

ENTERED

From: [Maestas, Ricardo, NMENV](#)
To: [McLean, Megan, NMENV](#); [Biswell, David, NMENV](#); [Tellez, Hernesto, NMENV](#)
Subject: FW: Reade & CCNS Comments re: proposed WIPP VOR
Date: Thursday, September 20, 2018 5:10:04 PM
Attachments: [f Reade CCNS Class 3 WIPP VOR Comments 9-20-18.pdf](#)
[2018-updatev3-SE-ThreatsMap_13x19-1.pdf](#)

-----Original Message-----

From: Joni Arends <jarends@nuclearactive.org>
Sent: Thursday, September 20, 2018 4:47 PM
To: Maestas, Ricardo, NMENV <Ricardo.Maestas@state.nm.us>; Deborah Reade <reade@nets.com>
Subject: Reade & CCNS Comments re: proposed WIPP VOR

Good afternoon,

Please find attached the comments of Deborah Reade and CCNS about the proposed WIPP Volume of Record permit modification. Please contact us with any questions or comments you may have.

Sincerely,

--

Joni Arends, Executive Director
Concerned Citizens for Nuclear Safety
P. O. Box 31147
Santa Fe, NM 87594-1147
505 986-1973
www.nuclearactive.org

180914.36



Concerned Citizens for Nuclear Safety
P. O. Box 31147
Santa Fe, NM 87594-1147
(505) 986-1973
www.nuclearactive.org

Deborah Reade
117 Duran Street
Santa Fe, NM 87501
(505) 986-9284
reade@nets.com

September 20, 2018

By email to: Ricardo.Maestas@state.nm.us

Mr. Ricardo Maestas, WIPP Project Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building One
Santa Fe, NM 87505-6303

Re: Public Comments about Class 3 Draft Permit
TRU Mixed Waste Disposal Volume Reporting for the
Waste Isolation Pilot Plant (WIPP)

Dear Mr. Maestas:

Deborah Reade, as an individual, and Concerned Citizens for Nuclear Safety (CCNS), a 30-year old non-governmental organization based in Santa Fe, New Mexico, provide the following general and specific public comments about the above-referenced Class 3 Draft Permit. Reade and CCNS oppose the proposed Volume of Record (VOR) Class 3 Draft Permit, and respectfully request a public hearing be held.

Further, and prior to any notice of public hearing, pursuant to 20.4.1.901.A.4 NMAC and New Mexico Environment Department (NMED) past practices regarding past Class 3 permit modification requests (PMRs) and the permit renewal hearing, we request that NMED, the Permittees (Department of Energy (DOE) and Nuclear Waste Partnership, LLC (NWP)), Reade, CCNS, and other parties conduct negotiations to attempt to resolve issues.

GENERAL COMMENTS

Reade and CCNS find the PMR, the Draft Permit, the Administrative Record, the Index to the Administrative Record and supporting documentation, including the Department's Public Involvement Plan (PIP), to be incomplete, inconsistent and inadequate to allow the public to fully understand and present technical testimony

upon which the Secretary of the Environment Department would make a final determination approving or disapproving the permit.

These comments focus on the preliminary documents reviewed by the public to provide informed public comments to NMED. To ensure we are working from the same page, and there has some confusion on the parties' part, we provide the 20.1.4 NMAC definitions for these essential documents in the hearing process, along with the Hearing Record and Record Proper.¹

SPECIFIC COMMENTS

1. NMED Did Not Provide a Draft Permit Based on the Current Version of the WIPP Permit for Public Review and Comment. The August 6, 2018, Fact Sheet states, "The foundation for the draft Permit is the current Permit as of June 2018." p. 2.

The June 2018 Permit is not the current Permit. On July 31, August 1 and 2, 2018, negotiations were held about the Panel Closure PMR and Draft Permit, resulting in an agreement between the Parties (NMED, Permittees, Southwest Research and Information Center (SRIC), CCNS, and Nuclear Watch NM) to change language in the Permit.

In the Department's rush to move the VOR process forward, the most current Permit was not used to provide the public with the current Permit. This matter is further complicated by the fact that the Panel Closure negotiations resulted in changes to the same permit sections as those in the draft VOR permit. For example, Attachment G *Panel Closure*, and Attachment H *Post-Closure Plan*.

Further, neither the Public Notice, nor the Fact Sheet revealed that the proposed changes are indicated on a previous iteration of the permit - not the current iteration based on the changes negotiated for the Panel Closure.

¹ **Draft Permit** means a document prepared by the Division indicating the Division's proposed decision

Administrative Record means all public records used by the Division in evaluating the application or petition, including the application or petition and all supporting data furnished by the applicant or petitioner, all materials cited in the application or petition, public comments, correspondence, and as applicable, the draft permit and statement of basis or fact sheet, and any other material used by the Division to evaluate the application or petition. 20.1.4.7.A.2 NMAC.

Hearing Record means the Record Proper and the written transcript or recorded tape of the public hearing, including all exhibits offered into evidence, whether or not admitted. 20.1.4.7.A.14 NMAC.

Record Proper means the Administrative Record and all documented filed by or with the Hearing Clerk. 20.1.4.7.A.19 NMAC.

NMED did not provide a provide “a document prepared by the Division indicating the Division’s proposed decision to issue, deny, or modify a permit. 20.1.4.7.A.9 NMAC. For this reason alone, the Draft VOR Permit must be retracted, repaired with the proposed modifications on the current version of the Permit, and then released for public review and comment.

This is a fatal flaw in the Draft Permit. Nevertheless, we have not taken the time to make specific comments about the language inaccuracies, inconsistencies, and incompleteness of the Draft VOR Permit because it is not based on the most current Permit.

2. Where is the Administrative Record posted? We have been unable to find an electronic copy of the Administrative Record (AR).

3. The Administrative Record Index is incomplete and inaccurate to allow the public to fully understand and present technical testimony upon which the Secretary of the Environment Department would make a final determination approving or disapproving the draft permit. For example, the four-page AR Index does not include the Permittees’ certificate of publication.

Further, public comments are grouped together at AR Index 180316 – 180405. These comments are not individually listed as those at AR Index 180209 – 180309. It is unclear what the distinction exists between the two groups.

We note that the extensive technical comments of Steve Zappe and SRIC were inserted into the group AR Index listing.

It is confusing why the Permittees submitted the proposed 1991-1992 U.S. House and Senate legislation (H.R. 2637 and S. 1671) into the AR. AR Index 180706. Why did they not submit the Public Law 102-579, the Waste Isolation Pilot Plant Land Withdrawal Act? What language is found in the proposed legislation that was not incorporated into P.L. 102-579 that the Permittees want to use to support their PMR?

This is but one example of the absence of important historical documents in the AR. Cf. the draft VOR Permit AR Index to that for the 1998 public hearing for the initial Draft Permit. The AR is incomplete for the public to understand whether the Permittees have the authority to even propose double counting the waste.

4. Where are the confidential documents/file stored? Where is the AR Index for the confidential documents/file?

5. NMED has not provided equal access or information to Spanish speaking members of the public.

New Mexico is one of a few states in the U.S. where distinct minority racial groups constitute the majority of the population. In the state, 35.7% of the population speaks a language other than English in the home. NMED is a recipient of federal funds from the Environmental Protection Agency (EPA) and therefore is not allowed to discriminate in any of its programs. EPA Low English Proficiency (LEP) Guidance states that recipients of federal funds must assess LEP service needs at a programmatic level, not only on a project-by-project basis.

There is also a large interest in the WIPP project throughout the state and facility transportation is routed near and through many communities in the state. Therefore NMED must provide Spanish translation of vital documents not only for the local area, but also for those affected throughout the state by its programs. Limiting the public process almost entirely to English, as has been done with this proposed modification, will create disparate effects or impacts for most New Mexico communities and will foreclose a meaningful opportunity for LEP community members to participate in the public process.

NMED has had extensive discussions with EPA and the public about the difficulties that LEP Spanish speakers have participating equally in the public processes for permitting facilities; therefore, NMED is well aware of these problems. In January 2017, NMED signed a Resolution Agreement with EPA on this matter and has created implementing policies on this matter. However, although the public notices on this modification have been translated into Spanish, that is the entire information available for the LEP Spanish speaking community about this modification.

Even the Fact Sheets have not been translated nor have any portions of the Draft Permit, the AR Index or of the AR itself been translated into Spanish. Although NMED is not required to translate the entire Record or Draft Permit into Spanish as they are lengthy, enough should be translated or summarized and translated so that LEP Spanish speakers can understand the modification, can fully and equally participate in the public process, and can provide public comment. With such a small amount of information available to them, no meaningful participation is possible.

As part of their implementing policies, NMED has retained an interpreter to help with questions from LEP Spanish speakers and to provide equal access to information that has not been translated. However, none of the public materials, including the English and Spanish Public Notices nor the English Fact Sheets inform the public that this interpreter is available or how to contact them. Ironically, information is provided for persons with disabilities on how to receive assistance and this paragraph is immediately before the paragraph that states that NMED does not discriminate. NMED have not met

their Civil Rights Act Title VI obligations with this modification and continue to discriminate against LEP Spanish-speakers.

NMED must describe how it will make corrections and provided the needed documents in Spanish.

6. The NMED's Public Involvement Plan (PIP)

As discussed at the September 17, 2018 meeting between the Environment Department, the Permittees, CCNS, SRIC, Nuclear Watch NM, and Citizens for Alternatives to Radioactive Dumping (CARD) to discuss the draft Permit, we reiterate the following:

Section VI. EJSCREEN Summary. We question the Department's inadequate use of a 15-mile radius of the WIPP facility in its preliminary screening. A 15-mile radius does not even include the City of Carlsbad, NM. In fact, the WIPP release in February 2014 extended beyond Clovis – more than 100 miles north of WIPP. Because it's impossible to know in what direction winds will be blowing if there is a future release, the PIP should extend at least 100 miles in all directions around the site. WIPP's extremely poor safety record and their lack of confidence that they have fixed the problems with their safety culture (public statements have WIPP officials talking of being on a "safety journey") indicate there is still a high likelihood of a future release of both radioactive and hazardous materials. The PIP and the AR do not provide documentation to support the use of an arbitrary 15-mile radius.

Further, the EJSCREEN was not used to conduct a preliminary screening of the WIPP transportation routes. Because the draft VOR Permit, if approved, would result in an almost 30 percent increase in waste volume, increased transportation would be required. There is no indication in the EJSCREEN description about whether increased transportation was even considered.

Lack of compliance with 40 C.F.R. §270.10 (j). Section 40 C.F.R. §270.10 (j) requires exposure information to be included for releases from both normal operations and accidents at the facility, as well as for facility transportation. Because the volume of waste will increase almost 30 percent under this proposed modification, facility transportation will be increasing as well. None of the effects of these increases has been studied either for the facility or for facility transportation. This information is necessary also to calculate whether or not there could be disparate impacts on "environmental justice" communities in the local area or along the transportation routes. The increase in diesel emissions alone could be enough to cause a disparate impact on some communities along the transportation routes. Nevertheless, we can't know this until the exposure information has been provided. The application for the proposed modification is incomplete without this information.

On January 19, 2018 NMED signed a Resolution Agreement with EPA where they agreed to:

...ensure that all permit applications contain necessary components as required by 40 C.F.R. §270.10, including Section (j) related to "exposure information," and necessary follow-up will be taken to ensure protection of human health and the environment.

Yet NMED has not made sure that the application for this modification contains these components, nor have they done the necessary follow-up to ensure protection of human health and the environment.

Southeastern New Mexico continues to have the highest cancer mortality – by far – in the entire state. *Please see the attached Sacred Trust map that shows the WIPP plume and included the Centers for Disease Control and Prevention map of cancer mortality.* Understanding the effects of increasing facility transportation and the other increased risks from this modification on this very vulnerable population is critical to understanding if this modification will be protective of human health and the environment.

Section X. Public Notices. Some newspapers in southeastern New Mexico publish in Spanish. The Department should take note of when such publication occurs so that the Spanish-speaking communities could be notified of opportunities to participate in these matters.

Section XIII. Public Information Meetings. It may be that the public information meetings may need to be moved to the early evening timeframe.

7. Lack of Transparency for Counting and Reporting VOR by Permittees. *See Section 1.5.22 of the draft VOR Permit.* The Permittees have proposed the creation of a self-regulating smoke screen. The Fact Sheet states,

The [Land Withdrawal Act] LWA [transuranic] TRU waste volume will be tracked and reported by DOE so that the total capacity limit for TRU waste is not exceeded pursuant to the WIPP Land Withdrawal Act. p. 2.

See also Section 1.5.22 of the Draft VOR Permit:

This volume is tracked and reported by the DOE internally relative to the WIPP Land Withdrawal Act total capacity limit of 6.2 million ft³ (175,564 m³) (Pub. L. 102-579, as amended).

If the proposed PMR is approved, it is clear that no state or federal agency will hold DOE accountable for the reporting. We'll never know when WIPP is "full," and has met its 6.2 million cubic feet capacity.

8. Permit Attachment A2, p. A2-6 of 51. We explicitly state that we do not support the proposed language change under "Underground Hazardous Waste Disposal Units (HWDUs)," which removes the repository limits for CH and RH TRU wastes.

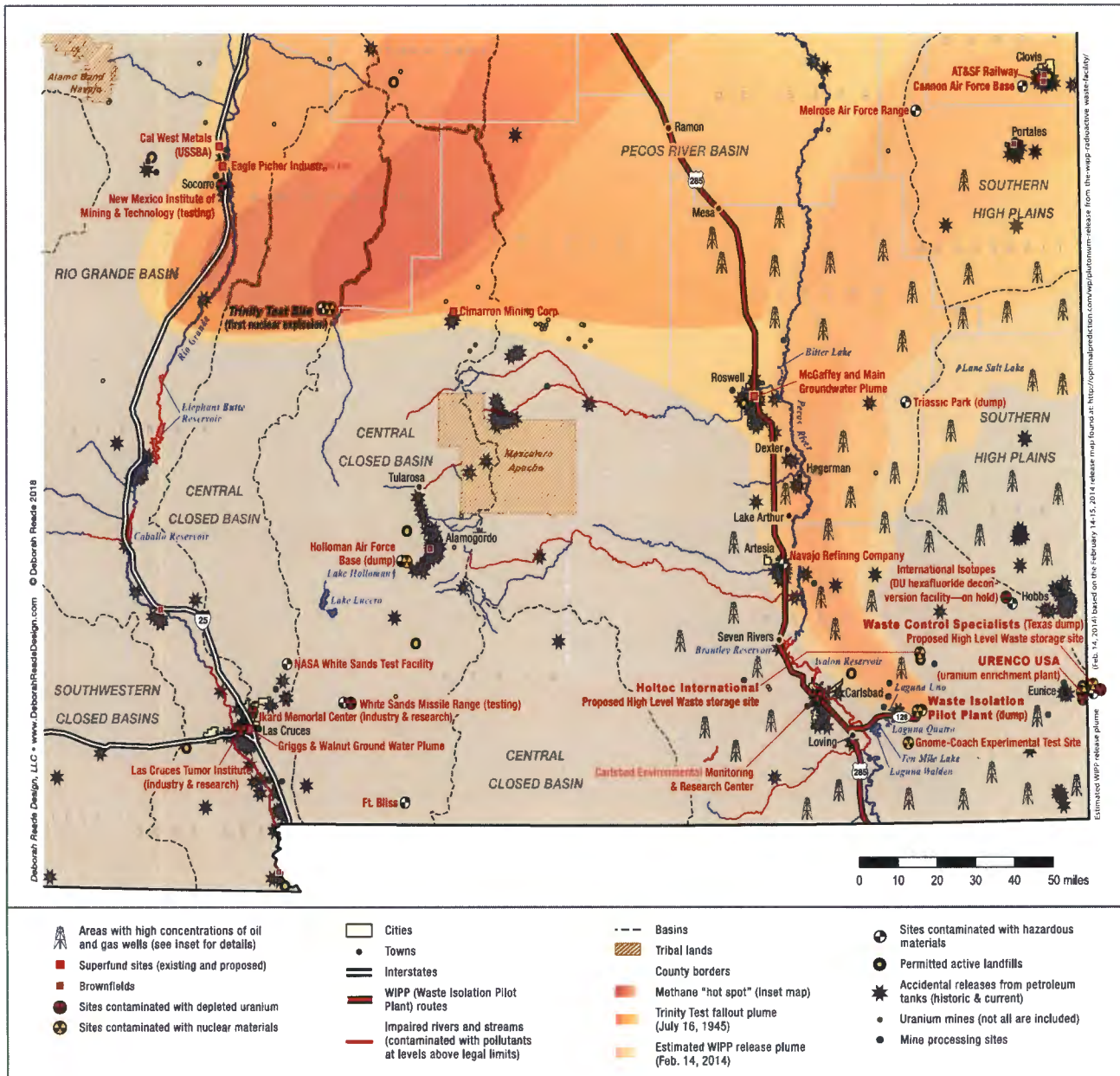
9. Attachment N. Post Closure Plan. We object to the proposal that the volatile organic compounds (VOC) monitoring program will begin after completion of closure of the first underground hazardous waste disposal unit. Neither NMED nor the Permittees have provided the necessary information, data and analysis to support such a change.

Thank you for your careful consideration of our comments. Please contact us with any questions or concerns.

Sincerely,

Deborah Reade

Joni Arends, Executive Director
Concerned Citizens for Nuclear Safety



WATER, AIR AND LAND: A SACRED TRUST

The uses of water, air and land are diverse in New Mexico and will change dramatically with climate change. For caretakers of this sacred trust, this map offers a bird's eye view of the health of our environment in southeastern New Mexico. It documents primarily the energy-related sources of pollution, though in New Mexico other polluting factors are also at work. This map does not cover *abatement sites, solid waste facilities and voluntary remediation sites*, among other things. Also, this map shows major water basins only.

Credits: We are grateful for initial project funding from the *Mercy Sisters - Northeast Community* and for additional project funds from the *New Mexico Community Foundation* in 2013. Maps created by Deborah Reade, *Deborah Reade Design*. Research by *Concerned Citizens for Nuclear Safety, Deborah Reade Design, Multicultural Alliance for a Safe Environment, Partnership for Earth Spirituality, and New Mexico Interfaith Power and Light*. Research and data interpretation by *Carlos Bustos, Resource Consultant and GIS Specialist*. For more information, references, additional credits and action you can take to protect water, air and land, please visit www.SacredTrustNM.org, www.earthspirituality.org, www.masecoalition.org, and www.nuclearactive.org.

