MEMORANDUM

TO: Butch Tongate, Secretary, New Mexico Environment Department (NMED)

THROUGH: J.C. Borrego, Deputy Secretary, NMED
        John E. Kieling, Chief, Hazardous Waste Bureau, NMED

FROM: Ricardo Maestas, WIPP Staff Manager, Hazardous Waste Bureau, NMED

CC: Jennifer Hower, General Counsel, Office of General Counsel, NMED

DATE: June 13, 2018

RE: RECOMMENDATION
CLASS 3 PANEL CLOSURE PERMIT MODIFICATION TO THE WASTE ISOLATION PILOT PLANT HAZARDOUS WASTE FACILITY PERMIT

On February 22, 2018, the New Mexico Environment Department ("NMED") Hazardous Waste Bureau ("HWB") issued a Draft Permit ("Draft Permit") and began a 60-day public comment period. NMED concurrently issued a Public Notice, Fact Sheet and an Index to the Administrative Record as part of this action. The Draft Permit was based on a Class 3 Permit Modification Request ("Modification Request") proposing modifications to the WIPP Panel Closure Plan that was submitted by the Department of Energy ("DOE") and Nuclear Waste Partnership LLC ("NWP") (collectively, the "Permittees"). Additional details of the proposed Class 3 modification can be found on the NMED WIPP Permit webpage at the following link: https://www.env.nm.gov/hazardous-waste/wipp/ under WIPP News dated February 22, 2018.

Brief Summary
On March 20, 2013, the Permittees submitted a three-item Class 3 Modification for modifications to the WIPP Panel Closure Plan; Repository Reconfiguration; and Changes to the Volatile Organic Compound Monitoring Program. On February 14, 2014, NMED issued a Draft Permit, based on the three-item Class 3 modification request, and began a 60-day public comment period, but had to withdraw the Draft Permit in March 2014 due to ongoing investigations of the salt haul truck fire and drum breach that occurred in February of that year. On February 22, 2018, after several requests for information and reviews of the responses, NMED issued a subsequent Draft Permit that only included modification to the Panel Closure Plan based upon amendments to the modification request by the Permittees, and began a 60-day
public comment period. During the comment period a total of eight comments were received consisting of five in support and three in opposition. The three commenters in opposition of the Draft Permit also requested to hold negotiations and a public hearing if needed.

**Technical Analysis Review**

HWB has conducted a review and analysis of the comments received. Based on the review and pursuant to 20.4.1.900 NMAC (incorporating 40 CFR §270.42(c)), HWB has determined that, while HWB can adequately respond to the comments received, the public comments indicate that there is public concern with some significance. For reference the comments can be found on the NMED WIPP Permit webpage at the following link: [https://www.env.nm.gov/wp-content/uploads/2016/05/Class-3-Panel-Closure-Public-Comments-Received.pdf](https://www.env.nm.gov/wp-content/uploads/2016/05/Class-3-Panel-Closure-Public-Comments-Received.pdf)

**Conclusion**

In conclusion, based on the analysis conducted by NMED, as described above, it is the HWB’s recommendation that this action be granted a public hearing. In proceeding with a public hearing, the HWB will coordinate negotiations under the provisions of 20.4.1.901.A(4) NMAC. HWB is hopeful that the negotiations with the Permittees and the three public hearing requestors can be productive to limit the issues during the public hearing.