

COPY

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT



IN THE MATTER OF THE CLASS 3
PERMIT MODIFICATION REQUEST
OF THE U.S. DEPARTMENT OF ENERGY
AND NUCLEAR WASTE PARTNERSHIP,
LLC, FOR THE WASTE ISOLATION PILOT
PLANT FOR CLARIFICATION OF TRU
MIXED WASTE DISPOSAL VOLUME
REPORTING UNDER THE
HAZARDOUS WASTE FACILITY PERMIT

HWB 18-19 (P)

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
CLOSING ARGUMENT BY
CONCERNED CITIZENS FOR NUCLEAR SAFETY

Pursuant to the Post-Hearing Scheduling and Procedural Order and 20.1.4.500.B
NMAC, Concerned Citizens for Nuclear Safety ("CCNS") submits the following
Proposed Findings of Fact, Conclusions of Law, and Closing Argument.

CCNS's submittals focus on historical background of the Waste Isolation Pilot
Plant ("WIPP"), procedural flaws in the permitting process, questions of closure; the
unadmitted CCNS Exhibits 1 through 3; the Informal Resolution Agreement between
the U.S. Environmental Protection Agency ("EPA") and the New Mexico Environment
Department ("NMED") and inadequate accommodations for Low English Proficiency
(LEP) Spanish speakers; inadequate NMED Public Involvement Plan for WIPP; and lack
of exposure information for releases from both normal operations and accidents at
WIPP. CCNS argues that the proposed permit modification request ("PMR") must be
denied because neither the Department of Energy ("DOE") and Nuclear Waste

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Partnership, LLC (“NWP”), collectively “the Permittees,” nor the NMED, have provided a compelling explanation for why the permit modification is needed.

CCNS wholeheartedly supports the Proposed Findings of Fact, Conclusions of Law, and Closing Argument submitted by Southwest Research and Information Center (“SRIC”).

PROPOSED FINDINGS OF FACT

Historical Background

1. The Waste Isolation Pilot Plant (“WIPP”) was authorized in 1979 in Public Law 96-164, § 213. Therein, Congress authorized WIPP “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 states that its mission is to “demonstrate the safe disposal.” AR 180121.08, § 213(a).

2. Thus, WIPP was not the sole disposal site for all TRU waste. 10/25/18 Tr. 181, ll. 1-2 (Hancock).

Procedural Flaws in Public Hearing Notice No. 18-07, dated September 22, 2018

3. The NMED describes the permit modification request as “modification to distinguish how WIPP calculates final disposal volumes of transuranic (“TRU”) mixed waste in accordance with the New Mexico Hazardous Waste Act (“HWA”), NMSA 1978, §§ 74-4-1 to - 14, and the New Mexico Hazardous Waste Management

Regulations, 20.4.1 NMAC (“HWMR”). AR No. 180928.

4. “This permit modification request also proposed to distinguish between the [Resource Conservation and Recovery Act (“RCRA”)] TRU mixed waste volume and the Land Withdrawal Act (“LWA”) TRU waste volume.” AR No. 180928, p. 2.

5. However, the proposed changes to Permit Part 4, Table 4.1.1, *Underground Hazardous Waste Disposal Unit (“HWDU”)*, indicate that the proposed PMR is not about how the Permittees distinguish between the RCRA TRU mixed waste volume and a fake LWA TRU waste volume -- but how about the Permittees are trying to skirt compliance with RCRA.

6. The Permittees are proposing to clarify their reporting. But what the words say on the paper are different from what the Permittees are saying. The Permittees are proposing a LWA TRU waste volume.

7. Permit Part 1, Section 1.5.6. defines TRU Waste as “waste containing more than 100 nanocuries of alpha-emitting transuranic isotopes per gram, with half-lives greater than 20 years, except for (A) high-level radioactive waste; (B) waste that the DOE Secretary has determined, with the concurrence of the EPA Administrator, does not need the degree of isolation required by the disposal regulations; or (C) waste that the Nuclear Regulatory Commission has approved for disposal on a case-by-case basis in accordance with part 61 of title 10, Code of Federal Regulations. [Pub. L. 102-579 (1992)].” September 2018 WIPP Hazardous Waste Permit, Permit Part 1, Page 1-3 of 20. Not listed in the AR. The TRU Waste definition does not mentioned hazardous waste,

nor mixed waste.

8. Please note that the Permittees are not proposing to report a LWA TRU **mixed waste volume**. [Emphasis added.] They are proposing a LWA TRU waste volume – a volume would be exclusively the volume of radioactive TRU waste. *See No. 7 above.*

No Compelling Reason for PMR Has Been Provided; Proposed PMR Must Be Denied

9. The Permittees have neglected to provide a compelling reason for the proposed PMR. 10/23/18 Tr. 98, ll. 19 – 22 (Kehrman); 10/23/18 Tr. 215, ll. 1 – 4 (Kehrman). The Permittees have failed to meet their burden of persuasion. 20.1.4.400.A.1 NMAC.

10. The NMED has not required the Permittees to provide a compelling reason for the proposed PMR. 11/24/18 Tr. 123, ll. 9 – 13 (Maestas); 11/24/18 Tr. 123 – 124, ll. 18 – 25 and 1 – 15. The NMED has not met their burden of persuasion. 20.1.4.400.A.1 NMAC.

11. Because the Permittees have not met their burden of persuasion, the proposed permit modification request must be denied.

12. Because the NMED has not met their burden of persuasion, the proposed permit modification request must be denied by the NMED Secretary.

If Approved, NMED Permit Will No Longer Provide Criteria to Determine Closure

13. The proposed PMR, if approved, will allow the DOE to determine when WIPP may be closed. Permit Part 6, Section 6.10.1., *Panel Closure*.

CCNS Exhibits 1 through 3

14. Early on the last day of the hearing, October 25, 2018, CCNS electronically submitted three exhibits in three separate emails to all the parties, including the Hearing Clerk. As stated in the transmittal email, "The exhibits will be used during cross examination of the NMED witness."

15. CCNS Exhibit 1 is Environmental Protection Agency ("EPA") "Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs," also known as "EPA Public Involvement Guidance," published in the Federal Register Vol. 71, No. 54, pp. 14207 - 14217, March 21, 2006.

16. CCNS Exhibit 2 is the EPA "Guidance to EPA Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting LEP [Low English Proficiency] Persons," also known as "EPA LEP Guidance," published in the Federal Register Vol. 59, No. 122, pp. 35602 -35613, June 25, 2004.

17. CCNS Exhibit 3 is the EPA January 19, 2017 "Informal Resolution Agreement between the New Mexico Environment Department and the United States Environmental Protection Agency," External Civil Rights Compliance Office, Office of General Counsel, ECRCO Complaint 09R-02-R6.

18. In our cross-examination of the NMED witness, Mr. Ricardo Maestas, CCNS attempted to bring CCNS Ex. 2 in. 10/25/18 Tr. 27, ll. 7 - 10 and 10/25/18 Tr. 28, ll. 18 - 21 (Arends).

19. When NMED counsel challenged the admittance of the three exhibits, Hearing Officer Shepherd said, “Ms. Arends, I’m going to have to review those exhibits. I have not had a chance to review them yet, and I’m not in a position to rule on them until I have reviewed them, so at this point, I am inclined to conditionally sustain the objection to the admission of your exhibits, and I will make a final ruling after I have had a chance to look at them.” 10/25/18 Tr. 45, ll. 7 - 13 (Hearing Officer Shepherd).

20. Near the end of the hearing, CCNS asked Hearing Officer Shepherd about the admission of the three CCNS Exhibits, when he would make a decision about them, and how the parties would be contacted about the decision. 10/25/18 Tr. 251, ll. 19 - 22 (Arends).

21. On October 30, 2018, Hearing Officer Shepherd signed and filed an Order stating, “After due consideration I hereby sustain the Department of Environment’s objection to the admission of Exhibits 1, 2, and 3 tendered by Ms. Joni Arends on behalf of Concerned Citizens for Nuclear Safety in the above captioned and numbered matter.”¹

Informal Resolution Agreement between U.S. EPA and NMED - Inadequate Accommodations for Low English Proficiency (LEP) Spanish Speakers

22. NMED is the recipient of federal funds from the U.S. Environmental Protection Agency (“EPA”). CCNS Ex. 3 (January 19, 2017 *Informal Resolution Agreement between the New Mexico Environment Department and the United States Environmental Protection*

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

Agency,” External Civil Rights Compliance Office, Office of General Counsel, ECRCO Complaint No. 09R-02-R6), § LA., p. 1.

23. As a result, NMED is not allowed to discriminate on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance.²

CCNS Ex. 3, § LA., p. 1.

24. On January 19, 2017, the NMED entered into an *Informal Resolution Agreement* with the U.S. EPA to resolve a civil rights complaint that had been filed with EPA against NMED in 2002 involving another hazardous waste permit for Triassic Park.

CCNS Ex. 3.

25. “NMED is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulation at 40 C.F.R. Part 7.” CCNS Ex. 3, § I.E., p. 1.

26. The EPA Low English Proficiency (LEP) Guidance states that recipients of federal funds must assess service needs at a programmatic level, not only on a project-by-project basis. CCNS Ex. 2.

27. New Mexico is one of the few states in the U.S. where distinct minority racial groups constitute the majority of the population.

28. NMED's efforts to include Low English Proficiency (LEP) Spanish speakers in this proposed PMR for WIPP have been inadequate to provide equal access to

² Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000 d-7 (Title VI) and the U.S. EPA regulations at 40 C.F.R. Part 7.

information for this segment of the public about the PMR, and the public process itself.

AR No. 180914.36, p. 4.

29. A significant number of New Mexicans and an even larger percentage of potentially affected members of the public living near the WIPP Facility consist of LEP Spanish speakers. AR No. 180914.36, p. 4.

30. In New Mexico, 35.7 percent of the population speaks a language other than English in the home. AR No. 180914.36, p. 4.

31. The August 6, 2018 Notice of Public Comment Period and Opportunity to Request a Public Hearing was translated into Spanish. AR No. 180805, 10/25/18 Tr. 30-31, ll. 25 and ll. 1-2 (Maestas).

32. The September 22, 2018 Notice of Public Hearing and Opportunity for Public Comment on Draft Hazardous Waste Facility Permit (No. 18-07) was translated into Spanish. AR No. 180928, 10/25/18 Tr. 31, ll. 3 - 4 (Maestas).

33. The Public Hearing Notice No. 18-07 explains that the proposed changes found in the PMR are of a “complex nature.” AR No.180805, p. 2.

34. While the Public Notice and Public Hearing Notice were translated into Spanish, that is the entire information available for the LEP Spanish speaking community about the proposed PMR. AR No. 180914, p. 4.

35. Official documents must be made available for the LEP Spanish speaking community so that they can meaningfully participate in the hearing process. AR No. 180914.36, p. 4 and AR No. 180914.36A.

36. The LEP Spanish speaking community must have the opportunity to understand the proposed PMR in order to fully and equally participate in the public process, and provide informed public comments. AR No. 180914.36, p. 4.
37. The four-page August 6, 2018, Index to the Administrative Record was not translated into Spanish. AR No. 180809.
38. The 17-page September 20, 2018, Index to the Administrative Record was not translated into Spanish. AR No. 180916.5.
39. The August 6, 2018 Fact Sheet, "Notice of Intent to Approve a Class 3 Modification to Clarify TRU Mixed Waste Disposal Volume Reporting at the Waste Isolation Pilot Plant (WIPP), Carlsbad, New Mexico," was not translated into Spanish. AR No. 180806.
40. The August 6, 2018 Fact Sheet describes its functions as "(1) to facilitate public review of that draft permit; and (2) to provide a brief summary of the basis for the draft permit conditions." AR No. 180806.
41. As required by the NMED Implementing Policies at <https://www.env.nm.gov/general/epa-and-nmed-informal-resolution-agreement.gov> translators were present at the public hearing. 10/25/18 Tr. 33, ll. 23 – 25.
42. No written NMED notice, however, was provided to the public about the availability of translators at the hearing to provide equal access to information that had not been translated. AR No. 180914.36, p. 4; AR No. 180806, August 6, 2018 Fact Sheet; AR No. 180805 Public Hearing Notice No. 18-07; and 10/25/18 Tr. 34, ll. 9 - 13.

43. Limiting the public process almost entirely to English, as has been done with this proposed PMR, creates disparate effects or impacts for most New Mexico communities located near the WIPP site and along the transportation routes in New Mexico. CCNS Ex. 3; the NMED Implementing Policies; and AR No. 180914.36, p. 4, and AR No. 180914.36A.

44. Limiting the public process almost entirely to English will foreclosure a meaningful opportunity for LEP community members to participate in the public process. CCNS Ex. 3; NMED Implementing Policies; and AR No. 180914.36, p. 4.

45. NMED has not met its Civil Rights Act of 1964, Title VI, obligations with the proposed PMR. AR No. 180914.36, pp. 4 - 5.

46. As a result, NMED continues to discriminate against LEP Spanish speakers. AR No. 180914.36, pp. 4 - 5.

Inadequate NMED Public Involvement Plan for WIPP

47. “NMED understands that meaningful public involvement consists of informing, consulting and working with potentially affected and affected communities at various stages of the environmental decision-making process to address their needs.” CCNS Ex. 1, EPA’s ECRCO’s Public Participation Guidance found at 71 FR 14,207, 14,210 (March 21, 2006.); and CCNS Ex. 3, § III.G. *Public Participation*, at 1., p. 11.

48. “Therefore, NMED will ensure its public involvement process is available to all persons regardless of race, color, national origin (including limited-English proficiency)

age, disability, and sex.” CCNS Ex. 3, § III.G.1., p. 11.

49. “NMED will develop and implement a public participation policy that will require NMED to create and/or carry out each step listed in (a) – (i) below, each time they engage in an action that triggers the public participation process.”³ CCNS Ex. 3, § III.G.2, pp. 11 – 12.

50. As part of creating the Public Involvement Plan for WIPP, NMED used a 15-mile radius of the WIPP facility in their preliminary EJSCREEN screening of the needs of the individuals and communities located near the WIPP site. AR No. 180717, 10/25/18 Tr. 36, ll. 3 – 16 (Arends and Maestas exchange).

51. A 15-mile radius of the WIPP facility does not even include the City of Carlsbad, New Mexico, the largest community in southeast New Mexico. AR Nos. 180717, 180914.36A; and 10/25/18 Tr. 36, ll. 7 – 10 (Arends – Maestas exchange).

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- “a) An overview of the Recipient’s plan of action for addressing the community’s needs and concerns;
 - “b) A description of the community (see footnote 16 below) (including demographics, history, and background);
 - “c) A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet;
 - “d) A detailed plan of action (outreach activities) Recipient will take to address concerns;
 - “e) A contingency plan for unexpected events;
 - “f) Location(s) where public meetings will be held (consider the availability and schedules of public transportation);
 - “g) Contact names for obtaining language assistance services for limited-English proficient persons, including translation of documents and/or interpreters for meetings;
 - “h) Appropriate local media contacts (based on the culture and linguistic needs of the community; and
 - “i) Location of the information repository.”

Footnote 16: “In order to identify stakeholders in the affected community, the recipient will make a concerted effort to create partnerships with private and public entities to share information in addition to efforts to share information on its website and through standard media outlets. Such information sharing should include communities in the relevant geographic area to the permitted activity; those who have previously expressed an interest in environmental decision making activities; environmental and environmental justice organizations; religious institutions and organizations; public administration, environmental, law and health departments at colleges and universities; tribal governments; and relevant community service organizations.”

52. The plume from the February 14, 2014 detonation in the WIPP underground, extended beyond Clovis, New Mexico – 100 miles north of WIPP. AR No. 180914.36A.

53. The WIPP Public Involvement Plan should extend at least 100 miles in all directions from the WIPP site because it is impossible to know in what direction the wind will be blowing if there is a future release into the environment. AR No. 180914.36, p. 5; and 10/25/18 Tr. 35, ll. 9 - 21.

54. NMED did not provide a basis for the decision to use an arbitrary 15- mile radius around the WIPP site. AR No. 180914.36, p. 5; and 10/25/18 Tr. 36 - 37, ll. 17 - 25, and 1 - 12.

55. The EJSCREEN was not used to conduct a preliminary screening of the WIPP transportation routes. AR No. 180914.36, p. 5; and 10/25/18 Tr. 37 - 38, ll. 13 - 25, and 1 - 5.

56. If the PMR is approved, it can be estimated that there will be a 30 percent increase in the number of waste shipments to WIPP. AR No. 180914.36, p. 5; 10/25/18 Tr. 38 - 39, ll. 22 - 25 and 1 - 16.

57. There is no indication in the EJSCREEN description about whether increased transportation was even considered by NMED in preparing its WIPP PIP. AR No. 180914.36, p. 5; and 10/25/18 Tr. 40, ll. 7 - 12.

NMED Did Not Require Permittees to Provide Exposure Information for Releases from Both Normal Operations and Accidents at the Facility as Required by Informal

Resolution Agreement and 40 C.F.R. §270.10 (j).

58. NMED 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.” CCNS Ex. 3, § III.C. *Hazardous Waste Permits in General*.

59. NMED has not required the Permittees to submit “exposure information” as required by Section III.C. of the Informal Resolution Agreement, nor 40 C.F.R. §270.10. 10/25/18 Tr. 40 - 41, ll. 13 - 25 and 1 - 13.

60. In the end, the agreed to Informal Resolution Agreement, states, “NMED understands that EPA will close its monitoring of this Agreement when EPA determines that NMED has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in EPA re-opening the investigation.” CCNS Ex. 3, § VI.B, p. 14.

PROPOSED CONCLUSIONS OF LAW

1. NMED is authorized to issue hazardous waste permits subject to any terms and conditions necessary to achieve compliance with the Resource Conservation and Recovery Act (“RCRA”), the New Mexico Hazardous Waste Act (“HWA”), or the hazardous waste regulations. 40 CFR § 270.32(b)(1), incorporated by 20.4.1.900 NMAC.

2. The proposed permit is not protective of public health and the environment, pursuant to RCRA and the HWA and, therefore, must be denied. 40 CFR § 270.42(c)(6),

incorporated by 20.4.1.900 NMAC.

3. 20.1.4.500.B NMAC allows: “Unless otherwise ordered by the Hearing Officer, any party may submit proposed findings of fact, conclusions of law, and closing arguments within thirty (30) days after filing of the transcript.” This proceeding has been rushed by unknown forces without a compelling reason so that the proposed permit modification request can be signed off before December 31, 2018. As a result, the Parties to the hearing have not been afforded a full thirty (30) days following filing of the transcript to prepare these findings of fact, conclusions of law, and closing arguments. Some of the Parties do not have legions of lawyers, paralegals and support staff to prepare this filing. In full disclosure, some of the Parties are doing all the work ourselves.

CCNS Exhibits 1 through 3.

4. The Record Proper means “the Administrative Record and all documents filed by or with the Hearing Clerk.” 20.4.1.7.A.19 NMAC.

5. The 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.*” [Emphasis added.] 20.4.1.7.A.14 NMAC.

6. “Our courts have previously emphasized that legislative policy favors the public’s ability to participate meaningfully in the [] permitting process. See Martinez v. Maggiore, 2003-NMCA-043, ¶¶ 15, 17, 133 N.M. 472, 64 P.3d 499; *id.* ¶ 28 (Pickard, J.,

specially concurring).” Colonias Dev. Council v. Rhino Environmental Svcs., Inc., 2005-NMSC-024, 138 N.M. 133, 117 P.3d 939.

7. The public was unable to participate meaningfully in this permitting process because of the lack of compliance with the January 19, 2017 Informal Resolution Agreement between the U.S. EPA and NMED to resolve violations of the 1964 Civil Rights Act, Title VI. In the agreement, NMED stated it would perform certain tasks to bring the opportunities for public participation in hazardous waste permitting processes into compliance with the Civil Rights Act. More than 18 months after signing the Informal Resolution Agreement, the NMED still had not fully implemented their commitments. Despite protests and written public comments to that effect, NMED went forward with this proposed permit modification request to expand WIPP.

8. It does not appear that EPA will hold NMED accountable. Witness the delays in EPA responding to the 2002 Civil Rights Complaint filed in an NMED hazardous waste permit process. It took over 15 years to come to resolution. In the meantime, the LEP communities continue to be kept in the dark because the EPA is not enforcing their Part 7 requirements.

9. CCNS believe NMED waived their right to object to CCNS attempts to bring CCNS Exhibits 1 through 3 into these proceeding because they were not in compliance with the Informal Resolution Agreement.

CLOSING ARGUMENT

The proposed permit modification request must be denied because of the ongoing pattern and practice of discriminatory permitting processes and lack of access for limited-English proficient (“LEP”) Spanish-speaking residents to the public participation and permitting process as required by Title VI of the Civil Rights Act of 1964. Neither the Permittees nor the NMED have provided cogent or compelling explanation for the proposed permit modification request. If approved, the WIPP hazardous waste permit will no longer determine when closure of the facility will begin. As a result, all forms of waste could be brought to WIPP. 10/25/18 Tr. 222 – 224, ll. 12 – 25, 1 – 25, and 1 – 3 (Hancock).

The NMED has not complied with the requirements of the January 19, 2017 Informal Resolution Agreement between the U.S. EPA External Civil Rights Compliance Office (“ECRCO”), to resolve another faulty hazardous waste permit proceeding in 2002 which violated Title VI of the Civil Rights Act of 1964 and U.S. Environmental Protection Agency (“EPA”) regulations at 40 C.F.R. Part 7. As a recipient of federal financial assistance for its permitting programs, NMED is subject to the provisions of Title VI and 40 C.F.R. Part 7.

As demonstrated in this expedited hearing process, the NMED is in violation of the Informal Resolution Agreement. There has been a lack of translation of documents, including the proposed permit modification request, the index to the Administrative Record, and other “vital” documents; and lack of updated 40 C.F.R. §270.10 exposure information as required by Section III.C.a. *Hazardous Waste Permits in General*. The

Public Involvement Plan is inadequate and only addresses those residing within a 15-mile radius of the WIPP site. It does not include Carlsbad, New Mexico, the largest community in southeast New Mexico, which is located 26 miles west of the WIPP facility. NMED has continued its patterns and practices of discrimination on the basis of race, color, or national origin.

The NMED General Counsel argued against the admission of CCNS Exhibits 1 through 3, which include the Informal Resolution Agreement and implementing guidances. Now it is clear why. The NMED has not met the minimum public participation requirements for hazardous waste permitting processes as required by the Informal Resolution Agreement. The hearing process should be stopped until such time as the NMED corrects their discriminatory permitting patterns and practices.

Following the February 2014 salt haul truck fire and detonation in the WIPP underground, the NMED did not require the Permittees to update their exposure information for routine operations transportation and accidents as required by the Informal Resolution Agreement, and the Resource Conservation and Recovery Act, 40 C.F.R. §270.10.

The Permittees, nor the NMED, have provided a cogent argument for why the proposed permit modification request is needed. The title of the proposed modification is to “clarify” the **. It does not clarify anything; it just muddies the waters.

Concerned Citizens for Nuclear Safety (“CCNS”) formed in 1988 to address community concerns about the proposed transportation of radioactive and hazardous

transuranic waste from Los Alamos National Laboratory (LANL) to the then proposed Waste Isolation Pilot Plant through Santa Fe on St. Francis Drive.

Based on over 30 years of experience in addressing WIPP issues, CCNS's reading of the proposed permit modification request indicates, if approved, the Permittees will only have to report the amount of radioactive transuranic waste as Land Withdrawal Act transuranic waste ("LWA TRU waste") in the new column proposed for Table 4.1.1. The Permittees would not report the amount of mixed radioactive and transuranic waste. If approved, the permit modification would allow for all sorts of shenanigans for counting and reporting waste – all in a segmented effort to expand WIPP for disposal of surplus plutonium, high-level waste incidental to reprocessing, and elemental mercury storage on the surface. As explained by George Anastas, DOE needs a punch list to fix/repair/maintain the myriad of operational problems at the WIPP.

10/25/18 Tr. 172 - 173, ll. 12 - 25, 1 - 11.

CCNS implores the Hearing Officer to recommend to the Secretary to deny the proposed WIPP Class 3 permit modification request.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2018, the original of these Proposed Findings of Fact, Conclusions of Law, and Closing Argument was filed and served via the stated methods below to:

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
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