

**SOUTHWEST RESEARCH AND INFORMATION CENTER**

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October 4, 2021

Ricardo Maestas  
New Mexico Environment Department (NMED)  
2095 Rodeo Park Drive, Building 1  
Santa Fe, NM 87505

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

RE: Class 3 Permit Modification Request (PMR) - Construction and Use of Hazardous Waste Disposal Units 11 and 12

Dear Ricardo,

Southwest Research and Information Center (SRIC) provides the following comments on the Class 3 Permit Modification request, dated July 30, 2021. Most basically, NMED should not be further diverted from proceeding with the permit renewal process, which is many months behind schedule. Because of the need to proceed with the renewal process, there are two possible actions that NMED can take to comply with the regulations: (1) Deny the PMR, or (2) Take no action.

SRIC strongly opposes this PMR, which does not meet the legal and regulatory requirements, and is another, inappropriate piecemeal PMR related to WIPP expansion. If NMED does not currently have the resources to fully evaluate and deny the request, it should take no action at least until the permit renewal process is completed.

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.

1. NMED has for too long, and without public explanation, delayed the Permit Renewal.

The current WIPP Permit was issued on November 30, 2010, for a period of ten years, and expired on December 30, 2020.<sup>1</sup> The Permit Renewal Application was submitted on March 30, 2020. AR 200318. But other than providing Public Notice 20-05 on August 28, 2020 (AR 200816), NMED has taken no public action to proceed with the renewal process.

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<sup>1</sup> <https://hwbdocuments.env.nm.gov/Waste%20Isolation%20Pilot%20Plant/101138.pdf>

In sharp contrast, the first WIPP renewal application was submitted on May 27, 2009. AR 090532. That application was inadequate, and the amended renewal application was submitted on September 24, 2009. AR 090937. NMED issued its completeness determination on November 25, 2009. AR 091136. Thus, it took less than six months from submittal of an inadequate permit renewal application for NMED to issue the completeness determination and two months after an amended renewal application to make the completeness determination. Now, more than 18 months after the renewal application was submitted, there has been no completeness (or incompleteness) determination. Such a delay is totally unexplained and totally unacceptable.

That delay in the renewal process and the lack of public explanation is especially unacceptable because SRIC has repeatedly, for more than 30 months, expressed concerns about the timing of the renewal process. On March 8, 2019, SRIC wrote to NMED: “An even better result would be agreement on which of the modification requests could be included in the permit renewal application that must be submitted in early 2020 and which could be submitted at an earlier date.” AR 190308. On April 15, 2019, following an April 11, 2019 meeting with the Permittees regarding the new shaft PMR, SRIC wrote to NMED and DOE: “that it was very concerned about the lack of the Permittees' willingness to discuss the permit renewal process and the apparent lack of action on a permit renewal application, since the public process should have already begun.” AR 190408. On October 16, 2019, commenting on the new shaft PMR request, SRIC stated (AR 191019.15 at 9):

The public concern and the gross deficiencies in the application indicate that if the request is not denied, the further modification process will be contentious and complex. For both NMED and the public, the time, effort, and cost of such a modification process will detract from the resources needed for the more important permit renewal process. Thus, if the new shaft modification request is not denied, SRIC renews its proposal of April 15, 2019 that further consideration of the request be postponed until after the conclusion of the permit renewal process.

On May 3, 2021, SRIC’s written testimony in the new shaft hearing stated: “Permittees’ piecemeal approach has delayed the permit renewal process and made it much more contentious and time and resource intensive for all parties.”<sup>2</sup>

On June 30, 2021, SRIC again wrote NMED: “The WIPP Renewal Permit has been too long delayed and must now move forward.” AR 210624 at 1.

Another indication that the renewal process should proceed and that the PMR cannot stand alone are the numerous PMR references to the renewal application – at 2, 3, 7, 10, 11, 14, 15.

NMED should finally prioritize its resources to the permit renewal process. That process is the appropriate venue to discuss the problems of the past eleven years and to address all upcoming waste management needs and minimize the number of permit modifications that will be required over the next ten years.

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<sup>2</sup> HWB 21-02 SRIC Exhibit 14 at 17.

2. If NMED takes any action on the PMR, it must issue a denial, pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(c)(6)).

Those regulations state:

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.

Further,

If the secretary decides the [modification] request is not justified, the permittee will be notified in writing explaining the reason for denial. Denial of request of modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. 20.4.1.901. B(4) NMAC.

Major reasons to deny the request include:

A. The Permittees have not accurately described the need for the two new panels.

20.4.1.900 NMAC (incorporating 40 CFR 270.42(c)(1)(iii)) requires that the request explain why the modification is needed.

The PMR (at 15) states:

This modification is needed to add descriptive information and to make applicable figure modifications and additions regarding the West Mains and replacement Panels 11 and 12, along with their maximum TRU mixed waste capacities, to the Permit. As detailed in the *March 2020 Permit Renewal Part B Application for the Waste Isolation Pilot Plant Hazardous Waste Facility Permit*, Addendum G1, replacement panels are required to replace a loss of disposal capacity in Panels 1, 7, and 9.

A Permit modification is necessary because the Permit does not currently include descriptive text or figures of the West Mains and replacement Panels 11 and 12. Panels 11 and 12 are alterations to the permitted facility which cause the need for modification of the permit.

The Permittees are, as they inappropriately did with the new shaft PMR, stating that the need is to add descriptive language to the Permit. However, the descriptive language changes are required by 40 CFR 270.42(c)(1)(i), and discussed in the PMR on pages 7-14. It would be redundant and duplicative to require the same discussion under 40 CFR 270.42(c)(1)(iii). Moreover, EPA's preamble makes clear that the changes to be shown "necessary" are changes to the facility. 53 Fed. Reg.37912, ¶ IV.B.5.

The original WIPP design, as described in its Environmental Impact Statements of 1980<sup>3</sup>, 1990<sup>4</sup>, and 1997,<sup>5</sup> provided that the 8 panels would accommodate more than the 6.2 million cubic feet of transuranic (TRU) waste. If additional Hazardous Waste Disposal Units (HWDUs) were needed, they were to be provided by Panels 9 and 10, which would not expand the 100-acre underground footprint.<sup>6</sup> That capacity design was also provided pursuant to the New Mexico-DOE Consultation and Cooperation Agreement (C&C).<sup>7</sup> Permittees confirmed that design capacity in their testimony at the original permit hearing:

A. The facility is laid out to have eight panels, starting with 1, 2, 3, 4, 5, 6, 7, 8. If, in fact, eight panels is insufficient for us to reach the capacity mandated by the Land Withdrawal Act, we also have available for disposal these areas between the panels. We refer to these—or will refer to these as “panels 9 and 10,” should it be necessary to use them.

Tr. Feb. 22, 1999 at 81.

Thus, the Permittees must explain in the PMR why the additional panels and expanded underground footprint are needed and why Panels 1, 7, and 9 lost disposal capacity.

\*Is the need because the original design of eight plus two panels was incorrect? The Permittees have not made such a claim.

\*Is the need because the underground disposal panels have not functioned as expected? The Permittees have made no such claim and have always stated that room and panel closure were both understood in the design and a reason that the salt bed site is a safe disposal site.

\*Is the need to manage more than the legal limit of 6.2 million cubic feet (175,564 cubic meters) of transuranic waste? The Permittees have not stated that in their PMR or other documents submitted to NMED; but that issue is further discussed in 2.C below.

\*Is the need because the underground space has been mismanaged and because of permit violations? Clearly, the Permittees have known that there was a volume shortfall in the original panel design since March 3, 2003 when Panel 1 was closed with 10,496.65 cubic meters (m<sup>3</sup>) of waste,<sup>8</sup> 7,503.35 cubic meters less than the contact-handled (CH) waste permitted capacity. Indeed, the PMR states: “replacement panels are required to replace a loss of disposal capacity in Panels 1, 7, and 9.” at 15.

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<sup>3</sup> AR 801001 at 2-17. Page 54 of PDF.

<sup>4</sup> AR 900102 at Vol. 3, p. 246. Page 1575 of the PDF.

<sup>5</sup> AR 971019 at Vol. 1, p. 1-3. Page 66 of PDF.

<sup>6</sup> The new panels would also add more than 29 acres to the underground footprint.

<sup>7</sup> AR 180706.02 at 56 of PDF.

<sup>8</sup> Permit Table 4.1.1. Note SRIC uses the historic and legal outer container or “TRU Mixed Waste” volume. DOE’s use of the “Volume of Record” (VOR) is both legally and historically incorrect, but it would also require DOE to state that WIPP’s design was insufficient for the 6.2 million cubic feet capacity limit.

Of course, DOE knew since 1999, when the original Permit was issued that prohibited remote-handled (RH) waste,<sup>9</sup> that there would be a shortfall in permitted capacity for RH waste. DOE has not discussed that issue in its PMR.

Why was Panel 1 not fully filled to capacity? The PMR states: “Disposal capacity was lost in both Panels 1 (Rooms 6, 5, and 4) and 7 (Room 4) due to ground conditions.” at 2. The further explanation (at D-6) is:

The panel was completed in 1988, anticipating that the WIPP facility would be authorized to receive and emplace waste in 1988. However, the first waste was not emplaced in Panel 1 until March 1999. This was far in excess of the anticipated 30-month emplacement period with the result that the Permittees had to perform extensive maintenance of the ground in Panel 1 before waste emplacement was started. Even with this effort, the Permittees made the decision to abandon rooms 6, 5, and 4 in Panel 1 due to the deteriorating ground conditions.

It was a self-imposed DOE decision to mine Panel 1 to emplace waste in 1988. There was no congressional requirement to do so. There was no provision of the C&C Agreement to begin waste emplacement in 1988. It was error on DOE’s part to mine the Panel 1 before obtaining legal and regulatory approvals. It was a further error on DOE’s part to neither take necessary actions from 1988 to 1999 to make all of Panel 1 safe to use nor to not totally abandon Panel 1. It was an additional error on DOE’s part to not begin discussions with NMED and the public at least by 2003 about what to do about the capacity shortfall. There is no legal or regulatory requirement to approve permit modifications based on self-imposed errors by the Permittee.

Why was Panel 7 not filled to capacity? The PMR states: “Disposal capacity was also lost in Panel 7 (Rooms 7 and 6) as a direct result of radiological contamination from the 2014 radiological event.” at 2. The further explanation (at D-8) is: “Panel 7 Room 7 and Panel 7 Room 6 were lost for waste emplacement as a direct result of radiological contamination.” Of course, that contamination was a violation of the Permit. There is no legal or regulatory requirement to approve a permit modification necessitated by permit violations. Further, “Because of the ground conditions in Panel 7 Room 4, the Permittees prohibited the use of the room thereby creating a loss of emplacement capacity.” The lack of ground control was because of the radiological contamination resulting from permit violations. Again, there is no legal or regulatory requirement to approve a permit modification necessitated by permit violations.

Why will Panel 9 not be used? The PMR states: “Based on the ground conditions, engineering judgment, and contamination in portions of the Panel 9 area, a decision was made to abandon the area, and therefore it is no longer available for TRU mixed waste emplacement. at 3. The further explanation (at D-8 to D-9) is:

The radiological event of 2014 had an impact on the potential use of Panels 9, 9A, 10, and 1 OA. Panels 9 and 10 both experienced radiological contamination in portions of the panels. Ground control efforts in Panel 9 after February 2014 could not be performed quickly enough in order to make the ground safe throughout the panel. Based on the ground conditions and contamination in

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<sup>9</sup> Module II.C.3.h.

portions of the Panel 9 area, a decision was made to abandon the potential use of Panel 9 for waste emplacement and to withdraw the Class 3 PMR, Repository Reconfiguration, associated with adding Panels 9A and 10A south of the existing panels.

The radiological event was the result of permit violations. Once again, there is no legal or regulatory requirement to approve a permit modification necessitated by permit violations.

Further, the PMR itself shows that Panels 11 and 12 would exceed the capacity limit. Proposed Table 4.1.1 totals the Maximum TRU Mixed Waste Capacity to 186,000 m<sup>3</sup> of CH waste, well in excess of the CH waste capacity limit of 168,485 m<sup>3</sup>. Both CH and RH waste total 189,935 m<sup>3</sup>, which is well in excess of the total legal capacity limit. It is totally inappropriate for NMED to approve this, or any, PMR that allows the waste capacity limit to be exceeded.

Thus, the regulatory need is not to add descriptive language in the Permit. But the PMR is not based on the stated need, which does not meet the regulatory requirements. Instead, the supposed need is provide additional HWDUs because of self-imposed errors in using Panel 1 and permit violations that led to not using Panels 7 and 9. But that actual need is not stated in the PMR. Nor does that need meet the regulatory requirements, since there is no requirement to approve a PMR based on self-imposed errors and permit violations. Additionally, approval of the PMR would allow the legal waste capacity limit to be exceeded.

B. The PMR does not provide any accurate basis for two additional panels.

As already discussed, Panel 1 has a CH-waste permitted capacity shortfall of 7,503.35 m<sup>3</sup>. The unused capacity in Panel 7 is unknown and is not included in the PMR. As of September 25, 2021, Panel 7 had 8,921.53 m<sup>3</sup> of CH waste and 25.89 m<sup>3</sup> of RH waste.<sup>10</sup> Since that volume does not include Room 1, Panel 7 should have an actual waste volume of more than 11,000 m<sup>3</sup> of CH waste. That will be a larger amount of CH waste than Panel 1. Thus, Panels 1 and 7 have a combined unused capacity of less than one Panel. The PMR estimates that as the equivalent of 0.7 panels. at 2.

The PMR tries to justify the second panel by incorrectly stating: “The lost disposal capacity of Panel 9, due to ground conditions and contamination, is the equivalent of one panel.” at 3. The Permittees have never submitted a PMR for Panel 9 to be a HWDU, nor a proposed capacity volume. Panel 9 was clearly never designed to be permitted for 18,750 m<sup>3</sup> of waste. So the Permittees cannot truthfully state now that it ever had such a capacity.

There is no actual basis to state that Panel 9 has a capacity of more than 0.3 panels. Thus, the PMR does not provide a basis to approve two panels, since the actual unused capacity of Panels 1, 7, and 9 is less than 18,750 m<sup>3</sup> of CH waste.

C. DOE’s planned need is for many new panels, Panels 11 and 12 being only the first two.

No place in the PMR do the Permittees state that two new panels and no more are needed or planned. In fact, numerous other documents, not included in the PMR, show the DOE plans for several more panels.

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<sup>10</sup> <https://www.wipp.energy.gov/general/GenerateWippStatusReport.pdf>

A National Academies (NAS) Committee released the *Review of the Department of Energy’s Plans for Disposal of Surplus Plutonium in the Waste Isolation Pilot Plant* that was issued on April 30, 2020.<sup>11</sup> The Committee reviewed in detail DOE’s plans, visited involved sites, and unanimously concluded that those plans would result in the amount of waste at WIPP exceeding the legal capacity – even under the Volume of Record (VOR) calculation.

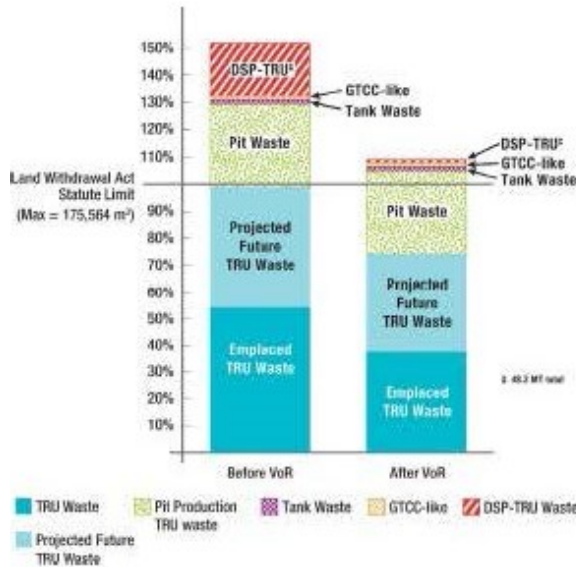


FIGURE S-5 DOE-reported emplaced and future transuranic wastes estimates (DOE-CBFO, 2018 a, 2019a) and additional wastes, identified by the committee. Additional wastes are: DSP-TRU, Greater-than-Class-C-like (GTCC-like) TRU wastes, tank wastes, and TRU waste generated from pit production. The graphs illustrate the impact of the Volume of Record (V oR) 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.

DOE has not refuted, or even responded to, the NAS Report and its Findings and Recommendations. But clearly, many more than two panels would be needed to accommodate the amount of waste that is included in the Report.

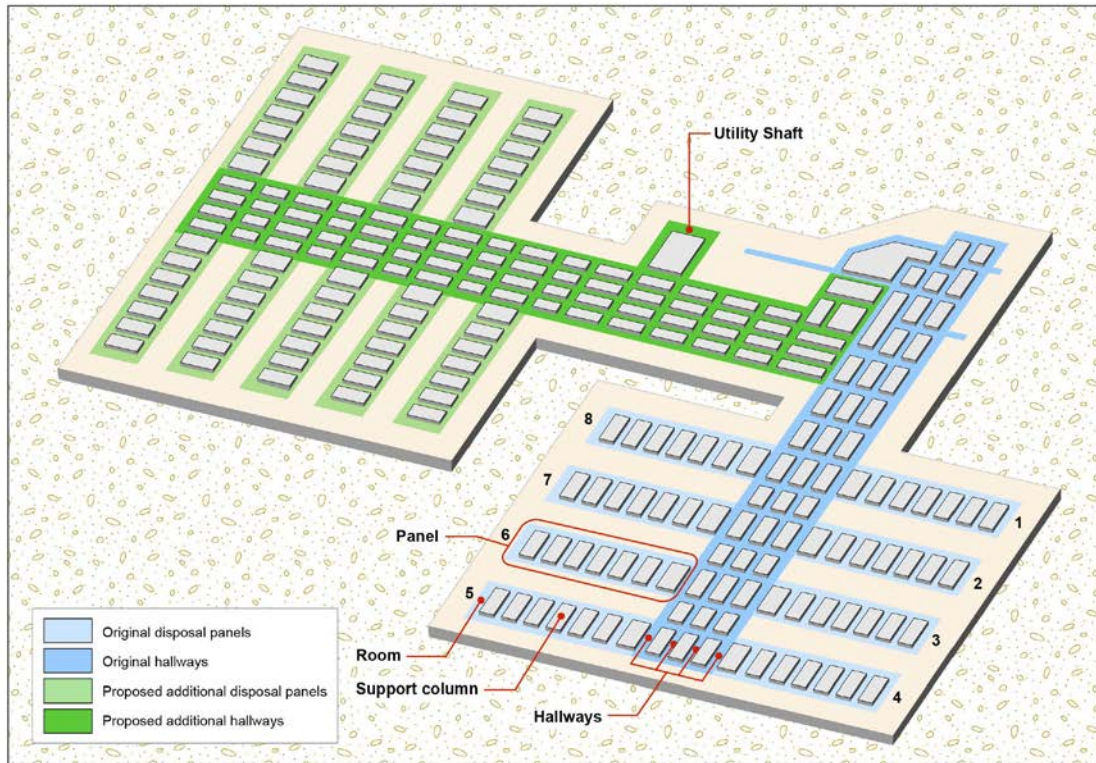
Subsequently, the Government Accountability Office (GAO) issued a report in November 2020.<sup>12</sup> The GAO reported: “During their planning, DOE officials calculated that nine additional panels, using panel designs similar to those of the existing panels, should be sufficient to meet DOE’s TRU waste disposal needs as outlined in its 2018 Annual TRU Waste Inventory Report.” at 18.

<sup>11</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>

<sup>12</sup> <https://www.gao.gov/assets/gao-21-48.pdf>

Of course, the capacity of nine additional panels would exceed the total amount of waste that will be disposed in Panels 1-10. The GAO report included a conceptual drawing of the nine additional panels.

Figure 4: Draft Conceptual Design for Additional Waste Disposal Physical Space at the Waste Isolation Pilot Plant (WIPP)



Source: GAO analysis of Department of Energy information. | GAO-21-48

Note: This figure does not include northern portions of the original WIPP underground area, which were mined during DOE's research and development phase for constructing WIPP, because these are not intended for use in transuranic waste disposal. A panel is an area in the underground area that consists of seven rooms where waste is disposed of.

Moreover, DOE documents show that it plans many more panels than Panels 11 and 12. One example is the *Federal Register* Notice of November 5, 2020 (85 Fed. Reg. 70601-04), DOE's Record of Decision to implement the Preferred Action in the Final Environmental Impact Statement (FEIS) for Plutonium Pit Production at the Savannah River Site in South Carolina, DOE/EIS-0541.<sup>13</sup> That action is to produce a minimum of 50 war reserve pits per year at the Savannah River Site (SRS), beginning during the year 2030. The FEIS states that WIPP will accommodate all of the TRU waste from pit production "over the next 50 years." at S-32.

Disposal at WIPP in 2080 will require mining new panels up until that time. The PMR reiterates that panels are being filled for 30 months. at 2. The PMR shows that three years operations in

<sup>13</sup> <https://www.energy.gov/sites/default/files/2020/09/f79/final-eis-0541-srs-pit-production-summary-2020-09.pdf>



Panel 12 would end in June 2031. at B-43. Pit production at SRS is to produce waste for disposal at WIPP for at least 49 years, or 588 months. At the rate of 30 months of disposal operations per panel, DOE would “need” at least 19 more panels. Even if future panels had disposal operations for three years, the “need” would be for 16 additional panels.

Clearly, DOE has plans for many more panels than Panels 11 and 12. Indeed, it has made a decision that it “needs” WIPP to operate past the year 2080 and will require many more panels to accommodate that waste. But that essential information is not included in the PMR.

The PMR is not based on the actual DOE plans. Those plans require additional HWDUs because of the new types and amounts of waste discussed in the NAS Report and the use of WIPP beyond 2080, since there is no other repository. But that need is not stated in the PMR. But those plans are contrary to the C&C Agreement and the WIPP Land Withdrawal Act (LWA), so the expanded underground panels do not meet the legal requirements, and cannot be permitted.

D. There is no legal requirement for the two new panels, nor is there a legal requirement for WIPP to dispose of exactly 6.2 million cubic feet of transuranic waste.

The PMR does not claim that there is any legal requirement for the new panels. The PMR states (at 7) that the two new panels “allow the DOE to continue its mission to safely dispose of defense-related TRU waste up to the LWA limit of 175,564 m<sup>3</sup> (6.2 million ft<sup>3</sup>) at the WIPP facility.”

The C&C Agreement and, subsequently, the LWA state that the capacity is up to 6.2 million cubic feet of transuranic waste. Neither the C&C Agreement nor the LWA require exactly that amount of waste to be emplaced. The fact that the existing panels will not accommodate that amount of waste is not a reason to add two new panels. Either DOE or NMED can lawfully stop disposal operations before the legal capacity limit is met, and the Permittees have not stated otherwise.

The major reason for the capacity limit is to prevent WIPP from being the only repository. There has long been significant public concern that WIPP would be the first and only repository. If there is no other disposal site, then inevitably WIPP would have to be expanded, as there is no legal requirement to stop TRU waste production at any future date.

SRIC has previously discussed the WIPP capacity limit history.<sup>14</sup> Briefly, WIPP was authorized in 1979 as a pilot plant to demonstrate the safe disposal of defense TRU waste. A pilot plant is the first, but not only facility. In 1982 and 1987, Congress enacted nuclear waste laws, stating that there would be other repositories. In subsequent years during the congressional debate about the LWA, Congress again reaffirmed that there would be other repositories, and that the volume limits on WIPP were established as part of the multi-repository plan.

In the House floor debate before the final vote, one of the bill co-sponsors, Rep. Peter Kostmayer stated (Cong. Rec. 32552 (c. 2), October 5, 1992):

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<sup>14</sup> AR 180914.32 at 3-8 is one example.

Whether we are going to generate more nuclear waste is not the question. The question is we have got to get rid of the material we have. This facility will take only 20 percent of all the waste that we have. Still 80 percent will remain unburied. We have to deal with that. Cong. Rec. 32552 (c. 2), October 5, 1992.

The PMR does not discuss that reality, and DOE has not proceeded with any other repository. Instead, as shown in 2.C above, it is continuing to plan for TRU waste disposal until at least 2080 with WIPP as the only repository.

But there is no regulatory requirement that the Permit must meet DOE's plans, undisclosed or not. NMED should not be complicit in those plans, which are contrary to the Permit, the C&C Agreement, and LWA.

Further, in establishing a capacity limit, Congress did not state that the amount of waste disposed had to be exactly 6.2 million ft<sup>3</sup>, and not one cubic foot of waste more or less. Trying to use the capacity limit to determine what the actual waste capacity will be has no basis in the law, nor does the PMR provide such a justification.

The request must be denied, as the unstated need for expansion should not be supported by NMED or the State.

E. The permittees did not submit a “true, accurate, and complete” request, as required by regulations and as stated in the August 15, 2019 Cover Letter for the request.

20.4.1.900 NMAC (incorporating 40 CFR 270.11(d)(1)) requires that permit document be signed and certified as being “true, accurate, and complete.” As discussed above, the request does not disclose the real purpose and need for the new shaft and associated drifts, although in the cover letter, the Permittees state that it does meet that requirement.

The New Mexico Hazardous Waste Act (HWA) provides that the Secretary may deny any permit application if the permittee has “knowingly and willfully misrepresented a material fact in the application for a permit.” NMSA § 74-4-4.2.D(1). The PMR does not include true, accurate, and complete information and does knowingly misrepresent material facts related to the need, including DOE's own documents. Thus, the PMR does not comply with the HWA requirements and should be denied.

In summary, the descriptive text need that the is basis for the PMR is not legally adequate, there is no factual basis provided for two panels, the actual need – and DOE plans – are for many more than two panels, there is no legal requirement to provide additional capacity, and the Permittees have not submitted a “true, accurate, and complete” application, in violation of regulations and the HWA. Therefore, the appropriate NMED action is to deny the PMR.

3. The PMR inconsistently addresses unused capacity in Panels 3, 4, 5, and 6.

In the PMR Overview, there is no mention of unused capacity of Panels 3, 4, 5, and 6 to justify Panels 11 and 12. But those panels are mentioned in Appendix D.

Why does the PMR include any discussion of unused capacity in those four panels? Perhaps because the Permittees are aware that the Appendix D (and Permit Renewal Application) rationale is inaccurate.

The PMR explanation (at D-7) is:

The loss of disposal capacity in Panels 3 - 6 is not related to ground control. Instead it is the result of using a different mix of container sizes than anticipated when the permitted volumes were determined and the placement of backfill (magnesium oxide sacks (MgO)) in racks on the floor. The placement of MgO on the floor reduced the amount of available floor space for CH-TRU mixed waste emplacement.

In fact, the MgO requirement has always been in the Permit, including for Panels 1 and 2 and 7 and 8. Thus, it does not cause any unused disposal capacity different than any other panel. As for the “different mix of container sizes,” there is no explanation of why containers that allow more waste to be emplaced than would be allowed by 55-gallon drums reduces the disposal capacity. For example, in 2006, the Permittees’ witness testified at the Class 3 PMR related to Section 311 related changes (HWB 06-01(M)) that compared with ten 55-gallon drums, or a SevenPACT or a standard waste box that the “ten-drum OverPACT uses the space in the underground more efficiently.” Thus, because of use of Ten-drum OverPACTs (TDOPs) in Panel 2, not all of the available space was filled. Attachment 1.

TDOPs have also been used for waste emplaced in Panels 3, 4, 5, 6, and 7. Again, the stated rationale for capacity shortfall in panels 3, 4, 5, and 6 is not valid.

SRIC raises this issue now, as we expect that for future “replacement panels,” the Permittees may argue that there was loss of capacity for the reasons stated in Appendix D. As a basis for additional panels in the permit renewal or in other PMR, such an argument must be rejected as invalid.

#### 4. NMED can take no action on the PMR.

The regulations provide no timetable for NMED’s action on a class 3 PMR. Actual NMED practice has included taking no action on a WIPP class 3 PMR. For example, the class 3 PMR for Addition of a Concrete Overpack Container Storage Unit was submitted on September 29, 2016.<sup>15</sup> More than five years have passed, and NMED has taken no action. Thus, based on the regulations and historic practice, NMED can take no action on this PMR.

While SRIC has shown that there is sufficient basis to deny the PMR, so long as NMED proceeds immediately with the Permit Renewal process, it could also comply with the regulations and historic practice and take no action on this PMR, at least until the permit renewal process is completed.

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<sup>15</sup> AR 160917.

5. Mining of the three drifts should not be allowed until there is a final decision about the PMR. If NMED denies the PMR, there is clearly no basis for the Permittees to begin mining any of the three new drifts that are included in the PMR. Similarly, if NMED takes no action on the PMR, it should clearly inform the Permittees that they cannot begin such mining.

At the virtual legislative briefing on February 9, 2021, WIPP Manager Knerr presented 2021 priorities, including: “Begin mining to the west of the current mine.” Attachment 2. Three weeks later, DOE Environment Management 2021 priorities were released and included: “Begin mining of the West Access Drifts at the Waste Isolation Pilot Plant.” Attachment 3.

SRIC has previously requested that NMED inform the Permittees that additional mining of drifts is not allowed until PMRs are approved.<sup>16</sup> Therefore, SRIC again urges NMED to inform the permittees that they should not undertake activities related to any new drifts in the West Mains until PMRs are approved.

Thank you very much for your careful consideration of, and your response to, these and all other comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is fluid and cursive, with a large initial "D" and "H".

Don Hancock

cc: Chris Catechis

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<sup>16</sup> AR 210624 at 2.

1 STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT

2 No. HWB 06-01(M)

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4 IN THE MATTER OF THE APPLICATION  
5 FOR A CLASS 3 MODIFICATION TO THE  
6 HAZARDOUS WASTE FACILITY PERMIT  
7 FOR THE WASTE ISOLATION PILOT PLANT,  
8 CARLSBAD, NEW MEXICO  
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12 EPA ID NO. NM 4890139088  
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1 capability of canisterizing that waste, taking the  
2 waste, the 55-gallon drums, putting it into the  
3 canister, and then shipping it using a 72B. So they --  
4 this option of being able to send 55-gallon drums  
5 directly in a 10-160B is an attractive option to them.

6 Q. Can you explain how the volume of TRU waste  
7 waste disposal works?

8 A. Yes.

9 This would be Module IV, page IV-1. This is  
10 -- when the permittees requested -- submitted their  
11 permit -- their permit modification request, they  
12 requested an increase in the volume of the disposal  
13 capacity in the underground.

14 The reason for that was that, when we  
15 initially permitted the facility, the containers that  
16 were being used and the basis for permitting were  
17 55-gallon drums and standard waste boxes, each of which  
18 has a known volume.

19 So we assumed a distribution of standard waste  
20 boxes and 55-gallon drums, calculated the associated  
21 volume, and that's what we requested.

22 Since that time, we have designed and have  
23 authorized a new container called a ten-drum OverPACT.  
24 A ten-drum OverPACT, as the name implies, will hold ten  
25 55-gallon drums, but it has an internal volume that, of  
26

1 course, is larger than the volume of those individual  
2 drums or larger than the volume of a SevenPACT or a  
3 standard waste box.

4 So as a result, the ten-drum OverPACT uses the  
5 space in the underground more efficiently.

6 What happened in panel two is that was the  
7 first panel where extensive use of ten-drum OverPACTS  
8 occurred, and before we finished filling all of the  
9 available space in panel two, we reached our panel  
10 limit. The limit was 18,000 cubic meters. So we had to  
11 abandon a portion of that panel to move on to the next  
12 panel because of that limit.

13 So in this permit, we're requesting sufficient  
14 capacity so that we would not have to abandon any  
15 underground space for those -- because of the efficiency  
16 of the containers.

17 What we negotiated was a capacity limit of  
18 18,750 cubic meters, with the ability to increase that  
19 by 1,000 cubic meters -- 1,000 cubic meters is roughly  
20 5,000 55-gallon drums -- increase that capacity by  
21 filing what's referred to as a class 1 star permit  
22 modification.

23 That just simply means it's a class 1  
24 modification that has to have the approval of the New  
25 Mexico Environment Department before we implement it.

26





U.S. DEPARTMENT OF  
**ENERGY**

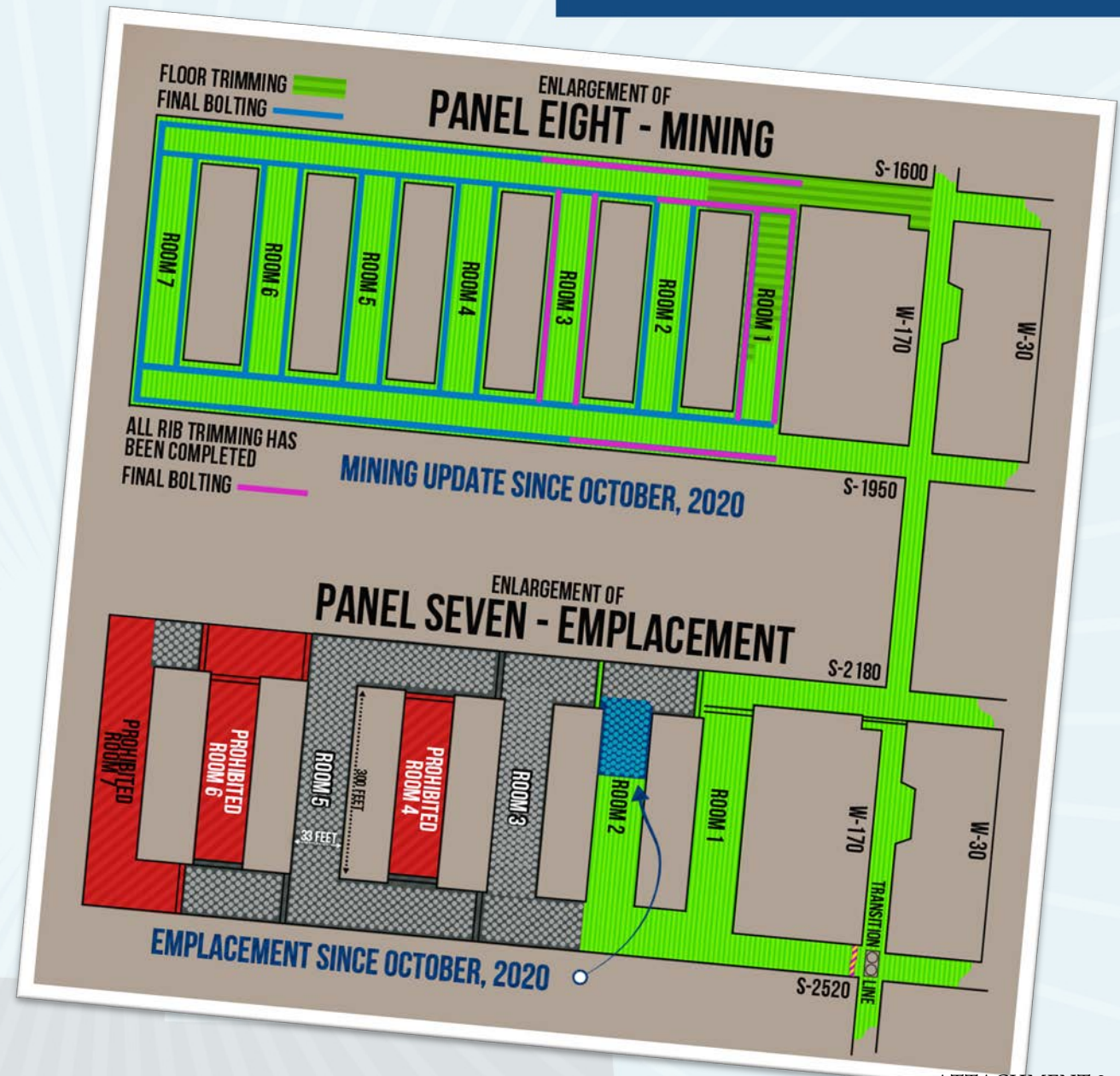
# LEGISLATIVE UPDATE WASTE ISOLATION PILOT PLANT

FEBRUARY 9, 2021



# MINING UPDATE

- Rough Cut and Final Rib Mining in Panel 8 is Complete
- Floor Trimming is scheduled to be complete in May 2021
- Outfitting and Certification of Panel 8 is scheduled to be completed by January 2022



ATTACHMENT 2

211001.40

# EM CY21 MISSION AND PRIORITIES



U.S. DEPARTMENT OF  
**ENERGY**

OFFICE OF  
**ENVIRONMENTAL  
MANAGEMENT**

## MISSION STATEMENT:

To complete the safe cleanup of the environmental legacy brought about from decades of nuclear weapons development and government-sponsored nuclear energy research.

### **PRIORITY #1:** ACHIEVE SIGNIFICANT CONSTRUCTION PROJECT MILESTONES

- Complete construction of the Tank-Side Cesium Removal system at Hanford
- Complete construction of the Saltstone Disposal Unit #7 at Savannah River Site
- Complete construction of the Salt Reduction Building at the Waste Isolation Pilot Plant

### **PRIORITY #2:** EXECUTE KEY PROJECTS OF EM CLEANUP MISSION

- Start up the Integrated Waste Treatment Unit at the Idaho National Laboratory Site
- Complete processing of 6 million gallons of tank waste at the Savannah River Site
- Complete Biology Complex demolition at Oak Ridge
- Complete 30 shipments of transuranic waste from EM-Los Alamos
- Complete demolition of all DOE-owned buildings at the Energy Technology Engineering Center
- Complete demolition of 40 percent of Building X-326 at Portsmouth
- Complete disposition of remaining legacy EM-Los Alamos transuranic waste at Waste Control Specialists
- Begin mining of the West Access Drifts at the Waste Isolation Pilot Plant
- Complete stabilization of below grade cribs/tanks at Hanford
- Disposition 1.5 million pounds of hazardous refrigerant from Paducah
- Remove a cumulative 12 million tons of former uranium mill tailings at Moab
- Begin demolition of the Main Plant Processing Building at West Valley
- Complete demolition of Building 175 to slab at Lawrence Livermore National Laboratory
- Complete demolition of Old Town Building 7 to slab at Lawrence Berkeley National Laboratory

### **PRIORITY #3:** REDUCE THE EM COMPLEX FOOTPRINT

- Transfer East Tennessee Technology Park real property to other DOE programs/community organizations
- Transfer 200 acres to the local community reuse organization at Portsmouth

### **PRIORITY #4:** AWARD CONTRACTS THAT ENABLE ACCELERATED PROGRESS ACROSS THE EM ENTERPRISE

- Award Idaho Cleanup Contract
- Award Oak Ridge Reservation Cleanup Contract
- Award Integrated Mission Completion Contract at the Savannah River Site
- Award Portsmouth Infrastructure Contract
- Award new contracts for deactivation and decommissioning activities at Office of Naval Reactors sites

### **PRIORITY #5:** DRIVE INNOVATION AND IMPROVED PERFORMANCE IN THE EM MISSION

- Issue an EM-wide succession plan for a long-term diverse and sustainable workforce
- Update the EM-wide strategic vision for 2021-2031
- Identify and complete an analysis for a second high-level waste interpretation waste stream
- Complete the waste incidental to reprocessing evaluation for Hanford Waste Management Area C

211001.40

ATTACHMENT 3