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By email to: [Ricardo.Maestas@state.nm.us](mailto: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 Permit Modification Request about the  
Proposed Excavation of a New Shaft and Associated Connecting Drifts at the  
Waste Isolation Pilot Plant (WIPP)

Dear Mr. Maestas:

Deborah Reade, as an individual, and Concerned Citizens for Nuclear Safety (CCNS), a 31-year old non-governmental organization based in Santa Fe, New Mexico, provide the following public comments about the above-referenced Class 3 Permit Modification Request (PMR) by the U.S. Department of Energy (DOE) and its contractor, Nuclear Waste Partnership, LLC (NWP) (collectively, the Permittees) about the Waste Isolation Pilot Plant (WIPP) proposed expansion.

**Reade and CCNS oppose the proposed excavation of a new shaft and associated connecting drifts Class 3 PMR;**

**Reade and CCNS urge the New Mexico Environment Department (NMED) to deny the PMR;**

**If NMED decides to move forward with a draft permit based on the PMR, Reade and CCNS request that 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 PMRs and the permit renewal hearing, we request that NMED, the Permittees, Reade, CCNS, and other parties conduct negotiations to attempt to resolve any outstanding issues; and**

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**Reade and CCNS respectfully request that a public hearing be held for any outstanding unresolved issues.**

## GENERAL COMMENTS

Reade and CCNS find the PMR to be incomplete, inconsistent and inadequate to allow the public to fully understand its foundation, why the proposed shaft and associated connecting drifts are needed, and the long-term implications of the PMR, if implemented.

Permittees have submitted a “pretend” PMR because they have not provided a clear explanation about why the new shaft and associated connecting drifts are being proposed, other than vague statements. **That being said, the underground floor plan for the associated connecting drifts and new shaft are equal to or larger than the existing WIPP underground.**

Further, the PMR is a part of a larger plan to extend WIPP’s permit term from the current ending date of 2024 to 2052 – a “life” extension of 28 years. The proposed PMR, plus the permit renewal application, would extend the permit period to more than double the 25-year operational phase DOE told the People of New Mexico it would take to “clean-up” and “secure” the transuranic (TRU) waste stored at its sites around the country. Even so, 4,000 drums of TRU waste are stored above ground in fabric tents at Los Alamos National Laboratory (LANL) awaiting characterization, shipment preparation, and disposal at WIPP.

Permittees believe they can “segment” their known and unknown expansion plans without anyone noticing. Based on decades of experience with the DOE’s patterns and practices of saying one thing and doing another, it is obvious to the People of New Mexico that the PMR is part of a gigantic expansion of WIPP’s size.

Further, a new shaft and associated connecting drifts could accommodate more wastes for which DOE has submitted specific plans for, or that DOE has declared WIPP to be a disposal option, including:

- At least 34 metric tons (74,800 pounds) of weapons-grade plutonium, to make WIPP the world’s largest plutonium “ore body”
- High-level wastes from Hanford, Washington (and other sites)
- Commercial waste from West Valley, New York
- Greater-Than-Class C commercial waste from nuclear power plants
- Elemental mercury surface storage

The Permittees must provide more information, layout, and closure plan for such proposed expansion.

## NMED PUBLIC INVOLVEMENT PLAN (PIP) FOR WIPP

Reade and CCNS find the PMR and the Department's Public Involvement Plan (PIP) to be incomplete, inconsistent and inadequate to allow the public to fully understand the foundation and implications of the PMR.

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 radiation and hazardous material release in February 2014 extended beyond Clovis – more than 100 miles north of WIPP. Because it is 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 Administrative Record (AR) do not provide documentation to support the use of an arbitrary 15-mile radius.

In addition, PIPs are supposed to include affected communities' needs, concerns, history and demographics. The PIP meets none of these requirements as it only purports to address translation needs and some minimal public participation needs. Even translation needs are not addressed by arbitrarily choosing the 15-mile radius and eliminating Carlsbad and all other areas beyond 15 miles. NMED has neatly avoided providing translation in an area with a large number of LEP persons.

The PIP does nothing to address all other major concerns in the area including the health of the population. **Southeast New Mexico has the highest cancer death rate in the state--a rate that is seen nowhere else in the state.** There are numerous polluting facilities, both permitted and unpermitted, in the area. NMED has avoided even mentioning Holtec, a proposed high-level radioactive waste Consolidated Interim Storage (CIS) facility for thousands of spent fuel rods to be transported there from other areas of the country. Holtec is 16 miles from WIPP so arbitrarily choosing a 15-mile radius again very neatly lets NMED ignore this major local concern. Along with Waste Control Specialists (WCS)/Interim Storage Partners (ISP), another nearby proposed CIS site, more than 60,000 comments were generated about these two proposed facilities – most of which were comments against having another major polluting facility built in the area.

Further, the EJSCREEN was not used to conduct a preliminary screening of the WIPP transportation routes. Because the proposed PMR, if approved, would obviously result in more waste disposal, increased transportation would be required. There is no indication in the EJSCREEN description about whether increased transportation was even considered.

## EQUAL ACCESS AND/OR INFORMATION FOR LIMITED ENGLISH PROFICIENCY (LEP) PERSONS

New Mexico is one of a few states in the U.S. where distinct minority racial groups constitute the majority of the population. In New Mexico, 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. The 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. Facility transportation is routed near and through many small and large communities within the state. NMED must, therefore, 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 was been done during the previous administration, 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 in order to participate equally in the public processes for permitting facilities. NMED, therefore, is well aware of these problems.

On January 19, 2017, NMED signed an *Informal Resolution Agreement* with EPA about these concerns and others. EPA No. 09R-02-R6. As a result, NMED created implementing policies to document what must be done. These include *NMED Policy & Procedure 07-10: Non-Employee Disability*; *NMED Policy & Procedure 07-11: Limited English Proficiency*; and *NMED Policy & Procedure 07-13: Public Participation*.  
<https://www.env.nm.gov/general/epa-and-nmed-informal-resolution-agreement-no-09r-02-r6-public-participation-limited-english-proficiency-and-non-employee-disability-policies/>

We are hopeful that NMED will publish the public notices about this PMR in both English and Spanish; utilize the Spanish newspapers for publication purposes; provide PSAs about the PMR in both English and Spanish; and translate the Fact Sheet into English and Spanish. See additional comments under Public Notices.

Further, any Draft Permit, the Administration Record (AR) Index and the AR itself must be translated into Spanish. Although NMED is not required to translate the entire AR or Draft Permit into Spanish as they are lengthy, all vital information to which English speakers have access 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 informed public comment. Without access to such vital information, Spanish speakers do not have full and equal access and cannot fully and equally participate in the permitting process. 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. We must ensure that the public materials, including the English and Spanish Public Notices and the English Fact Sheet inform the public that this interpreter is available and 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.

### **PERMITTEES LACK OF COMPLIANCE WITH 40 C.F.R. §270.10 (j) AND (k)**

Sections 40 C.F.R. §270.10 (j) and (k) 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, if the PMR were approved, would increase, 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.

There has been some indication in the past that NMED sees transportation as separate from the site itself. Nevertheless, under Title VI of the Civil Rights Act, NMED's actions and programs that *have the effect of* discriminating or causing disparate impacts are not allowed. NMED allowed the WIPP project to be sited in Southeastern New Mexico. From the beginning, facility transportation throughout New Mexico has been a major part of the project and is, in fact, responsible for most of the negative health effects of the entire project during normal operations. Even if another agency sets the routes through New Mexico, NMED still has a responsibility to make sure that transportation throughout New Mexico is not discriminatory and to make sure *all* people along the routes who could be affected are able to inform themselves about the project, including its transportation.

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.

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.

NMED claims to want to understand what they can do to increase public participation and particularly public participation by Hispanic residents. Yet they do not appear to make any effort to include Public Notices in Spanish when local newspapers (all of which are primarily aimed at English speakers) have Spanish editions or sections even though doing so would maximize the possibility that LEP Spanish speakers would see these notices.

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

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