



ENTRUSTED

SOUTHWEST RESEARCH AND INFORMATION CENTER

P.O. Box 4524 Albuquerque, NM 87196 505-262-1862 FAX: 505-262-1864 www.sric.org

September 21, 2018

Butch Tongate, Secretary
New Mexico Environment Department (NMED)
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469

via email

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

Dear Secretary Tongate:

Southwest Research and Information Center (SRIC) provides this initial response to posting of:

“All of the *timely* public comments received for the draft Permit Class 3 *Clarification of TRU Mixed Waste Disposal Volume Reporting* are posted at the following link on the NMED website: <https://www.env.nm.gov/wp-content/uploads/2016/05/All-On-time-Public-Comments-Received-Class-3-VOR-09-20-2018.pdf>” (Email from Ricardo Maestas on 9/20/18 7:54 pm)

SRIC also again objects to the planned negotiations and public hearing date and location.

All timely public comments received have NOT been posted

SRIC was involved in two sets of timely public comments that are not included in the posted PDF. First, on August 20, 2018, SRIC and 20 other organizations submitted comments to you – which were copied to Ricardo Maestas and others – regarding the Draft Permit and requesting an extension of the public comment period. That comment letter is NOT included in the posted comments even though it was timely submitted 30 days in advance of the end of the comment period. That NMED received the comment is uncontested, since you responded and denied the requested extension on August 22. That response (along with the comment letter) must also be included in the Administrative Record (Amended on 9-20-2018).

Second, on September 19, 2018, SRIC and three other organizations submitted comments, requested a public hearing, and objected to the negotiations and public hearing schedule. That comment letter is not included in the posted comments even though it was timely submitted. That comment letter must also be included in the Administrative Record (Amended on 9-20-2018).

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Permitting regulations require NMED to make public and respond to all comments

That NMED is knowingly excluding public comments from the Administrative Record (AR) indicates that it will not comply with 20.4.1.901.A(9)(b) NMAC which requires the Secretary to: “briefly describe and respond to all comments on the draft permit or the permit application raised during the public comment period, or during any hearing.” If NMED doesn’t include public comments, it will not respond, as required by the regulations.

In your August 22, 2018 response denying the comment extension, you correctly noted that the regulations require that the comment period will be extended until the close of the public hearing. Thus, this comment letter must also be included in public comments and in the AR.

Objections to the dates for negotiations

The September 19, 2018 comment letter from SRIC and three other organizations noted above, states: “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.” By scheduling negotiations on that date, NMED is knowingly excluding SRIC from full participation in the negotiations. Such exclusion cannot be good faith compliance with the regulations to “attempt to resolve the issues giving rise to the opposition.” 20.4.1.901.A(4) NMAC.

Since at least two other organizations have stated that they have scheduling conflicts on those negotiation dates, and other parties have been given only a four-day notice of the negotiations (and at least one party requesting a public hearing apparently hasn’t been notified by NMED), it seems clear that NMED has no intention of complying with that regulation.

SRIC requests that the negotiations be re-scheduled so that all parties have significant advanced notice and time to review and analyze the hundreds of pages of public comments, thousands of pages of documents in the Administrative Record, and thousands of pages of documents that have been cited in comments that may not currently be in the Administrative Record, as they must be. If negotiations are convened, as currently scheduled, on September 24, the schedule for the remaining days of the negotiations should be discussed then and continued until an appropriate time.

Further objection to date and location of the public hearing

Based on what NMED representatives have stated, NMED has already decided that negotiations will not resolve all of the issues. Therefore, today or tomorrow the Department will issue a Notice of Public Hearing, beginning October 23 in Carlsbad. SRIC and other organizations objected to that date and location at a meeting on September 17, SRIC and three other organizations objected in the September 19 comment letter, and there were additional objections in public comments (see “All [sic] timely public comments” pages 57, 74-75).

Further, the commenters from Carlsbad, including Mayor Janway, have universally opposed a public hearing. See “All [sic] timely public comments” pages 11, 12, 13, 14, 15, 17, 20, 49, and 85. Of course, the Permittees have not requested a public hearing, including through the submission (over objections of SRIC and others) of the modification as a Class 2 request.

In striking contrast, none of the requests for public hearing have asked for Carlsbad to be the location and numerous ones have specifically requested that the location be in Santa Fe. Several parties have pointed out the historic precedents of the 1999 WIPP Permit hearing and 2010 WIPP Permit renewal hearings, which were held in Santa Fe (technical testimony and public comment) and Carlsbad (public comment). There has been no basis provided to change that precedent. If anything, because of the current lack of and expense of housing in Carlsbad, it is an even less appropriate location for the technical testimony, which will take several days. Of course, Carlsbad is far removed from the majority of people in the state and from many of those that have requested a public hearing.

Thus, SRIC, on its behalf and of many other parties to the public hearing, requests that technical testimony at the public hearing should be in Santa Fe, with public comment being held in Carlsbad.

Importantly, the decision to be made regarding expanding WIPP's capacity by approximately 30 percent will have significant effect on present and all future generations of New Mexicans public health and environment.

Thank you for your careful consideration of these matters before you notice the public hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is fluid and cursive, with a large initial "D" and "H".

Don Hancock

cc: J.C. Borrego, John Kieling, Ricardo Maestas