

## **SOUTHWEST RESEARCH AND INFORMATION CENTER**

**P.O. Box 4524 Albuquerque, NM 87196 505-262-1862 FAX: 505-262-1864 [www.sric.org](http://www.sric.org)**

August 11, 2020

Ricardo Maestas  
New Mexico Environment Department (NMED)  
2905 Rodeo Park Drive, Building 1  
Santa Fe, NM 87505-6303

Via email: [Ricardo.Maestas@state.nm.us](mailto:Ricardo.Maestas@state.nm.us)

RE: Public Notice 20-03 - Draft New Shaft and Associated Connecting Drifts Permit

Dear Ricardo,

Southwest Research and Information Center (SRIC) provides the following comments on the draft Permit Modification, dated June 12, 2020. SRIC's comments in the Administrative Record (AR) regarding the new shaft are incorporated by reference and must be fully considered and responded to.

As is already well documented in the AR, before the New Mexico Court of Appeals (No. A-1-CA-38924), and before the New Mexico Supreme Court (Nos. S-1-SC-38372 and 38373), SRIC strongly opposes the draft permit and the Temporary Authorization (TA) issued for the New Shaft and Associated Connecting Drifts.

**SRIC objects to each and every provision of the draft permit for technical and legal reasons, and instead supports denial of the Class 3 Permit Modification Request (PMR) submitted on August 15, 2019. SRIC requests negotiations with the permittees, NMED, and other parties, and a public hearing on the draft permit.**

1. NMED's actions demonstrate that the agency has decided to approve the PMR.  
20.4.1.900 NMAC (incorporating Title 40 CFR §270.42(c)(6) provides:

After the conclusion of the 60-day comment period, the Director must grant or deny the permit modification request according to the permit modification procedures of 40 CFR part 124. In addition, the Director must consider and respond to all significant written comments received during the 60-day comment period.

Since the pre-submittal meeting on November 9, 2017 in Albuquerque (AR 171106.5), the permittees and NMED have been aware of the strong opposition to the new shaft by SRIC, other

organizations, and members of the public. The technical and legal deficiencies of a modification to allow the new shaft and associated drifts were discussed at the November 9, 2017 meeting, in SRIC's repeated comments on February 2, 2018 (AR 180205), March 8, 2019 (AR 190308), April 15, 2019 (AR 190408), October 16, 2019 (AR 191019.15), and January 27, 2020 (AR 200124), and litigation (AR 200421, AR 200422, AR 200503, and AR 200525, and subsequent filings). The opposition of other organizations and individuals comprise the majority of the documents in the AR released with the draft permit. NMED's own compilation of comments on the class 3 PMR submitted from September 25, 2019 to February 27, 2020 (AR 200610) show that more than 97 percent of the 295 commenters opposed the PMR.

Rather than deny the PMR, for which there was significant basis, or deny the TA as should have occurred to comply with regulatory requirements, NMED approved the TA on April 24, 2020 (AR 200415) and issued the draft permit on June 12, 2020. The draft permit makes no substantive changes to any of the proposed revisions to the Permit that are included in the December 22, 2017 class determination modification request (AR 171222) and the Class 3 PMR (AR 190815).

NMED also has repeatedly defended the TA in its Court of Appeals and New Mexico Supreme Court filings. In none of those filings has NMED refuted or even directly responded to the affidavit of Steven Zappe, who is the longest serving NMED WIPP staffer (AR 200422):

For several clear regulatory reasons, NMED should not have approved the January 16, 2020 TA request to excavate Shaft #5. Any one of the following reasons would be sufficient grounds to deny this TA request. ¶15 (at 385 of PDF).

In granting the TA on April 24, 2020, NMED has in essence foreordained the outcome of the PMR without the benefit of public comment and hearing. After the Permittees spend millions of dollars *beginning* the excavation of a new shaft under the TA granted by NMED, it is unimaginable that NMED would be able to deny the PMR. Likewise, telling the Permittees that they would need to "reverse all construction activities associated with this request" if the PMR were ultimately denied is technically infeasible." ¶15E (at 387-388 of PDF).

SRIC's comments on January 27, 2020 detailing why the TA was not legally and technically approvable (AR 200124) were not responded to in the TA or the two-page explanation of the basis for approving the TA. AR 200415.1. NMED has not even stated that it considered and reviewed those comments before approving the TA.

Thus, NMED's actions in the record clearly indicate that NMED has approved the TA and has decided to approve the PMR. The statements in the TA and in court filings to the contrary have no credibility. Further, NMED must know that DOE has no appropriation from Congress, nor any contract, to re-fill and seal the shaft (if such sealing is possible) that is being constructed. Thus, as Mr. Zappe states, it is technically infeasible to reverse all construction activities.

Therefore, NMED's decision to approve the TA is effectively a decision to approve the PMR, contrary to the requirements of the Hazardous Waste Act and its regulations.

2. NMED admits that it has already concluded that the new shaft is important, despite many comments to the contrary, before completing the required public comment and hearing process. The Fact Sheet states: “NMED has concluded that the proposed new shaft is important for current underground operations and worker safety.” at 3. NMED has not “tentatively concluded” or “preliminarily concluded”; it “has concluded.” NMED has not provided a technical basis for its conclusion.

NMED implicitly admits that it has already ignored – and will continue to ignore – the comments and facts by SRIC and others submitted that the new shaft is not important for the current underground operations because of the additional ventilation will be provided by the New Filter Building (NFB), which is under construction and is scheduled to be operational in 2021. NMED is even ignoring provisions of the Permit that have been in place since March 23, 2018 that state:

The Underground Ventilation Filtration System (**UVFS**) fans which are part of the New Filter Building (**NFB**) (Building 416) provide enhanced ventilation in the underground, sufficient to allow concurrent mining and waste emplacement while in filtration mode.<sup>1</sup>

AR 191019.15; *see also* #4 that follows.

NMED has not responded to concerns of the Defense Nuclear Facilities Safety Board (DNFSB) related to safety problems with the new ventilation system that DNFSB had been raising for more than a year, as is discussed in SRIC’s October 16, 2019 comments. AR 191019.15. NMED has not explained in the AR what independent technical basis the agency has to conclude that the new shaft configuration is important and that it will actually operate to protect worker safety.

Further, NMED has not explained:

- Why, if the new shaft is “important for current underground operations and worker safety,” did the agency not reach the conclusion during its consideration of the December 22, 2017 PMR?
- Why, if the new shaft is “important for current underground operations and worker safety,” did the agency delay for 239 days from the end of the comment period on the class 3 request on October 16, 2019 until issuing the draft permit on June 12, 2020?
- Why, if the new shaft is “important for current underground operations and worker safety,” does NMED allow the site to continue to operate without the new shaft, including allowing dozens of workers to go underground on a daily basis?
- Why, if the new shaft is “important for current underground operations and worker safety,” does NMED allow underground operations even though the agency stated to the New Mexico Court of Appeals and the New Mexico Supreme Court that current workers in the underground are an “imminent health concern, and improved ventilation at the facility is a necessity.”<sup>2</sup>?

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<sup>1</sup><https://hwbdocuments.env.nm.gov/Waste%20Isolation%20Pilot%20Plant/200100/200100%20WIPP%20Permit%20PDF/Attachment%20A2%20%2001-2020.pdf> at A2-9.

<sup>2</sup> AR 200516 at 13; AR 200710 at 16. Numbering from the NMED WIPP Facility Records Index, [https://hwbdocuments.env.nm.gov/Waste%20Isolation%20Pilot%20Plant/000000\\_WIPP%20Index.pdf](https://hwbdocuments.env.nm.gov/Waste%20Isolation%20Pilot%20Plant/000000_WIPP%20Index.pdf)

- Why, if the new shaft is “important for current underground operations and worker safety,” is the site allowed to continue underground operations during the 37 months of scheduled construction of the new shaft and associated underground drifts?
- Why is the new shaft “important for current underground operations and worker safety,” when it is scheduled to be in operation for little more than a year before the permit states that waste disposal operations will end in 2024?

Thus, NMED has concluded that the new shaft is important, and the agency will effectively not consider any further facts that will be submitted during the public process on the draft permit!

NMED’s actions in approving the TA and vigorously defending that decision in legal filings and issuing a draft permit with no significant changes from the PMR are sufficient demonstration that NMED has pre-determined its decision to approve the request. But, in the Fact Sheet, NMED specifically admits that it has concluded that the new shaft is important.

That final conclusion was made before the public comment and hearing process started on June 12, 2020. Such a conclusion is clearly contrary to the requirements of 20.4.1.900 NMAC (incorporating Title 40 CFR §270.42(c)(6)) that such a final conclusion can be made only after the public comment and hearing process is finished.

3. NMED’s actions demonstrate that the agency coordinated the schedule for new shaft construction with the permittees before issuing the TA, and then delayed issuing the draft permit to compress the time available for the required public comment and public hearing process. The first document in the AR (AR 170715) is the Notification of Planned Change for the new shaft (S#5) and associated drifts. The document states: “The Permittees anticipate that the excavation of S#5 will start in calendar year 2018.” at 1. Of course, there was no basis for that start date since there were no detailed designs and the contract to excavate the new shaft would not be signed until August 21, 2019. [https://wipp.energy.gov/wipp\\_news\\_20190821.asp](https://wipp.energy.gov/wipp_news_20190821.asp).

The permittees kept NMED informed about the actual timeframe in which the contractor would be ready to begin excavation, which was scheduled for March 2020, but was delayed until late April 2020. The TA request was submitted on January 16, 2020 (AR 200112) and the regulations state “The Director shall approve or deny the temporary authorization as quickly as practical.” 40 CFR 270.42(e)(3). Yet the NMED delayed approving the TA for more than three months, until April 24, 2020 (AR 200415), to be effective on April 27, 2020, the day that construction began.

After approving the TA on April 24, 2020, NMED delayed issuing the draft permit for public comment for seven weeks, until June 12, 2020. The initial TA is in effect until October 24, 2020, but because of the required public process, the permit will not be issued by that date. So the TA will inevitably be extended for another 180 days until April 22, 2021. NMED recognizes that the one TA renewal is all that is allowed by 40 CFR 270.42(e)(4). AR 200415. Thus, while NMED could have issued the draft permit before approving the TA, or when it approved the TA, it did not do so. NMED has not explained the rationale for its PMR process schedule.

Instead, NMED delayed starting the required public comment process, including negotiations and public hearing, which has the effect of reducing the time available for that required public

process because there is a pre-determined date of no later than April 22, 2021 by which the modification request will be approved. Unless the request is approved by April 22, 2021, construction of the new shaft would have to cease, as there would be neither a TA, nor an approved permit modification. In their court filings, the permittees have acknowledged that fact: “If the authorization granted by the TA expires, then construction will simply have to cease until NMED takes action on the PMR following the completion of public participation procedures.”<sup>3</sup>

The effect of NMED’s actions has been to accommodate the permittees’ schedule to begin construction, while compressing the required public process, all of which is to benefit the permittees and limit the time for the required public participation.

NMED is well aware that a robust Class 3 modification process for a controversial request can take longer than the 314 days from the issuance of Public Notice 20-03 until the Final Order date of no later than April 22, 2021. For example, on November 23, 2005, NMED issued Public Notice 05-16 on a class 3 modification, for which the Final Order was issued on October 16, 2006, a process that took 327 days.

Consistent with its actions to approve the TA and the PMR, NMED’s process has clearly favored the interests, including their preferred timeframes, of the permittees and prejudiced the ability of SRIC and other members of the public to effectively participate in the permitting process. Such actions are contrary to the Hazardous Waste Act and its regulations.

4. DOE and NMED state an erroneous need for the PMR, rather than stating that the need for the new shaft and associated drifts is to physically expand the underground footprint of WIPP to allow for more waste disposal and extend the lifetime of the facility.

20.4.1.900 NMAC (incorporating Title 40 CFR §270.42(c)(1)(iii) requires that the Class 3 modification request: “Explains why the modification is needed.”

The permit modification process for the new shaft and associated drifts commenced with a pre-submittal meeting on November 9, 2017 in Albuquerque on three proposed PMRs – Training Program Revisions, New Filter Building (NFB), and New Shaft. AR 171106.5. At that meeting, there was discussion of combining two proposed class 2 PMRs – NFB and New Shaft – into one class 3 request. Rick Chavez for the permittees stated that had been considered, but they decided to proceed separately so as to not delay the NFB, since the desired 540,000 actual cubic feet per minute (acfm) would be provided by the NFB. SRIC also made clear that the new shaft PMR is a class 3 request and other public participants agreed. SRIC further pointed out that the new shaft was not needed for ventilation and that its real purpose was to expand the capacity of the facility.

On November 29, 2017, the permittees submitted a class 2 modification for the Training Program Revisions and NFB. On March 23, 2018, NMED approved the PMR with changes.

On December 22, 2017, the permittees submitted the New Shaft and Associated Drifts PMR as a request for class determination. AR 171222. On February 2, 2018, SRIC submitted comments on

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<sup>3</sup> Nuclear Waste Partnership (NWP) Response to Verified Petition For an Emergency Writ of Mandamus and Request for Stay, July 15, 2020, at 14.

the PMR that, as stated at the November 9, 2017 pre-submittal meeting, the PMR should not be submitted or that it must be considered as a Class 3 request. AR 180205. CARD (AR 180207), CCNS (AR 180210), and Nuclear Watch (AR 180217) all agreed with the SRIC comments.

SRIC further documented that the new shaft and associated drifts are not for ventilation, but rather for facility expansion to address the lost capacity in ten-panel underground footprint in its comments of February 2, 2018 (AR 180205) and March 8, 2019 (AR 190308). Neither NMED nor the permittees have refuted those comments, but they did not specifically acknowledge the real need for the new shaft and associated drifts for WIPP expansion.

The permittees withdrew the December 22, 2017 request and submitted the Class 3 PMR on August 15, 2019. AR 190815. The request does not respond to, nor refute, the SRIC comments regarding the need for the new shaft for expanding the underground footprint.

In its October 16, 2019 comments on the PMR (AR 191019.15), SRIC again detailed why the new shaft was not needed and that the NFB provided for the 540,000 acfm. The SRIC comments further documented that the new shaft is needed to expand the underground footprint of WIPP beyond the ten-panel design. Neither the permittees nor NMED have responded to or refuted those comments.

That expanded underground footprint is needed because of mismanagement of the permitted underground space and underground contamination for the February 14, 2014 radiation release so that the panels are not filled to capacity. The expansion is also needed because of DOE's many plans to bring much more waste to WIPP, which were also detailed in SRIC comments of October 16, 2019. Those plans include National Environmental Policy Act (NEPA) documents related to High-Level Tank Waste; Greater-Than-Class C commercial waste; West Valley, NY commercial waste; surplus plutonium waste; and most recently, waste from fifty years of proposed new plutonium pit production at Los Alamos and the Savannah River Site.<sup>4</sup> Neither the permittees, nor NMED have responded to or refuted those comments.

The DOE Carlsbad Field Office Draft 2019-2024 Strategic Plan<sup>5</sup> declares the objective of operating WIPP through the year 2050 to emplace, not the statutory limit of 6.2 million cubic feet, but the entire "existing defense TRU waste inventory" and states that the new shaft and additional disposal panels are necessary for that purpose. at 1. SRIC comments on that document were included in the October 16, 2019 submittal. AR 191019.15. NMED has not addressed that planned operating period, which is contrary to provisions related to WIPP's disposal operations timeframe that have always been in the Permit.

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<sup>4</sup> *Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement*, DOE/EIS-0236-S4-SA-02 (Dec. 2019). *Draft Environmental Impact Statement for Plutonium Pit Production at the Savannah River Site in South Carolina*, DOE/EIS-0541 (April 2020).

<sup>5</sup> [https://wipp.energy.gov/pdfs/DOE-CBFO-19-3605\\_CBFO%20Strategic%20Plan%202019-2023-Rev%200-DRAFT%20A.pdf](https://wipp.energy.gov/pdfs/DOE-CBFO-19-3605_CBFO%20Strategic%20Plan%202019-2023-Rev%200-DRAFT%20A.pdf)

DOE’s agencywide Environmental Management Strategic Vision 2020-2030 states that “the new Utility Shaft will provide a new air intake shaft to support the SSCVS and facilitate mining additional panels.”<sup>6</sup> Again, DOE admits that the new shaft is for expanding the ten-panel underground footprint for new panels.

Thus, NMED ignores statements of the permittees about the purpose of the new shaft, and the agency ignores SRIC and other public comments that the physical expansion is needed because all of the waste that DOE desires to emplace at WIPP will not fit in the ten-panel design. Further, as SRIC has pointed out for many years, the waste that DOE intends to emplace at WIPP is beyond the legal limits of the WIPP Land Withdrawal Act (LWA)<sup>7</sup> and DOE-New Mexico Consultation and Cooperation (C&C) Agreement.<sup>8</sup>

There can be no technical doubt about the fact that DOE seeks to emplace more waste in WIPP than those legal limits. Using DOE documents and extensively discussing DOE’s plans with the Department, the National Academy of Sciences (NAS) demonstrated that DOE’s plans exceed those limits.<sup>9</sup>

Figure S-5 of that NAS document shows current and proposed volumes of waste, using both the Land Withdrawal Act (LWA) and Volume of Record (VOR) volumes. The graphic shows that the proposed waste streams vastly exceed the LWA volume limits and exceed the VOR limits.

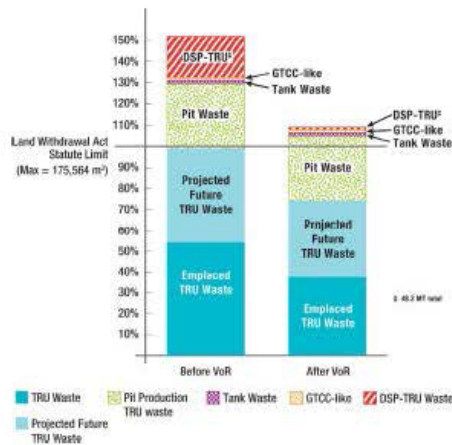


FIGURE S-5 DOE-reported emplaced and future transuranic wastes estimates (DOE-CBFO, 2018a, 2019a) and additional wastes, identified by the committee. Additional wastes are: DSP-TRU, Greater-than-Class-C-like (GTCC-like) TRU wastes, tank wastes, and TRU waste generated from pit production. The graphs illustrate the impact of the Volume of Record (VoR) recalculation, in particular the large reduction in DSP-TRU waste volumes. Both graphs also show that the Land Withdrawal Act statutory limit is likely to be exceeded. DSP-TRU volumes have been subtracted from TRU waste estimates. See Table 3-2.

<sup>6</sup> <https://www.energy.gov/sites/prod/files/2020/03/f72/DOE-Strategic-Vision-LR.pdf>, at 59.

<sup>7</sup> AR 180706.04 NMED WIPP Facility Records.

<https://hwbdocuments.env.nm.gov/Waste%20Isolation%20Pilot%20Plant/>

<sup>8</sup> AR 180706.02 NMED WIPP Facility Records.

<sup>9</sup> <https://www.nap.edu/catalog/25593/review-of-the-department-of-energys-plans-for-disposal-of-surplus-plutonium-in-the-waste-isolation-pilot-plant>

Thus, it is clear that the new shaft is not needed for adequate ventilation for the 10-panel design. But the new shaft is needed for the expanded underground footprint. The PMR request has not accurately stated the need. Nor has NMED explained why it approved the TA and issued a draft permit for a falsely stated need and did not explain the actual need for the new shaft is WIPP expansion.

5. While not responding to comments about WIPP expansion, NMED has told the New Mexico Court of Appeals and the New Mexico Supreme Court that the courts cannot consider WIPP's capacity.

While NMED has provided no explanation to the public for not responding to SRIC and other public comments regarding WIPP expansion, it has offered a rationale of sorts to the New Mexico courts. NMED has stated that such DOE plans are SRIC's "allegation" and SRIC's claims of "conspiracy."

"Much of SRIC's motion amounts to an allegation that the United States Department of Energy ("DOE") is conspiring to unlawfully expand WIPP under the cover of an upgrade to the WIPP facility's ventilation system." AR 200516. at 2.

"In the current Petition, SRIC, as it did before the Court of Appeals, continues to misrepresent the applicable law and make unsupported allegations regarding the intentions of the Department of Energy ("DOE"), Nuclear Waste Partnership, LLC ("NWP") (collectively "Permittees") and NMED." AR 200709 at 1.

"SRIC continues to ask New Mexico appellate courts to hold the administrative permit hearing itself and weigh the evidence of an alleged conspiracy before allowing the Department to proceed in the permitting process." AR 200710 at 16.

In fact, DOE documents that describe some of its plans for WIPP expansion are not allegations. In none of its filings to NMED, the Court of Appeals, or Supreme Court has SRIC used the term "conspiracy."

Additionally, NMED has told the New Mexico Court of Appeals that WIPP's capacity cannot be considered by the courts.

"The issue of WIPP's capacity is not properly before the Court in this proceeding. SRIC's appeal in this matter is asking the Court to adjudicate a hypothetical future outcome of a PMR that is still in an ongoing permitting process." AR 200516 at 9.

Thus, NMED in the courts is misrepresenting DOE documents as SRIC "allegations" and is stating that WIPP capacity issues are not included in what the courts can consider. Given the hundreds of WIPP comments opposing expanding WIPP's capacity that NMED has not responded to, apparently the agency has also inappropriately concluded that capacity issues are beyond the scope of the PMR and draft permit.



6. The new shaft and associated drifts are not supported by adequate NEPA analysis.

While the regulations do not specifically require that class 3 permit modification requests be supported by National Environmental Policy Act (NEPA) document(s), the regulations do include the need to comply with other federal laws. 20.4.1.900 NMAC (incorporating 40 CFR 270.3).

In addition, the WIPP LWA requires that DOE comply with “all other applicable Federal laws pertaining to public health and safety or the environment.”<sup>10</sup> The C&C Agreement requires: “In carrying out this stated mission, DOE and WIPP will comply, at a minimum, with all applicable state, federal, and local standards, regulations, and laws, including any applicable regulations or standards promulgated by the Environmental Protection Agency.” AR 180706.02, Article VI.E.1.

One such law is NEPA. The request does not include any discussion of NEPA compliance. On November 7, 2017, DOE approved a Supplement Analysis (SA) for New Permanent Ventilation System.<sup>11</sup> The SA states: “For the purposes of this SA, a New Filter Building (NFB) and a New Exhaust Shaft were evaluated together for potential cumulative impacts. The Proposed Action, the PVS, would involve the construction and operation of an NFB and a New Exhaust Shaft.”<sup>12</sup> (emphasis added). The permittees submitted that SA in its Technical Incompleteness Determination response of January 21, 2020. AR 200114.

However, the new shaft is not a “new exhaust shaft.” The existing exhaust shaft will continue to be used and the new shaft would be another air intake shaft with no exhaust shaft functions. The request states: “Shaft #5 will be used as the primary air intake shaft for the underground repository.” AR 190815 at 1.

Thus, the SA does not provide adequate NEPA analysis of the new shaft #5 and associated drifts, including the need and intended uses. Because DOE issued an SA, which is not subject to public notice and comment, there was no opportunity for SRIC or other members of the public to comment on that document before it was issued.

SRIC raised this NEPA issue in its comments on October 16, 2019. AR 191019.15. As with other comments, NMED has not responded to the comments, clearly ignoring or rejecting them.

The SA is inadequate and incomplete to provide legally required NEPA analysis of WIPP expansion alternatives, including the new shaft and new underground footprint. That the new shaft is not needed for operation of the ten-panel underground footprint and is not included in WIPP NEPA documents is further demonstrated by the most recent WIPP Environmental Impact Statement (SEIS-II) in 1997 that includes the ten-panel underground footprint, without shaft #5 or additional panels.<sup>13</sup> See attached Figure 2-4.

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<sup>10</sup> AR 180706.04 § 9(a)(1)(G).

<sup>11</sup> [https://wipp.energy.gov/library/seis/DOE-EIS-0026-SA-11\\_Nov\\_2017.pdf](https://wipp.energy.gov/library/seis/DOE-EIS-0026-SA-11_Nov_2017.pdf)

<sup>12</sup> *Ibid.* at 10 of 25.

<sup>13</sup> AR 971019 at 2-14.

As noted on page 6 above, there are various DOE NEPA documents for other sites that discuss WIPP expansion plans, including waste that exceed WIPP's capacity or the legal limitations to management of only defense transuranic waste. Those NEPA documents are not sufficient for WIPP-specific NEPA documents, nor has DOE submitted them as evidence of NEPA compliance. Thus, NMED should require that adequate WIPP NEPA documents are issued before approving the new shaft and associated drifts, including before approving the TA.

7. The Fact Sheet is deficient and inadequate.

20.4.1.901.D(1) NMAC provides that the fact sheet "shall briefly set forth the principal facts and the significant factual legal, methodological and policy questions considered in preparing the draft permit."

A principal fact, not mentioned in the fact sheet, is that the TA was approved on April 24, 2020 and that shaft construction began on April 27, 2020. That fact is essential for adequate, informed public comments on the draft permit.

The fact sheet does not even mention "policy questions" considered in preparing the draft permit, so the fact sheet is clearly deficient. The fact sheet does mention public concern about "expansion of the Facility footprint." at 3. The fact sheet then states that, as the PMR request does not, "the proposed new shaft will support future disposal units by providing the airflow needed to mine, maintain, and subsequently emplace waste in new units." *Id.*

Policy questions that should have been discussed and are not include:

- whether expanding WIPP is consistent with the C&C Agreement,
- whether expanding WIPP to accept additional volume and types of waste is appropriate,
- how important is having the new shaft in operation for about a year before waste disposal operations end in 2024 according to the permit, and
- whether the permit requirements reflect the policy that multiple repositories, not just WIPP, are necessary to accommodate the present and future transuranic waste inventory.

Since the fact sheet is deficient and it is required for "every draft permit," the draft permit itself is deficient. The draft permit and the fact sheet should be withdrawn and reissued for additional public comment.

8. The draft permit makes no substantive changes to the provisions of the class determination request and the PMR.

The December 22, 2017 class determination PMR included proposed changes to Attachment A, Attachment A2, Attachment A4, Attachment B, Attachment D, and Attachment G. The August 15, 2019 PMR included the same proposed changes to the same permit provisions.

The draft permit includes the same proposed changes to the same permit provisions. Since NMED made no substantive changes, the reasonable conclusion once again is that NMED will approve the PMR.

SRIC specifically objects to each and every provision included in the draft permit, except for three typographic and editorial additions on page A2-9. SRIC does not object to changing the typographical error on line 23 on that page. SRIC also does not object to adding “standard” in the two places shown in line 45 on the page. However, those changes can be made through class 1 modifications and in no way are a justification for the other changes included in the draft permit.

9. Request for negotiations and public hearing.

As NMED is well aware, SRIC is a non-profit organization based in Albuquerque, New Mexico that focuses on public education and involvement and public health and environmental justice. SRIC has been involved in WIPP permitting activities for more than 20 years, including being a party in the original permit proceeding, the permit renewal, dozens of permit modification requests, as well as numerous other activities related to public health and the environment.

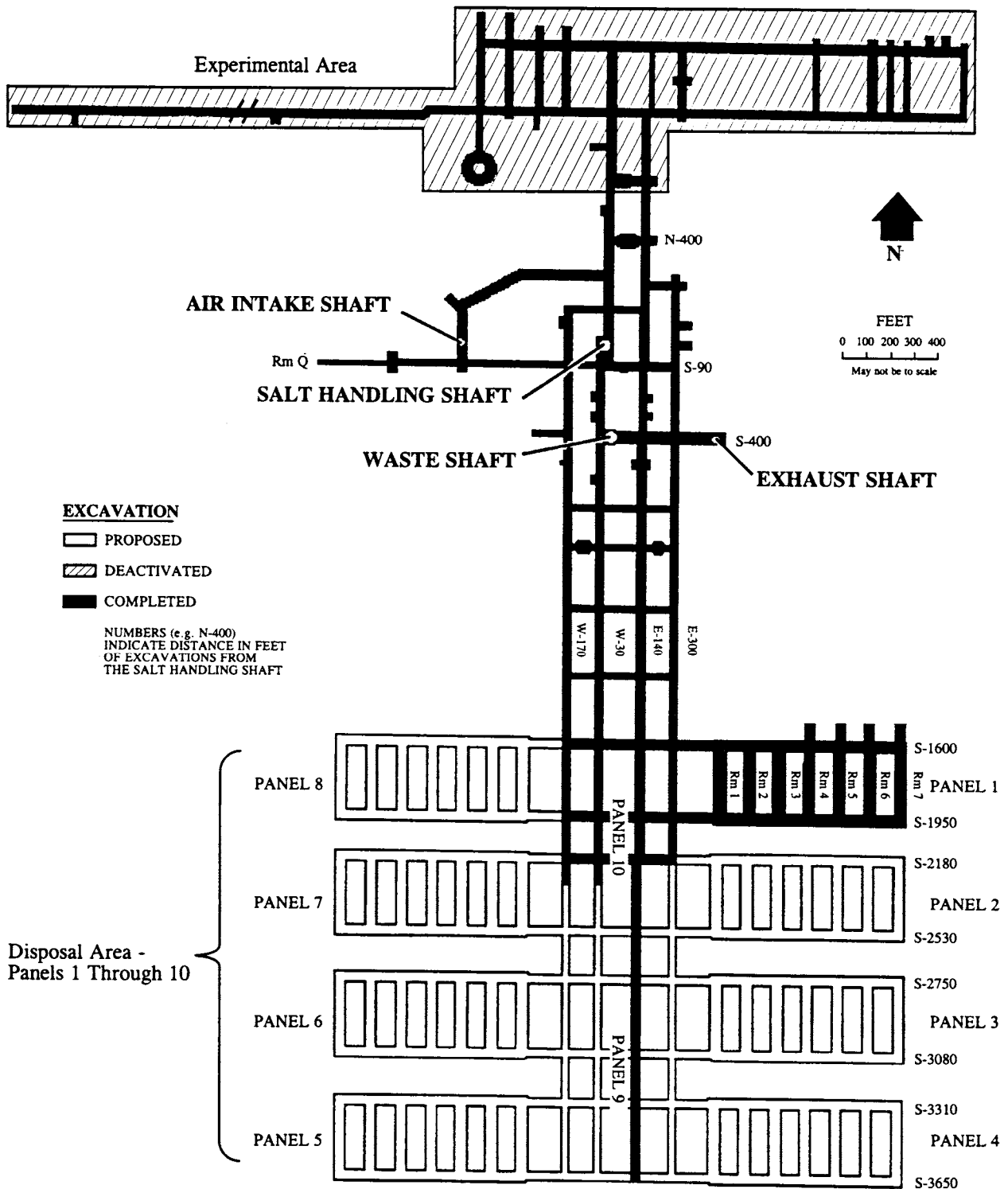
Further, and prior to any notice of public hearing, pursuant to 20.4.1.901. A.4 NMAC and NMED practice regarding past class 3 modifications and the permit renewal hearing, SRIC requests that NMED, the Permittees, SRIC, and other parties conduct negotiations to attempt to resolve issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is written in a cursive, flowing style.

Don Hancock

cc: Kevin Pierard



**Figure 2-4**  
**Plan View of WIPP Underground Facility**  
 (655 meters [2,150 feet] below ground level)