetime.

While not explained in the DSP, such a "WIPP Forever" extension of the lifetime apparently has multiple causes. One important cause is not using all available space in Panels 1, 3, 4, 5, and 6. That WIPP's underground footprint would not accommodate 175,564 cubic meters of waste has been known since 2003 when Panel 1 was closed after using 58.32 percent of the permitted capacity. For many years, SRIC has publicly noted that the permittees' management practices, especially failing to use all of the disposal capacity of each WIPP panel, meant that the actual capacity of the eight (or ten) panels is much less than 6.2 million cubic feet. In Panels 1 through 6, the capacity shortfall is 20,761 cubic meters of contact-handled (CH) waste and 710 cubic meters of remote-handled (RH) waste. Thus, 81.3 percent of CH capacity was used and 46.82 percent of RH capacity. See Attachment 1.

In 2013 the DOE Inspector General (IG) reported:

"We found that while EM had made progress in meeting its operational disposal goals, it was not on track to meet its goal to dispose of 90 percent of the Department's legacy TRU waste by the end of FY 2015. In particular, EM faces a number of challenges in meeting its planned 90 percent waste disposal goal by 2015. Additionally, without further modifications to the repository or existing waste disposal practices, WIPP may not have capacity for disposal of the current RH inventory."

<https://www.energy.gov/sites/prod/files/2013/05/f1/OAS-L-13-09.pdf> at 1-2.

In 2017, the Government Accountability Office (GAO) reported:

“DOE does not have sufficient space at WIPP to dispose of all defense TRU waste....

- DOE’s TRU waste management plan, which includes planning for WIPP, covers a 5-year period and does not address possible expansion. Moreover, DOE’s TRU waste management plan does not include a schedule for expanding DOE’s disposal space before existing space is full.
- Expanding WIPP’s disposal space will require regulatory approval that is expected to take several years. However, DOE modeling that is needed to begin the regulatory approval process is not expected to be ready until 2024.”

<https://www.gao.gov/assets/690/686928.pdf> at inside cover.

Another likely cause of the extended lifetime is DOE’s desire to expand the amounts and types of waste beyond legacy defense TRU waste, which SRIC and many others oppose, including:

- 34 metric tons or more of surplus plutonium, as a result of the cancellation of the Mixed Oxide Fuel Facility
- Renamed high-level, excluded waste
- Commercial Greater-Than-Class C waste
- Commercial waste from the West Valley, New York site
- 10,000 metric tons of elemental mercury for long-term surface storage

Additional likely causes are the lack of another repository and the inability of storage sites to characterize and ship wastes to meet the 25-year timeframe, among others.

Regardless of DOE’s plans, the WIPP Permit provides that for good cause the NMED can order facility closure at any date.

Revisions needed: The Plan must include an explanation of the reasons that the WIPP operational lifetime is planned to be more than doubled. The Plan should include which of the proposed additional wastes are to be disposed by 2050. The Plan should also clearly state that the WIPP Permit allows disposal operations to be halted for good cause well before 2050.

D. New underground footprint and additional infrastructure.

For more than four decades, the WIPP underground design has been based on the eight panels, plus Panels 9 and 10, if needed. That footprint included the four existing shafts and the Waste Handling Building. The DSP apparently estimates that only the eight panels will be filled through FY 2024, though it does not include the volume of wastes that those panels will hold by 2024. The Future of WIPP Conceptual Draft diagram on page 17 clearly indicates the current footprint is inadequate and will be expanded, as does some of the infrastructure description.

But the DSP does not describe the new underground footprint, including new panels and rooms. The DSP does not explain what additional infrastructure is needed for the proposed 2050 operational timeframe. Nor has DOE issued NEPA document(s) to discuss that proposed operational timeframe, new underground footprint and infrastructure and the impacts of such operations, nor the reasonable alternatives to such operations, among other legal requirements.

Revisions needed: The Plan must include what NEPA document(s) and decisions that will be issued during the 5-year timeframe. The Plan also must explain how the infrastructure improvements relate to the future larger underground footprint, which should be much more fully described, including proposed panels and rooms and other additional infrastructure.

2. The DSP does not discuss all of the proposed major activities during the 5-year period.

A. Above-Ground Storage Facility (AGSF).

The AGSF is identified as “A” on the Future of WIPP Conceptual Draft diagram on page 17. But there is no description of that facility or why it is needed during the 5-year timeframe or for WIPP operations after that time. SRIC has reiterated its opposition to such a facility because WIPP is not a surface storage facility, has never been included in NEPA documents and decisions, and would endanger public health and the environment.

Revisions needed:

The Plan should state that there will not be an AGSF. However, if the facility and the permit modification request are part of the next 5-year timeframe and beyond that time, the Plan should explain why the facility is needed, by what date it is required to be operational, and when NEPA compliance and decisions will be accomplished.

B. Excluded waste.

Since 2003, there have been permitting activities related to DOE’s proposals to bring renamed high-level waste to WIPP, which have resulted in the excluded waste provision of the Permit. § 2.3.3.8. Since 2013, there is a class 3 permit modification request to change that provision. But the DSP includes no discussion of that modification or the need for such a modification. SRIC and many members of the public have strongly opposed such waste as being excluded by the LWA § 12.

Revisions needed: The Plan should state that the class 3 permit modification will be withdrawn. However, if DOE intends to pursue allowing excluded waste during the next five years, it should provide a timeframe of when such a modification is needed and the volume of waste by outer and inner container calculation, and how that volume complies with the capacity limit.

C. Remote-handled (RH) waste.

WIPP’s mission includes disposal of up to 250,000 cubic feet (7,079 cubic meters) of RH waste, which is included in the LWA, C&C Agreement, and WIPP Permit. The DSP briefly discusses RH waste in shielded containers (but not the number of shipments and number of containers) and only confirms that RH waste in canisters will not be authorized during the 5-year timeframe. at 19. Since the DSP also states that the design for new shielded containers is being explored, the inference is that all future RH waste will be in shielded containers, and none in canisters. But there is no technical documentation as to how all RH waste could come in shielded containers. Consequently, the DSP does not specifically state that WIPP will ever complete that RH waste mission, nor how much RH waste is expected to be emplaced.

The RH waste emplacement rate has always been insufficient to dispose of all such waste. In 2003, the DOE Inspector General (IG) reported:

“If current waste emplacement practices continue, by 2020, the repository, as now configured, will not be able to accommodate 980 planned shipments of remote-handled TRU waste. The Department has recognized the potential space problem and identified some alternatives, but has not yet formally planned for the resolution of this issue.”

<https://www.energy.gov/sites/prod/files/igprod/documents/CalendarYear2003/ig-0613.pdf> at 1.

What to do with RH waste is a major issue to be determined during the next five years, but it is not adequately addressed in the DSP.

Revisions needed: The Plan should discuss how much RH waste in shielded containers will be shipped and emplaced during the 5-year timeframe and years beyond. The Plan should include whether the RH volume limit is expected to be met. The Plan should include decisions (and permit modifications) that are expected regarding panel design and capacity and RH Bay modifications to accommodate RH waste in canisters or whether no more RH waste in canisters is planned.

D. Panel 10.

A decision that must be made during the next five years is whether or not Panel 10 will be used for waste emplacement. Yet the DSP contains no discussion of Panel 10. The Future of WIPP Conceptual Draft diagram on page 17 does not show any TRU waste in Panel 10.

Revisions needed: The Plan should state whether Panel 10 will be used, when such a decision will be made if no determination has yet been made, and how much waste by outer and inner container volumes would be emplaced if the panel were used.

3. Other Necessary Revisions.

A. Utility Shaft.

The DSP identifies the new shaft #5 as the Utility Shaft (at 5 and 12) and “New Air Stack for Unfiltered Exhaust” (p. 17). The new shaft #5 is identified as part of the ventilation system (at 5 and 12). But the diagram on page 13 does not include the new shaft #5 in the Safety Significant Confinement Ventilation System (SSCVS). In fact, the SSCVS could operate without the new shaft #5. The major reason for the new shaft #5 is for the proposed new underground footprint of panels and disposal rooms to the west of the existing underground footprint. Presumably that is the “operational efficiency” purpose of the five enumerated on page 12.

Revisions needed: The Plan should be revised to state that the new shaft is not essential to operate the SSCVS. The Plan should more fully describe the purpose of the shaft for future waste emplacement and the panels and rooms that will be needed.

B. Number of shipments.

The DSP states that the goal is 14 shipments per week. at 5. 14 shipments per week for 44 weeks equals 616 shipments, which is the stated goal for FY 2023 and FY 2024. at 18. However, the DSP also states that the goal is to have approximately 17 shipments per week by FY 2023. at 24.

Revisions needed: The Plan should include the number of shipments per week, the number of weeks available per year, and the annual shipments in future years. The Plan should also include any infrastructure or permit modification requirements to meet those shipment goals.

C. New Airlock and TRUdock.

The Future of WIPP Conceptual Draft diagram includes “F” Airlock to Additional TRUdock. The DSP otherwise provides no explanation of why an additional TRUdock is necessary, when it would be operational, what permit modifications would be required, among other things. Since the DSP includes no more than 17 shipments per week in the future and states that in the past WIPP has received more than twice that many shipments in a week, there is no basis given that such a new TRUdock is needed.

Revisions needed: The Plan should either eliminate the new Airlock and TRUdock or include a description of the need for such an additional TRUdock, when it would be operational, and what permit modifications would be required.

D. Historic inaccuracies.

The DSP states: “After the first waste receipt, shipping rates exceeded the designed shipping rate to a maximum of 36 shipments received in one week, and an average of about 25 shipments per week towards the end of that 15-year operational period.” at 8. However, as Attachment 2 shows, the maximum number of annual CH shipments was in FY 2006 when there were 1,128 shipments. The same number of shipments was made in FY 2010. Those two years cannot accurately be described as being “towards the end of that 15-year operational period.” The maximum amount of waste emplaced – the more appropriate metric – was also in FY 2006 with 10,555 cubic meters of CH waste. Again, that is not “towards the end of that 15-year operational period.”

Revisions needed: The Plan should change the statement on page 8, so that it accurately describes the history of maximum number of shipments and maximum waste emplacement.

E. Previous WIPP Strategic Plans

The DSP Cover Page states that the Plan supersedes DOE/CBFO-11-3473, Rev. 0. However, that document is not publicly available on the WIPP website or in the more than three million documents in the DOE Office of Scientific and Technical Information website – www.osti.gov. On September 23, 2019, SRIC requested that the document be provided and made publicly available, but it is still not available.

In FY 2016, NWP was given a \$250,000 Performance Based Incentives bonus for “developing an overarching vision and strategy for WIPP to achieve its operational lifetime through FY 2050 with both near term and long term operational activities and projects.”

https://www.wipp.energy.gov/NWPpayments/NWP/FY16_Fee_Determination_Scorecard_17-02_85.pdf at 4, Metric 8. The document - *WIPP Strategic Plan Operations Through 2050* – dated June 27, 2016 was publicly released only as a result of SRIC’s Freedom of Information Act request. http://src.org/nuclear/docs/2016-06-27_FY-2016-Plan.pdf

As released to SRIC, the document was marked “Obsolete.” There has been no explanation as to why the taxpayers should have paid \$250,000 for such an “obsolete” document. However, major aspects of the NWP Strategic Plan are mirrored in the DSP, including:

- Operating WIPP until 2050
- “substantial repairs or replacements of existing structures, facilities and properties are needed within the next five years.” at 6.
- 44 weeks available for shipments. at 21.

The 2016 NWP Strategic Plan also references DOE/WIPP 04-3327, *Waste Isolation Pilot Plant Ten-Year Site Plan FY 2017-FY 2026*, Rev. 12 at 30. That document also is not publicly available on the WIPP website or in the more than three million documents in the DOE Office of Scientific and Technical Information website – www.osti.gov. On September 23, 2019, SRIC requested that the document be provided and made publicly available, but it is still not available.

Revisions needed: DOE/CBFO-11-3473, Rev. 0 should be made publicly available, and the Plan should be revised to discuss the major changes from the earlier plan. DOE/WIPP 04-3327 should be made publicly available, and the Plan should be revised to discuss major changes from that Site Plan. The Plan should be revised to discuss the major changes compared with the FY 2016 NWP Strategic Plan.

F. Underground science laboratory.

The DSP briefly describes some historic underground science laboratory activities. at 9. But there is no discussion of current and future possible underground science laboratory activities or what portions of the underground are available for such activities.

Revisions needed: The Plan should either state that no further underground science laboratory activities are expected or describe the activities and portions of the underground that are available for such activities.

In summary, while the Strategic Plan is an important document to describe for DOE and the public what WIPP’s goals and operations will be for the next five years and in future years, the DSP has very significant deficiencies. The Plan must be substantially revised to adequately fulfill its purpose. “WIPP Forever” is not legally or publicly acceptable and must be eliminated, and plans for additional repositories must now be made publicly available.

Thank you for your careful consideration of and response to these comments and all others received.

Sincerely,



Don Hancock

WIPP PERMITTED VS. ACTUAL CAPACITY

Attachment 1

(in cubic meters) - As September 21, 2019

	<u>CH-Permitted</u>	<u>Actual</u>	<u>% Used</u>	<u>RH-Permitted</u>	<u>Actual</u>	<u>% Used</u>
Panel 1	18,000	10,497	58.32%	0		
Panel 2	18,000	17,998	99.99%	0		
Panel 3	18,750	17,092	91.16%	0		
Panel 4	18,750	14,258	76.04%	356	176	49.44%
Panel 5	18,750	15,927	84.94%	445	235	52.81%
Panel 6	18,750	14,467	77.16%	534	214	40.07%
Panels 1-6	111,000	90,239	81.30%	1,335	625	46.82%
Shortfall		20,761			710	
Panel 7	18,750	6,118		650	20	
Panel 8	18,750			650		
Panels 1-8	148,500	96,357		2,635	645	

Notes:

"CH" is Contact-Handled waste; "RH" is Remote-Handled

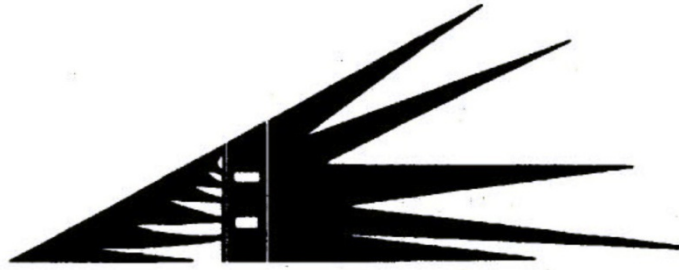
"Permitted" refers to the capacity limits in the New Mexico WIPP permit

Volume is by outer container volume

Compiled by: Don Hancock, Southwest Research and Information Center
505/262-1862; sricdon@earthlink.net

WIPP DISPOSAL																		Attachment 2		
in cubic meters - Outer container volume																				
																			to 9/21	
CH	FY1999	FY2000	FY01	FY02	FY03	FY04	FY05	FY2006	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY17	FY18	FY2019	Total
Argonne					97	24														121
Hanford		13	68	18	250	448	853	715	765	622	9	475	825							5,061
ORP																				
INL	15	87	717	2,065	567	342	2,564	7,890	5,390	3,304	4,621	5,114	4,211	2,620	2,099	1,138	453	2,111	2,033	47,341
KAPL-NFS																				
LANL	190		74	8	327		171	546	823	689	727	1,063	1,014	1,514	1,460	556	12	126	173	9,473
LBL																				
LLNL							146													146
Material & Fuels																				
NTS						106	235	64												405
NRD																				
ORR										12	37	230	79	57			20	340	200	975
RFETS	62	252	1,044	2,903	4,017	4,650	2,134													15,062
SNL																				
SRS			62	141	2,285	3,240	1,554	1,340	1,548	1,267	719	862	1,139	1,469	1,465	416	80	39	23	17,649
WCS/LANL																	99			99
	267	352	1,965	5,135	7,543	8,810	7,657	10,555	8,526	5,894	6,113	7,744	7,268	5,660	5,024	2,110	664	2,616	2,429	96,331
WIPP derived				1							3						21			25
Total	267	352	1,965	5,136	7,543	8,810	7,657	10,555	8,526	5,894	6,116	7,744	7,268	5,660	5,024	2,110	685	2,616	2,429	96,356
<u>RH</u>																				
Argonne										4.5	17.8	19.6	41.8	34.7	31.3	9.8			3.8	163.3
Bettis													4.5							4.5
GEVNC										5.3	23.1									28.5
Hanford																				0.0
INL								57.9	95.2	24.0	28.5	25.8	25.8	65.0	1.8					324.0
KAPL-Schen.																				
LANL											14.2									14.2
Material & Fuels																				
ORR										7.1	46.3	7.1	4.5							65.0
SANL													7.1							7.1
SRS										24.9		10.7	2.7							38.3
WV																				
								57.9	99.7	93.5	117.5	89.9	74.8	96.3	11.6	0.0	0.0	3.8		644.8

CH Shipments	FY1999	FY2000	FY01	FY02	FY03	FY04	FY05	FY2006	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY17	FY18	FY2019	
Argonne					9	5									1				2	17
Hanford		3	7	2	37	72	100	67	79	64	1	52	88							572
INL	3	13	121	373	85	38	308	833	637	421	640	669	555	361	299	124	48	232	253	6,013
LANL	17		7	1	46		37	105	116	76	116	157	172	230	184	64		1	30	1,359
LLNL							18													18
NTS						13	27	8												48
ORR										2	4	36	9	7			5	56	23	142
RFETS	12	42	162	469	437	597	326													2,045
SRS			7	16	185	239	125	115	122	122	87	82	115	157	178	61	9	1	2	1,623
WCS																	11	20	2	33
	32	58	304	861	799	964	941	1,128	954	685	848	996	939	755	662	249	73	310	312	11,870
RH shipments																				
Argonne										5	20	22	47	39	34	11				178
Bettis													5							5
GEVNC											6	26								32
INL								65	107	27	32	29	29	73	2					364
LANL											16									16
ORR											8	52	8	5						73
SANL														8						8
SRS											28		12	3						43
								65	112	105	132	101	84	107	13	0	0	0	0	719
CH+RH	32	58	304	861	799	964	941	1,128	1,019	797	953	1,128	1,040	839	769	262	73	310	312	12,589
Sources: DOE Run Date 4/16/2013 and subsequent DOE documents - some individual site volume numbers are approximate.																				
Notes: Argonne CH Shipments in FY2013 and FY 2019 were RH waste in lead-shielded container, which is included in RH volume.																				
WCS shipments in most years are included as LANL waste, where the waste originated.																				
Compiled by: Don Hancock, Southwest Research and Information Center, 505/262-1862; sricdon@earthlink.net																				



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April 15, 2019

James C. Kenney, Secretary
New Mexico Environment Department (NMED)
1190 St. Francis Dr.
Santa Fe, NM 87505

via email

RE: WIPP Permit Renewal Process and New Shaft permit modification

Dear Secretary Kenney:

On April 11, representatives of Southwest Research and Information Center (SRIC), Nuclear Watch New Mexico, Concerned Citizens for Nuclear Safety, and Citizens for Alternatives to Radioactive Dumping met with seven representatives of the WIPP permittees – Department of Energy (DOE) Carlsbad Field Office and Nuclear Waste Partnership. The permittees limited the scope of the meeting to the new shaft #5 and the permittees' answers of March 4, 2019 to NMED questions about the shaft determination request. At the meeting, we were informed that DOE WIPP Manager Todd Shrader intended to have a meeting with us "in a couple of months" to discuss the permit modification and permit renewal issues that we have long been requesting.

At the meeting, SRIC stated that it was very concerned about the lack of the permittees' willingness to discuss the permit renewal process and the apparent lack of action on a permit renewal application, since the public process should have already begun. While the permittees' representatives said that they would report our concerns, SRIC believes that the permittees' inaction may better be addressed by NMED action.

Given the statements at the April 11 meeting and previous permittees' actions, we have two suggestions, consistent with your authority, and the discussions held with you on April 2, 2019:

1. NMED inform the permittees that the priority is the permit renewal process and that the permittees should initiate the pre-renewal application public process immediately, given the time required for what could be a technically and legally complex renewal process so that a permit renewal decision can be issued by the end of 2020, when the existing permit expires.
2. NMED inform the permittees that no construction-related activities related to Shaft # 5 are allowed until a modification is approved and, further, that the modification request will not be processed prior to the permit renewal decision and that it might be deferred until after the Final Order on the renewal application is issued.

The permit renewal process may require more than 21 months, so it must begin immediately.

The regulations (20 NMAC 4.1.901.C(1) (incorporating 40 CFR 124.31(d)) require that prior to submitting a permit renewal application, the permittees must provide public notice at least 30 days prior to having one or more pre-application meetings. For the first WIPP Permit Renewal process, the permittees held pre-application meetings on February 10 and 12, 2009. The Secretary's Final Order renewing the permit was issued on November 30, 2010 – or more than 21 months later. Based on that history, the pre-application meetings for the renewal should have been held two months ago, yet they have not been announced and the permittees have not even provided a schedule for such public meetings, nor the expected contents of the renewal application.

Moreover, the forthcoming renewal process will likely be more technically and legally complex and be subject to much more public concern and opposition than the previous renewal, which could require a more lengthy timeframe. The previous renewal application included few major changes, whereas the forthcoming renewal has at least one issue – Overpack Container Storage Unit – that SRIC and some other parties consider to be illegal and technically complex. The Permittees may seek to change Permit Section 2.3.3.8 related to Excluded Waste, and they may propose other major changes, including Shaft #5 and authorizing disposal in additional panels.

Also, unlike the previous renewal process, there are existing provisions of the Permit that are being legally challenged – the Volume of Record modification approved on December 21, 2018 – and which SRIC intends to oppose in the renewal process, if it has not been addressed through the ongoing appeal in the New Mexico Court of Appeals (A-1-CA-37894) or by an agency-initiated modification under 20 NMAC 4.1.901 (incorporating 40 CFR 270.41). Thus, the already known substantive issues in the forthcoming renewal process make it likely that it will take a longer period of time than the previous renewal.

The Permittees are well aware of the regulatory requirements, the time to complete the previous renewal process, and the limited resources of NMED and stakeholders. Consequently, the Permittees apparently expect that there will be an administrative approval of an extension of the existing permit beyond its expiration date of December 30, 2020. SRIC urges you to inform the permittees that such an extension is not favored and that the permittees should immediately start the renewal process with the required public notice and pre-application meetings.

2. The permittees should be informed that construction of Shaft #5 is not allowed until a permit modification is approved and that such a decision is a lower priority than the renewal process.

The Permittees' March 4, 2019 response to Question #9 stated:

“The following time lines are estimated for the Utility Shaft Project:

- a. Initiate sinking of S#5 in March 2020
- b. Shaft sinking complete approximately 17 months after start date (August 2021)
- c. Drifts (mining from west to east) complete approximately 8-month duration (April 2022; the connection to the existing facility will be made at approximately this point in time)
- d. Startup/Testing/Project Closeout approximately one-year duration (March 2023)”

Page 7.

At the April 11 meeting when asked which of those four activities could begin without an approved permit modification, the answer was “We don’t know.” Since the Shaft #5 request is not a class 1 modification that may be put into effect without agency action under 20 NMAC 4.1.901 (incorporating 40 CFR 270.42(a)(1)), the expected, correct answer is “None of them.”

Thus, SRIC believes that NMED should clearly inform that permittees that none of those actions, including beginning of shaft sinking, can occur prior to the issuance of a permit modification.

As already noted, SRIC further believes that the priority is the permit renewal process and the Shaft #5 should be considered either in the renewal process or after any Final Order on the renewal application is issued, which is SRIC’s preferred approach. NMED and stakeholder resources are limited and they should be used on the highest priority activities, of which the permit renewal process seems the most important.

SRIC continues to request a meeting as soon as possible with the permittees to further discuss the permit renewal process. CBFO Manager Todd Shrader is copied to ensure that he is aware of our concerns and our continued request for a meeting sooner than his proposed timeframe.

Of course, we also welcome further discussions with you and your staff.

Thank you very much for your careful consideration of these suggestions.

Sincerely,

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

Don Hancock

cc: Jennifer Pruett, Stephanie Stringer, John Kieling, Ricardo Maestas, Todd Shrader