

August 10, 2020

Ricardo Maestas
Hazardous Waste Bureau
New Mexico Environment Department
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Santa Fe, NM 87505
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Re: PUBLIC NOTICE No. 20-03 - New Shaft at the Waste Isolation Pilot Plant;
WIPP Permit Renewal and Modification

Dear Mr. Maestas:

I object to the proposed permit modification to allow construction of a new utility shaft and associated drifts (tunnels) into the Waste Isolation Pilot Plant (WIPP). I also object to the New Mexico Environment Department's (NMED) temporary authorization to allow shaft construction seven weeks before the draft permit was issued.

It is clear there is no emergency requiring NMED to issue a temporary authorization for shaft construction for ventilation. In fact, the New Filter Building scheduled for completion next year will provide more than 100% of the ventilation required for workers in the partially contaminated WIPP facility.

Instead the construction of a new utility shaft and drifts is part of a WIPP expansion design. Utility shaft and drift construction is the first step towards an enlargement of disposal operations at WIPP that would more than double the size of WIPP's current disposal area, which is presently near capacity. New waste panels and waste rooms can be excavated along each side of the two new drifts, to facilitate the storage of more waste.

DOE's recently released Draft Environmental Impact Statement for Plutonium Pit Production at the Savannah River Site in South Carolina (DOE/EIS-0541) confirms its intentions to store additional volumes of weapons grade plutonium waste at WIPP. Other waste being considered for potential storage at WIPP includes Greater-Than-Class C low-level waste; elemental mercury; high-level radioactive waste from sites like Hanford, Washington; and commercial waste from West Valley, New York.

Forty years ago, when Congress first designated WIPP as a research and development facility for demonstrating the safe disposal of plutonium-contaminated wastes from national defense activities, multiple repositories for different types of nuclear waste and other hazardous materials were envisioned. WIPP's mission was limited to the storage of 6.2 million cubic feet of existing transuranic waste from the nuclear weapons complex for a period of 25 years. WIPP was never intended, nor has it been designated, as the only permanent repository for the nation's growing nuclear waste stockpile.

Although an expanded WIPP could conceivably store more waste, these plans are constrained by Department of Energy (DOE) promises to New Mexico that WIPP operations would cease after 25 years in 2024, as stated in Public Law 96-164. Disposal at the WIPP pilot project was limited to existing plutonium contaminated waste from the nuclear weapons complex.

WIPP's current permit mandates closure in 2024. Any modification to extend the operating life of WIPP beyond its original pilot period or to expand its original mission constitutes a major change that requires explicit Congressional action, consultation with the state of New Mexico, and consent from the state of New Mexico. Until that process is undertaken, NMED lacks authority to permit an expansion of WIPP to store additional nuclear waste beyond 2024 through a permit modification, or to temporarily authorize the construction of a new utility shaft to facilitate the extension of WIPP's mission and life.

NMED must withdraw its temporary authorization to construct a new utility shaft immediately and must deny the associated modification request.

Congress first authorized WIPP (Public Law 96-164) as a pilot plant "to demonstrate the safe disposal of radioactive wastes" from U.S. defense programs in December 1979. Public Law 96-164 also directed DOE and the State of New Mexico to "seek to enter" a Consultation and Cooperation (C&C) Agreement. A C&C Agreement was signed in July 1, 1981 as part of a lawsuit settlement. The First Modification of the C&C Agreement expanded the geological studies required. A Second Modification limited the total volume of waste at WIPP to 6.2 million cubic feet (175,564 cubic meters). NRC certification for shipping containers was required and mining and drilling into the WIPP site area are prohibited.

The WIPP Land Withdrawal Act (Public Law 102-579) was passed in October 1992. This Act imposed detailed standards and requirements for WIPP that specify a total waste volume of 6.2 million cubic feet of transuranic (TRU) waste, compliance with EPA disposal regulations, and the issuance of a federal Resource Conservation and Recovery Act (RCRA) permit. DOE was required to ensure funding to upgrade New Mexico's highways and the storage of high level nuclear waste at WIPP was prohibited.

The State regulates WIPP through the New Mexico Hazardous Waste Act pursuant to RCRA. WIPP's RCRA permit, in conformity with governing Public Law, incorporates federal limitations on the permanent storage of no more than 6.2 million cubic feet (175,564 cubic meters) of transuranic waste and states that disposal operations at WIPP will end in 2024, followed by a 10-year closure period.

Together, the Department of Energy, Congress, and the State of New Mexico have placed clear limits on the types and volume of waste to be stored at WIPP, along with a defined closure date for WIPP disposal operations, through written agreements, permits, and federal law.

DOE's application for renewal and modification of WIPP's RCRA permit now proposes to expand WIPP disposal operations indefinitely, eliminating WIPP's 2024 closure date and allowing for the disposal of additional waste that was not included in the original TRU waste inventory for which WIPP was constructed.

DOE's plan to turn WIPP into the sole permanent repository for the nation's nuclear waste and hazardous materials is misguided and contrary to federal and state law.

Thank you for considering my comments.

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