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April 3, 2018

Mr. Ricardo Maestas  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505  
[Ricardo.maestas@state.nm.us](mailto:Ricardo.maestas@state.nm.us)

RE: WIPP "Volume Reduction" PMR

Dear Mr. Maestas:

**Nuclear Watch New Mexico** seeks to promote safety and environmental protection at nuclear facilities; mission diversification away from nuclear weapons programs; greater accountability and cleanup in the nation-wide nuclear weapons complex; and consistent U.S. leadership toward a world free of nuclear weapons.

We strongly oppose the "Volume Reduction" Permit Modification Request (PMR) that the Waste Isolation Pilot Plant (WIPP) permittees submitted on January 31, 2018, according to the public notice. The Land Withdrawal Act does not support it. And the need is not proven.

While there are many problems with the request, there are two overriding reasons that NMED must either deny the request or determine to follow class 3 modification procedures, so that additional public comment is allowed and a public hearing would be held on a draft permit.

A major problem with this PMR is the lack of consideration of connected actions and cumulative effects. A federal agency cannot segment proposed actions into small pieces to avoid looking at the big picture. Connected actions must be considered together and not be sneaked in separately. An agency should analyze "connected actions" and "cumulative actions" in one document. DOE has hacked the proposed expansion of WIPP into little PMR pieces. The proposed Volume Reduction PMR would not stand on alone.

Agency "connected actions" are those actions that are tied to other actions, cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for justification. The proposed Volume Reduction PMR would not stand on alone.

"Cumulative actions" are those that when viewed with other actions proposed by the agency have cumulatively significant impacts. Regulations are directed at avoiding



segmentation, wherein the significance of the environmental impacts of an action as a whole would not be evident if the action were to be broken into component parts and the impact of those parts analyzed separately. The proposed Volume Reduction PMR would not stand on alone.

The Carlsbad Field Office should think of this proposed PMR expansively and aim to include rather than exclude connected activities. The proposed Volume Reduction PMR is actually a small part of the larger plan to expand WIPP.

- DOE must do a big Class 3 PMR for expansion of WIPP.
  
- Here's a list coming regulatory items that be considered together as connected actions to expand WIPP:
  - New shaft
  - New filter building
  - Revised training
  - Updates and efficiencies
  - Excluded waste prohibition
  - Addition of concrete overpack aboveground storage
  - Panel closure redesign
  - Additional waste disposal panels
  - Others

Safe operations of the WIPP site and along the transportation routes should be the focus – not expansion.

The permittees – U.S. Department of Energy (DOE) and Nuclear Waste Partnership – were told by numerous organizations before submitting the request, that the very substantial changes in the WIPP Permit are strongly opposed and there is significant public concern. By regulatory definition, such a request is a Class 3 modification. Nonetheless, the permittees submitted the request as a Class 2 modification. State regulations 20.4.1.900 NMAC (incorporating 40 CFR §270.42(b)(6)(i)(B) and (C)) provide that the NMED must deny the request or determine that the procedures for Class 3 modifications apply. Thus, NMED must take one of those two actions.

The request seeks to very significantly change the way the volume of waste at WIPP is measured in order to substantially increase the facility's capacity. Since long before WIPP opened in 1999, the waste volume is measured by the size of the outer container. That measurement has always been incorporated into the WIPP Permit, and it is that way that DOE has reported to Congress how much waste is disposed at WIPP. The proposed new measurement of the volume of waste inside a container results in "reducing" the amount of waste in WIPP by more than 930,000 cubic feet. The effect would be to immediately increase WIPP's capacity by that amount. Such an expansion of WIPP's capacity is a clear attempt to circumvent, not comply, with the WIPP Land Withdrawal Act capacity limit of

6,200,000 cubic feet. Such a major change is unacceptable, apparently contrary to law, and the PMR should be denied.

We ask you to deny the request or determine to consider it under Class 3 modification procedures.

Sincerely,  
Scott Kovac  
Nuclear Watch New Mexico